

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
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A hearing in the above-entitled matter was held on
October 24, 2013, commencing at 9:39 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue, 2nd
Floor Council Hearing Room, Rockville, Maryland 20850
before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

For the Applicant:

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E X H I B I T S

Exhibit No.		Marked/Received
352	August 2010 excerpt from NCEE, Preliminary Stated-Preference Research on the Impact of LUST Sites on Property Values: Focus Group Results	38
353	Document entitled Building Prosperous Places in Michigan: Understanding Placemaking Values, Perceptions, and Barriers	38
354	April 14, 2009, article entitled Is It Safe to Live Near a Gas Station?	46
355	January 20, 2012, report entitled Welcome to the FHA Appraisal Inspection Requirements Webinar	47
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1 PROCEEDINGS
2 MR. GROSSMAN: This is the 18th day of a public
3 hearing in the matter of Costco Wholesale Corporation, Board
4 of Appeals No. S-2863, OZAH No. 13-12, petition for a
5 special exception pursuant to Zoning Ordinance Section
6 59-G-2.06 to allow petitioner to construct and operate an
7 automobile filling station which would include 16 pumps.
8 The subject site is located at 11160 Veirs Mill Road in
9 Silver Spring, Maryland. That's Lot N, 631 Wheaton Plaza,
10 Parcel 10, also known as Westfield Wheaton Mall, and is
11 zoned C-2, general commercial.
12 The hearing was begun on April 26th, 2013, and
13 resumed frequently. It was noticed -- it was noticed to
14 resume again today. The next session has been noticed for
15 Thursday, November 14, 2013, here in the second floor
16 hearing room in this building, the Council Office Building,
17 at 9:30 a.m.
18 This hearing is conducted on behalf of the Board
19 of Appeals. My name is Martin Grossman. I'm the Hearing
20 Examiner, which means I will take evidence and write a
21 report and recommendation to the Board of Appeals which will
22 make the decision in this case. Will the parties identify
23 themselves, please, for the record?
24 MS. HARRIS: Good morning. Pat Harris on behalf
25 of Costco, and I would note that unfortunately Mr. Brann is

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1 caught in traffic on the two accidents that occurred in
2 Virginia this morning.
3 MR. GROSSMAN: Okay.
4 MR. GOECKE: Good morning. Mike Goecke on behalf
5 of Costco.
6 MR. GROSSMAN: Mr. Goecke.
7 MS. CORDRY: Karen Cordry on behalf of Kensington
8 Heights.
9 MS. ROSENFELD: Michele Rosenfeld on behalf of
10 Kensington Heights.
11 MR. GROSSMAN: Ms. Rosenfeld.
12 MR. SILVERMAN: Good morning. Larry Silverman,
13 Stop Costco Gas Coalition.
14 MR. GROSSMAN: Mr. Silverman.
15 MS. ADELMAN: Good morning, Mr. Grossman. Abigail
16 Adelman, Stop Costco Gas Coalition.
17 MR. GROSSMAN: Ms. Adelman.
18 MS. DUCKETT: Eleanor Duckett, Kensington View.
19 MR. GROSSMAN: Welcome back.
20 MS. SHEARD: Virginia Sheard, Kensington View.
21 MR. GROSSMAN: Ms. Sheard.
22 MR. ADELMAN: Good morning, Mr. Grossman.
23 Dr. Mark Adelman for the Coalition.
24 MS. SAVAGE: Donna Savage, Kensington Heights.
25 MR. GROSSMAN: All right.

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1 MR. CORE: And my name is Jim Core. I'm a
2 resident of 8 Torrance Court.
3 MR. GROSSMAN: Yes, Mr. Core. Okay. So let me
4 see what we have in the way of preliminary matters. I don't
5 think there were any significant filings, blessedly, over
6 the last few days. The witnesses scheduled for today are
7 Mr. Silverman completing his regulatory compliance
8 cross-examination regarding Exhibit 342, the CRC Report No.
9 A-79, Assessment of Near-Roadway NO2 Concentrations, and
10 Mr. Core regarding home values; Ms. Cordry on traffic,
11 pedestrians, and queuing; and then a Sierra Club
12 representative, as I understand it, Mr. Goffman --
13 MS. CORDRY: Yes.
14 MR. GROSSMAN: -- is supposed to be here and
15 Ms. Mary Ann Carter.
16 MS. CORDRY: Yes.
17 MS. ADELMAN: Okay.
18 MS. ROSENFELD: And Ms. Cordry's testimony is
19 limited just to the queuing issues today.
20 MR. GROSSMAN: Okay. All right. Are there any
21 other preliminary matters?
22 MS. ADELMAN: Yes, Mr. Grossman.
23 MR. GROSSMAN: Ms. Adelman.
24 MS. ADELMAN: The Coalition wishes to object to
25 the admission of the CRC Report A-79, Assessment of

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1 Near-Roadway NO2 Concentrations. The applicant concluded
2 its case-in-chief on September 23rd, and therefore it is
3 inappropriate for the applicant to introduce an exhibit
4 while the opposition is presenting its case-in-chief, and we
5 ask that the CRC Report A-79 be expunged from the record at
6 this time.
7 As I understand the process --
8 MR. GROSSMAN: Yes.
9 MS. ADELMAN: -- there is a 10-day comment period,
10 after the case concludes, for additional material to be
11 filed. The applicant will have the opportunity, should they
12 choose, to submit this document at that time. So, again --
13 MR. GROSSMAN: That's not correct.
14 MS. ADELMAN: That isn't correct?
15 MR. GROSSMAN: No.
16 MS. ADELMAN: What a surprise.
17 MR. GROSSMAN: The process is once the record, the
18 record closes -- what'll happen in this case is after the
19 testimony is completed, the parties, we'll discuss how
20 parties want to handle closing statements, whether they just
21 wish to submit closing statement documents as opposed to
22 making oral arguments --
23 MS. ADELMAN: Yes.
24 MR. GROSSMAN: -- and, or how we want to proceed
25 with that. We'll hear from the parties on that point, and

1 the record will remain open for, to receive that sort of
2 documentation but that's not for additional evidence. Then
3 once the, once the report and recommendation is issued, all
4 people who participated in the hearing will get notice that
5 my report has been issued, and it'll be published on our
6 website pursuant to -- that's the code procedure. Then any
7 party, within 10 days after the issuance of that report, not
8 its receipt, but the issuance of that report, any party may
9 request oral argument. That's not their submission of
10 additional evidence. That's oral argument before the Board
11 of Appeals, which has the option of granting or denying that
12 request.

13 The Board of Appeals handles the decision-making
14 process at a work session, which is not noticed, as I
15 understand it, in general. So you do have to check with the
16 Board of Appeals as to when their work session will be that
17 will address this case, you know, once the, once the report
18 is issued, but there's no additional evidence that's
19 automatically allowed in.

20 MS. ADELMAN: Okay. Well, I withdraw that
21 paragraph, but again, the Coalition does object to the
22 admission of this document and we ask that it be removed.

23 MR. GROSSMAN: All right.

24 MS. ROSENFELD: And, Mr. Grossman, on behalf of
25 Kensington Heights, just to join in with the Coalition,

1 Mr. Silverman was, testified on regulatory standards and EPA
2 guidelines and EPA policy. This is clearly a scientific
3 document, and Mr. Silverman was not presented as a
4 scientific expert nor did he testify on the science
5 associated with monitors. In fact, very clearly he said
6 that, while noting that there were different monitors and
7 different monitoring status, the scientific information
8 related to those issues would be left to Dr. Cole. So,
9 again, beyond the scope of his direct testimony and he
10 simply should not be cross-examined on this information.

11 MR. GROSSMAN: Well --

12 MS. ADELMAN: And could I just add that --

13 MR. GROSSMAN: Yes, certainly, Ms. Adelman.

14 MS. ADELMAN: -- in an e-mail of October 14th of
15 this year, Ms. Harris states that Costco objects to any
16 witness testimony that relies on documents not provided at
17 least 10 days before any hearing, so another reason why we
18 would like this withdrawn.

19 MR. GROSSMAN: All right. By the way, as to the
20 portion of your objection, Ms. Rosenfeld, regarding the fact
21 that Mr. Silverman is not an expert in air modeling,
22 whatever, then I take it that would not apply to
23 cross-examination of Dr. Cole, is that correct?

24 MS. ROSENFELD: That would be correct.

25 MR. GROSSMAN: Okay. All right. Any response to

1 the objection from the applicant?

2 MR. GOECKE: So I guess there's two points: one,
3 an objection that this was disclosed untimely and so it's
4 therefore prejudicial to them. I thought this was a
5 document that Mr. Silverman had relied on. That was my
6 mistake. We had talked about this at the last hearing and
7 thought that we, if we gave him until Thursday, he would
8 have enough time. If he feels like he needs more time to
9 review the document, I'm happy to cross-examine about, him
10 about this at another time.

11 In terms of the scope of this going beyond what he
12 testified to on direct examination, I agree that he's not a
13 scientist, and he testified to that; nor did he purport to
14 be an expert in the areas he did talk about. However, he,
15 as you pointed out, Mr. Grossman, he had a lot of argument
16 there, and a lot of his argument went very broadly into many
17 issues in this case that did attack Mr. Sullivan's findings.
18 He said that there's basically two things that Sullivan did,
19 that Sullivan did wrong, or two points that he was trying to
20 make in relation to Mr. Sullivan's reports, I guess I should
21 say. One is that based on Mr. Sullivan's reports, these
22 levels are unsafe for the community and, two, that even if
23 you're applying the EPA National Ambient Air Quality
24 Standards, those standards in and of themselves are
25 insufficient to protect the public health. And then he did

1 focus mostly on the second portion of that, but I don't
2 think it was beyond the scope because he did raise that
3 first point. I can see that he deferred to Dr. Cole to sort
4 of back him up on several of those points, but he did enter
5 into that arena, and I think these questions and this
6 document, therefore, is appropriate for cross-examination.

7 MS. ROSENFELD: And I think what he said was under
8 -- these are the EPA guidelines, these are the EPA standards
9 and I think they were properly applied, but as to the
10 specifics of how they were applied and the air modeling
11 effects of the impacts of what he chose to model or not
12 model would be dealt with by Dr. Cole.

13 MR. GOECKE: One other point, he did specifically
14 testify about roadside air modeling several times in his
15 testimony and that's what this report addresses.

16 MS. ROSENFELD: And we specifically tried to
17 question him about the effects of the near-road monitors and
18 that line of questioning was objected to and that objection
19 was sustained. So he never testified on that point
20 specifically.

21 MR. GROSSMAN: All right. First of all, on the
22 question of the timeliness of the document being produced,
23 it is true that in ordinary cases documents may be produced
24 for cross-examination purposes that haven't been exchanged
25 before. We've tried to follow, in order to ensure, as I

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1 mentioned the last time, to ensure that there is an
2 opportunity for intelligent reflection on any documents,
3 we've tried to make sure that the parties have exchanged
4 these things in advance. So as to that aspect of it, I
5 certainly, if additional time is needed -- and this
6 document, apparently in error, not having been produced
7 before, Mr. Goecke saying that he thought it had been
8 produced even by the applicant, is that what you stated, I
9 would certainly, as to that aspect of it, give Mr. Silverman
10 more time to review it if the opposition wished it. I'm not
11 inclined to preclude it per se, in terms of a
12 cross-examination document and potentially as a rebuttal,
13 piece of rebuttal evidence, if the applicant chooses to use
14 it in that fashion.

15 As to whether this witness is appropriate for it,
16 I'd wait to see what the specific questions that are asked
17 after Mr. Silverman has had an opportunity to review the
18 document, to determine whether or not the questions are
19 objectionable given the scope of his direct examination,
20 which did go beyond mere analysis of the formula for
21 evaluating regulatory process or conducting a regulatory
22 process. So since it did slosh over, I'm hesitant to limit
23 the cross-examination until I certainly hear the
24 cross-examination questions and see if they are fair.
25 Certainly the witness can answer a question that goes beyond

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1 the scope of his knowledge and just say that. So I don't
2 see where that is prejudicial to the other side.

3 So my ruling is I'm going to overrule the
4 objection but I'm going to allow more time, if that is
5 desired by Mr. Silverman, to review the document, and we'll
6 conduct that remaining cross-examination at a later time.
7 What is the preference? Mr. Silverman, do you wish to --

8 MR. SILVERMAN: I'd like more time.

9 MR. GROSSMAN: All right. So we will do that.

10 Okay. Any other preliminary matters?

11 MS. ROSENFELD: Mr. Grossman, yes. Michele
12 Rosenfeld. There are a number of exhibits. I believe all
13 of these actually have been provided in electronic or hard
14 format to the other side, but I'd like to take a few minutes
15 just to go ahead and get them marked now in anticipation of
16 them being used by Dr. Cole and perhaps others in their
17 testimony. I think it will just facilitate their testimony
18 if they can prepare, knowing what these exhibit numbers
19 are --

20 MR. GROSSMAN: All right.

21 MS. ROSENFELD: -- if that's acceptable to you.

22 MR. GROSSMAN: Well, let's, before we do that --
23 that amounts to putting on evidence. So let's see if there
24 are any procedural matters that are being raised by the
25 parties.

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1 (No audible response.)

2 MR. GROSSMAN: Hearing none, do you wish to do
3 that before -- we have Mr. Core here, his return visit. Did
4 you --

5 MS. ROSENFELD: We can do this any time today
6 that's convenient --

7 MR. GROSSMAN: Okay.

8 MS. ROSENFELD: -- for the proceedings. We can
9 even do it at the end of the day if that's easier.

10 MR. GROSSMAN: All right. I was going to give
11 Mr. Core the opportunity to become the first witness --

12 MS. ROSENFELD: Sure.

13 MR. GROSSMAN: -- here so that we don't unduly
14 delay him. You're certainly, Mr. Core, happy to have you
15 remain the whole day and watch the festivities, but I know
16 that you may have other --

17 MR. CORE: I'm sure this is much more compelling
18 than what's happening at my office, but sadly, I have to do
19 people's business, sir.

20 MR. GROSSMAN: All right, sir. So is that
21 agreeable, we'll proceed now with Mr. Core?

22 MS. ROSENFELD: Yes, sure, that's agreeable to me.

23 MR. GROSSMAN: All right. Mr. Core, would you
24 resume the stand, please?
25 (Witness previously sworn.)

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1 THE WITNESS: Good morning, sir.

2 MR. GROSSMAN: Good morning. Be so kind as to
3 state your full name and address for the record, again.

4 THE WITNESS: Yes. My name is James Core, and I
5 live at 8 Torrance Court in Kensington, Maryland.

6 MR. GROSSMAN: All right, Mr. Core, you're still
7 under oath, and did you have additional testimony to offer?

8 THE WITNESS: I do.

9 MR. GROSSMAN: All right. You may proceed. How
10 did you wish to proceed here?

11 MS. ROSENFELD: I will be questioning --

12 MR. GROSSMAN: All right.

13 MS. ROSENFELD: -- Mr. Core through his direct
14 examination.

15 DIRECT EXAMINATION

16 BY MS. ROSENFELD:

17 Q Mr. Core, when you testified on Tuesday, you said
18 that you consider the mall a part of your neighborhood.
19 When you bought your house, were you aware of the ring road
20 and the traffic associated with the ring road and the
21 parking lots in the mall at that time?

22 A Certainly, yes, we were. When I moved into the
23 mall, you know, certainly aware of the ring road -- we had
24 walked the property, walked around the neighborhood -- very
25 aware that the way the mall was constructed most of the

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1 activity was occurring in the center of the parcel, they had
2 parking lots that were buffering, and I can say that,
3 moreover, the mall operated at reasonably normal hours, you
4 know, normal trade hours, 10:00 a.m. to 9:00 p.m., and it
5 was very quiet in the morning. So it was, you know, just a
6 typical mall, and yeah, we went in eyes wide open on the
7 transaction.
8 Q And what is your understanding of what time the
9 gas station will open in the morning?
10 A My understanding is the gas station's opening at
11 like 6:00 or 7:00 in the morning --
12 Q Okay. So --
13 A -- forgive me for not knowing the exact time.
14 Q But your understanding is it's extending the hours
15 of the operation of the mall --
16 A Absolutely, yes.
17 Q -- and when traffic would arrive? Okay. The
18 report by the applicant's witness Mr. Cronyn had repeated
19 references in it to a Montgomery Ward's auto service station
20 center that at one time existed on the mall parcel, and he
21 suggested in his report that the Costco gas station is a
22 similar use. Are you familiar with the operation of the
23 Montgomery Ward's auto center when it existed?
24 A Yes, I am.
25 Q You have personal knowledge of that?

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1 A Yes, because I had a car serviced there --
2 Q Okay.
3 A -- you know, when I shopped at the mall.
4 Q And could you describe the auto service center
5 operations, please?
6 A Sure. I think, first of all, we need to be clear
7 about the location. It was not exactly where this proposed
8 special exception is going to be, as is suggested by
9 Mr. Cronyn. It was much, it was much more in the center of
10 the parking lot, north of where this proposed activity is
11 supposed to take place. Also, another key distinction, when
12 we think about the operations, are that it did not include
13 fueling. I mean, this is much more like a
14 Mr. Goodwrench-type operation. There's one up --
15 MR. GROSSMAN: By this, you mean the Montgomery
16 Ward?
17 THE WITNESS: Yes. Forgive me, sir. Yeah, the
18 Montgomery Ward, which is being used as a comparator, is a
19 very different type, or was a very different type of
20 operation. That was much more like, as I indicated, a
21 Mr. Goodwrench or, you know, one of those tire service
22 centers. You know, the work was done inside. There was no
23 fueling taking place there. There were really no idling
24 cars. Folks were like, when you go to get your car
25 serviced, you drive up, check in with the service center

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1 advisor and, you know, park the car; they bring it in, they
2 do the work, but we don't have cars idling for 10, 15, 20
3 minutes at a time. So it was a much less-intensive
4 activity.
5 MR. GROSSMAN: You hail from the Boston area, by
6 the way?
7 THE WITNESS: I do, sir.
8 MR. GROSSMAN: I thought I detected an accent. I
9 thought you might be celebrating today.
10 THE WITNESS: Well, you know, I wanted to make
11 sure that I was making good use of the Hearing Examiner's
12 time; so I went to bed at a reasonable hour because I wanted
13 to be sharp this morning.
14 MR. GROSSMAN: Far enough ahead.
15 THE WITNESS: So what were the results?
16 MS. ADELMAN: They won. They won.
17 MR. GROSSMAN: You don't know the results?
18 THE WITNESS: No.
19 MR. GROSSMAN: Oh, Boston won --
20 THE WITNESS: Okay, awesome.
21 MR. GROSSMAN: -- eight to one, I believe.
22 THE WITNESS: Great.
23 MR. SILVERMAN: Nine to one.
24 MS. ROSENFELD: Nine to one?
25 MR. GROSSMAN: All right.

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1 MS. ADELMAN: Nine to one. Oh --
2 MR. GROSSMAN: Oh, nine to one? Okay.
3 MS. ADELMAN: -- I thought it was eight and one.
4 MS. CORDRY: Eight to one, I think.
5 MS. ADELMAN: Eight to one, yes.
6 MS. CARTER: Yes.
7 MS. ADELMAN: Eight to one.
8 MR. GROSSMAN: All right. Well, I'm sorry to
9 interrupt the flow.
10 THE WITNESS: No, no, no, that's great, no, just
11 -- yeah, I'm from Brockton, Massachusetts, which is a city
12 just south of Boston.
13 MR. GROSSMAN: Yes. And are you from the area?
14 THE WITNESS: No.
15 MR. GROSSMAN: All right.
16 THE WITNESS: Yeah, so I just want to end on the
17 note that frankly it's not a good comparison, you know,
18 Montgomery Ward to, you know, a regional fueling depot.
19 This is, you know -- that was much more like a
20 Mr. Goodwrench, and what's being proposed here is materially
21 different in terms of intensity and impact on the
22 neighborhood.
23 MR. GROSSMAN: Okay.
24 BY MS. ROSENFELD:
25 Q Mr. Cronyn's report also says that, and I'm

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1 quoting, all current owners purchased their homes taking
2 into account the mall's proximity to their properties,
3 understanding that an auto service center in essentially the
4 Costco filling station's location was in operation, end
5 quote, and he noted that it was a full-service automobile
6 repair center from 1960 to 2002. Do you agree with that
7 statement?
8 A No, I don't, you know, for the reasons that I
9 illuminated just a few moments ago: very different type of
10 activity, different levels of intensity, different car, you
11 know, different queuing, different traffic. It's just a
12 completely different type of activity, and frankly, I think
13 it's just disingenuous to include that reference in terms of
14 supporting the applicant's --
15 Q And, in fact, was that Montgomery Ward's auto
16 service center operational when you bought your house?
17 A It was not.
18 Q So you weren't even aware of that type of use on
19 the mall parcel?
20 A Oh, no, I was because, as I had testified earlier,
21 I used to shop at the mall, you know, I shopped at the mall
22 before I bought my house and I got a car serviced there; so
23 -- but, you know, I'm aware of what was happening, and it
24 wasn't there when I bought my house.
25 Q Okay. Mr. Cronyn also said in his report that the

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1 Costco filling station is not a typical retail filling
2 station. Do you agree with that statement?
3 A So I am -- this is one area where we absolutely
4 agree. This is, Costco is not, this is not a typical -- no
5 disagreement there, no daylight, because this really, what
6 is being proposed, is a mega gas station. It is a regional
7 fueling depot. We're going to have 16 pumps, 12 million
8 gallons per year. It's expected to pump eight times, eight
9 times, sir, the regular volume of a normal gas station.
10 It's three to four times what our County Council defined as
11 a large gas station. This is, frankly, kind of more like
12 putting a highway rest area fueling station right next to an
13 existing neighborhood. That's a big deal. It's materially
14 different, and I'm frankly a little afraid of it because of
15 what it's going to do to my neighborhood, to my property
16 value. It's just materially different.
17 Q In your opinion, will the gas station have a
18 negative economic impact on the value of your home?
19 A Absolutely.
20 Q And why do you conclude that?
21 A Sure. So you're right. We bought a house. We
22 bought a townhouse right next to a regional mall -- no
23 problem, eyes wide open, knew exactly what was there. We
24 view the mall as an amenity. We did not buy next to a gas
25 station. That's a problem. We certainly did not buy next

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1 to a 16-pump regional fueling depot. So that's just a big
2 difference. That's going to be a magnet. It is going to --
3 it's going to be the largest in the county. It's going to
4 attract traffic, it's going to attract business from miles
5 away, and literally concentrate a huge problem in the
6 adjoining parcel, literally in my backyard, right adjacent
7 to my neighborhood.
8 There will inevitably, to get back to the
9 question, be a negative impact on home values. I even think
10 putting a regular gas station would have a negative impact
11 on a home value because it would have been located ex post
12 facto, after the fact. This gas station, I believe, has,
13 you know, to use the language of the planners and, you know,
14 folks that live in that world, will have a non-inherent
15 negative impact on -- and those are going to be queuing and
16 idling; it's going to be the presence of underground tanks.
17 It's just going to create the appearance of a problem. It's
18 going to make the area relatively less friendly to
19 pedestrians and, frankly, as I testified on Monday, I
20 believe, have a detrimental effect even on the narrowly
21 defined neighborhood that the applicant prefers of just the
22 mall -- so a whole host of problems for people that are in
23 the neighborhood, both narrowly defined and broadly defined,
24 and I believe that this is going to make my home harder to
25 sell.

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1 Overshadowing all of this is the fact that people
2 are going to be concerned -- potential home buyers, people
3 who live in the area or are considering living in the area
4 -- are going to be very concerned about potential adverse
5 health effects, whether they are not -- whether or not they
6 are scientifically proven, and frankly, that perception, in
7 terms of my house, is going to have serious impacts.
8 Q And that is not the result that Mr. Cronyn
9 reached. How is it that you can assert that in your view
10 there will be these kinds of adverse effects on property
11 values?
12 A Sure. So, you know, I read Mr. Cronyn's report,
13 and frankly, I don't see where it really deals with this
14 type of case. I don't see where he's actually analyzing
15 what is happening here. It doesn't cite a single case like
16 this. There's no analysis whatsoever of what the home
17 values are going to be, the effect on an existing
18 residential neighborhood by putting a mega gas station.
19 It's just not there. It's -- I just don't find that his
20 paper is really applicable to this case.
21 Q Are there any other factors in his report that you
22 think are not well founded?
23 A Sure. I think there are a number of things that
24 need to be considered and that, at the end of the day, the
25 bottom line up front is that his methodology was lacking.

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1 His report relies on Mr. Sullivan's conclusions with respect
2 to adverse physical impacts and Mr. Sullivan's conclusion
3 that there can be no negative impact on home values, but
4 he's wrong on a number of fronts.

5 So if we look at page 7, you know, his assessment
6 of factors affecting value, Mr. Cronyn's report, noise --
7 despite assertions to the contrary, one does hear and, to a
8 certain degree, feel traffic on the ring road, large trucks
9 moving around from the adjacent properties. I know this
10 because I live there, I sit on my deck; this is personal
11 observation. And I believe that adding a half-dozen fuel
12 tankers per day will exacerbate those impacts and will
13 definitely be noticed.

14 All of the traffic and idling from persons using
15 the station between the time it opens in the morning and
16 between, before the mall closes -- I'm sorry, between the
17 time the station opens and before the mall opens will be new
18 trips. So we're going to have more traffic unrelated to the
19 mall and the Costco warehouse, and this will generate
20 additional noise and externalities, you know, fundamentally
21 changing the experience there on the mall property, my
22 neighbor's property.

23 He also states that there'll be no sound wall past
24 the edge of the warehouse. This is not going to mitigate
25 noise on the ring road that's being generated by this

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1 additional traffic earlier in the morning. I think it's,
2 frankly, false to assert that there will be no noise
3 generated by the additional traffic. Cars make noise.
4 Trucks make noise. Mr. Cronyn asserted that there will be
5 no additional noise. I just find that to be unsustainable
6 based on my experience of sitting in the mall. All we know
7 is that right now I live in a quiet neighborhood and
8 Mr. Sullivan's report, which is, Mr. Cronyn is relying on,
9 can't comment on what the experience will be like in the
10 neighborhood after if this proposed special exception is
11 granted.

12 And, lastly, Mr. Cronyn relies on an environmental
13 report that has been submitted and resubmitted multiple
14 times and that asserts there will be no health effects.

15 MR. GROSSMAN: You're talking about Sullivan's
16 report --

17 THE WITNESS: Yeah, Mr. --

18 MR. GROSSMAN: -- or are you talking about --

19 THE WITNESS: Yeah. Mr. Cronyn relies on
20 Mr. Sullivan's report.

21 MR. GROSSMAN: Okay.

22 THE WITNESS: And there were shifting assumptions.
23 We learned there were basic math assumptions. Frankly, I
24 don't think a prospective home buyer is going to be
25 comforted by that. They're simply not going to, frankly,

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1 accept that we can have an ever-changing analysis when a
2 prospective home buyer is thinking about where they're going
3 to live with their family and they're going to see this gas
4 station. And I can throw documents on the table all day
5 long, though I disagree with them, that it's not a problem.
6 We can put stacks and stacks of papers, but that I don't
7 think is going to affect home buyers.

8 BY MS. ROSENFELD:

9 Q Those factors that you just talked about that you
10 dispute in Mr. Cronyn's report, how in your -- in your view,
11 what will the practical effect be with respect to home
12 values?

13 A Sure. Clearly, it's going to drive down home
14 values. There's one thing that matters when people are
15 buying homes: location, location, location. And you add a
16 regional fueling depot, largest in the county -- anyone
17 who's concerned about noise or pollution, they're going to
18 simply walk away or they're not even going to consider the
19 property as a potential place to live with their family,
20 with their kids.

21 They're just, every prospective buyer who walks
22 away, who doesn't come -- every prospective buyer who walks
23 away or who doesn't even enter the market is going to
24 negatively impair the competitiveness of the property and
25 drive down the value of the home. And a regular gas station

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1 will do that. You take something that's eight times the
2 size of a regular gas station in throughput and you have a
3 fairly large specter out there that we're not going to be
4 able to work through, and by extension, we are going to be
5 deprived of economic value. And I don't think this special
6 exception application meets the standard in the zoning code
7 that they can prove no economic harm or, you know, loss of
8 economic value.

9 Q Would you personally consider buying a home next
10 to a gas station?

11 A Absolutely not, no, and there are ample reasons to
12 believe many buyers will be dissuaded from considering these
13 homes as well. There are -- there's ample evidence to
14 dispute Mr. Cronyn's statement about hazards: the presence
15 of large underground tanks introducing hazardous chemicals
16 into the environment, and furthermore, even if those
17 emissions aren't occurring, it's going to affect home
18 buyers, you know, because just the perception is out there
19 that gas stations are not good neighbors, that are not
20 healthy neighbors, that are pollution sources.

21 MR. GROSSMAN: Let me interrupt for a second. The
22 question that was asked is, would you buy a home next to a
23 gas station? So I just want to understand what you're
24 perceiving as next to in your mind, and to understand that
25 better, how far exactly -- I know you pointed out the

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1 location of your home -- but how many feet is your home from
2 the proposed gas station site?
3 THE WITNESS: I think I'm about 650.
4 MR. GROSSMAN: Six hundred and 50 feet?
5 THE WITNESS: Yeah, 700. Sorry, can I -- I want
6 to make sure that I answer your --
7 MR. GROSSMAN: Absolutely. You can check it if
8 you need.
9 THE WITNESS: See if I have a map.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: Is that, is that close enough?
12 BY MS. ROSENFELD:
13 Q I don't know.
14 MS. CORDRY: Well, I think it's 850 feet to the
15 school line.
16 THE WITNESS: Yeah, right.
17 MS. CORDRY: So he's several hundred feet, I
18 would --
19 MS. ROSENFELD: To the west.
20 MR. GROSSMAN: About --
21 MS. CORDRY: -- 200 feet or more --
22 MR. GROSSMAN: About 600 feet or so?
23 MS. CORDRY: Six to 650, somewhere in that
24 range --
25 MR. GROSSMAN: Okay.

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1 MS. CORDRY: -- I would say, probably.
2 MR. GROSSMAN: So, all right.
3 THE WITNESS: Yeah, and I consider that like next
4 to my house. I mean, it's on the next parcel.
5 MR. GROSSMAN: So how far away in your mind --
6 well, on the next parcel, mean that it's on the mall?
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: Okay. And how far away in your
9 mind would a gas station have to be to not be next to your
10 home?
11 THE WITNESS: I would have to say certainly not in
12 a place where I would feel the traffic or smell potential
13 fumes or be in the path of the plume of, you know, wind, the
14 way the prevailing wind goes. I don't have an exact figure,
15 and I think, kind of like a lot of people, this is how
16 people feel, you know, where something is in relation to
17 where they're standing, where they're sitting, where they're
18 living. So I don't have a mathematical number to give you,
19 sir. I just know that that southern end of the mall I
20 consider, you know, my neighbor and I would not want to have
21 a gas station there.
22 MR. GROSSMAN: Okay. All right.
23 BY MS. ROSENFELD:
24 Q And following up on that, Mr. Core, did you write
25 a report or an analysis titled Refuting the Special

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1 Exception Land Use Report: Analysis of purported
2 comparables is baseless, weak, and disingenuous?
3 A I did.
4 Q And is that --
5 MS. ROSENFELD: Mr. Grossman, for your purposes,
6 this is listed as Exhibit No. 96(a) in your hearing
7 exhibits.
8 BY MS. ROSENFELD:
9 Q I'd like to ask the question a slightly different
10 way. Based on -- did you do any research or study any
11 surveys in, as you prepared Exhibit No. 96(a)?
12 A I did. I did some Google research and found some
13 literature on the, on the topic.
14 Q And based on your research, were there any studies
15 or analyses that quantified at what distance a gas station
16 would have a negative impact on home values?
17 A Yes.
18 Q And can you explain to Mr. Grossman what you found
19 in your research?
20 A Sure.
21 MR. GROSSMAN: Well, this is going to get a little
22 bit -- is that, is the research in evidence here?
23 MS. ROSENFELD: The documents that he relied on
24 are cited, and he certainly can speak to what he found in
25 his, in his analysis, and one of them is referenced, is

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1 discussed in his report.
2 MR. GROSSMAN: But, I mean, I still have a
3 problem. So far we've heard, he's not claiming to be an
4 expert in home evaluation, and so I'm taking his lay
5 opinions as to impacts, as a homeowner. But if he's going
6 to rely on a report that's on the web, I do have a problem
7 with that because -- if it's not before me as a piece of
8 evidence, so, and it doesn't give the other side an
9 opportunity to reply to it --
10 MS. ROSENFELD: Well.
11 MR. GROSSMAN: -- to a piece of evidence that's
12 actually in. So if you have copies of those studies that,
13 that you want to submit, the other side can look at, object
14 if it wants to, you know, that's one thing; but just a
15 website, to me, is problematic.
16 BY MS. ROSENFELD:
17 Q Okay. Mr. Core, do you have copies of --
18 A I do.
19 Q -- the studies that you relied upon?
20 A Certainly.
21 MR. GOECKE: So, Mr. Grossman, will we be provided
22 10 days to review this?
23 MR. GROSSMAN: I don't know. Let's see what we're
24 talking about here first.
25 MS. CORDRY: Well, if they're cited in a report

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1 that they've had for months --
2 THE WITNESS: Yeah. Here you go, sir.
3 MS. ROSENFELD: And some of this information is
4 actually contained in a quantified way in his report.
5 THE WITNESS: Yes.
6 BY MS. ROSENFELD:
7 Q Can you, just to make sure that I can provide the
8 other side with copies, what are -- what did you just hand
9 to the Hearing Examiner, please?
10 A So --
11 MR. GROSSMAN: All right. Well, two things were
12 handed to me. One is entitled NCEE -- that is, National
13 Center for Environmental Economics -- and it says, Working
14 Paper Series, Preliminary Stated-Preference Research on the
15 Impact of LUST -- I take it that means, L-U-S-T is an
16 acronym for something.
17 MR. SILVERMAN: Leaking underground storage tank.
18 MR. GROSSMAN: You're not claiming to be an expert
19 on LUST, I take it?
20 THE WITNESS: Yes --
21 MR. GROSSMAN: All right. Sites --
22 THE WITNESS: -- not going to comment. I'm too
23 respective of the Hearing Examiner.
24 MR. GROSSMAN: -- on Property Values and Focus
25 Group Results --

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1 THE WITNESS: Yeah.
2 MR. GROSSMAN: -- by Anna Alberini and Dennis
3 Guignet.
4 THE WITNESS: Yeah.
5 MR. GROSSMAN: And there's one page provided --
6 and that's page 34 of the study -- in addition to the title
7 page, and that's designated Interview Results. I'm going to
8 mark these as exhibits so that we have an intelligent way of
9 referencing them. That doesn't mean that they'll ultimately
10 be admitted. The question of what's admitted and what's not
11 is going to be reviewed at the end of the case, subject to
12 anybody's objections as to particular items.
13 So the item I just identified will be Exhibit 352.
14 So this is an excerpt from NCEE, National Center for
15 Environmental Economics, and let's see if there's a date on
16 it here, August of 2010, and it's Working Paper No. 10-09,
17 Preliminary Stated-Preference Research -- do we know what
18 L-U-S-T stands for?
19 THE WITNESS: Large underground storage tanks.
20 MR. SILVERMAN: No, no, leaking.
21 MR. GOECKE: Leaking.
22 THE WITNESS: Oh, leaking underground storage
23 tanks.
24 MR. SILVERMAN: Leaking underground storage tanks.
25 MR. GROSSMAN: All right. All right. So

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1 Preliminary Stated-Preference --
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: -- Research on Impact of Leaking
4 Underground Storage Tanks, L-U-S-T, Sites on Property
5 Values, page 34. So I'm not sure, I mean, the -- just
6 looking at the chart that you attached on page 34 --
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: -- if the study is of impact of
9 leaking underground storage tank sites, does this particular
10 page deal with those situations or with other situations?
11 THE WITNESS: Sure. It deals with how homeowners
12 -- so this was a survey group. This group -- this study was
13 done for the EPA by this center that's affiliated with the
14 University of Maryland. I found it when I was googling gas
15 stations and home values of gas stations in neighborhoods.
16 And what this page shows is, hey, they were trying to
17 determine how particular factors, how particular types of
18 places or characteristics affect how people feel about homes
19 and how it would influence their perception of value, what
20 they're willing to pay, how they think about it. And what
21 this is showing is that 75 percent of respondents felt that
22 a gas station would negatively affect home values, and they
23 -- they kind of thought that it was right around \$3,300 in
24 terms of a negative effect on the home value.
25 MR. GROSSMAN: Okay. Depending on distance,

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1 because --
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: -- they have two, two figures for
4 that --
5 THE WITNESS: Right.
6 MR. GROSSMAN: -- one actually adds value if it's
7 two miles away --
8 THE WITNESS: Yes.
9 MR. GROSSMAN: -- and according to this analysis,
10 it subtracts value if it's a half a mile away.
11 THE WITNESS: Yeah, if it's, if it's relatively
12 close. So --
13 MR. GROSSMAN: Right.
14 THE WITNESS: -- what we're getting at is how do
15 gas stations affect home values, and this was something, as
16 a layman, I just Googled. I found this study. It was --
17 MR. GROSSMAN: Right.
18 THE WITNESS: -- done by an economic research
19 institute affiliated with our flagship state university, and
20 this particular study was referenced with a website in a
21 filing that was made on April 9th, 2013. I believe it was
22 Exhibit 96 dash A. And I think this proves the point that
23 there's a negative effect.
24 MR. GROSSMAN: All right. Well, I'm not going to
25 express an opinion on that, but we'll leave that and now

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1 identify the other exhibit, and then the applicant can
2 decide whether or not they wish to object to it. The other
3 one is going to be Exhibit 353.
4 (Exhibit Nos. 352 and 353 were
5 marked for identification.)
6 MS. ROSENFELD: Mr. Grossman, what does that --
7 MR. GROSSMAN: The other one is a multipage
8 document entitled Building Prosperous Places in Michigan:
9 Understanding Placemaking Values, Perceptions, and Barriers,
10 Real Estate Class, April 25, 2012, Michigan State University
11 Land Policy Institute.
12 MS. ROSENFELD: Thank you.
13 MR. GROSSMAN: Do you know if this is -- since you
14 have many pages here, is this the entire document or are
15 they still excerpts?
16 THE WITNESS: It's one particular excerpt --
17 MR. GROSSMAN: All right.
18 THE WITNESS: -- and there's one -- oh, it is
19 tabbed for you, sir. I believe we --
20 MR. GROSSMAN: No, I know, but I mean, you've
21 handed me a large document. So is this, what you've handed
22 me, the entire document, or is this still an excerpt from
23 the entire document?
24 THE WITNESS: Oh, forgive me, sir, for not
25 answering the question clearly. That is the entire

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1 document --
2 MR. GROSSMAN: Okay.
3 THE WITNESS: -- and we have tabbed the relevant
4 page --
5 MR. GROSSMAN: Okay.
6 THE WITNESS: -- for you, sir.
7 MS. HARRIS: Do we have a copy of that?
8 MR. GOECKE: Not yet.
9 MS. ROSENFELD: Yes.
10 MR. GOECKE: Thank you.
11 MS. HARRIS: Mr. Grossman --
12 MR. GROSSMAN: Yes.
13 MS. HARRIS: -- on, I may comment on 352, but on
14 353, this is certainly the first time that we've ever seen
15 this, and while there's only one page tabbed, I'm a little
16 concerned that I -- I don't want to rely on just one tabbed
17 page. I'd want to see how it fits into the context of this
18 inch-thick-long document --
19 MR. GROSSMAN: Okay.
20 MS. HARRIS: -- and therefore we may not be
21 prepared to cross-examine him on this, having not received
22 it 10 days prior.
23 MS. ROSENFELD: Mr. Grossman, I don't have any
24 objection to them looking at this for 10 days. It was --
25 you know, Mr. Core has his report, these are cited in it,

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1 and I simply was trying to establish the foundation under
2 which he came up with his conclusions.
3 MR. GROSSMAN: Okay.
4 MS. HARRIS: Where in Mr. Core's report is this
5 document cited?
6 MS. ROSENFELD: Exhibit No. 352 is under Footnote
7 3, and actually --
8 MS. HARRIS: No. I believe that --
9 THE WITNESS: I have to -- I believe the Royal Oak
10 was something that I found recently.
11 BY MS. ROSENFELD:
12 Q Recently? Okay.
13 A So I apologize.
14 MR. GROSSMAN: The Royal Oak, which is that?
15 MS. ROSENFELD: It was, it was only published in
16 April.
17 THE WITNESS: This is the Michigan, the large
18 stack of documents.
19 MS. ROSENFELD: The Michigan was published in
20 April.
21 MR. GROSSMAN: So the large one is not cited in
22 your --
23 THE WITNESS: Correct, and I apologize for that,
24 sir.
25 MS. ROSENFELD: And, actually, I believe it was --

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1 MR. GROSSMAN: Okay. So how do you want to
2 proceed?
3 MR. GOECKE: We would object to Exhibit 352,
4 Mr. Grossman. We have seen this document before, so not on
5 the untimeliness of its production but on the fact that it's
6 just not relevant. I mean, the one page that they are
7 proffering to admit into evidence, page 34, the top line
8 says: As in the past groups, most respondents were able to
9 speculate whether specific changes in housing -- this is a
10 speculative document, a speculative survey. It's not actual
11 data about actual homes near actual gas stations that have
12 affected property prices in the real world.
13 MS. CORDRY: Well --
14 MS. HARRIS: And I would also add that it was also
15 done in the context of a focus group, focusing on leaking
16 underground storage tanks, which is not relevant in this
17 case.
18 MS. CORDRY: But that was not the question --
19 MR. GOECKE: The --
20 MS. CORDRY: -- in his report, and I would note --
21 MR. GOECKE: If I may, if I may, yes, just the
22 first page, the abstract says: The purpose of this research
23 effort is to examine the feasibility of designing a
24 stated-preference instrument to elicit the public's
25 willingness to pay for remediation of leaking underground

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1 storage tank sites. So the whole focus of this was how can
2 we generate money to pay for environmental contamination
3 that already exists, and the speculative component of this
4 very thick document was, was not the focus of this document
5 and is not at all germane to whether the proposed gas
6 station here is likely to affect the real estate property
7 values in this area.

8 MS. ROSENFELD: And, Mr. Grossman, on page 29 of
9 that same document, they say, in trying to assess people's
10 perception of home values: It is important for us to
11 understand whether people are capable of assessing the
12 impact of various factors on home values. So we first ask
13 people to tell us if certain home renovations -- for
14 example, a kitchen upgrade, installing energy-efficient
15 windows -- are likely to affect the value, and if so, by how
16 much. We then ask people to consider changes in the
17 neighborhood, including a new school, a new gas station, and
18 a fast-food restaurant. Since earlier groups suggested that
19 a gas station may be an amenity and a disamenity at the same
20 time, we asked the respondent to consider a gas station
21 within one-half mile and within two miles of their home.

22 Now, again, if they would like to have 10 days to
23 review the report, which they have, and Mr. Core can come
24 back and be cross-examined, we're certainly happy to do
25 that. But even though Mr. Core is a laywitness,

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1 laywitnesses are certainly capable of doing research and
2 forming their own educated, although non-expert, opinions
3 and that certainly is what Mr. Core has done in this case.

4 MR. GROSSMAN: Well, I agree, and I haven't --
5 MS. CORDRY: Right.
6 MR. GROSSMAN: -- nobody has asked to strike
7 Mr. Core's --
8 MS. ROSENFELD: I understand.
9 MS. CORDRY: Right.
10 MR. GROSSMAN: -- testimony. So we're not talking
11 about that. We're talking about this report from the
12 internet. By the way, he's only supplied me, so far Exhibit
13 352 is two pages, what I have --
14 MS. ROSENFELD: Let's give you --
15 MR. GROSSMAN: -- I haven't been supplied the
16 entire report.
17 MS. ROSENFELD: Well, and I don't have the entire
18 report. I do have several more pages. Maybe we can mark
19 them Exhibit 352(a) and (b) and --
20 MR. GROSSMAN: Do you, Mr. Goecke, do you have the
21 entire report?
22 MS. HARRIS: We do, we have the entire copy of it.
23 MR. GROSSMAN: All right. Well, let's -- do you
24 have one copy or do you have more?
25 MS. HARRIS: One, sorry.

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1 MR. GOECKE: One copy.
2 MR. GROSSMAN: One copy. I think if --
3 MS. ROSENFELD: And I'll --
4 MR. GROSSMAN: -- if we're going to cogitate this
5 as a possibility, we ought to have the entire report. So --
6 MS. ROSENFELD: And --
7 MR. GROSSMAN: -- whatever, positive or negative,
8 there isn't it. So --
9 MS. ROSENFELD: If Mr. Core is likely to come back
10 for further cross-examination, we'll certainly provide a
11 full copy of the report to you.
12 MR. GROSSMAN: All right. Well, certainly
13 regarding Exhibit 353, I think that is what, if I understand
14 you correctly, they haven't seen that, were not aware of
15 that. They were aware of this one. So I presume he will be
16 back, and you can supply the full report here.
17 I'm going to overrule the objection to having, at
18 least at this stage -- I agree that there are problems with
19 relying on it because of the nature of the report itself in
20 that it was overall intended, dealing with leaking
21 underground storage tanks and there is this language about
22 asking people to speculate on values. So it has somewhat
23 limited value, but I'm not going to say that it has no
24 value, and given the opportunity for cross-examination on
25 it, I think it's fair at this juncture to allow it, to

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1 overrule the objection, subject to later consideration after
2 cross-examination. All right.
3 BY MS. ROSENFELD:
4 Q And in --
5 MS. ROSENFELD: I'm sorry. I didn't mean to cut
6 you off.
7 MR. GROSSMAN: Go ahead. You didn't.
8 MS. ROSENFELD: Okay.
9 BY MS. ROSENFELD:
10 Q Mr. Core, were there other documents that you
11 relied upon in formulating your opinion as to the impact of
12 the gas station on home values?
13 A Yeah. So I provided some documents already, and
14 then there was some info on appraisals that I found online
15 as well.
16 MR. GROSSMAN: Was that in a report of some kind?
17 BY MS. ROSENFELD:
18 Q I'd like to ask more specifically, there's -- in
19 Footnote 1 of Exhibit 96(a), you referenced an article from
20 Scientific America, is that correct?
21 A Oh, forgive me, yes.
22 MS. ROSENFELD: And maybe, Mr. Grossman, why don't
23 we go ahead and introduce that --
24 MR. GROSSMAN: All right.
25 MS. ROSENFELD: -- as well.

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1 THE WITNESS: Here you go, sir.
2 MR. GROSSMAN: Thank you. Is this the whole item
3 from Scientific American?
4 THE WITNESS: Correct, yes.
5 MS. ROSENFELD: That should be the whole article.
6 MR. GROSSMAN: Okay. So this is Exhibit 354,
7 Scientific American article dated April 14th, 2009, entitled
8 Is It Safe to Live Near a Gas Station, question mark? All
9 right.
10 (Exhibit No. 354 was marked
11 for identification.)
12 BY MS. ROSENFELD:
13 Q And were there any other materials that you
14 reviewed?
15 A Yes. I looked at the Federal Housing
16 Administration appraisal guidelines to see how they, you
17 know, to see how appraisers are instructed to consider
18 elements that are nearer to a home if they're, if they're
19 inspected.
20 MR. GROSSMAN: All right.
21 BY MS. ROSENFELD:
22 Q And do you have a copy of those materials?
23 A I do, yes.
24 Q Okay. And if you could give those to
25 Mr. Grossman.

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1 A And it's the entire document with the relevant
2 pages flagged.
3 MR. GROSSMAN: Okay.
4 MS. ROSENFELD: I do not have a copy of the entire
5 document, but we will provide one to --
6 MR. GROSSMAN: So I see the entire document is --
7 MS. ROSENFELD: Is quite long.
8 MR. GROSSMAN: -- in black and white, and then the
9 pages on which you're relying are color pages; is that the
10 idea?
11 THE WITNESS: Yes, sir. We have extracted them
12 for your convenience.
13 MR. GROSSMAN: Okay. So this will be, we'll say
14 the main body of the report will be Exhibit 355, and that is
15 a Welcome to the FHA Appraisal Inspection Requirements
16 Webinar. Do we have a date on this?
17 (Exhibit No. 355 was marked
18 for identification.)
19 THE WITNESS: Yes. I believe it was January 20th.
20 It's on the second page.
21 MR. GROSSMAN: Is it? Okay.
22 THE WITNESS: I believe it's on the second page.
23 MR. GROSSMAN: Oh, January 20, 2012.
24 THE WITNESS: Yes.
25 MS. HARRIS: Our second page doesn't say that.

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1 MR. GROSSMAN: The very bottom of the second page,
2 under Important Things to Know, is the second page --
3 MS. HARRIS: No. Our second --
4 MR. GROSSMAN: -- at the very bottom on the
5 left-hand side. Are you looking at the color version or
6 the --
7 MS. HARRIS: Yes, the color version.
8 MR. GOECKE: Color version.
9 MS. ROSENFELD: Oh.
10 MR. GROSSMAN: Oh. Well, there's a longer
11 document. The entire document --
12 MR. GOECKE: Oh, we don't have that.
13 MS. HARRIS: We don't have that one either.
14 MR. GROSSMAN: -- is in black and white.
15 MS. ROSENFELD: Here's a complete copy.
16 MR. GROSSMAN: Okay. And then Exhibit 355(a) will
17 be excerpts from Exhibit 355. Okay. And when did you
18 discover this document?
19 (Exhibit No. 355(a) was marked
20 for identification.)
21 THE WITNESS: I came across this document last
22 week.
23 MR. GROSSMAN: Okay. So this is another thing
24 that hasn't been noticed to the applicant.
25 THE WITNESS: But I would think that it's

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1 something that the applicant's expert would have been aware
2 of as part of his expertise and being part of a property
3 consulting and valuation company that does appraisal work.
4 So I'm -- this is in the public domain. Certainly --
5 MR. GROSSMAN: There's a gazillion things in the
6 public domain. So the question is whether or not the other
7 side has notice and time to --
8 THE WITNESS: Sure.
9 MR. GROSSMAN: -- cross-examine on it. So --
10 THE WITNESS: All right.
11 MR. GROSSMAN: -- that's why that -- I take it
12 that you would be available on our next session, which would
13 be in November, to come back for cross-examination purposes?
14 THE WITNESS: Certainly I can make arrangements.
15 MR. GROSSMAN: So we're talking about --
16 BY MS. ROSENFELD:
17 Q I think our --
18 A What's that?
19 Q -- first date back is November 14th. I know --
20 MR. GROSSMAN: November --
21 BY MS. ROSENFELD:
22 Q -- you're traveling. I'm not sure when.
23 A Yeah, that's tough. I was supposed to be -- so
24 because of these proceedings, I canceled the trip to
25 Johannesburg. I'm supposed to be in Guatemala, leaving on

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1 the 15th. So our next day back is the 14th?
2 MS. CORDRY: Yes.
3 MR. GROSSMAN: Yes. And we have --
4 BY MS. ROSENFELD:
5 Q And when do you return?
6 MR. GROSSMAN: What's our next date after the --
7 MS. ROSENFELD: The 19th.
8 MS. ADELMAN: The 19th.
9 MR. GROSSMAN: The 19th?
10 THE WITNESS: I won't be back until the 22nd.
11 MS. ROSENFELD: Okay. So the 14th, hopefully.
12 THE WITNESS: Okay.
13 MR. GROSSMAN: Because, unless he's available for
14 cross-examination, I can't have him testify on this.
15 MS. ROSENFELD: No, no, I understand.
16 MR. GROSSMAN: Right.
17 MS. ROSENFELD: I understand. I'm just trying to
18 find a --
19 THE WITNESS: Yeah, I think we can make that
20 happen.
21 BY MS. ROSENFELD:
22 Q You're leaving tomorrow, right?
23 A Yeah -- well, no. Because of these proceedings,
24 being out of the office for a day and a half, I had to
25 cancel the trip to Johannesburg. We just weren't able to

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1 pull things together. But notwithstanding, you know, I'm
2 not trying to portray myself as being an expert in
3 appraisals. I'm just trying -- anyone who's bought a home
4 who's seen an appraisal report knows the factors that are
5 considered, and I was trying to bring forward, you know, a
6 little more information about what are the types of
7 variables that, you know, people think about, you know, as a
8 layperson buying a home; but, more importantly, when I think
9 about Mr. Cronyn's analysis, where there are areas where
10 it's insufficient. And a gentleman who works for a firm
11 that does appraisals, that does real estate valuation, you
12 know, a fellow who's got a lot of experience -- you know, I
13 looked at his résumé; you know, he's been in the business
14 for a long time -- I find it a little lacking, honestly,
15 that they didn't even consider this.
16 You know, the conclusion that there's no effect
17 just doesn't really resonate with how people behave, how
18 people perceive the value of things, what's attractive,
19 what's unattractive. Okay. That's feeling, right? And
20 then there's the terms of art, there's the prevailing
21 practices, and I would think that a fellow who purports to
22 be an expert in these matters would say, hey, you know, when
23 we look at guidelines, when we look at appraisals or when we
24 look at valuations, these are the things that we look at.
25 And the report was silent on the presence of gas stations,

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1 which are significant enough that they've been surveyed,
2 okay, how people feel about things, and more importantly,
3 how professionals in the industry are trained.
4 MR. GROSSMAN: I don't think his report was silent
5 on gas stations. He did have some comparison things, but
6 I'm not faulting you for having a different impression of
7 him, of his report, or of this general topic. All I'm
8 saying is part of my job is to ensure fairness --
9 THE WITNESS: Sure.
10 MR. GROSSMAN: -- and to ensure fairness, I'm
11 requiring that there not be surprise, and dropping reports
12 on the other side on the day of your testimony amounts to
13 surprise. And so that's why we're requiring that additional
14 time be allotted for your cross-examination.
15 THE WITNESS: Sure.
16 MR. GROSSMAN: All right.
17 MS. ROSENFELD: Okay.
18 MR. GROSSMAN: How do you want to proceed then?
19 MS. ROSENFELD: We have, I guess, two options: I
20 can continue to take Mr. Core through his direct testimony
21 today and he can come back for cross, or we can give the
22 other side an opportunity to review the materials and bring
23 him back and --
24 MS. CORDRY: In terms of timing, wouldn't it make
25 more sense to finish the direct today, and if there's

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1 anything else that comes up, then it would all be --
2 MR. GROSSMAN: I think it would also, but let's
3 hear from the other side because we want to -- we have
4 already lost the time for Mr. Sullivan's cross-examination
5 as part of his testimony today. So we want to make sure
6 that we are fully occupying our days here. What is your
7 preference, Ms. Harris?
8 MS. HARRIS: I think it's acceptable to complete
9 the direct --
10 MR. GROSSMAN: Okay.
11 MS. HARRIS: -- and then we'll bring him back for
12 cross because, certainly, given all of this material, we're
13 not prepared to do that now.
14 MR. GROSSMAN: Okay. All right then.
15 MS. ROSENFELD: Okay.
16 MR. GROSSMAN: How much longer, by the way, do you
17 anticipate Mr. Core's direct?
18 MS. ROSENFELD: How long have we been so far?
19 MR. GROSSMAN: I didn't count it up. We started
20 at 9:35 or so and it's now 10:30. So it's about 45 minutes.
21 MS. ROSENFELD: I would suspect maybe a half an
22 hour perhaps.
23 MR. GROSSMAN: Okay.
24 MS. ROSENFELD: Okay.
25 MR. GROSSMAN: All right, fine. You may proceed.

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1 THE WITNESS: Yeah.
2 BY MS. ROSENFELD:
3 Q Mr. Core, you've reviewed Mr. Cronyn's report --
4 A I have.
5 Q -- I take it? And in his report he shows certain
6 trend lines --
7 A Yeah.
8 Q -- that say that homes next to gas stations will
9 appreciate. And do you have any views as to whether or not
10 his analysis is applicable to your situation in this case?
11 A Yeah. I don't think they apply at all, honestly,
12 because what he was talking about was looking at trend lines
13 appreciation for homes that are near gas stations, have been
14 near gas stations, people bought the homes when they were
15 near gas stations. We're talking about something very
16 different, and that is, after the fact, putting a gas
17 station next to a residential community but, more
18 importantly, a significantly huge, I mean, a really large
19 gas station right next to existing communities. That's an
20 after-the-fact-type thing that's going to be a game changer.
21 It is not all things being equal, and I believe that that is
22 going to detract from the home value, my home value. So,
23 again, to answer the question directly, I don't think
24 Mr. Cronyn's analysis is at all relevant to what we're
25 talking about here because it's very different situations.

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1 Q In his report he makes a suggestion that houses
2 next to gas stations appreciate over time and, as such, they
3 don't lose value. Are you familiar with the analysis that
4 I'm talking about?
5 A Yeah. That was in, you know, Mr. Cronyn's report
6 that was submitted.
7 Q Oh, that's right.
8 A Right. So I am familiar with that. I'm familiar
9 with that chart, and I find it to be really curious. I
10 mean, honestly, I don't find it to be particularly helpful
11 in terms of making any decisions. It was an economic
12 analysis, looked at appreciation over a period of time. It
13 did not consider the impact of the baseline. So, you know,
14 look at my house at a gas station, look at any house at a
15 gas station that wasn't there before and, boom, that
16 baseline is going to drop.
17 So when we look at trend lines, you can take two
18 assets at different baselines and appreciate them at the
19 same rate and you can see a line where they appreciate --
20 which I believe was his fundamental conclusion -- at the
21 same rate, but we're talking about fundamental baseline.
22 We're talking about a material change to the value of my
23 house by placing a gas station there.
24 So, so I find that his analysis is flawed in that
25 sense because it doesn't take account of that really

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1 significant change, and secondly, I'm going to jump into why
2 I just find it curious that he chose to use an economic
3 analysis model, you know, versus using appraisals. Okay.
4 Notwithstanding the documents that have just been put into
5 evidence, but I would think that an appraisal model that is
6 much more rigorous, that is much more regulated would have
7 been a much more helpful and accurate way of gauging the
8 impact on the community here.
9 So with an economic analysis model, you can define
10 the assumptions that you want to look at, you can define the
11 variables, both internal and exogenous, and in an appraisal,
12 it's a much more regulated activity. There are specific
13 things that appraisers are instructed to look at. There are
14 particular forms that needed to be complied with. They need
15 to comport with regulations and agree and, you know, meet
16 the standards of Fannie Mae and HUD. They need to meet the
17 internal standards of the folks that are, you know, writing
18 the note on the mortgage.
19 So this is -- appraisals are much more well
20 defined and, I believe, a much more rigorous way of
21 assessing the value of a home than looking at an economic
22 analysis, where you can define your own variables. And I'm
23 frankly not surprised that Mr. Cronyn chose to use an
24 economic analysis model rather than an appraisal model
25 because I think if you look at the appraisal model, it just

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1 doesn't, it just doesn't work. And frankly --
2 MR. GROSSMAN: What do you mean it just doesn't
3 work?
4 THE WITNESS: I think he would have to recognize
5 the external -- frankly, all right, just bottom-line it, no
6 fancy words, I think with an appraisal model, we'll just,
7 he'd have to acknowledge the house would be less valuable,
8 the houses in the neighborhood would lose value, they would
9 be relatively less attractive. There would be documented
10 evidence that, hey, you got a gas station, you've got
11 storage tanks that are relatively close. So there are a
12 whole host of problems that, using the rigorous appraisal
13 model, you need to follow, and frankly, he should know
14 better.
15 So he was, he was a veteran of, you know, home
16 lending, you know. At a period of time as the thrift he was
17 with was failing, there was a lot of pressure being brought
18 onto the savings and loan industry by the federal government
19 about improving appraisal standards, and there's a reason
20 why appraisal standards have improved over the last couple
21 of decades, because you can't get away with shortcuts and
22 you need to actually determine what particular effects there
23 are on home values.
24 MR. GROSSMAN: All right.
25 BY MS. ROSENFELD:

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1 Q Mr. Core, I'd like to go back for a moment to the
2 baseline issue and the trends of properties appreciating.
3 MR. GROSSMAN: And before you do that, I'm going
4 to break it and ask the applicant -- and you don't have to
5 answer this question now, but I would like you to answer it
6 at some point -- and that is, why is it that you chose to
7 introduce just an economic analysis as opposed to an
8 appraisal model in determining the potential impact of a gas
9 station on the nearby homes?
10 MS. HARRIS: And what I would like to do -- I
11 mean, I believe I know the answer to that, but I want to
12 wait until we discuss it with Mr. Cronyn.
13 MR. GROSSMAN: Certainly. Well, he did testify
14 that he's not a certified appraiser --
15 MS. HARRIS: Right, yes.
16 MR. GROSSMAN: -- and so on, but I mean, it's your
17 choice as to what evidence you present.
18 MS. HARRIS: Yes.
19 MR. GROSSMAN: So I would, I mean, that's an issue
20 just raised by Mr. Core, but I think it's worthy of asking
21 you to give us an answer to it. All right. Go ahead.
22 BY MS. ROSENFELD:
23 Q Mr. Core, as I understand your testimony, let's
24 assume your townhome is worth \$100,000 --
25 A Sure.

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1 Q -- and your --
2 MS. CORDRY: Hopefully not.
3 BY MS. ROSENFELD:
4 Q I'm not --
5 A It might be by the time we're done with all this.
6 Q I was just making easy numbers --
7 A Okay.
8 Q -- to make life easier for me. So let's say your
9 house is worth \$100,000 and the gas station is built. The
10 day after the gas station is built, in your opinion, your
11 home value would drop, is that --
12 A Yeah.
13 Q At, let's say, to \$75,000.
14 A Yeah. I believe it drops the, if the unfortunate
15 -- yeah, it would be unfortunate if it got approved. I
16 think --
17 Q Okay. So --
18 A -- it happens before shovels turn.
19 Q But for purposes --
20 MR. GROSSMAN: Well, you suggested a figure.
21 THE WITNESS: Yeah.
22 MR. GROSSMAN: Is there a percentage that you
23 think it will drop? Is that --
24 THE WITNESS: Yeah.
25 MR. GROSSMAN: -- in your estimation?

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1 THE WITNESS: No, no. I'm just going with a
2 hypothetical --
3 MR. GROSSMAN: Okay.
4 THE WITNESS: -- to illustrate the baseline.
5 MS. ROSENFELD: This is just --
6 MR. GROSSMAN: Okay.
7 MS. ROSENFELD: -- to help illustrate a concept in
8 Mr. Cronyn's report.
9 BY MS. ROSENFELD:
10 Q And another home next to an existing gas station
11 that's worth \$100,000 --
12 A Yeah.
13 Q -- but it was purchased after the gas station was
14 built --
15 A Right.
16 Q -- so yours is now worth 75 and that one is worth
17 100, and Mr. Cronyn's report reflects that houses continue
18 to appreciate --
19 A At a --
20 Q -- even though they're next to a gas station.
21 Does that appreciation, in your opinion, if they're all
22 floating upwards at the same rate --
23 A Does that matter?
24 Q -- ever recapture -- yes.
25 A Absolutely not, because let's say I'm taking a

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1 \$25,000 hit -- and, frankly, I think it'll be larger than
2 that -- on day one. Okay. Let's run with that. Okay. So
3 I take a \$25,000 hit. I'm not going to recapture that
4 relative to that other home; that, you know, both \$100,000
5 day one, day two mine is worth 75,000. Let's appreciate
6 them \$10,000, same rate over -- at the same rate over five
7 years. That other property is still worth more. I've taken
8 a hit on the baseline that's just never going to be, never,
9 ever going to be caught, never, ever regained.
10 Q Thank you. In your review of the literature, what
11 have you learned or what information have you reviewed that
12 leads you to conclude that you would take a hit on your
13 property values the day after the station is built?
14 A Sure. The fact that there is even this type of
15 conversation, you can Google, you know, you can, and talk to
16 people, and you Google gas station, Google home values,
17 Google, you know, gas station threats, you end up with
18 problems. So there's the Scientific American article that's
19 been introduced; there's that other survey, you know, that,
20 this documentation that's been introduced; and then there's
21 just common sense. People are concerned about emissions.
22 People are concerned about, you know, being next to sources
23 of pollution.
24 So you asked about sources that I've looked at.
25 So there's the Scientific American article, there's the EPA

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1 article that was introduced, and then there are other things
2 that have been introduced, you know, when you read about
3 these things. I don't know how far afield I can get because
4 I want to reference some of the material that --
5 MR. GROSSMAN: Well, you can answer --
6 BY MS. ROSENFELD:
7 Q Well, there, you can --
8 MR. GROSSMAN: -- any question that's posed until
9 there's an objection --
10 THE WITNESS: Okay.
11 MR. GROSSMAN: -- to be ruled upon.
12 BY MS. ROSENFELD:
13 Q You can answer these questions. You'll be --
14 A Okay, great, certainly. I didn't want to run too
15 afoul because --
16 MR. GROSSMAN: Right.
17 THE WITNESS: -- apparently I've not done well
18 here so far in terms of --
19 MR. GROSSMAN: No, I didn't say you haven't done
20 well, and I certainly admire any citizen who does the kind
21 of research that you've done. It's just a question, I want
22 to avoid surprise to the other side so they have the
23 opportunity to cross-examine.
24 THE WITNESS: Okay. That's fair, right.
25 BY MS. ROSENFELD:

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1 Q Mr. Core, in Exhibit 96(a) you do have on page 2
2 of that a box --
3 A Right.
4 Q -- box text where you reference a March 2010
5 survey conducted for the EPA.
6 A Yes.
7 Q And can you talk about that and the numerical
8 values that were --
9 A Great. So --
10 Q -- determined in that study?
11 A So this, as presented in Exhibit 96(a), I have a
12 statement that in March 2010 a survey was conducted for the
13 EPA by the National Center for Environmental Economics, and
14 Industrial Economics, based in College Park, that said that
15 75 percent of one group of respondents reported that a gas
16 station does affect the home value with an average discount
17 of \$3,300 if a station is opened a half mile away.
18 Q And you certainly are well within a half a mile of
19 this gas station?
20 A Correct. We've testified probably about 650 feet.
21 Q And did you find any other empirical evidence or
22 empirical research that would give you a quantitative value
23 as to how much the, your home might depreciate?
24 A That my home might depreciate? I don't have any
25 specifics on our home. Again, we haven't seen any appraisal

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1 analysis coming out of any of the filings here. But
2 Michigan State University, as referenced earlier, indicated
3 that they would -- that based upon the characteristics of a
4 home and neighborhoods changing, that the study found that
5 opening an additional gas station within a quarter of a mile
6 would reduce a home price by \$6,052. Now, I don't know what
7 the baseline is on that but that's a fairly significant
8 figure.
9 Q And do you know if that was a regular gas station,
10 sort of a typical neighborhood gas station, or was it a mega
11 gas station?
12 A All of what I've read referenced typical gas
13 stations, not the mega gas station that the special
14 exception would bring to my neighborhood, which is a mega,
15 huge regional fuel depot, frankly more akin to what we
16 should see at a highway rest area.
17 Q And you talked also about how home values can be
18 affected by perception and not necessarily by reality --
19 A Correct.
20 Q -- people have perceptions about gas stations and
21 some people --
22 A Sure.
23 Q -- might not choose to buy. Do you have any other
24 evidence of how perceptions may or may not affect people's
25 decision to buy a particular house?

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1 A Yeah, absolutely, and I think anyone who has
2 purchased a home or rented an apartment, made a selection
3 about housing knows that there are a whole host of
4 preferences and personal factors that go into these types of
5 decisions. So let's bring it closer to home. So I've
6 talked about the academics and what researchers have found
7 both in Michigan; we found what the University of Maryland
8 has found in relation to this other study. Well, let's
9 bring it closer to home to something that happened in Silver
10 Spring just off of Georgia Avenue in a neighborhood where
11 there are some gas stations, and this is referenced here.
12 And we have a situation where there's that home, that
13 particularly unfortunate home on Columbia Boulevard where
14 there were three people murdered in that home recently,
15 within the last couple of years. It was that unfortunate
16 incident where the school principal was murdered. Do you
17 know the case, what I'm referring to?
18 MR. GROSSMAN: Not off the top of my head.
19 THE WITNESS: Okay. Anyhow, so what we have here
20 is three people were murdered in two separate attacks. Now,
21 the County Council or the county permitting authorities
22 allowed some action to take place and that was to renumber
23 the home because it was frankly a stigmatized property. You
24 know, you Googled the address of this particular home, and
25 you came up with all these articles about these two murder

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1 -- two unfortunate events that led to the murders of three
2 people.
3 This generated a lot of attention in the Gazette.
4 There were Washington Post articles. You know, looking
5 online at the Gazette, there was local traffic, local
6 commentary, and there were not a lot of posts, but this one
7 really, really stuck out, and it said, quote, a dozen
8 different people point out that the valuation is negatively
9 affected by the gas station. Exactly no one says the
10 opposite.
11 So the significance of this is we have a
12 hyperlocal situation just a few miles from where we live and
13 people are commenting that a gas station is a bigger factor
14 on the negative valuation of a home than the fact that three
15 people had been murdered in two separate attacks. I think
16 that underscores how people feel about these things, and we
17 can never take out how people feel about particular
18 properties and how people feel about what has occurred and
19 what's in the neighborhood out of these types of
20 transactions. People -- it's somewhat emotional,
21 non-scientific activity.
22 BY MS. ROSENFELD:
23 Q Okay, thank you.
24 MR. GROSSMAN: Well, I think the problem is it may
25 be an emotional, non-scientific activity, that is the

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1 perception of people, but what we would try to consider here
2 is a scientific analysis of what that perception is likely
3 or not likely to yield in terms of home values.
4 THE WITNESS: Sure.
5 MR. GROSSMAN: I can't, it's very difficult to
6 base a fact-finding on what might be a perception or any
7 individual's perception as distinguished from some study of
8 what, overall, the --
9 THE WITNESS: So --
10 MR. GROSSMAN: -- result of such perceptions might
11 be. And there's also another factor here, and that is, we
12 can't base decisions just on fears that, you know, may or
13 may not be refuted by --
14 THE WITNESS: Okay.
15 MR. GROSSMAN: -- expert opinion. So that's, I
16 mean, there's case law on precisely that point. So we have
17 to wrestle with those things --
18 THE WITNESS: Great.
19 MR. GROSSMAN: -- and I agree, in this kind of
20 context, it's very difficult to make that separation,
21 because perception of home value may be determination of
22 home value, to some extent, and so it is difficult to make
23 that distinction.
24 THE WITNESS: Yeah, absolutely, and I understand
25 that you need to make a decision, or I'm sorry, you need to

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1 make a recommendation. Forgive me, sir.
2 MR. GROSSMAN: Right. And findings of fact --
3 THE WITNESS: Yeah, and findings of fact.
4 MR. GROSSMAN: -- and conclusions of law, right.
5 THE WITNESS: So that's why -- so I looked at the
6 zoning, and certainly I'm not an expert in the zoning code,
7 but I did look at the criteria. And the criteria are that
8 the applicant, as I understand it, and correct me if I'm
9 wrong, has to prove that there is no loss of economic value.
10 Let me get the exact --
11 MR. GROSSMAN: I'm very familiar with the code,
12 obviously, but that's, that's leavened by the question of
13 inherent and non-inherent --
14 THE WITNESS: Right.
15 MR. GROSSMAN: -- characteristics. So it's not
16 exactly that. I know that the -- it's unfortunate in the
17 code that they're separated in a way that doesn't bring
18 those two concepts close enough together, but --
19 THE WITNESS: Great. So that's why, as I was --
20 as I was looking into this, you know, as a layperson, trying
21 to pull out, tease out information that I thought was
22 relevant, I looked for, okay, you can't make decisions based
23 on fear, you can't always make decisions based upon
24 feelings, though I think a lot of it is, on home values, is
25 based upon how people feel about things. So that's why I

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1 went to this survey data that --
2 MR. GROSSMAN: Right.
3 THE WITNESS: -- indicates that, and quantifies,
4 based upon, you know, research by psychologists and
5 economists, that there's a problem here by putting gas
6 stations in next to homes and how people have been able to
7 quantify that. And then I have this other info that I've
8 solicited that's hyperlocal that I'm offering to help bring
9 in some of these other social aspects of it. That's why I
10 brought that in.
11 MR. GROSSMAN: Right. The difficulty is, of
12 course, trying to apply general conclusions about next to
13 and distance with a particular situation, such as this one,
14 where the proposed gas station is to be in a commercial zone
15 in a mall. So there are differences there, also, as to how
16 this affects people's perceptions of what should be there.
17 So it's not, it's not a one-on-one analogy, is all I'm
18 saying.
19 THE WITNESS: Yeah, which, you know, which is a
20 really interesting point. You're right. It's not
21 one-on-one analogy and that's why -- well, it's not a
22 one-on-one analogy, and I kind of view this as kind of a
23 whole-systems approach, okay? So all of what I've
24 referenced about gas stations, you know, there's a negative
25 -- people do not perceive gas stations favorably as a

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1 negative economic value on adjoining property owners, and by
2 the way, there are also really non-inherent risks associated
3 with this one because everything that we've cited has just
4 talked about regular gas stations but this is, this is a
5 mega gas station --
6 MR. GROSSMAN: Right.
7 THE WITNESS: -- that's going to have significant
8 impact. So when we think about the zone, we think about the
9 impacts, I would hope that we wouldn't be so, so quick to
10 just define it as, okay, there's the property line and boom,
11 that's where the effects end; but, really, it does bleed
12 over into the adjacent property owners.
13 MR. GROSSMAN: Certainly.
14 BY MS. ROSENFELD:
15 Q And so, Mr. Core, to the extent that you've
16 identified a number of non-inherent characteristics, in your
17 view, would those exacerbate the negative effect on property
18 values?
19 A Yes. I think, okay, people aren't going to love a
20 gas station, okay, fine. I do acknowledge that there was a
21 gas station on the mall before, but that was right on
22 Georgia, I'm sorry, right on Veirs Mill Road. What we're
23 talking about here is taking a gas station eight times the
24 size of a regular gas station, it's going to have extensive
25 queuing, extensive idling that we don't see at other gas

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1 stations, and then plopping it right next to a residential
2 neighborhood. I don't see where that's good for anybody. I
3 certainly don't see where it's good for me or my neighbors.
4 Q Mr. Core, can I draw your attention to what's been
5 marked as Hearing Examiner Exhibit 355, the FHA Appraisal
6 Inspection Requirements Webinar?
7 A Yeah.
8 Q Were there elements of this that you also used in
9 developing your conclusions?
10 A Yeah, because -- exactly. I can say that there
11 were because, when I was thinking about the economic
12 analysis, I thought, wow, this doesn't really seem to work,
13 they seem to not be thinking about how appraisals handle the
14 presence of gas stations. And we look at it, and there's
15 very specific guidance here on these particular aspects that
16 -- you know, HUD does a lot of work through the FHA with
17 appraisers on these topics, and I'll just call your
18 attention to one, one or two things.
19 There are negative influences. Appraisers are
20 required to look at any external obsolescence and they
21 define these, and they're listed there -- high traffic,
22 commercial activity -- and it must be photographed and it
23 must be included in the report. The training calls for
24 appraisers to specifically comment on gas stations when
25 assessing exterior obsolescence, when looking at the site

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1 analysis. That's a specific requirement: appraisers must
2 consider the presence of a gas station. It has to consider
3 other nuisances when assessing, if a property is going to be
4 considered unacceptable. They also have to have photographs
5 of many of these external influences, positive or negative,
6 and I found this to be particularly interesting. When you
7 look at the list, sir, you know, in the list of influences
8 that must be photographed, it specifically includes gas
9 stations, along with other problem features such as
10 railroads and freeways and hazardous waste sites. So it
11 kind of lumps them in that type, in that category.
12 MR. GROSSMAN: And what if the gas station is not
13 visible from the property in question? How do you
14 photograph it?
15 THE WITNESS: Well --
16 MR. GROSSMAN: And the testimony here is --
17 THE WITNESS: Okay.
18 MR. GROSSMAN: -- is that it will not be visible.
19 THE WITNESS: That doesn't mean it's, folks are
20 not going to be able to accommodate for the presence of a
21 gas station just over a wall. I don't --
22 MR. GROSSMAN: No. I'm just saying that in terms
23 of applying --
24 THE WITNESS: Yeah.
25 MR. GROSSMAN: -- this analysis, the appraisal

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1 requirements, FHA appraisal requirements, doesn't that
2 factor in too? I mean, if their concern is visibility of a
3 nearby gas station and it's not visible here, isn't that,
4 doesn't that cut against what you're suggesting?
5 THE WITNESS: No, I don't think it cuts against
6 what I'm suggesting at all. I think the visibility and the
7 photographic evidence is just one component but the presence
8 of the gas station in proximity to the home is something
9 that needs to be, needs to be assessed by the appraiser and
10 how that affects --
11 MR. GROSSMAN: Okay.
12 THE WITNESS: -- the value. So that's part of the
13 analysis for the site analysis that I referenced earlier.
14 MR. GROSSMAN: Okay.
15 BY MS. ROSENFELD:
16 Q Looking, turning to Exhibit No. 355, turning to
17 page 44, Site Analysis, what are -- are gas stations
18 included among the factors that should be considered?
19 A Yes. When writing up an appraisal report, this
20 instruction indicates that -- and, again, I'm not an expert;
21 I'm just testifying as a layperson who's had a lot of
22 properties appraised -- that exterior influences slash
23 obsolescence includes gas stations and other wonderful
24 things, such as dumps, landfills, and industrial/commercial
25 uses.

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1 Q And there's no requirement under the analysis
2 component that these necessarily be photographed --
3 A Yeah.
4 Q -- is that correct?
5 A I'm just saying that's -- it's not under the
6 analysis when factoring in the valuation. I'm just saying
7 if a gas station is visible, there's a specific requirement
8 that it needs to be photographed --
9 Q And --
10 A -- but that, that doesn't mean it's not going to
11 be silent, okay? You can have a beautiful green wall and on
12 the other side of it a gas station. That needs to be
13 considered.
14 Q And turning to page 59 again, are there factors,
15 whether or not generated by a gas station or generated by
16 any use, the appraiser needs to take into consideration?
17 A Yeah. He needs to take into consideration noxious
18 odors, pollution, excessive noise, environmental
19 contaminants. Certainly, I would say, a gas station would
20 be considered a nuisance --
21 Q And --
22 A -- not something that I would find appealing.
23 Q Okay. And page 60, this is the question of
24 photographs. What --
25 A Yeah, I think we covered that.

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1 Q Okay. And it doesn't necessarily say that the gas
2 station has to be within the viewshed --
3 A Right.
4 Q -- of the particular property, is that correct?
5 A Correct.
6 Q Okay.
7 A I just think in plain language, I think there's
8 enough evidence there that my home is likely to lose
9 value --
10 Q Okay.
11 A -- by putting this in after the fact.
12 Q Thank you.
13 MS. ROSENFELD: I have no further questions.
14 MR. GROSSMAN: Okay. Do you want to do any
15 cross-examination now, or do you want to just postpone
16 until --
17 MS. HARRIS: No. I think, given the amount of
18 materials, I think it's better to postpone --
19 MR. GROSSMAN: Okay.
20 MS. HARRIS: -- but just to be clear, will
21 Mr. Core be back on the 14th?
22 MS. ROSENFELD: You're leaving town on the 15th,
23 you said?
24 THE WITNESS: Yeah. I'm going to have to see --
25 MS. ROSENFELD: Will you be able to be here on the

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1 14th?
2 THE WITNESS: I will make arrangements.
3 MS. ROSENFELD: Okay.
4 MR. GROSSMAN: Okay.
5 MR. ADELMAN: Mr. Grossman, may I have one
6 question?
7 MR. GROSSMAN: Yes, sir.
8 CROSS-EXAMINATION
9 BY MR. ADELMAN:
10 Q Mr. Core, can you hear me?
11 A Yes, sir.
12 Q Good. If I recall correctly, you spoke about the
13 possibility/probability that potential buyers will not be
14 interested in a house next to a gas station.
15 A Yeah, absolutely, yes.
16 Q What about people who might be interested and make
17 an offer -- do you have an expectation about what their
18 offer would be?
19 A Yeah. I absolutely think the offer would be less
20 than a similar house not next to a gas station if, if it
21 were to sell, and I frankly, I think there's -- it just
22 causes a real problem, creates economic loss.
23 Q Okay, thank you.
24 MR. GROSSMAN: Okay. All right. Once again,
25 thank you very much --

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1 THE WITNESS: Thank you, sir.
2 MR. GROSSMAN: -- for taking your time to come
3 down here and share your views, and have a great trip to
4 Johannesburg, if that's what you're planning on doing, and
5 we'll see you back here on November 14th.
6 THE WITNESS: Great. Thank you.
7 MR. GROSSMAN: Thank you. Okay.
8 MS. HARRIS: Before our next witness, may we take
9 a three-minute break?
10 MR. GROSSMAN: Certainly.
11 MS. HARRIS: Thank you.
12 MR. GROSSMAN: Who is our next witness then?
13 MS. CORDRY: I just talked to Mr. Goffman -- this
14 is Mr. Goffman from the Sierra Club --
15 MR. GOFFMAN: Hi.
16 MR. GROSSMAN: Okay.
17 MS. CORDRY: -- and he indicated he would need to
18 be, leave by noon. So if you're all right with that Mary
19 Ann?
20 MS. CARTER: Or would we then take a lunch break
21 and come back --
22 MS. CORDRY: No. No.
23 MS. CARTER: -- or we would just keep going at
24 noon?
25 MS. CORDRY: We would keep going.

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1 MS. CARTER: Then I can wait until noon.
2 MS. CORDRY: Okay.
3 MR. GROSSMAN: Okay. So then we'll have
4 Mr. Goffman come on next. We'll take a five-minute break
5 until 11:15. Okay.
6 (Whereupon, a brief recess was taken.)
7 MR. GROSSMAN: Let's try to turn off all of the
8 cell phones, please. So the next witness is from the Sierra
9 Club?
10 MS. CORDRY: Yes.
11 MR. GROSSMAN: All right. Mr. Goffman, would you
12 be so kind as to step into the hot seat?
13 MR. GOFFMAN: Okay. Hello. How are you doing?
14 MR. GROSSMAN: Fine, thank you. How about
15 yourself?
16 MR. GOFFMAN: Oh, I'm fine.
17 MR. GROSSMAN: Good. Have a seat, and will you
18 state your full name and address, please?
19 MR. GOFFMAN: I'm Ethan Goffman, and it's 523
20 North Horners Lane in Rockville.
21 MR. GROSSMAN: Okay. And can you spell your last
22 name?
23 MR. GOFFMAN: G-O-F, as in Frank, -F-M-A-N.
24 MR. GROSSMAN: All right. Would you raise your
25 right hand, please?

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1 (Witness sworn.)
2 MR. GROSSMAN: All right. And are you here on
3 behalf of an organization today?
4 THE WITNESS: The Montgomery County Sierra Club.
5 MR. GROSSMAN: Okay. And do they have a business
6 address here?
7 THE WITNESS: No. They operate out of different
8 people's houses.
9 MR. GROSSMAN: All right. And do you wish to
10 testify today on behalf of the Sierra Club?
11 THE WITNESS: Exactly.
12 MR. GROSSMAN: All right. You may proceed.
13 DIRECT EXAMINATION
14 THE WITNESS: All right. So the Wheaton Sector
15 Plan envisions a walkable, mixed-use, transit-oriented hub
16 with plenty of residences and retail businesses. Page 9 of
17 the plan describes Wheaton's future as being a major
18 mixed-use center for Georgia Avenue and eastern Montgomery
19 County, including regional shopping, transit-oriented
20 residential and office, and business and government
21 services. It proposes to capitalize on the role of Metro
22 and Wheaton as a regional transit hub to promote
23 high-density growth and redevelopment in the business core.
24 Another prime redevelopment goal is to reduce energy
25 consumption and make Wheaton more green and sustainable by

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1 providing transportation alternatives to reduce vehicle
2 miles traveled.
3 Building an enormous gas station in downtown
4 Wheaton is antithetical to all parts of this plan. The
5 Montgomery County Sierra Club wishes to reiterate its
6 previous objections filed in April and in Exhibit 94 to the
7 construction of this station, which undermines local,
8 county, state, and national goals regarding smart growth and
9 the environment.
10 We do welcome the decision of Costco and Westfield
11 to reinstate the pedestrian path largely in the form that it
12 was presented to the Planning Board and staff when first
13 reviewed. The sector plan also speaks at page 53 about the
14 possibility of expanding the forest buffer and creating a
15 green shared-use path adjacent to the existing area, and we
16 hope this will occur as soon as possible.
17 In any event, the proposed Costco gas station will
18 mean more cars and traffic in the mall and surrounding
19 areas, making walking and biking more difficult. The
20 station will also compete with transit and undermine efforts
21 to move Montgomery County to a new paradigm. With young
22 people increasingly rejecting automobile use and a rising
23 number of seniors, we need to create pleasant communities
24 that encourage mobility without a car. We need buildings
25 and infrastructure easily accessible by transit, with

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1 walking and biking unhindered by automobile congestion.
2 This will increase the economic vitality and quality of life
3 in the county.
4 It's particularly important to encourage this kind
5 of growth near a Metro station on the eastern side of the
6 Red Line in an area of the county that has been eclipsed by
7 the development in Silver Spring, Bethesda, Rockville, and
8 White Flint. Wheaton's location at the junction of a major
9 Metrorail and bus station makes it especially important for
10 transit-oriented development. Plans for a rapid bus transit
11 network encompassing Georgia Avenue and Veirs Mill Road
12 further enhance Wheaton's position as a major smart growth
13 node that would only be undermined by adding an enormous gas
14 station.
15 Although we recognize that some customers of the
16 station may already be driving to the area, a substantial
17 portion are projected to be new gas-only trips. Indeed,
18 this station will act as a magnet, pulling cars away from
19 other gas stations near and far, and increasing vehicle
20 miles traveled, exactly the opposite of the county's goals.
21 We know that such car trips are not inevitable. Costco's
22 Pentagon City warehouse is similarly located near transit
23 and without a gas station, and it is our understanding that
24 a meaningful number of patrons do use Metro. Certainly, if
25 such a station is built, there will be no incentive for

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1 Costco to think creatively of how to encourage alternatives
2 to driving. Furthermore, a look at the supporting postcards
3 Costco submitted indicates that a large portion of those
4 wanting this store live in far-flung neighborhoods and would
5 bypass dozens of stations to use the Costco station.
6 The Sierra Club is also concerned because this
7 station, in particular, is designed to operate with large
8 numbers of idling vehicles for many hours a day, polluting
9 the air, likely increasing asthma and other respiratory
10 diseases, and perhaps even cancer, at the local level.
11 Allergies are on the rise, due at least in part to
12 environmental causes, including air quality. Asthma and
13 allergies have become something of an epidemic among young
14 people, severely restricting their quality of life. Taking
15 asthma alone, in Montgomery County in 2009 12.4 percent of
16 adults have a history of asthma, according to the Department
17 of Health and Mental Hygiene. Numbers for children are not
18 well documented, but the rate of emergency visits by 0- to
19 4-year-olds for asthma was five times that of adults in
20 Montgomery County.
21 Because Wheaton has a relatively large minority
22 population and a large low-income population, there's also
23 an environmental justice issue. This is particularly
24 disconcerting since, according to the report, the asthma
25 rate was approximately 5.3 times higher among black

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1 residents and 4.8 times higher among other residents. One
2 must ask whether such a project would have been brought to
3 the more affluent and politically influential western part
4 of the county.
5 The Sierra Club recommends applying the
6 precautionary principle of first do no harm, rather than
7 subjecting the people of Wheaton to possible adverse health
8 effects so drivers can save a few pennies per gallon. The
9 station's location, near numerous residences as well as a
10 special-needs school and swimming pool, underscores the
11 impact. Where the local station is already well served with
12 more than two dozen serving stations, or the local area,
13 there is no reason to allow a megastation that would
14 concentrate all of these sales just a few hundred feet away
15 from such sensitive areas.
16 Finally, even leaving aside disputes over the
17 station's health effects, the added driving and idling
18 created by this station would mean more greenhouse gas
19 emissions, running counter to Maryland's stated goal of a 20
20 percent reduction from 2006 levels by 2020 in the Greenhouse
21 Gas Reduction Act of 2009. The situation is worsened
22 because no other station in the county operates with scores
23 of cars idling for hours daily.
24 In addition to the state, Montgomery County has
25 itself committed to making significant reductions in

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1 greenhouse gases. Its Climate Protection Plan calls for
2 reducing countywide greenhouse gas emissions to 80 percent
3 below the 2005 base year by 2010 and 10 percent every five
4 years through 2050. The report makes clear that the county
5 needs to be forward thinking in all sectors, from energy
6 efficiency to renewables to transportation, to meet these
7 ambitious goals. So two specific recommendations in the
8 plan were T-9, develop comprehensive idling policies
9 supporting Maryland's vehicle anti-idling law with an
10 emphasis on both education/outreach and effective
11 enforcement; T-11, create an effective transportation
12 education and outreach campaign to modify resident and
13 business transportation behavior to reduce GHG emissions.
14 Currently, approving a station that creates an idling
15 problem fulfills neither of these recommendations.
16 The new Intergovernmental Panel on Climate Change
17 report -- the big international global document that
18 summarizes the work of thousands of scientists -- surveys
19 the mounting danger from fossil fuel emissions and the utter
20 failure to respond in an adequate way. We're already seeing
21 droughts, floods, monster hurricanes, and other effects
22 partly due to climate change, and it's all projected to get
23 worse. Of course, any given project will have a small
24 impact, but allowing additional greenhouse gases flies in
25 the face of reduction efforts. So it's one more step in the

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1 wrong direction.
2 The Planning Board staff recommends rejecting the
3 Costco gas station due to local health concerns and other
4 adverse effects, including the idling. The Planning Board
5 voted to reject the station due to its undermining of smart
6 growth goals and the new Wheaton Sector Plan. We strongly
7 agree with both reasons and urge that this project be
8 rejected. It's wholly out of scale and unnecessary to the
9 needs of developing a Wheaton that will attract more young
10 people, contribute to the growth and vitality of Montgomery
11 County in a way that we all look forward to as the 21st
12 century unfolds.
13 MR. GROSSMAN: All right. Mr. Goffman, is the
14 Sierra Club testifying on behalf of one of the parties here
15 or just as an independent witness?
16 THE WITNESS: It's an independent witness.
17 MR. GROSSMAN: Okay. Then in terms of
18 cross-examination, I'll turn actually first to Kensington
19 View. Do you have any questions of this witness?
20 MS. SHEARD: No.
21 MR. GROSSMAN: All right. Then we'll turn to the
22 Stop Costco Gas Coalition. Do you have questions?
23 MR. SILVERMAN: I think Dr. Adelman has a
24 question.
25 MR. ADELMAN: Yes.

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1 CROSS-EXAMINATION
2 BY MR. ADELMAN:
3 Q Just, I think, two brief questions. If I
4 understood, you are approving of Westfield and Costco's
5 decision to build the pedestrian path, is that correct?
6 A Yes.
7 Q Are you aware that building the pedestrian path is
8 contingent on approval of this application?
9 A No, but any pedestrian path added is obviously
10 supporting the walkability of the area, but --
11 Q No. The question I'm asking, perhaps I wasn't
12 clear, I'm referencing an exhibit number, which I'm not
13 asking you if you know.
14 A Right.
15 Q It's 341.
16 A Uh-huh.
17 Q That's a submission from Costco, saying in essence
18 that Westfield has given approval to Costco to build --
19 A Right.
20 Q -- the pedestrian path if this --
21 A Yeah.
22 Q -- project is approved.
23 A Right. Okay. So, yeah, obviously the path goes
24 along with the project. So you don't need that particular
25 layout of the path if there's no gas station, but you do

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1 always want to look at walkability, and anything to improve
2 walkability is always a good thing, especially in this kind
3 of mixed, mixed-use development.
4 MR. GROSSMAN: I would say something about that,
5 your question about contingent upon. It is true that one of
6 the requirements that has been agreed to by the, by Costco
7 as part of this application and has been agreed to by
8 Westfield is, if the special exception were granted, they
9 would put in the pedestrian path, and there is nothing that
10 prohibits Westfield from putting in a pedestrian path if
11 there is no special exception. So it's not -- so I just
12 want to make sure that the contingency aspect of that is
13 clear. It's only --
14 MR. ADELMAN: May I respond without testifying?
15 My reading of the letter says explicitly that the building
16 of the pedestrian path is contingent upon approval of the
17 project.
18 MR. GROSSMAN: I understand. The commitment in
19 that letter that you mentioned is linked to the Costco
20 special exception but that doesn't mean that they are
21 prohibited from putting in the path if Westfield elects to
22 do it, whether or not there is a special exception. It's
23 just that the special exception site does not include the
24 area of the path and Westfield is not an applicant here; the
25 applicant is Costco. So neither the Board of Appeals nor

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1 the Hearing Examiner would have any sway over, over
2 Westfield, or any authority over Westfield, as such, outside
3 of the special exception site. But they do have -- this is
4 not to say that, that they are prohibited in some way, if
5 the special exception were denied, from putting in a
6 pedestrian path.
7 MR. ADELMAN: Nor are they prohibited from putting
8 in the pedestrian path today.
9 MR. GROSSMAN: Correct.
10 MR. ADELMAN: Thank you.
11 THE WITNESS: You're welcome.
12 MR. GROSSMAN: Not by anything that's before me,
13 in any event.
14 MR. ADELMAN: Understood.
15 MR. GROSSMAN: I don't pretend to know everything
16 that happens in terms of Westfield's practice. All right.
17 Does Kensington Heights Civic Association have any questions
18 of this witness?
19 MS. ROSENFELD: No. Thank you.
20 MR. GROSSMAN: All right. The applicant?
21 MS. HARRIS: Yes. Thank you.
22 MR. GROSSMAN: All right.
23 BY MS. HARRIS:
24 Q Mr. Goffman, you, I believe you said it's
25 important to encourage this type of development in this --

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1 A Uh-huh.
2 Q -- in this area of the county, is that correct?
3 A Yeah, walkable, transit-oriented, mixed use, all
4 kinds of businesses, people just easily getting from place
5 to place on one trip, which is good for commerce in the area
6 and makes local buying better, yeah.
7 Q Yes. And when you say mixed use, what types of
8 uses are you referring to?
9 A I'm talking about residential, talking about
10 shopping. In this case, probably those two uses would be
11 the primary ones. So we're thinking about downtown Bethesda
12 -- probably fewer office buildings and things like that,
13 although, you know, we do want to bring more jobs to Wheaton
14 also; so, you know, that would be part of the picture. Plus
15 people would then go down to lunch and shop afterwards,
16 et cetera, so actually all kinds of uses --
17 Q Okay.
18 A -- they all support each other and they all
19 discourage vehicle miles traveled because you go down -- you
20 don't drive off to some far destination for each --
21 Q Right. Okay. Do you know what the site is zoned?
22 A I do not.
23 Q Do you know what that portion of the site is zoned
24 along Veirs Mill and University Boulevard?
25 A No, but I know the sector plan is calling for this

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1 kind of mixed use.

2 Q Yes. Would you be surprised to learn that the

3 site, the portion of the site on which the special exception

4 is located is zoned C-2?

5 A Yeah, I don't know about the zoning.

6 Q So you don't know or you have no awareness that

7 the C-2 zone would not even permit residential on this

8 portion of this site?

9 A Well, but that's right across from residential, so

10 the residents, the local residents. The other point is, in

11 the long run, you can change the zoning.

12 Q But the zoning today would not permit the mixed

13 use that you were proposing on the majority of the mall

14 site, correct?

15 A Right.

16 MR. GROSSMAN: Now, Mr. Goffman, I should have

17 asked you, do you have a particular title in the Sierra

18 Club?

19 THE WITNESS: Oh, I'm the transit chair.

20 MR. GROSSMAN: Okay. So transit chair of the

21 Montgomery County Sierra Club, is that correct?

22 THE WITNESS: Right. Technically it's Montgomery

23 County Sierra Club Group. So --

24 MR. GROSSMAN: Okay. And I take it you're

25 authorized to speak on behalf of the Montgomery County

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1 Sierra Club Group today?

2 THE WITNESS: Exactly.

3 MR. GROSSMAN: All right.

4 BY MS. HARRIS:

5 Q Do you --

6 MR. GROSSMAN: Go ahead.

7 MS. HARRIS: Thank you.

8 BY MS. HARRIS:

9 Q Do you recognize that there's, the mall includes a

10 6,000-space parking lot? Are you aware of that?

11 A I do.

12 Q And are you also aware that there's a

13 900-plus-space parking, Metro parking garage on the site as

14 well?

15 A Right, not the exact site, but yeah. I shop at

16 the mall. I'm very familiar with it.

17 Q Okay. And so those people that shop at the mall

18 or drive to the mall to get on the Metro --

19 A Uh-huh.

20 Q -- they're coming by car, correct?

21 A Right.

22 Q And what do cars consume?

23 A Gasoline.

24 Q And so there's a need for gasoline, is that

25 correct?

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1 A Oh, yeah, but there are also lots of gasoline

2 stations.

3 Q But wouldn't it be more convenient for people that

4 are on the mall site to actually frequent -- purchase their

5 gas where they're, while they're at the mall site as opposed

6 to creating an unnecessary trip to get gas elsewhere?

7 A Well, you don't need a huge gas station to do that

8 because basically -- there's two answers. One is most

9 people have gas stations near their houses or where they're

10 driving anyway, and this is just going to, because it's less

11 expensive, people are going to be making extra trips. So,

12 overall, they're going to be driving more to go to that gas

13 station. I mean, it would be, at times, somewhat more

14 convenient for a few people, but it would create a great

15 inconvenience for people trying to walk around and would be

16 bad for the commercial future, we think, of the area.

17 But the second answer is the whole county is

18 trying to become a lot more transit-oriented, including a

19 new rapid transit system that would go on Georgia and Veirs

20 Mill Road. It's by a major Metro center with lots of buses

21 today. Therefore, you want to encourage people to take

22 those modes of transit when possible, and you're also going

23 to, you know, it's going to be very pleasant. People from

24 nearby are going to want to walk or bike. Therefore,

25 they're not going to be taking trips further away to do

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1 tasks. They're going to be lulled out of their cars, which

2 is the objective.

3 Q Are you aware that there's approximately 4100

4 people that drive to the Costco every day to shop at the

5 Costco?

6 A It's not very surprising numbers.

7 Q And would it not be more convenient for those

8 individuals to be able to purchase gas, again, at this --

9 where they've already made a trip, as opposed to creating a

10 new trip to obtain gasoline?

11 A Well, a lot of them are going to be passing gas

12 stations anyway, first of all. Second, again, we want to

13 get as many taking trips via transit, even to the Costco,

14 which I take Metro or, actually, I take the 48 bus to go to

15 the Wheaton Mall. I don't even have a car, but you know,

16 I'm going to go to the Costco and shop there. I'm not using

17 a car. So you're assuming an indefinite future of continued

18 high car use.

19 Q So if you eliminated all of the gas stations along

20 Veirs Mill Road and Georgia Avenue, are you suggesting that

21 the number of trips coming down Georgia Avenue would

22 suddenly decrease because there's not the -- because there's

23 not gas stations there?

24 A No. I'm suggesting, in the long term, we're

25 working on decreasing the percentage of trips and the giant

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1 gas station is going to tend to seduce people into traveling
2 more and, also, longer trips to get the cheaper gas than --
3 Q In your view, simply providing a gas station makes
4 people want to drive more?
5 A Yeah, an enormous gas station with discount
6 prices, yes, that would make people drive more.
7 Q Did you follow the sector plan process?
8 A No.
9 Q So you're not that, you're not familiar with the
10 sector plan document?
11 A Well, I've toured it. I went on a Coalition for
12 Smarter Growth tour. It's a -- you can create a really
13 unique environment because there are all these nice little
14 businesses, kind of a Hispanic flavor to the neighborhood,
15 you know, having --
16 Q But if I understood you --
17 A Uh-huh.
18 Q -- while you're not familiar with -- you didn't
19 follow the sector plan process, you're not familiar with the
20 document, and yet did I misunderstand you when you said that
21 the use would not be consistent with the sector plan?
22 A Well, I read the document.
23 Q Okay. I want to show you language on page 53 of
24 the document, if I could.
25 MS. HARRIS: And this is already in the record,

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1 but I don't know where it is.
2 MR. GROSSMAN: The sector plan is in there a
3 couple of times.
4 BY MS. HARRIS:
5 Q Can you please read the second paragraph on page
6 53, which is pertaining specifically to the Westfield
7 District?
8 A This one that starts, The mall?
9 Q Yes.
10 A The mall is currently zoned C-2 and built to
11 approximately .4 F-A-R, excluding the office buildings along
12 Veirs Mill Road and University Boulevard West. The owners
13 currently have no plans to develop this property for uses
14 other than retail, and the C-2 zoning is not conducive to
15 mixed-use development. However, the frontage along Veirs
16 Mill Road, closest to the Metro station, is an appropriate
17 location for high-density office, residential, hotel, and
18 additional retail.
19 Q Okay. And then I'll refer to the image on page
20 52. Where you see the blue --
21 A Uh-huh, yeah.
22 Q -- that's the reference to the CR zone versus the
23 remaining portion of the site, which is zoned C-2.
24 A Okay.
25 Q So based on that information, wouldn't you

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1 conclude that the frontage along Veirs Mill was in fact
2 intended for mixed use?
3 A Uh-huh.
4 Q And that the remainder of the 1.5 million
5 square-foot mall was intended to remain a mall?
6 A Well, it's says not currently zoned.
7 Q Right. And this, you may want to -- and then --
8 A Currently have no plans.
9 MR. GROSSMAN: Well, do you want to finish the
10 sentence that was --
11 BY MS. HARRIS:
12 Q The owners currently, can you read that whole
13 thing, please?
14 A Oh, the owners currently have no plans to develop
15 the property for uses other than retail, and the C-2 zoning
16 is not conducive to mixed-use development.
17 Q And then based on the owners' current plans --
18 A Uh-huh.
19 Q -- not to redevelop the mall, are you aware that
20 the Council determined to retain the C-2 zoning on the site?
21 A Okay. All right, but the point is, you want to
22 look at the larger area, not just -- I mean, you're, what
23 you're doing is you're cutting out a small section and
24 saying that part is C-2, but you're not looking at a
25 somewhat larger area where you have residences. It says it

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1 would be excellent for office buildings, right? So, again,
2 once you add a tremendous amount of traffic and idling cars,
3 you're not going to, in the long run, be able to develop the
4 same character to the area.
5 If you look at like downtown Bethesda, you know,
6 the whole area, people want to be there. If you look at
7 downtown Rockville, where I live, they did a lot, right?
8 They developed a beautiful new downtown. And, but there --
9 you've got large permanent structures, like the disposition
10 of Metro relative to the downtown, that makes it less
11 friendly in the long run.
12 So if you have a huge gas station that's never
13 going to be moved, that's generating lots of traffic, the
14 whole area is not going to be able to be developed as
15 organically in the long run as this beautiful functioning
16 neighborhood like Bethesda, but it'll be more fragmented
17 because of that.
18 Q Now, if you could --
19 MS. ROSENFELD: Excuse me one second.
20 Mr. Grossman, may I have a copy of the sector plan from your
21 files, if --
22 MR. GROSSMAN: It would be in one of these boxes.
23 MS. HARRIS: Okay.
24 MR. GROSSMAN: You'll have to go diving through
25 that.

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1 MS. ROSENFELD: You don't have an extra copy with
2 you, do you?
3 MS. HARRIS: No, sorry.
4 MR. GOECKE: Do you know the exhibit number?
5 MS. ROSENFELD: I don't.
6 MS. CORDRY: Well, you should have the exhibit
7 number on there.
8 MS. ROSENFELD: Do you have the exhibit number,
9 Pat?
10 MS. HARRIS: No, not on this. Oh, no, that's not
11 it, sorry.
12 MS. CORDRY: Looks like 150.
13 MS. ROSENFELD: 150? 1-5-0, exhibit number.
14 MR. GROSSMAN: Yes. It's separate, though.
15 MS. ROSENFELD: Oh, sorry.
16 MR. GOECKE: We have an extra copy.
17 MR. GROSSMAN: Oh, you do?
18 MR. GOECKE: Yes.
19 MR. GROSSMAN: Thank you, Mr. Goecke.
20 BY MS. HARRIS:
21 Q If I understood you just a moment ago, you had
22 said that you have a huge big gas station --
23 A Yeah.
24 Q -- that's not going anywhere, I believe that's
25 what you said --

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1 A Right.
2 Q -- if it gets built. Okay. Referring to Exhibit
3 159, if you take the gas station out of the picture --
4 A Uh-huh.
5 Q -- is it not correct that you have a huge big mall
6 currently?
7 A Yeah, but --
8 Q And are there any plans, as far as you're aware,
9 for the mall to be anything but a mall for the foreseeable
10 future?
11 A No, but --
12 Q Okay, thank you. And are you aware that the
13 Wheaton Mall is considered a regional mall?
14 A I've heard that, yeah, it's a regional mall.
15 Q And as a regional mall, you'd agree that it draws
16 people from the region?
17 A Right.
18 Q And in order for people from the region to come to
19 the mall and the Costco, you agree that people drive to the
20 mall, correct?
21 A Oh, yeah, they're going to drive, but we can get a
22 bigger number, especially since we're planning all these
23 transit networks, we can get a bigger number taking transit
24 and a smaller number driving, which is the objective.
25 Q Can you repeat that, please? I'm sorry.

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1 A I mean, the county wants to get people out of cars
2 and get a bigger percentage of people taking transit, and
3 you know, they want to build a rapid transit --
4 Q Yes.
5 A -- down two major lines. So, you know, again, you
6 want to do things to encourage a higher share of transit and
7 a lower share of driving.
8 Q Right. And certainly, you'd agree that the
9 county, in rezoning the frontage of the property CR for
10 mixed use, was trying to very much achieve that?
11 A Right.
12 Q At the same time, retaining the mall site and its
13 6,000 parking spaces, obviously they viewed that separate
14 and distinct from the areas that they did rezone CR,
15 correct?
16 A Well, for the time being, but again, looking down
17 the road, they're probably going to want to keep the mall,
18 but you know, the move is going to be away from having these
19 large, flat, impervious parking lots in the, in the way that
20 they're designed now.
21 Q Were you aware that the sector plan area was
22 divided into various districts?
23 A No, I don't -- I mean, I'm the transit person, not
24 the --
25 Q Not the sector plan person, I'm sorry.

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1 A -- our smart growth person has -- we don't really
2 have a smart growth person right now.
3 Q Okay. In establishing those various districts --
4 A Uh-huh.
5 Q -- they distinguished the CBD Metro core district
6 from other districts.
7 A Okay.
8 Q Wouldn't you agree with the statement that it's
9 certainly possible to achieve that TOD, those TOD objectives
10 in certain areas within the Wheaton Sector Plan area?
11 A Yeah, you can get a smaller TOD, yeah. I'm just
12 saying that Wheaton is, really has potential to be a smart
13 growth. Look at the future of the county decades down the
14 road, and you're going to want a really dense, walkable,
15 beautiful, larger Wheaton, I think.
16 Q Retaining the mall as a mall in no way detracts
17 from the Metro core area becoming that, that TOD area, isn't
18 that right?
19 A Yeah, but you're still going to have fewer users
20 because, you know, it's going to be a bounded area. I mean,
21 you can make a nice little area that's very attractive and
22 walkable, and then suddenly you leave the boundaries and
23 it's a completely different character.
24 Q But isn't that what was done in the fact that the
25 mall site wasn't rezoned?

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1 A Well, it's not rezoned right now. I mean, they
2 can rezone it in 10 or 20 years.
3 Q That is true, but right now it's not, right?
4 A Uh-huh.
5 Q You noted that the pedestrian path would promote
6 walkability, is that correct?
7 A Right.
8 Q And it would assist in, to the extent people are
9 walking to the Metro station, it would promote the
10 walkability to the Metro station?
11 A My understanding is it's kind of behind.
12 MR. GROSSMAN: Pardon?
13 THE WITNESS: The Metro station is on the other
14 side of the mall, is it not?
15 MS. ADELMAN: It's to the right of the map.
16 THE WITNESS: So, yeah.
17 BY MS. HARRIS:
18 Q Do you know -- I'm sorry. Let me, maybe we should
19 start with that. Are you aware of where the Metro station
20 is located --
21 A Yeah. The Metro station --
22 Q -- on Exhibit 159?
23 A Yeah. The Metro station is on this side, right?
24 And --
25 MS. ADELMAN: Yes.

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1 THE WITNESS: -- here's the thing.
2 MR. GROSSMAN: On the eastern side of the mall.
3 THE WITNESS: Correct.
4 BY MS. HARRIS:
5 Q And are you familiar with where the pedestrian
6 path is being proposed?
7 A Isn't it be behind the mall here?
8 MR. GROSSMAN: Behind, you mean the southern side
9 of the ring road?
10 THE WITNESS: Yeah.
11 MR. GROSSMAN: Okay.
12 BY MS. HARRIS:
13 Q But within the mall property?
14 A Right. So that would be good, once people come to
15 the mall, for walking around the mall more fluidly. I --
16 Q Would you agree with the statement that gas
17 stations are not TOD?
18 A I would have to say that's probably correct.
19 Q So, to the extent that this gas station, which is
20 not within the CR zone --
21 A Uh-huh.
22 Q -- it's been alleged by the opposition that this
23 gas station will end up causing stations within the CR zone
24 to close down.
25 MS. ROSENFELD: Well beyond the scope of his

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1 direct.
2 MR. GROSSMAN: I think that's --
3 MS. ROSENFELD: Objection.
4 MR. GROSSMAN: All right. I'm going to sustain
5 that. You can rephrase that question, if you want, in some
6 way, but --
7 MS. HARRIS: Excuse me one second.
8 BY MS. HARRIS:
9 Q Are you opposed to all gas stations or just, or --
10 at this location -- or just the proposed gas station at this
11 location?
12 A Well, it's the size and the scale. I mean, if you
13 have a gas station that local people are going to use and
14 it's more convenient for them, I wouldn't be opposed to
15 that, no.
16 Q Are you opposed for it being convenient to the
17 people that come to the mall site, such as the people
18 shopping at the Costco?
19 A I believe that most people are going to have gas
20 stations near their house or along the route that are just
21 as convenient to them.
22 Q So if I understand it, you're not objecting to a
23 smaller station which would be convenient to the people in
24 the neighborhood but, to the extent people become the
25 neighborhood because they're at the mall site, you're not

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1 trying to promote the convenience for them?
2 A Right. I don't, I don't think -- I think there
3 are going to be gas stations that are convenient for them
4 anyway. I mean, it's really, the reason they're going to
5 use this one is the lower cost. And I'll tell you, maybe
6 this is going to bring a few -- it's probably going to bring
7 some customers to Costco, but if you have really great
8 transit-oriented businesses, you're going to end up bringing
9 at least as many, probably more. I don't think it's a good
10 business decision for Costco because they want the whole
11 area to flourish and they want a lot of shoppers to come by
12 and this is not going to -- this is going to be doing the
13 opposite.
14 Q Okay. You said earlier that you thought, in
15 general, all gas station -- that gas stations are
16 inconsistent with TOD, correct?
17 A I would not say that you should not have gas
18 stations in a TOD area, because you want them to serve the
19 local residents and obviously people drive. I would say
20 that putting a gas station does not promote TOD but a small
21 gas station does not necessarily harm TOD.
22 Q So if this proposed gas station had 12 pumps, TOD?
23 A I don't have a specific cutout point. I -- you
24 know, four pumps, it's obviously a local gas station. I'm
25 not going to give a number that's magically TOD or not.

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1 Q How about if it had a C-store, a convenience store
2 associated with it?
3 A A convenience store.
4 MS. ROSENFELD: Again, again, objection, well
5 beyond the scope of his testimony. He's --
6 MR. GROSSMAN: Well, no, I don't think that this
7 is beyond the scope. I think that probing him as to what he
8 considers to be transit-oriented development, when he's
9 testified about it, is fair. So I'll overrule that
10 objection.
11 THE WITNESS: Yeah, a convenience store, like a
12 7-Eleven, is part of transit-oriented development.
13 BY MS. HARRIS:
14 Q And if the gas station were a 24-hour gas station?
15 A That could be useful. If it's like a four-pump
16 station, you know, people who are in the area anyway are
17 going to come use it.
18 Q And if it had a car wash?
19 A Well, a car wash, I'm not a big personal fan of
20 car washes because there's one -- I take the pedestrian
21 pathway across the Metro tracks, and it goes right into a
22 car wash and it's really ugly and you're getting a smell.
23 So that's not pedestrian-friendly.
24 Q And how about a repair bay?
25 A Repair bay, again, not really pedestrian-friendly,

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1 not, not TOD-friendly, a repair bay.
2 Q So some gas stations in your mind may be TOD but
3 others aren't, but --
4 A Or at least not anti-TOD.
5 Q And do you have any authority, or is this just
6 your general sense?
7 A It's my general sense. I mean, I -- yeah. You
8 know, I've worked with the Coalition for Smarter Growth
9 and --
10 Q Is a 6,000-space parking lot TOD?
11 A If I were designing this from scratch, I would not
12 design it the same way, and the idea, you want to shrink
13 parking lots in the long run. I mean, we are, we put out a
14 letter opposed to the parking minimums, right, because, you
15 know, that's actually subsidizing automobile use and
16 encouraging more car use.
17 Q I'm sorry. You said you put out a letter,
18 promoting parking?
19 A The Sierra Club Group did.
20 MR. GROSSMAN: Opposing.
21 THE WITNESS: Opposing parking minimums. We'd
22 like to shrink the amount of parking overall, but --
23 BY MS. HARRIS:
24 Q Are you aware that the opponents in this case are,
25 have expressed concern that the Westfield Corporation has

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1 obtained a parking waiver which would reduce the number of
2 parking spaces required?
3 A No, I'm not aware of that.
4 MR. ADELMAN: Objection. I think that's a
5 mischaracterization of what the opponents have stated.
6 MR. GROSSMAN: The opponents, haven't the
7 opponents --
8 MR. ADELMAN: Not that --
9 MR. GROSSMAN: -- complained about not enough
10 parking?
11 MR. ADELMAN: I think that the opposition's
12 position is that there's an inconsistency between bringing
13 more traffic to the mall while simultaneously reducing the
14 parking spaces available.
15 MR. GROSSMAN: Okay.
16 MR. SILVERMAN: That's a fair statement.
17 MS. ROSENFELD: Yes.
18 MR. GROSSMAN: All right. I'll take her question
19 and his answer as encompassing that characterization.
20 BY MS. HARRIS:
21 Q Were you aware that the Costco station was being
22 proposed while the Council was considering the sector plan?
23 A Yes. I don't think the Council was as forward
24 looking as early as they should have been on this issue.
25 Q And do you agree that the Council could have

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1 included a recommendation in the sector plan, prohibiting
2 gasoline stations on the mall site?
3 A Yeah. It would have been a good thing if they
4 had, I mean, of that size and scale.
5 Q And the other thing they could have done is rezone
6 the entire mall parcel CR, correct?
7 A They could have.
8 MR. ADELMAN: Objection, relevance. I mean,
9 Council can do a million things, but --
10 MR. GROSSMAN: Yes, I think it's pretty
11 tangential, but I think what she's asking is not what the
12 Council can do, but she's asking is he aware of the
13 Council's powers to do it. And I think that, in testing his
14 knowledge, is a fair cross-examination question. So I'll
15 overrule that objection.
16 BY MS. HARRIS:
17 Q And are you also aware of the zoning text
18 amendment that was recently adopted that provided a 300-foot
19 setback for the gas station on the mall?
20 MR. GROSSMAN: Well, a 300-foot setback --
21 BY MS. HARRIS:
22 Q A 300-foot setback from certain specified uses?
23 MR. GROSSMAN: Right.
24 THE WITNESS: Not really. I mean, I -- no, I
25 would say.

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1 BY MS. HARRIS:
2 Q But you are aware, just based on this testimony --
3 A Uh-huh.
4 Q -- or this line of questioning, that the C-2 zone
5 was retained at the mall site, correct?
6 MR. GROSSMAN: Well, we've been over that.
7 MS. HARRIS: Okay.
8 MS. ROSENFELD: Asked and answered.
9 BY MS. HARRIS:
10 Q And that the special exception is permitted --
11 that the C-2 zone permits a gas station by special
12 exception?
13 A Right.
14 MS. ROSENFELD: Objection, Mr. Grossman.
15 Mr. Goffman's testimony here isn't with respect to
16 conformance with the master plan, the recommendations and
17 guidelines of the master plan. He's not here as a zoning
18 expert. He's made it perfectly clear --
19 MR. GROSSMAN: I understand, but she's entitled to
20 cross-examine on the extent of his knowledge because he's
21 expressed an opinion of the Sierra Club, and so I'll
22 overrule that objection.
23 MS. HARRIS: Thank you. Just one moment.
24 MR. GROSSMAN: Sure.
25 BY MS. HARRIS:

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1 Q You're aware that Costco is a membership store,
2 correct?
3 A Right.
4 Q And that in order to buy gas at Costco, you need
5 to be a member of Costco?
6 A Okay. I didn't know that. I mean, I knew it had
7 some membership benefits.
8 Q And that if a member currently wants to buy gas,
9 they need to travel to the Beltsville Costco?
10 MR. ADELMAN: Objection. That's not factually
11 accurate. If a member wants to buy gas at a Costco station.
12 MS. HARRIS: Thank you for the --
13 MR. GROSSMAN: Yes, as amended, as amended we'll
14 allow it.
15 BY MS. HARRIS:
16 Q As amended, I pose the question.
17 A Yeah, I do know about the Prince George's.
18 Q Let me state it another way. If a Costco member
19 desires to buy gas at a Costco station --
20 A Uh-huh.
21 Q -- because of either price, safety, or convenience
22 or a variety of other reasons --
23 A Yeah.
24 Q -- they would need to travel to a Costco warehouse
25 that has a gas station.

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1 A Right.
2 Q And so wouldn't you agree that if a Costco gas
3 station were provided here, it would in fact reduce vehicle
4 miles traveled for those customer -- those gas customers?
5 A Look, for some specific customers, it would, but
6 the overall impact is more people are going to be driving
7 more, but yeah, there are specific instances where people
8 will be driving further to the Prince George's.
9 Q And is that your opinion, or do you have a factual
10 basis?
11 A That's my opinion.
12 Q You haven't conducted any traffic studies or --
13 A No, I --
14 Q -- analysis of the customers' vehicle miles?
15 A Right. It's my opinion.
16 Q Thank you.
17 MS. HARRIS: No more questions. Thank you.
18 MR. GROSSMAN: All right. I thank you very much,
19 Mr. Goffman.
20 THE WITNESS: All right, thank you.
21 MS. CORDRY: Wait. Excuse me.
22 MS. ROSENFELD: Well, wait, wait, wait, redirect.
23 THE WITNESS: Oh, more.
24 MR. GROSSMAN: There's no recross from a cross.
25 MR. ADELMAN: Never mind.

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1 MR. GROSSMAN: All right. Thank you, Mr. Goffman.
2 I appreciate you coming down here. I appreciate the Sierra
3 Club sharing its views.
4 THE WITNESS: All right. Thanks very much.
5 MR. GROSSMAN: Thank you.
6 MS. HARRIS: Right on time.
7 THE WITNESS: Oh, yeah.
8 MR. GROSSMAN: All right. Then we're ready for
9 Ms. Carter. Okay. All right. Ms. Carter, will you state
10 your full name, please, and address?
11 MS. CARTER: Mary Ann Carter, 3201 Decatur Avenue,
12 Kensington, Maryland.
13 MR. GROSSMAN: Okay. So it's Mary Ann Carter?
14 MS. CARTER: Mary is the first name. Ann is
15 officially my middle name, but I go by Mary Ann.
16 MR. GROSSMAN: Okay. And I'm sorry. What was the
17 address again?
18 MS. CARTER: 3201 Decatur Avenue.
19 MR. GROSSMAN: And that's in?
20 MS. CARTER: Kensington.
21 MR. GROSSMAN: Okay. Would you raise your right
22 hand, please?
23 (Witness sworn.)
24 MR. GROSSMAN: All right. You may -- are you
25 being called by, by any of the parties here, or are you

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1 testifying on your own?
2 THE WITNESS: I'm testifying as an individual.
3 MR. GROSSMAN: All right. You may proceed.
4 DIRECT EXAMINATION
5 THE WITNESS: All right, thank you. My name is
6 Mary Ann Carter, and I'm speaking here today to make sure
7 that everyone understands that we do have a particular
8 population which will be adversely affected if Costco is
9 granted a special exception to build the proposed gas
10 station.
11 I currently work at Stephen Knolls School. I am
12 the library media specialist, otherwise known as the school
13 librarian. I must state here that I am not speaking here,
14 officially representing the school in any way. I am
15 speaking as an individual who is aware of our student
16 population. I would just like to point out and remind
17 everyone where the school is located in relation to the
18 proposed station. We are down here at this quadrant.
19 MR. GROSSMAN: All right. So you're at the
20 southeastern corner, just outside of the mall proper?
21 THE WITNESS: Yes.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: And you can't see it on this here,
24 but I do just want to point out that the special swing set
25 that we have for our special students is outside, right here

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1 on this side of the property, right --
2 MR. GROSSMAN: Just to --
3 THE WITNESS: Just bordering.
4 MR. GROSSMAN: -- the south of the ring road?
5 THE WITNESS: Yes. That's where our kids go
6 outside. We are not a typical school. Let's be clear,
7 Costco is not asking for this gas station to be put in a
8 standard neighborhood next to a typical school. When Costco
9 started this process, they didn't know this. Back in 2010,
10 when I spoke with Costco representatives after an
11 introductory meeting to tell them about our children, the
12 two gentlemen I spoke with were genuinely surprised and they
13 told me they did not know that that population was at our
14 school. I wonder if the sign above our school door said
15 Care for Sick Children Here, that they would have even
16 initiated this proposal. So I'm here today to teach you
17 about the ways that our students will be impacted.
18 First, let me tell you about our school. We are
19 composed of two special programs. We have an early
20 intervention program where we have preschool children who
21 are only 3 and 4 years old who have already been identified
22 as special-needs. Our other program is for school-age
23 students up to 21 years old who have multiple-severe
24 disabilities, most of whom are also medically fragile, who
25 cannot be accommodated in any other local school.

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1 We have about 100 children, and we have about 10
2 nurses present at a time. Our staff also includes
3 occupational therapists, physical therapists, speech
4 therapists. We don't have a hospital sign over our doors,
5 even though we do have an ambulette parked out front every
6 morning. We look like a typical school, but some days it
7 feels like I'm working in a nursing home.
8 It is typical, not exaggeration, to say that in
9 one 30-minute lesson with a class of students, I might have
10 one student over here experiencing a seizure, with a nurse
11 monitoring, while I continue with the lesson, while another
12 student over here is being prepped by a nurse for a
13 tube-feeding while I continue with my lesson; another class
14 that day I might have a child begin to have difficulty
15 breathing because they're trying to cough up the phlegm or
16 the drool and they can't get it out, so a staff person will
17 be helping that child readjust their position and wipe up
18 whatever comes out while I go on with my lesson, and another
19 child's medical monitor starts to beep, beep, beep, and
20 somebody has to call in a nurse to come and see what's going
21 on and fix that problem while I go on with my lessons.
22 That's a typical day. And on a bad day 9-1-1 gets called,
23 and on our worst days a child dies. And I don't want that
24 to sound overly melodramatic, but this is our reality, this
25 is what we do right here. We care for, we educate, and we

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1 celebrate Montgomery County's most fragile citizens, and
2 they attend here longer than most typical children are in a
3 typical school. Our children are eligible for our summer
4 program. So they're here even on the Code Red days of
5 summer. And once they're enrolled in kindergarten, unless
6 the family moves far away or the child dies, then they'll
7 stay with us for the next 17 years until they age out at 21
8 years old.
9 Every one of our students is sent here
10 specifically because of their special needs. They are
11 bussed from all over downcounty to this specific location
12 because this is the place that Montgomery County has created
13 to care for these most special-needs children. Their
14 parents live in Takoma Park or Silver Spring, but the
15 children are bussed here. And if this gas station gets
16 built, these families do not have the freedom to decide that
17 because their child might be more severely impacted because
18 of this gas station than a typical child would, they can't
19 decide that they'll just move to Rockville or move to
20 Bethesda and have their child be far away from this, because
21 their child will get bussed right back to this location.
22 They can't move away. They don't have the choices that most
23 of our county residents have. Residents can choose to go to
24 a different gas station in their neighborhood, but Stephen
25 Knolls students cannot choose to attend their neighborhood

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1 school.

2 So in what ways will our children be negatively

3 impacted? First, as I'm trying to keep up with this, I read

4 the transcripts because I can't come every day, and I read

5 in an earlier transcript that more pollution is an inherent

6 adverse characteristic of a proposed gas station -- so I

7 assume there's no argument that there's going to be more

8 pollution here -- but what is not inherent is the particular

9 population that we are exposing to this additional

10 pollution.

11 Maybe the EPA says that it's fine for the general

12 population to be exposed to some more pollution, but no one

13 has defined the impact on this particular population. No

14 one can tell me how this could affect that 3-year-old boy, 3

15 years old, on an oxygen tank, attending school here on a

16 Code Red day in the summer. No one can tell me the

17 long-term effect of the respiratory problems -- of a child

18 with respiratory problems who will be coming here every day

19 for 15 years. No, the effects of the added pollution that

20 the gas station will bring to this particular population

21 have not been tested because it would be unethical to do so;

22 yet that's what's being proposed: put the gas station in

23 and see what happens to them, see if it causes our student

24 population hospitalization rate to go up, see if it causes

25 our death rate to go up.

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1 When I spoke before the Planning Board last

2 February, I was asked, isn't there already a lot of

3 pollution here from the traffic? Yes, unfortunately there

4 is, but does that make it okay? Does that make it right to

5 add even more pollution from the gas station on top of that,

6 even if it's just a little more? The cumulative effect may

7 just be the straw that breaks the camel's back or, more

8 literally, the strain that breaks the compromised health of

9 our children.

10 The second impact to our students will be the

11 increased traffic. Have any of the traffic studies

12 specifically investigated and addressed the impact to our

13 students in getting to the mall? To my knowledge, no,

14 Costco has not addressed that.

15 Every class of our school-age children comes to

16 the mall regularly. It is an important way for them to

17 learn how to get along in the community. Consider the high

18 school class with all of their students in wheelchairs,

19 except one blind student who can walk with assistance, who

20 walk from our school over to the mall every Friday.

21 Fast-Food Fridays is the highlight of the week for some of

22 these kids. They don't usually get to go to restaurants.

23 They don't usually get to go hang out at the mall with their

24 friends. These kids have been denied so many of the simple

25 joys that you and I take for granted, and the staff at our

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1 school is so dedicated. If you have not tried to get this

2 group of teenagers up the ramp, across the ring road and

3 into the mall, you just don't know how difficult it already

4 is. Yes, there is traffic now, but what if that added

5 traffic on top of what we already have is too much and the

6 teacher finally gives up making that trip on Fridays? Do

7 you want to be responsible for taking away that one bright

8 spot in their week?

9 And what about the rest of our classes who come

10 over to shop but whose teachers have already decided that

11 it's not feasible to walk very far, so they only go to the

12 mall on the days when they can get a special school bus to

13 transport them? Some of those bus drivers have already

14 expressed concern with the additional Costco traffic. If

15 the bus drivers feel that it is unsafe to unload the

16 children near that quadrant of the mall, the students and

17 teachers will be dropped off, instead, farther away at other

18 parts of the mall, therefore necessitating further walking

19 for the very population that cannot walk very far and

20 therefore basically taking away access to that quadrant of

21 the mall for those students. The traffic studies should

22 address specifically how the traffic will impact this staff

23 from this school getting these kids with their wheelchairs

24 and their vision problems to and from their community

25 learning area in the mall slowly and safely.

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1 In summary, the special exception process requires

2 that the proposed use not affect the health of those at the

3 subject site. So the standard by which Costco's application

4 must be judged is whether the gas station could have adverse

5 health effects on children at Stephen Knolls School who have

6 serious disabilities and health issues, children who land in

7 the hospital from a common cold. Until there are sound

8 scientific studies that considered this specific population,

9 a preponderance of evidence does not exist that shows that

10 the proposed mega gas station will not have adverse health

11 effects and the traffic studies have not shown how we will

12 continue to be able to access the mall safely.

13 So, please, I invite you, come visit us at Stephen

14 Knolls School, come see the great things that we're

15 accomplishing, see our joys and our struggles, come

16 understand who you will impact if you approve this proposed

17 gas station. Steven Knolls students are already special

18 exceptions and they should take priority. They don't have a

19 choice, but today we do have a choice, and it is our

20 responsibility to protect our most vulnerable citizens.

21 Thank you.

22 MR. GROSSMAN: Thank you. Kensington View, any

23 cross-examination?

24 MS. SHEARD: No.

25 MR. GROSSMAN: Coalition, any cross-examination?

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1 CROSS-EXAMINATION
2 BY MR. SILVERMAN:
3 Q First of all, thank you for what you do. Are you
4 familiar with the EPA school-siting guidelines?
5 A I am not.
6 Q Okay. Well --
7 MR. GROSSMAN: You're not required to have a
8 question, Mr. Silverman.
9 MR. SILVERMAN: Right. I know. I know. Well,
10 it's a little too complicated; so I won't. Thank you.
11 MR. GROSSMAN: All right. Kensington Heights, do
12 you have any cross-examination questions?
13 MS. ROSENFELD: Yes, I do. Thank you.
14 BY MS. ROSENFELD:
15 Q You described the students, was it the high school
16 students who walk --
17 A Yes.
18 Q -- to the mall? And can you go to Exhibit No. 159
19 and show me where, what path you take when you walk to the
20 mall?
21 A Yes. Behind the school here there is a ramp that
22 comes up and then there's a crosswalk that crosses over
23 about here.
24 MR. GROSSMAN: All right. So just for the record,
25 when you say behind the school, you're saying to the

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1 northwest corner of the school.
2 THE WITNESS: Right. From the northwest corner of
3 the school, there is a ramp that comes up to the property --
4 MR. GROSSMAN: Up to the ring road.
5 THE WITNESS: Up to the ring road, and then right
6 about here, I can't tell on here, but right about, I don't
7 know how to describe that, but there's a crosswalk.
8 MR. GROSSMAN: All right. It's a crosswalk that
9 goes right across to the --
10 THE WITNESS: They cross there across the ring
11 road.
12 MR. GROSSMAN: -- to the southeast corner of the
13 mall --
14 THE WITNESS: Correct.
15 MR. GROSSMAN: -- of the mall buildings, okay.
16 THE WITNESS: Right.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: They would walk up to the current
19 parking garage, and I believe they usually walk through the
20 parking garage, because then they're out of the sun and the
21 outdoors sorts of elements, to walk over the parking garage
22 to enter --
23 MR. GROSSMAN: All right. So they walk in a
24 westerly direction in the parking garage to the mall?
25 THE WITNESS: To the mall and go inside there.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: And then go over to the food court.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: That particular group does for their
5 Fast-Food Fridays.
6 MR. GROSSMAN: All right.
7 BY MS. ROSENFELD:
8 Q And approximately how long does it take from the
9 time you leave the school until you actually enter the mall?
10 A I haven't timed that. I would estimate about a
11 half an hour.
12 Q Okay. And the students who take the bus when you,
13 when they go on field trips to the mall, where does the bus
14 drop the students off?
15 A Different -- the bus drivers are officially
16 supposed to drop off the children wherever the teacher
17 requests that they drop off the children. Unofficially,
18 without naming any names, because I don't want to get any
19 bus drivers in trouble, sometimes the teachers have
20 requested that they get dropped off here at this entrance to
21 Target or here at this --
22 MR. GROSSMAN: All right. So that here being the
23 Target entrance on the western --
24 THE WITNESS: South.
25 MR. GROSSMAN: -- central area, south of the

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1 Target.
2 THE WITNESS: Southwestern, to the south, the
3 south entrance.
4 MR. GROSSMAN: Okay. Okay.
5 THE WITNESS: Or the entrance to Costco, because
6 our kids like --
7 MR. GROSSMAN: Okay.
8 THE WITNESS: -- Costco too. They have nice wide
9 aisles for the wheelchairs; it's great.
10 MR. GROSSMAN: All right. That's the, that's the
11 western entrance to the mall.
12 THE WITNESS: The western entrance, right. And
13 some school bus drivers have said I don't really want to,
14 it's dangerous, there's all this traffic, dah, dah, dah, but
15 okay; and sometimes -- one bus driver has said, no, I won't
16 do that anymore, I will only drop you off over here on the
17 Penney's side because there isn't so much traffic over --
18 where is the Penney's side? They'll drop them off at the
19 Penney's entrance. That's all the way over here, isn't it?
20 MR. GROSSMAN: To the north.
21 MS. CORDRY: No. No.
22 MS. ADELMAN: No --
23 THE WITNESS: No.
24 MS. ADELMAN: -- you were right.
25 MS. CORDRY: Yes, right there.

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1 MR. GROSSMAN: East, okay.
2 THE WITNESS: Yeah. They come over to this side
3 because there isn't so much traffic, because loading and
4 unloading the buses, when you're trying to get a wheelchair
5 on and off and then the next wheelchair on and off and
6 you've got five wheelchairs to get on and off, it takes a
7 long time to load and unload the children. So they want to
8 stop someplace where there isn't a lot of traffic and people
9 can get around them easily.
10 BY MS. ROSENFELD:
11 Q And approximately how long does it take, once the
12 bus arrives, how long does it take for the students to
13 actually all get off of the bus?
14 A Again, I haven't timed it. I would say, if I had
15 to estimate, about 15 minutes.
16 Q Okay. And do the students wait there next to the
17 bus until --
18 A They try to, not --
19 Q -- everybody gets off?
20 A Right, not like right in the, like, the street
21 right there, but if there's, like, a little sidewalk area,
22 they would, like, wait on the sidewalk area.
23 Q Okay. And that would be the case when they're
24 getting off the bus in front of Penney's?
25 A Uh-huh.

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1 Q And how about when they're getting off the bus in
2 front of Target or the Costco --
3 A There's --
4 Q -- entrance?
5 A There's a little entrance area there, and they
6 just kind of get off at the little entrance area there.
7 Q And so they wait outside until everybody's off the
8 bus and then --
9 A Uh-huh, and then --
10 Q -- and then go in?
11 A -- they can all go in as a group.
12 Q And how long approximately does it take for the
13 students to get back onto the bus?
14 A About the same time as it takes to get off, about
15 15 minutes.
16 Q About 15? And does the bus driver typically wait
17 at the mall parcel until the student -- until the field trip
18 is over?
19 A I don't know.
20 Q Okay.
21 A I honestly don't know how that part works.
22 Q Okay. And you mentioned that some of your
23 students in fact do die from, during -- have you had any
24 recent deaths at this school?
25 A No. Our last student that passed away was last

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1 February --
2 Q Okay.
3 A -- on the day of the -- well, the memorial service
4 was on the day of the Planning Board hearing.
5 Q Okay. And you --
6 MS. CORDRY: So that, I'm sorry, that was February
7 this year?
8 THE WITNESS: That was this year, yes.
9 MS. CORDRY: Okay.
10 BY MS. ROSENFELD:
11 Q You also described somewhat about the types of
12 physical conditions that your students have. Could you be
13 more specific about, in particular, any respiratory or
14 cardiac conditions that they may have?
15 A I am not privileged to read their official health
16 records.
17 Q But you did say you have students who are on
18 oxygen --
19 A Yes.
20 Q -- or at least one? Okay. But do you know if
21 any --
22 A We have multiple students on oxygen.
23 Q -- do you know if any of your students suffer from
24 asthma?
25 A I don't legally officially know. Personally, I

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1 think that they do from what I've observed, but I am not
2 officially privy to their medical records.
3 Q Okay.
4 MS. ROSENFELD: I have no further questions.
5 MR. GROSSMAN: Okay. Applicant,
6 cross-examination?
7 MS. HARRIS: Yes. Thank you.
8 MR. GOECKE: Thank you.
9 MR. GROSSMAN: Mr. Goecke.
10 BY MR. GOECKE:
11 Q So, Ms. Carter, if you're not privy to the medical
12 records, you don't know what, what they can be exposed to
13 and what they can't be exposed to, is that fair?
14 MR. GROSSMAN: When you say can be, you mean what
15 their health condition permits them to be exposed to?
16 MR. GOECKE: Yes.
17 MR. GROSSMAN: I see.
18 THE WITNESS: My point is that no one knows what
19 they're -- what, what the acceptable levels of pollution
20 would be for them to be exposed to and that that has not
21 been addressed. So, no, I don't know. I don't think you do
22 either.
23 BY MR. GOECKE:
24 Q Okay. So, for example, when you take the children
25 to fast-food restaurants on Fast-Food Fridays --

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1 A Uh-huh.
2 Q -- is there any concern about exposure to
3 particulate matter that's generated at fast-food
4 restaurants?
5 A The -- inside the mall I assume that there's
6 air-conditioning running. They go to the food court.
7 Q They only eat at fast-food restaurants inside?
8 A They only go to the food court in the mall.
9 Q Okay. And when they travel on the buses, is it
10 diesel buses?
11 A I have no idea --
12 Q Okay.
13 A -- but again, I would assume there's
14 air-conditioning running in the bus that they're inside.
15 Q Okay. So it's your testimony that they're not
16 exposed to any exhaust fume from the buses?
17 A I have -- I cannot testify to that.
18 Q You testified that the, these children with the
19 special needs are a, I believe you -- I'm trying to find my
20 notes here -- that they are a special exception in and of
21 themselves. Is that the way you put it?
22 A That's the way I put it, yes.
23 Q And because of that, you think that any gas
24 station is inappropriate at this location?
25 A I did not say that.

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1 Q Okay.
2 A I'm opposed to what's being proposed.
3 Q Okay. So you're not opposed to any gas station?
4 A I'm not for or against any gas station. That's
5 not what's on the table. What's on the table is this, and
6 I'm against it.
7 Q Okay. But I'm trying to understand. If a smaller
8 one were proposed, would you be opposed to a smaller gas
9 station?
10 A That's not what's being proposed.
11 MR. GROSSMAN: Well, but answer his question if
12 you can. If a smaller gas station were being proposed,
13 would you be opposed to that?
14 THE WITNESS: Well, I would think that they would
15 still need to meet the requirements of -- it would need to
16 meet a special exception. So it would need to be able to
17 show to me how the smaller gas station pollution wouldn't be
18 affecting them either.
19 BY MR. GOECKE:
20 Q Yes. Yes, but you don't have a sense --
21 A So -- and if the traffic study was done, showing
22 how the traffic would be done. So, theoretically, I would
23 have the same questions as I have now of, are you meeting
24 the burden of proof for a special exception for any size of
25 a gas station?

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1 Q Okay. But sitting here today, you don't have any
2 understanding of the difference of the pollution from, let's
3 call, generically, a smaller gas station as opposed to --
4 MR. ADELMAN: Objection. The question was --
5 THE WITNESS: My understanding is that a mega gas
6 station --
7 MR. GROSSMAN: Well, hold on one second.
8 THE WITNESS: -- would have more pollution.
9 MR. GROSSMAN: Hold on. Hold on. Hold on.
10 There's an objection made. So you have to wait until --
11 THE WITNESS: Okay.
12 MR. GROSSMAN: I'm sorry?
13 MR. ADELMAN: The question has been asked and
14 answered. The witness --
15 MR. GROSSMAN: No, I don't think so. I'll
16 overrule that objection.
17 MR. ADELMAN: -- the witness is not testifying as
18 an expert. She's answered the question.
19 MR. GROSSMAN: No. He's entitled to ask the
20 question. I'll overrule the objection. Go ahead, ma'am.
21 THE WITNESS: What's the question again?
22 BY MR. GOECKE:
23 Q Sure. The question is, you're not aware, sitting
24 here today, of the difference in emissions from a smaller
25 gas station, as you put it, with what's being proposed as

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1 the Costco gas station?
2 A I would assume that the Costco gas station is
3 larger and therefore it would have more emissions, and --
4 Q Yes. Are you --
5 A Go ahead.
6 Q No. I'm sorry. I didn't mean to cut you off.
7 A I was going to say, I was, I was told that there
8 are pollutions inherent in a gas station --
9 Q Yes.
10 A -- the assumption would be more pollution -- more
11 gas pumps, more cars, more pollution.
12 Q And you said you've been reading the transcripts
13 for this case?
14 A Some of them, not all of them. I've tried to skim
15 them.
16 Q In the transcripts that you've read, have you read
17 about the Arid Permeator that Costco is planning to use?
18 A I read about it. I don't pretend to fully
19 understand it --
20 Q Okay.
21 A -- but my statement is that the, whatever
22 guidelines that are being followed for the general EPA and
23 the air filters and whatever have not addressed the
24 population that's being affected.
25 Q But back to the Arid Permeator, so you understand

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1 that the Arid Permeator is designed to reduce the VOC
2 emissions from a gas station?
3 MR. ADELMAN: Objection, misleading statement.
4 THE WITNESS: I've read that.
5 MR. GROSSMAN: Hold on one second. Hold on.
6 THE WITNESS: I have read that.
7 MR. GROSSMAN: Ms. Carter, hold on. There's an
8 objection raised. So we have to rule on that.
9 THE WITNESS: Sorry.
10 MR. ADELMAN: Objection. The Arid Permeator has
11 to do with the pumping of the pumps --
12 MR. GROSSMAN: No.
13 MR. ADELMAN: -- Ms. Carter has testified about
14 the vehicle emissions.
15 MR. GROSSMAN: No. Well, first of all, the Arid
16 Permeator doesn't have to do with the pumping of the pumps;
17 it has to do with the emissions from the underground tank.
18 So, but in any event, the question -- your objection is
19 overruled.
20 THE WITNESS: I have read about it. I do not
21 fully understand it.
22 BY MR. GOECKE:
23 Q That's fair. And is it, if I understand you
24 correctly, it's your testimony that the EPA National Ambient
25 Air Quality Standards do not adequately protect the children

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1 at Stephen Knolls School?
2 A That's not exactly what I said. What I said is --
3 and I will have to go back and find exactly what I said --
4 what I said literally was maybe the EPA says it's fine for
5 the general population to be exposed to a certain amount of
6 pollution but that no one has defined the impact on this
7 particular population.
8 Q Okay. So you're not aware then that the EPA
9 National Ambient Air Quality Standards are federally
10 required to take into account sensitive populations, such as
11 the children at Stephen Knolls School?
12 MR. SILVERMAN: Objection.
13 MR. GROSSMAN: Yes, and what's your objection?
14 MR. SILVERMAN: They have produced no, no
15 documents, no evidence, no letters from the CASAC or
16 anything else dealing with institutions like this and
17 children like this. It's one thing to say that the EPA says
18 take account of various handicap, but it's quite another
19 thing to say that it's, that these -- to talk about a
20 facility or institution such as this. It's really, they
21 have really produced nothing along that line.
22 MR. GROSSMAN: A portion of that objection, I
23 think, is appropriate, that is, the such-as-this ending of
24 your question. So if you eliminate the such as this and
25 just leave it at the NAAQS standards were required to take

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1 into account sensitive populations, I think that question is
2 appropriate. Would you agree, Mr. Silverman?
3 MR. SILVERMAN: Yes, I would.
4 MR. GROSSMAN: All right. So answer that
5 question.
6 THE WITNESS: So can you restate it now?
7 BY MR. GOECKE:
8 Q Sure, sure, sure. So you're not aware then that
9 the, that the EPA guidelines require National Ambient Air
10 Quality Standards to be set at a level that takes into
11 account sensitive populations?
12 A I am aware that that is a piece of what the EPA
13 does generically, but I do not believe that that
14 specifically addresses this situation.
15 Q Why not?
16 A Because this is a concentrated set of children
17 that are bussed here from all over the county to this
18 specific location, not just there are some general
19 special-ed kids out in the general population. Does the
20 EPA, can you tell me, does the EPA regulate based on, like,
21 what it needs to be at a hospital and a nursing home and
22 things like that? Do they specify out that kind of stuff,
23 or do they just say in the general population, which
24 includes people of every age and health issue?
25 Q Well, would you agree that the children at Stephen

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1 Knolls School are a sensitive population?
2 A They are more than just a sensitive population.
3 They are very specific, bussed here. We've got the nurses.
4 We've got the therapists. We've got the things to take care
5 of them here. They are bussed here to be cared for because
6 of their special needs.
7 Q And I'm just trying to be clear on this. And so
8 it's your understanding that the EPA guidelines don't take
9 into account populations such as Stephen Knolls School?
10 A No, I'm not saying that. I'm saying that they
11 take --
12 MS. ROSENFELD: Asked and answered.
13 MR. GROSSMAN: Yes, I think that, I think that --
14 MS. ROSENFELD: Asked and answered.
15 MR. GROSSMAN: Her answer, I think, sufficiently
16 addresses that question already. She's not -- I don't think
17 she claims to be familiar, per se, with the EPA regulations.
18 She asked you a question back, which you are the questioner,
19 not the, not the answer man, but -- about what do the EPA
20 regulations take into account. So I think the sense of her
21 answer is she's not sure that the, that they have ever
22 addressed this particular type of population specifically.
23 MR. GOECKE: Yes.
24 MR. GROSSMAN: I think that's the sense of your
25 answer, Ms. Carter.

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1 THE WITNESS: Yes.
2 MR. GROSSMAN: Okay.
3 MS. CORDRY: I think it's fair to say she's saying
4 this is not just a sensitive population. This is --
5 MR. GROSSMAN: Well, we'll let her words speak for
6 themselves --
7 MS. CORDRY: Sure.
8 MR. GROSSMAN: -- rather than yours.
9 BY MR. GOECKE:
10 Q When you reviewed the transcripts, did you review
11 Mr. Sullivan's testimony?
12 A No, I did not.
13 Q Have you reviewed Mr. Sullivan's reports at all?
14 A No, not at -- I may have heard about them back at
15 the Planning Board hearing, but I, I don't remember.
16 MS. ROSENFELD: You wouldn't recognize --
17 THE WITNESS: Yeah.
18 BY MR. GOECKE:
19 Q Did you review the testimony from Costco's traffic
20 expert, Mr. Guckert?
21 A Again, not this time. I was more familiar with it
22 back in, last February, but I haven't been able to really
23 keep up nearly as much as I would like to. Unfortunately,
24 this isn't my focus. This, you know, this is --
25 MR. GROSSMAN: As long as he's asking, how about

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1 Dr. Chase's testimony -- did you review that?
2 THE WITNESS: No. I, you know, I've just kind of
3 skimmed some of the testimonies to kind of just keep up on
4 what's going on, but I haven't really read the specifics of
5 them this time.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: So I probably wouldn't be able to
8 answer any specific questions on anyone else's specific
9 testimony.
10 BY MR. GOECKE:
11 Q And that would apply also to Mr. Guckert's report?
12 A Correct.
13 Q Okay. If I were to tell you to assume that the
14 anticipated peak-hour additional traffic to the Costco gas
15 station would be 138 trips and if we also were to assume
16 that the cars entered the mall property from two different
17 locations, so about half of them come from the east and half
18 of them come from the west, and then if you'd just accept my
19 math that that means a car, an additional car will travel on
20 the ring road towards the gas station about every 51
21 seconds, if we --
22 MR. GROSSMAN: During the peak hour.
23 MR. GOECKE: During the peak hour, right.
24 THE WITNESS: Uh-huh.
25 BY MR. GOECKE:

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1 Q If we can assume that --
2 A And is the peak hour during school hours?
3 MS. HARRIS: It's after school hours, actually.
4 MR. GOECKE: Yes.
5 BY MR. GOECKE:
6 Q Actually, it's after school hours, but let's just,
7 let's just assume that it was during --
8 A Uh-huh.
9 Q -- during school hours. Would an additional
10 car --
11 MR. ADELMAN: Objection.
12 MR. GROSSMAN: Well, the peak, p.m. peak hour is
13 after school hours. The peak a.m. --
14 MS. CORDRY: I think I'd object on another basis,
15 which is that that is new traffic coming into the mall but
16 that is not, that does not take into account the fact that
17 people are going to have to leave wherever they were parked
18 and make another trip to come back to the gas station. So
19 the --
20 MS. HARRIS: Excuse me.
21 MS. CORDRY: -- so I think the question misstates
22 what the effects are going to be in terms of traffic at --
23 MR. GOECKE: Well, it's a hypothetical.
24 MS. CORDRY: Well --
25 MR. GROSSMAN: Well, hold on one second. Yes,

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1 Ms. Harris.
2 MS. HARRIS: I didn't hear a question there. I
3 heard more of a testimonial from Ms. Cordry.
4 MS. CORDRY: Well --
5 MS. ROSENFELD: No. I think she's --
6 MR. GROSSMAN: She's expressing her opinion on
7 the, on an objection.
8 MS. ROSENFELD: I think she's objecting because --
9 on the grounds that it's a factually inaccurate statement.
10 MR. GROSSMAN: Dr. Adelman, do you have something
11 to add?
12 MR. ADELMAN: Yes. I object to a hypothetical
13 when, in fact, there's fact. The peak hours are defined --
14 MR. GROSSMAN: Right.
15 MR. ADELMAN: -- it's not hypothetical.
16 MR. GROSSMAN: Right. The hypothetical should be
17 based on, unlike an expert -- when you are examining an
18 expert, you can pose hypotheticals. They should have a fact
19 base even there. He's contending that there is a factual
20 basis for his hypothetical question here based on
21 Mr. Guckert's testimony, and I think he's correct in saying
22 that there's a factual basis for his statement as to the
23 peak-hour traffic based on Guckert's testimony.
24 MS. CORDRY: I think that is of coming into the
25 mall, but that is not the same thing as traffic on the ring

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1 road, because those people are going to come into the mall
2 but they're going to have to make another trip within the
3 mall to get back to the gas station. In other words, I --
4 MR. GROSSMAN: So you're suggesting there would be
5 less traffic?
6 MS. CORDRY: No, no, no, no. I'm saying people
7 will come into the mall, stop and shop at the warehouse --
8 MR. GROSSMAN: Right.
9 MS. ROSENFELD: Park.
10 MS. CORDRY: -- then, park, then they have to get
11 back in their car, come back out on the ring road, make
12 another trip around to come to the gas station. So the
13 number of trips on that back part of the ring road dealing
14 with coming to the gas station is not the same as the number
15 of people coming into the mall just to go to the gas
16 station. Those are two different questions.
17 MR. GROSSMAN: Well, they may be. I think he's
18 entitled to ask this question, and we'll take into account
19 the vagaries and possibilities of additional traffic given
20 that. But I think, based on Mr. Guckert's report and
21 testimony, he's entitled to ask about peak-hour traffic in
22 the way that he did. So I'm going to overrule the
23 objection.
24 MR. GOECKE: Thank you.
25 BY MR. GOECKE:

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1 Q So what I'm getting at, Ms. Carter, is, if we can
2 assume that a car travels from each side of the ring road
3 towards the gas station, an additional car, but every 51
4 seconds per peak hour, do you think that that additional
5 traffic would be an imposition on the children of Stephen
6 Knolls?
7 A Well, let's look at it mathematically, because
8 that's what you were saying. If it takes the children -- I,
9 just once, I went out and timed it, how long it took them to
10 cross the road. They were right there at one side, they
11 were walking -- walking and pushing and whatever -- across
12 the road to the other side, and it took them between four
13 and five minutes, and already, the day that I watched them,
14 there was a few cars that came through that had to stop for
15 them. I didn't count exactly, but there was a few. So say
16 there was four. So you're effectively saying that that
17 would double the amount of traffic that they would have to
18 cross during their crossing time.
19 Q I'm saying there would be an additional --
20 A A car every minute --
21 Q Yes.
22 A -- takes them four minutes to cross. Four extra
23 cars, there was already four cars, so you'd be doubling the
24 amount of traffic that they would have to get across.
25 Q Okay. But you're --

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1 A So, yes, I believe it would impact them.
2 Q Okay. But you're saying that those cars stop and
3 allow the students to pass?
4 A They, they did the day that I was there, yes.
5 Q Have you ever been there on a day when those cars
6 did not let students pass?
7 A I think the teachers kind of wait until it's
8 basically clear and then they go and then some cars show up,
9 and of course, when kids are in the middle, hopefully the
10 cars stop.
11 Q And there are designated crosswalks for those
12 students to cross over as well, right?
13 A There is a white-painted crosswalk.
14 Q Right. And you've made it clear that you're here
15 testifying today on your, in your individual capacity and
16 not on behalf of the school. Have you --
17 A Correct.
18 Q -- asked the school to get involved in this
19 matter?
20 MS. CORDRY: Oh, Lord.
21 THE WITNESS: That is not my place.
22 MS. CORDRY: Objection. I think that's hearsay.
23 MR. GROSSMAN: No, whether she asked the school is
24 not hearsay.
25 MS. CORDRY: Well, I'm sorry. That's correct,

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1 but --
2 MR. GROSSMAN: So --
3 THE WITNESS: I don't believe that it's my place
4 to ask the school to get involved.
5 BY MR. GOECKE:
6 Q Okay. To your knowledge, has anyone asked the
7 school to get involved in this?
8 MS. ROSENFELD: Beyond the scope of her direct.
9 THE WITNESS: I believe that both sides have
10 asked --
11 MR. GROSSMAN: Hold on one second, ma'am. I think
12 there's an --
13 MS. ROSENFELD: Objection, really beyond the scope
14 of her direct. She said she's here as an individual. She's
15 testifying as an individual.
16 MR. GROSSMAN: Yes. I think it's, it's a
17 questionable question. What's the point? What will that,
18 what will that yield us in terms of information if she says
19 either way?
20 MR. GOECKE: Well, I'm trying to find out why the
21 school isn't here testifying the way she's testifying.
22 MR. GROSSMAN: I don't know that I can reason that
23 from any answer that she gives.
24 THE WITNESS: I can give my personal opinion, but
25 I certainly --

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1 MS. ROSENFELD: Yes, but --
2 THE WITNESS: -- cannot speak for Montgomery
3 County Public Schools.
4 MR. GROSSMAN: Well, hold on one second. There's
5 no question posed. There's an objection to the question
6 that was posed. I'm going to sustain it because I really
7 just don't think that it's -- it is beyond the scope of the
8 direct, but one could argue that it's somehow tangential,
9 close enough, but I just don't see it yielding any useful
10 information here. So I'll sustain the objection.
11 MR. GOECKE: Thank you. I have no further
12 questions.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: Can, I don't know, can I speak?
15 MR. GROSSMAN: There's nothing pending, but I'm
16 going to let you say whatever you want to say.
17 THE WITNESS: Okay. I would like --
18 MR. GROSSMAN: Within reason.
19 THE WITNESS: I would like to address the
20 perception that because people aren't here speaking today,
21 other than me, that other people aren't, aren't concerned.
22 MR. GOECKE: I didn't say no one's --
23 MR. GROSSMAN: No, I think that's, that's beyond
24 what I'll let you get into --
25 THE WITNESS: Okay.

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1 MR. GROSSMAN: -- because I don't think that --
2 that does involve a hearsay issue; that is, the suggestion
3 that you may state what you think other people are thinking
4 tends to be information outside of an extrajudicial
5 declaration --
6 THE WITNESS: Okay.
7 MR. GROSSMAN: -- offered to prove the truth of
8 what's asserted therein. So that's problematic and I won't
9 let you testify to that.
10 THE WITNESS: Okay. Yeah, okay, not addressing
11 the school system's side of it, from the parents' side of
12 it, from what parents have told me about what --
13 MR. GROSSMAN: No. That's also --
14 THE WITNESS: No? Okay.
15 MR. GROSSMAN: -- problematic.
16 THE WITNESS: All right.
17 MR. GROSSMAN: As to what people tell you is
18 problematic. I mean, hearsay, to some extent, is permitted
19 here, but it has to be reliable and probative, and --
20 THE WITNESS: Okay. Right.
21 MR. GROSSMAN: -- it's a problem to have repeated
22 conversations of that kind come in. So --
23 THE WITNESS: Okay.
24 MR. GROSSMAN: But I greatly appreciate your
25 coming down here and sharing your views, very helpful, and I

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1 appreciate the fact you've taken your time to do that.
2 Thank you.
3 THE WITNESS: All right, thank you. And I do
4 honestly say, if anybody wants to come and visit the school,
5 we would be happy to host anyone who wants to come see the
6 kids who are, who are here and who will be affected.
7 MR. GROSSMAN: For a lot of reasons, I don't think
8 we can do that as part of this process.
9 THE WITNESS: Okay.
10 MR. GROSSMAN: But anybody else can do it on their
11 own. Thank you.
12 THE WITNESS: Uh-huh.
13 MR. GROSSMAN: All right. Who does that leave us
14 now?
15 MS. CORDRY: I think I'd be up next.
16 MS. ROSENFELD: Ms. Cordry.
17 MR. GROSSMAN: Ms. Cordry.
18 MS. CORDRY: Does it make sense to do the lunch
19 break before we start?
20 MR. GROSSMAN: What's the pleasure of the crowd
21 here in terms of lunch breaks?
22 MS. ROSENFELD: Ravenous.
23 MR. SILVERMAN: Lunch. Lunch. Lunch.
24 MR. GOECKE: Lunch sounds good.
25 MR. GROSSMAN: Ravenous, all right. Okay. Well,

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1 it seems to be the pleasure of the crowd is to go to lunch.
2 So --
3 MS. HARRIS: Did we just overrule you?
4 MR. GROSSMAN: -- so, yes, we'll come back then at
5 1:30. We'll break for lunch now.
6 MR. GOECKE: Thank you.
7 (Whereupon, at 12:41 p.m., a luncheon recess was
8 taken.)
9 MR. GROSSMAN: We're back on the record and a
10 return to Ms. Cordry.
11 MS. CORDRY: Yes.
12 MR. GROSSMAN: I'm going to get these exhibits in
13 the exhibits pile because, if you get your piles mixed up
14 here --
15 MS. CORDRY: It's all over with.
16 MR. GROSSMAN: Yes, no telling what'll happen.
17 (Witness previously sworn.)
18 DIRECT EXAMINATION (Resumed)
19 MR. GROSSMAN: Okay. So where did we leave off,
20 Ms. Cordry?
21 THE WITNESS: We had left off that I had just
22 identified Exhibits 350 and 351 --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- with 350 being the Frederick
25 store and 351 being the Leesburg store.

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1 MR. GROSSMAN: Right.
2 THE WITNESS: And I was just going to comment on
3 them briefly, a little bit.
4 MR. GROSSMAN: Yes.
5 THE WITNESS: I was also going to say, I took the
6 occasion, while I was off the record, to count up the number
7 of cars actually queuing at the Elkridge store.
8 MR. GROSSMAN: Okay. What was that exhibit number
9 again, the Elkridge one?
10 THE WITNESS: It was 345(a).
11 MR. GROSSMAN: Okay.
12 THE WITNESS: It's a little blurry, but I think I,
13 I think I have the count right, and it's 27 cars there and
14 that has pretty much filled up the queuing space completely.
15 And I believe Mr. Guckert's traffic analysis was based on an
16 assumption that 34 was the point at which you would start to
17 spill over and out of the queue area, and if you look at
18 this, you'll see that 27, the next car that comes, is going
19 to be outside the queuing area. So it just illustrates the
20 point that I saw with my own observations that, generally,
21 the queue area fills up far short of the theoretical maximum
22 that was being used.
23 And 350 and 351 are just two more where you can
24 sort of see very much the same sort of thing operating. At
25 the Frederick store -- do you have those handy?

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1 MR. GROSSMAN: I do. I don't have them in front
2 of me, though.
3 THE WITNESS: Okay.
4 MR. GROSSMAN: It's okay.
5 THE WITNESS: The Frederick store, it's six lines,
6 and as they come in, you actually have, again, this sort of
7 small bottleneck and then they have to go past each other
8 and make, you know, turn in to get into their lines, and
9 clearly, cars are interfering with the ability of -- the
10 close-in cars are interfering with the ability to go over to
11 the far lines; they're not all taking up all the space. I
12 don't actually know precisely what he considers the maximum
13 capacity of that station. I don't think he's analyzed that,
14 but whatever it is I think I can guarantee that if you look
15 at this, it's nowhere near the maximum. Cars are spilling
16 back out already. There clearly is additional space in
17 there, but it's not being able to be utilized effectively.
18 The cars are spilling out into the drive aisle coming in
19 there. They're, in fact, all the way back out on a main
20 road. Perhaps the cops will come along at some point and
21 stop that.
22 MR. GROSSMAN: Did you have a count on those? I
23 know you were comparing the other one --
24 THE WITNESS: Yeah.
25 MR. GROSSMAN: -- to your recollection. I didn't

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1 recall testimony regarding Elkridge as to the number that
2 would be, that was assumed to have been allowed in the
3 queue --
4 THE WITNESS: I know there were queuing reports he
5 had done at one time. I'll double-check whether it has come
6 into this record. If not, there's reports that he has made
7 at prior times that he had come, with Elkridge, and I can, I
8 can supply those afterwards. And I'm, I'll proffer for
9 you --
10 MR. GROSSMAN: I mean, I'll assume that --
11 THE WITNESS: -- I'll proffer to you for the
12 moment that 34 is the number that he has put out in
13 documents, that Mr. Guckert has put into reports.
14 MR. GROSSMAN: For Elkridge?
15 THE WITNESS: Yes.
16 MR. GROSSMAN: Okay. And what about -- the one
17 you're talking about now is?
18 THE WITNESS: Yeah. This one happens to be
19 Frederick.
20 MR. GROSSMAN: Frederick. And was there --
21 THE WITNESS: No. These two, Frederick and
22 Leesburg, happen to be one. I'm just looking at some other
23 ones, but --
24 MR. GROSSMAN: All right. So the count really
25 doesn't matter. I mean, the comparison that's of any

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1 significance is between what is assumed to have been the
2 number of cars that would queue --
3 THE WITNESS: Right.
4 MR. GROSSMAN: -- before they'd flow out, and the
5 number in actual practice that that occurs?
6 THE WITNESS: Right. And, but I think you can
7 look at both -- again, if I, if it's not an exhibit here,
8 I'll find the exhibit and we can introduce it subsequently.
9 In both this one at Elkridge and at Wheaton, and actually
10 both of the ones at Wheaton, they show very nice neat little
11 cars, all nicely lined up, each one taking only 20 feet, and
12 so forth, and they're showing what's the maximum you can put
13 in there, and it clearly is a much less orderly sort of
14 process. And, again, I'm sure if you did the same kind of
15 a, lining up each of the cars very nicely and neatly there,
16 in each one of these you would see substantially more cars
17 that have managed to actually get their way into here
18 without having traffic backed up and blocking.
19 Now, at Frederick you have a completely separate
20 set of entrances, two actual main entrances, it looks like,
21 that comes at different places off the main road into the
22 store area. So those are -- cars can go completely away
23 from the gas station and get to and from the store without
24 being blocked through this area there, but that particular
25 area, if you try to come in that entrance, it's already

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1 being blocked up with what looks to be far less than the
2 maximum that you can put in there.
3 The same thing at Leesburg. This one has actually
4 a very small number of cars, relatively speaking, probably
5 not more than about 10 or 15 lined up in an area that's
6 about the same size as these other ones, but the cars coming
7 in have blocked the entranceway. And, again, all of those
8 queue lines behind where the car is coming in have blocked
9 up the space, and again, it's going back out onto the main
10 road. And, again, because this particular design has other
11 entrances for the cars coming to the store well away from
12 the gas station or, put another way, the gas station is well
13 away from the store, you do manage to have -- that kind of
14 traffic obviously can come and go without being completely
15 impinged upon by the gas station.
16 Again, I'd point out, with both of these you have
17 very large parking lots between the gas station and the
18 store. There's no sign of a loading dock, which I assume in
19 both cases means that the loading dock is at the far end of
20 the store, outside of where these particular pictures were
21 taken. I can always go back and get bigger Google Earth
22 shots, but the point being, you definitely don't have the
23 gas station right next to the loading dock, right next to a
24 main drive aisle coming into the store parking area there.
25 So to somewhat tie that back then to come to this,

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1 this station, I'll try to talk just a little bit about the
2 special exception area here --
3 MR. GROSSMAN: Sure.
4 THE WITNESS: -- and I'm looking, at this point,
5 at Exhibit, what number, 231, looks like it, which is the
6 current --
7 MR. GROSSMAN: Okay. I think we identified that
8 the last time you were up.
9 THE WITNESS: Right. Right. So with this one,
10 it's not quite as badly designed as the other two, which had
11 you coming in and then making a turn. This one is straight
12 in, but you do still have the same kind of a bottleneck
13 here. You still have the problem that cars have to be able
14 to try to get to all of these different lanes. And, again,
15 I'm going to kind of just confine myself right to this sort
16 of, dimensions right around here. There will be other
17 traffic discussions --
18 MR. GROSSMAN: Right.
19 THE WITNESS: -- about the more global area of the
20 mall, but I'm just going to talk about the queuing and
21 coming out --
22 MR. GROSSMAN: Just so the record is clear as to
23 what you're saying, you said a bottleneck here; you mean a
24 bottleneck right at the entrance --
25 THE WITNESS: Yes. As you're coming in --

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1 MR. GROSSMAN: -- to the --
2 THE WITNESS: -- the entrance, you have the
3 narrowed area and then you have to try --
4 MR. GROSSMAN: Right.
5 THE WITNESS: -- unlike what we saw at Sterling
6 currently, where it has now been removed, any of this kind
7 of barriers around here, and they're simply allowed to all
8 come in and flow freely through.
9 MR. GROSSMAN: Right. The islands, you're talking
10 about the barriers around here --
11 THE WITNESS: Right.
12 MR. GROSSMAN: -- you're talking about the islands
13 that were removed from the traffic area?
14 THE WITNESS: Right. These two islands, I guess
15 they're going to be the bioretention areas --
16 MR. GROSSMAN: Right.
17 THE WITNESS: -- create this single entrance here
18 which, I believe Mr. Guckert testified, was going to allow
19 one car in at a time.
20 So if you have a situation like you saw in the
21 other ones where cars may come in, if they back up here in
22 the center area to the point where a car obstructs this
23 entrance aisle and cannot get past that until some other
24 cars move out of the way, that will immediately then start
25 traffic having to wait back here to get in.

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1 Now, some of what is significant here is that this
2 is a very narrow section of the ring road. When we did all
3 those various sections, it's wider -- when I say here, I
4 mean directly across from the gas station.
5 MR. GROSSMAN: Right.
6 THE WITNESS: The area on the west side here is
7 considerably wider; the lanes -- there's more room to put
8 the lanes in, to adjust them and so forth, but this is, this
9 here, from the gas station over past the warehouse, is the
10 narrowest section of the ring road and that's at least in
11 part because the warehouse was built out as an immovable
12 object, all the way right out to where the ring road is now,
13 which gives you very little leeway to be able to move it.
14 It was built to fairly narrow dimensions here.
15 Obviously, we do believe that a pedestrian path is
16 necessary as critical. It's necessary even with the
17 warehouse here. It really needs to be built, but if you add
18 the gasoline station on top of it, it becomes even more
19 critical. But it does then mean, to some extent, you have
20 conflicting needs that I don't think can be accommodated
21 with this station, which is going to go to our more general
22 gas station traffic discussions.
23 MR. GROSSMAN: So you want them to remove the
24 pedestrian path?
25 THE WITNESS: No, I do not want them to remove it.

1 I want them to decide. You can't --
 2 MR. GROSSMAN: I know. I know. I'm just, just
 3 teasing you, just teasing you.
 4 THE WITNESS: I know that. I know that. Just, I
 5 wanted to give you the rise --
 6 MS. HARRIS: You rose to the bait.
 7 THE WITNESS: I did.
 8 MS. HARRIS: You rose to the bait.
 9 THE WITNESS: I wanted to give --
 10 MR. GROSSMAN: I don't want to take a chance of
 11 being strangled in the middle of a hearing.
 12 THE WITNESS: Yeah. I wanted to give you exactly
 13 the reaction you asked for. So, no, I mean, clearly, our
 14 view is that sometimes -- and I think we said this earlier
 15 on -- sometimes you can't condition your way into a workable
 16 situation, and I think this is a station that we're going to
 17 continue to demonstrate is one of those situations.
 18 What you have here at this point is two lanes
 19 going this way --
 20 MR. GROSSMAN: Going westbound.
 21 THE WITNESS: I'm sorry, going west, one lane
 22 coming east. I think there was a suggestion there was two
 23 lanes, but it's my understanding that parking is shown all
 24 the way around here and that there is no separate second
 25 lane. This is an eight-foot parking width here --

1 MR. GROSSMAN: Parking around the southern ring
 2 road is what you're --
 3 THE WITNESS: Yeah, southern ring road, the
 4 outermost part of the southern ring road --
 5 MR. GROSSMAN: Right.
 6 THE WITNESS: -- shows parking all the way, from
 7 the west side all the way past the station and so forth.
 8 MR. GROSSMAN: Right, but they're going to narrow
 9 the parking area, they testified --
 10 THE WITNESS: Well, it's --
 11 MR. GROSSMAN: -- to, in part -- they were also
 12 going to narrow the lanes -- but they were going to narrow
 13 the parking area to accommodate the five-foot-wide
 14 pedestrian path.
 15 THE WITNESS: Right. So you have the
 16 five-foot-wide here and an eight-foot-half parking space,
 17 and then you have a lane.
 18 MR. GROSSMAN: No, it's not going to be an
 19 eight-foot parking space, I believe, and I think he said it
 20 was going to be seven feet, and -- it's supposed to be, I
 21 think he said it has to be a minimum of six, if I recall his
 22 testimony, but it's going to be seven feet.
 23 THE WITNESS: All right. Well, then even more
 24 clearly, if you have seven feet, you don't -- that is not
 25 wide enough to be a driveway. So you're only showing one

1 lane here, parking, and the ring road. So I think there was
 2 a suggestion that there's two lanes. Clearly, a
 3 seven-foot-wide parking space is clearly not wide enough. I
 4 looked at, on the Federal Highway Administration. They said
 5 nine feet is narrowest for a driveway. So you're only
 6 really going to have one lane here, two lanes here. These
 7 people are going to be trying to turn left into the station.
 8 MR. GROSSMAN: These people are the people heading
 9 eastbound --
 10 THE WITNESS: That's exactly.
 11 MR. GROSSMAN: -- are going to have to make a
 12 left.
 13 THE WITNESS: People coming east on the one
 14 lane --
 15 MR. GROSSMAN: Right.
 16 THE WITNESS: -- are going to have to try to turn
 17 left --
 18 MR. GROSSMAN: Yes.
 19 THE WITNESS: -- turning across the two lanes
 20 going here, from the, from the east going west.
 21 MR. GROSSMAN: Right.
 22 THE WITNESS: It's going to be difficult enough if
 23 traffic is free flowing. If you have traffic backing out of
 24 here at any point --
 25 MR. GROSSMAN: Right.

1 THE WITNESS: -- then coming, coming out this way,
 2 to the east, there's really only space there for one,
 3 possibly two cars, but really, if that's 24 feet wide, if
 4 you take that the lane is 24 feet wide, if you look at the
 5 same dimensions here, there really is not going to be room
 6 for more than one car sitting there.
 7 MR. GROSSMAN: Same dimensions here being?
 8 THE WITNESS: Being across the base area of this
 9 bioretention island, the right-hand bioretention island
 10 here.
 11 MR. GROSSMAN: Okay.
 12 THE WITNESS: I mean, it's certainly more than 24
 13 feet, but it's certainly not long enough to put two cars in.
 14 So you're really only going to have room for one car to back
 15 up there before it starts backing into the drive aisle,
 16 backing across the drive aisle, backing around to the drive
 17 aisle -- in any case, certainly obstructing this
 18 northernmost lane of traffic coming through.
 19 MR. GROSSMAN: Right.
 20 THE WITNESS: So any traffic trying to go past the
 21 station is all going to have to be condensed down into one
 22 westbound lane, which is going to make it even more
 23 difficult for someone coming east to try to make that left
 24 turn across there. You'll have continuing traffic coming
 25 in, more blocking up that traffic there as it tries to come

1 in. And, again, as I said, Mr. Guckert said this was only
2 going to happen a small portion of the time and that
3 wouldn't be any problem and that we really aren't going to
4 have this happen very much. But when he did his
5 observations, he also testified that what they did was they
6 put up a camera -- they didn't have people standing there,
7 watching; they had a camera -- and then they had computers
8 count the film.

9 MR. GROSSMAN: Right.

10 THE WITNESS: And as I say, his numbers, when he
11 did his numbers for either Sterling or here, it was based on
12 the theoretical maximum of how many times he went over that
13 theoretical maximum. But there was no one who testified as
14 a person that they stood there and watched and saw that if
15 said 33 cars, that those 33 cars, for instance, at Elkridge,
16 were actually all within the queuing area. We asked to have
17 that, copies of that film, if you recall, early on in the
18 hearing, about the first day or two, and --

19 MR. GROSSMAN: I don't recall that.

20 THE WITNESS: If you look back, we did ask if we
21 could see a copy. In any case, we can certainly give you
22 the page and cite on that, but we did ask to see it. You
23 know, it was never provided, because we thought, great,
24 that's actually great, because it would, we think, would
25 verify exactly what we're saying as to where the cars fill

1 up, but it was never provided. Our point being, as between
2 theoretically how many cars do you put in a queuing area and
3 personal observation of how many cars actually are in a
4 queuing area, the observed facts trump theory every time.
5 And we have observations that say, including satellite
6 photos, that say you don't get the maximum cars in a queuing
7 area all the time.

8 So, you know, can I guarantee how often people are
9 going to be spilling out there? I can't give you a
10 minute-by-minute number, but on a busy Saturday, much less
11 the holiday season, it's going to be far more than the
12 numbers that were in Mr. Guckert's report based on every bit
13 of evidence and observations we've seen to this date. Once
14 it spills out, then it's going to cause a great deal of
15 traffic issues on the mall, on the mall road, the ring road,
16 going around there.

17 Now, our suggestion is this is a bad place to
18 build this station on top of all of the other issues about
19 not building it at all, but this is a bad place to build it
20 and will cause a nuisance and traffic problems. I mean,
21 we're not the only ones who thought that. I mean, I think
22 you can start with the fact that Costco did not propose to
23 build this station here. Costco, when it was given a
24 choice, it thought -- it didn't want to put it right here,
25 across from the loading docks, so that people would have to

1 walk through the station and go around it and have this kind
2 of traffic interfering with very limited space to overflow.
3 It wanted to put it over in the corner, out of the way, and
4 I believe it was Mr. Brann testified -- if not him, perhaps
5 Mr. Hurlocker -- that their goal in putting these stations
6 is normally to put them as far away as possible from the
7 other, from the entrance to the store and the parking so
8 it's just unobtrusive as possible for their customers. Now,
9 they couldn't do that because of the special -- because of
10 the zoning text amendment. So they've had to do something
11 that is considerably, at a minimum, is suboptimal.

12 Our view is it's not appropriate at all, and
13 again, if you just look at their other kinds of stations and
14 what we've been sort of pointing out here, the way they
15 design their stations and the way they lay out their stores,
16 this is not what is a workable, reasonable solution and
17 would not have been done except for the fact that they are
18 trying to find that tiny little window between that 300-foot
19 circle that you see there that shows 300 feet from the pool
20 and the edge of the store. The fact that you can get it in
21 there does not mean that it's a reasonable thing to do, to
22 actually try to wedge it into there.

23 Now, I think there's been some suggestion that,
24 well, maybe the attendants will solve all the problem, that
25 if you throw enough bodies at --

1 MR. GROSSMAN: Attendants, not attendance, not
2 attendance with c-e, but at attendants --

3 THE WITNESS: S.

4 MR. GROSSMAN: -- t-s, yes.

5 THE WITNESS: Persons working for Costco --

6 MR. GROSSMAN: Right. Right.

7 THE WITNESS: -- attending the store, that perhaps
8 if you just throw enough bodies at this parking area, that
9 you can maybe manage to get everybody, I think Mr. Guckert
10 used the term, you can just get them to scooch up everybody
11 so they'd all fit within the queuing area and have as many
12 as they thought could get in there and then they won't spill
13 over as often. First off, of course, I think trying to have
14 two -- or probably three attendants you may very well have
15 to have, to try to keep that level of cohesion -- really
16 undercuts the whole efficiency and cost-effectiveness
17 approach that these kinds of stations are based on. I'm not
18 sure who's really going to be able to police keeping
19 attendants out there all the time.

20 MR. GROSSMAN: Well, you know, cost-effectiveness
21 and all of that is not really a consideration --

22 THE WITNESS: Well --

23 MR. GROSSMAN: -- for me. My only consideration
24 regarding what you have been testifying is to the extent to
25 which it will create other problems --

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1 THE WITNESS: Right, I understand.
2 MR. GROSSMAN: -- not Costco business decision
3 type of problems.
4 THE WITNESS: But what I'm saying is, it's not
5 something they're going to, you know, be happy to do. It's
6 something that they will try to -- you know, anyone who's
7 trying to run the station at a cost-effective basis is going
8 to try to do it as less, as little as they can, and somebody
9 is going to have to be out there policing it, saying, okay,
10 now you need the attendant because they're not staying
11 within the queuing area, and who's -- the question of, who's
12 going to do that, who is really going to be responsible for
13 that? Are we going to have the Planning Board police
14 sitting out there, watching you?
15 MR. GROSSMAN: No. DPS, Department of Permitting
16 Services, is the enforcing agency for special exceptions,
17 and if there's a complaint, then he will send out
18 investigators.
19 THE WITNESS: All right. And when he gets there,
20 hours later, days later, and there's nobody backed up at
21 that particular moment, you know, it's -- I'm just saying,
22 as a practical matter, you know, whether or not you can
23 actually be sure that you have the attendants there when
24 they need to be there, it's not really a very practical way
25 of saying that, well, we'll call somebody else in to

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1 investigate any more than trying to get, as I think
2 Mr. Baker made clear, trying to get somebody out to make
3 sure the trucks never idle on the ring road doesn't always
4 work too well either.
5 MR. GROSSMAN: Well, there's a big incentive for
6 them to comply because their special exception is at risk if
7 they don't comply with conditions that are set up for --
8 THE WITNESS: Well --
9 MR. GROSSMAN: -- for the special exception if
10 it's granted. So there is a big incentive --
11 THE WITNESS: Well --
12 MR. GROSSMAN: -- to comply when you've made a --
13 THE WITNESS: -- once you've already built the
14 special exception --
15 MR. GROSSMAN: Right.
16 THE WITNESS: -- and it's there, I mean, nobody's
17 really going to make them shut the station down, I don't
18 think, on the basis of whether or not somebody calls and
19 says you didn't have an attendant out there.
20 MR. GROSSMAN: If somebody is not complying and
21 doesn't take steps to comply, it can certainly be shut down.
22 THE WITNESS: Okay. It could be, I suppose, in
23 theory. In reality, I think that's not real likely. In any
24 case --
25 MR. GROSSMAN: All right.

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1 THE WITNESS: -- moving on to the question as to
2 the blocking of traffic on the road and whether the
3 attendants are going to be able to deal with that, again, I
4 think that -- and I think Mr. Core made some of the same
5 point -- these are employees and they have a nice vest on
6 and they're going to tell people, but whether people
7 actually are going to obey that is a different question. If
8 you've been sitting there, you watched that whole long line
9 of traffic, you see there are people coming up behind you,
10 you've been waiting already to get in there and somebody
11 tells you to move away, go drive away and make a big circle
12 around the parking lot and come back, are you going to do
13 that? Maybe, maybe not, I think quite possibly not.
14 I sat there at a meeting of the Wheaton
15 Redevelopment Advisory Committee when Mr. Brann and
16 Ms. Harris were there, and I recall Mr. Brann talking about
17 the fact that one of their attendants almost had somebody
18 get in a fistfight with them because they tried to just get
19 them to turn off the car at the pump. Now, if people aren't
20 necessarily going to obey those kind of rules, are they --
21 can we really be assured that if somebody says go, get out
22 of line, waste 10 minutes more and go around the parking lot
23 and come back, are they going to do that? Maybe. I think
24 the answer is probably not. I think it's going to have
25 limited ability to really control the kind of blocking

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1 that's going to go on there. And, okay, let's assume they
2 do, they go out and they start circling endlessly. Well,
3 that's not real good either. That means we've now added
4 more driving around, more traffic, more slow speeds, more
5 idling, more emissions, more of all the things that go into
6 these calculations, not only as to the traffic effects but
7 as to the kind of calculation Mr. Sullivan is going to do.
8 His calculations assumed, again, a fairly
9 idealized world, where people were all going to come in
10 here, the vast majority of the time they were just going to
11 park in the station, they weren't going to be idling on the
12 ring road, they weren't going to be circling and circling,
13 and I think that is not going to be the reality that we're
14 going to see here, certainly not, I think, over the next
15 couple of months. If this station was operational now, as
16 the traffic multiplies itself for the holiday season, I
17 think you're going to see a great deal more blocking and so
18 forth.
19 And certainly, you know, I think one of the real
20 questions is, is an inherent, sort of normal kind of part of
21 the operation of a station to say it can only operate if you
22 have extra people standing there, constantly directing
23 traffic throughout most of its existence? I don't think
24 that's a very normal situation for gas stations. Certainly,
25 a gas station on the main road is not allowed to block the

1 road, but there they have police telling you to do and
2 you've got lots of traffic sitting there behind you, blowing
3 their horns and everything else. So I think it's really a
4 non-inherent sort of operating system in which you say this
5 station will only work if it has extra people there,
6 standing there, constantly directing traffic to try to keep
7 the area working.

8 So one of our major components for our concerns
9 here obviously are the likely impacts on the traffic in the
10 traditional sense that we look at in special exceptions: Is
11 it going to affect those trying to maneuver around the
12 special exception area? Is there going to be backups, going
13 to be delay? Is it going to create a general nuisance for
14 those trying to use the mall parcel, all the other people
15 that aren't coming to the gas station and aren't going to
16 the Costco? Again, also, will it create more cars idling
17 closer to homes, creating more noise than is being assumed
18 will happen? Will there be car horns blaring when somebody
19 gets mad about sitting in line too long, waiting, trying to
20 get past, and so forth? So all of that is the traditional
21 sort of problems.

22 The other major reason of concern for us, of
23 course, is that, as I say, this queuing and idling we think
24 will play out in reality as being much more intensive than
25 is being assumed at this point, is because of the impacts on

1 the emissions analysis. That analysis is only as good as
2 the factual inputs that are being used and the factual bases
3 for those inputs. When you had very conservative
4 assumptions, you could perhaps set aside some of these
5 concerns and say, as Mr. Sullivan did on July 30th, before
6 he had his problem, that, well, okay, I can, I can double
7 the traffic for holiday times or I can double it for the
8 MOVES analysis, for the MOBILE6, I can do all these kinds of
9 things that will raise the levels of emissions because I
10 have so much leeway. Well, now we don't have that leeway
11 anymore. Now it becomes really much more critical.

12 The tighter you make your assumptions, the more
13 accurate you refine your assumptions to be, the more
14 critical -- you look at whether or not some of these
15 assumptions really are going to be valid. And again, as we
16 say, there's a lot of things -- some of his things you could
17 make from actual numbers he could use, but a lot of these
18 things he's assuming: I am assuming there will not be cars
19 idling here, I am assuming there will not be a lot of
20 backup, and those are things that -- I think what we're
21 trying to put into the record right now is to show that
22 those assumptions are not necessarily valid. Obviously
23 Mr. Cole, Dr. Cole was going to do more with saying what
24 happens if you change those assumptions, but we are trying
25 to put into the record the factual bases to show that those

1 are not going to be --

2 MR. GROSSMAN: So you're talking about the
3 revised, the August 16th, 2013, assumptions regarding
4 queuing?

5 THE WITNESS: Well, both, both, both the
6 assumptions, both, both sets of them. Even with his
7 original assumptions, we were going to suggest that his
8 numbers -- I mean, he's already stated in his testimony a
9 number of times that the assumptions that he has put in
10 about queuing for, I believe it was the eight-hour and the
11 24-hour figures, both of those are understated. If you
12 recall, he did that whole calculation with I'm assuming 20
13 cars and the actual data from Sterling says I should have
14 used 32 cars, so I'm going to scale up the queuing parts of
15 my numbers by so much. He's discussed that, but he has
16 never gone back and actually put that into his calculations
17 and his assumptions. He's just said, well, it doesn't get
18 me high enough to make a problem, so I'm just, I'm going to
19 tell you about this but I'm never actually going to change
20 my data to show that. And he's never actually --

21 MR. GROSSMAN: If I recall, he said it was a small
22 increment when you looked at it over the whole period of
23 time of operation.

24 THE WITNESS: I understand he's got his reasons
25 why he doesn't think it's important, but --

1 MR. GROSSMAN: Do you agree with my recollection?
2 Is that what --

3 THE WITNESS: I understand him to say that, well,
4 it wasn't that big of a change, but the point is, is he
5 doing accurately -- you know, he's accurately refining his
6 reports all the time, but somehow his accuracy generally
7 seems to go towards where it allows him to reduce his
8 numbers. When the accuracy goes to increasing them, he may
9 talk about it but he hasn't put those in there yet. So I
10 think it is important to just be sure that all of his
11 assumptions become as accurate as possible if that's the way
12 he wants to go.

13 MR. GROSSMAN: That's fair in its weight, but I
14 mean, it's not, it's not significant if the difference is
15 not significant, which is what I think he testified to.

16 THE WITNESS: Well --

17 MR. GROSSMAN: So I don't know if it is or it
18 isn't. I'd have to go back and look at the numbers again --

19 THE WITNESS: I understand.

20 MR. GROSSMAN: -- but I'm just saying that, that
21 the issue of accuracy is important to the extent it makes a
22 difference in terms of the outcome.

23 THE WITNESS: I understand, but until you put all
24 the accurate numbers in, until you then say what about this
25 one and what about this one -- you know, it doesn't help to

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1 have only half of the corrections made because there may be
2 other changes that need to be made and they're not there.
3 So that's what we're getting at. We want to be sure that we
4 have -- that the accuracy doesn't all go to reducing these.
5 And, as I say, when you were using very conservative
6 assumptions, theoretically, then it may have been less
7 important; but as the conservatism goes down and down, it
8 becomes more important that he puts all of the accurate
9 assumptions in there.
10 Let's see. And certainly that's going to become
11 very important, I think Dr. Cole is going to talk about with
12 respect to the NO2, in particular, because -- and, again,
13 I'm not going to get into how it's measuring -- but I'm just
14 looking at the rule, and we've been looking at a number of
15 like 190, this 190 --
16 MR. GROSSMAN: You say you're looking at the rule.
17 What --
18 THE WITNESS: The rule, the EPA rule --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- that puts in the -- that sets
21 that standard, that Federal Register rule that we've put in.
22 And I guess we haven't actually put it all in yet, but we'll
23 have that in before the end of the day. And the numbers in
24 there, the 190, as you'll see, when it gets discussed
25 further, it's not just that 190 is the only number out

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1 there. That's the maximum number anywhere that it's
2 supposed to be. And what they do make clear in the rule --
3 and, again, obviously we'll discuss this further --
4 MS. ROSENFELD: Karen, just for clarification,
5 identify what pollutants you're talking about.
6 THE WITNESS: I'm talking about the NO2 pollutant.
7 MS. ROSENFELD: And which standard?
8 THE WITNESS: And the EPA standard that --
9 MR. GROSSMAN: The National Ambient Air Quality
10 Standard.
11 THE WITNESS: Air Quality Standard, right, the one
12 that --
13 MR. GROSSMAN: The 190 pertains --
14 THE WITNESS: To the micrograms per meter cubed of
15 the --
16 MR. GROSSMAN: Per cubic meter, but for which one
17 of the time measures?
18 THE WITNESS: For the one-hour measurement.
19 MR. GROSSMAN: The one-hour measurements.
20 MS. HARRIS: Mr. Grossman, excuse me, I was under
21 the understanding that Ms. Cordry was going to be testifying
22 about queuing, and while I understand there's some
23 relationship, if we had thought she was getting into this
24 level of detail, we would have certainly had Mr. Sullivan
25 available for this discussion.

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1 MR. GROSSMAN: Okay. Well, let's see where this
2 is going. I --
3 THE WITNESS: All I'm really going to say is that
4 our concern is that in the rule, when we weed it through and
5 it gets discussed in detail, it actually discusses a whole
6 continuum of effects well below the 190 as it relates to
7 areas around --
8 MR. GROSSMAN: Well, I presume that Dr. Cole is
9 going to address that, right?
10 THE WITNESS: Right, and I just --
11 MR. GROSSMAN: So, actually, let's --
12 THE WITNESS: Right. So --
13 MR. GROSSMAN: -- why don't you stick to the
14 queuing, and then we'll --
15 THE WITNESS: Okay. So I just --
16 MR. GROSSMAN: -- we'll let Dr. Cole do the --
17 THE WITNESS: But that's the reason why we're
18 looking at these issues, because the queuing relates to
19 these emissions and to the fact that there's a great deal of
20 additional concern just beyond the 190, going out to the
21 area around the queuing area, out to the homes and so forth.
22 MR. GROSSMAN: I see. The 190, I think, is the
23 parts per billion, isn't it?
24 THE WITNESS: No, no. One hundred is parts per
25 billion.

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1 MR. GROSSMAN: Oh, 100 is parts per billion, and
2 190 is the micrograms --
3 THE WITNESS: One ninety is the micrograms per
4 meter cubed.
5 MR. GROSSMAN: Yes, okay.
6 THE WITNESS: Right. And that, that becomes
7 important that -- as we look at the bigger picture and where
8 the idling may take place, where it changes, all of that can
9 be important there. Let me see. I think, I think that was
10 all I had to say.
11 MR. GROSSMAN: All right. So that completes your
12 testimony in this --
13 THE WITNESS: That completes my direct testimony
14 on this, yes.
15 MR. GROSSMAN: Okay. Cross-examination from
16 Kensington View?
17 MS. SHEARD: No.
18 MR. GROSSMAN: Any cross-examination from the
19 Coalition?
20 MR. SILVERMAN: No, sir.
21 MR. GROSSMAN: Applicant?
22 MS. HARRIS: Yes. Thank you. Thank you.
23 CROSS-EXAMINATION
24 BY MS. HARRIS:
25 Q Ms. Cordry, we've seen aerials regarding Sterling,

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1 Elkridge, Beltsville, Leesburg, and Frederick, is that
2 correct?
3 A Right, uh-huh.
4 MS. HARRIS: And I'd note just that those are
5 Exhibits 343, 345, 344, 350, and 351.
6 MR. GROSSMAN: Okay.
7 BY MS. HARRIS:
8 Q And what I want to do is show a few more
9 additional sites, which are White Marsh, Glen Burnie,
10 Brandywine, Durham, North Carolina, and Richmond.
11 MR. GROSSMAN: Thank you.
12 BY MS. HARRIS:
13 Q I'll give you a moment to take a look at those.
14 MS. ROSENFELD: Do you have one more for
15 Ms. Adelman?
16 MR. GROSSMAN: I mean, you may have given me --
17 you gave me two copies, I believe.
18 MS. ADELMAN: Oh, can I have one back?
19 MS. HARRIS: There we go.
20 MR. GROSSMAN: All right. So do you want these
21 marked as a package or as individual -- if this is a
22 package, we can do it as a --
23 MS. HARRIS: That's fine, a package is fine.
24 MR. GROSSMAN: Okay. So we're talking about
25 Exhibit 356.

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1 THE WITNESS: Just as a question, were any of
2 these ever in the record before or --
3 BY MS. HARRIS:
4 Q No. They were just -- no.
5 A Okay.
6 MR. GROSSMAN: Okay. So 356(a) --
7 THE WITNESS: I have -- you gave me two sets as
8 well. I will attempt to look at these, having never seen
9 them before.
10 MR. GROSSMAN: 356(a) is aerial photo of Costco
11 gas station at White Marsh, Maryland, and 356(b) is the same
12 but at Glen Burnie, Maryland, and 356(c) is the same but at
13 Brandywine, Maryland, and 356(d), the same but at Durham,
14 North Carolina, and 356(e), the same but at Richmond,
15 Virginia. Okay.
16 (Exhibit Nos. 356(a) through
17 356(e) were marked for
18 identification.)
19 MS. HARRIS: Good. Thank you.
20 BY MS. HARRIS:
21 Q Ms. Cordry, in taking a look at these and other
22 ones that are already in the record, you'd agree that none
23 of these stations is, none of the stations are identical?
24 Would you agree with that?
25 A I think that's probably true, yes. Again, as I

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1 say, I'm looking at these for the first time, but in looking
2 through them, there do appear to be some minor differences
3 between different ones. The Richmond one is probably, which
4 is this three-block one/piece on the kind of right-hand
5 side, that appears to be the one that's most different from
6 the rest of them.
7 Q So some have open entrances; some have single
8 funneled entrances. Some have one entrance to the queue
9 area; others have two or more entrances. I mean, there's
10 that type of variation, you agree?
11 A I see variation in them, yes.
12 Q And in some instances, vehicles, after they're
13 done pumping, may in fact drive through a drive, the parking
14 lot in terms, while they're exiting; that's another -- such
15 as Glen Burnie, White Marsh, Brandywine?
16 A Well, Glen Burnie, it looks to me like they exit
17 out and away. I mean, the parking lot looks to me to be on
18 the back side of the station there. I mean, there's a very
19 small number of parking spaces, it looks like, on the side
20 of the station, but the main area, the parking lot looks
21 like it's behind and away from where you would exit the
22 parking -- the gas station, if I'm, if I have the
23 orientation on that correctly.
24 Q I'm sorry. In Glen Burnie, if you came out and
25 then if you --

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1 A Oh, I'm sorry. I'm saying White Marsh. You said
2 White Marsh.
3 Q At White Marsh, if you exited, whether you went
4 left or right, you would nonetheless have to drive through a
5 portion of the parking lot to exit, is that correct?
6 A Well, it certainly looks to me like you exit at
7 the very back of the parking lot. There is a small amount
8 of, very small amount of parking behind there, but
9 certainly, the major area of the parking is behind the
10 station, and you would not be driving through that main
11 portion of the --
12 Q But you're driving through a drive aisle, is that
13 correct, a parking lot drive aisle?
14 A At the back of the White Marsh? Yes.
15 Q Either way, actually, yes. Okay. So --
16 A It's really --
17 Q -- wouldn't you agree -- excuse me?
18 A But I would note that it is, again, with this one,
19 it's located well away from the store and the main parking
20 is not something that people have to transit the gas station
21 to park their cars.
22 Q And if you look, observe some of the other
23 pictures, you see different scenarios as well, but you would
24 agree that because of the varying site configurations, what
25 happens on one site may not necessarily happen on another

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1 site? Do you agree with that?
2 A Well, I would certainly agree that he would
3 probably design things differently on different sites.
4 MR. GROSSMAN: Well, it didn't exactly answer the
5 question.
6 THE WITNESS: Well --
7 MR. GROSSMAN: Her question was things would
8 happen differently because of variations in stations at
9 different sites. Is that -- that's the question.
10 THE WITNESS: I thought she said, I thought she
11 was talking about the day he designed it --
12 BY MS. HARRIS:
13 Q No. I'll repeat the question. Based on the
14 varying site configuration, one could not necessarily
15 conclude that what happens on one site will necessarily
16 happen on another site?
17 A Well, yes, because the sites are set up
18 differently, they will have different effects, yes.
19 Q Okay. And that this could actually depend on a
20 number of things, including the surrounding drive aisles,
21 whether it's public or private roads, the parking lots,
22 whatever. Those are all variations that could influence it,
23 correct?
24 A Yes, and that's why I was talking very
25 specifically about this site --

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1 Q Right. Okay.
2 A -- and the problems I saw here.
3 Q Okay. But the problems that you see here are
4 based in part on observations you've made at very different
5 stations.
6 A Well, what I was suggesting at very different
7 stations was the difficulty with getting people to line up
8 and fill in spaces exactly in the way that a maximum space
9 would be, and I don't think that has anything to do with
10 drive aisles or anything else. I think that has to do with
11 the fact of human behavior and the way that configurations
12 are laid out and that's why I saw problems with the couple
13 other ones that I was pointing out and some of the issues
14 you could see there and some of the reasons I saw problems
15 here.
16 Q But the number --
17 MR. GROSSMAN: Don't you think that's a fair
18 point, by the way, that human behavior being what it is,
19 that there are going to be spaces, that it's not going to
20 all exactly line up the way the plan shows?
21 MS. HARRIS: I think that's probably true, which
22 is exactly why having an attendant out there who can do
23 queue management would, would address the problem.
24 MR. GROSSMAN: Right. All I'm saying is that I'm
25 not sure whether showing all the stations where there is a

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1 problem and showing ones where there isn't a problem
2 ultimately convinces me one way or the other. It's just a
3 fact of human nature, as --
4 MS. HARRIS: True, but I think --
5 MR. GROSSMAN: -- Cordry says, that --
6 MS. HARRIS: -- to be shown a picture where there
7 are four queue lanes --
8 MR. GROSSMAN: Yes.
9 MS. HARRIS: -- where here there is eight, that
10 there is clearly going to be a difference in terms of the
11 impact during the peak hour of the station.
12 MR. GROSSMAN: What I'm saying is I guess I buy
13 both your points. I buy Ms. Cordry's point that there are
14 going to be variations from the perfectly lined up --
15 MS. HARRIS: Yes.
16 MR. GROSSMAN: -- vehicles that were, you know,
17 shown in the plan, and I buy your point that they're going
18 to be different at different stations, they're different
19 configurations.
20 MS. HARRIS: Okay.
21 MR. GROSSMAN: So I didn't want to waste a lot of
22 time on that issue.
23 MS. HARRIS: Okay.
24 BY MS. HARRIS:
25 Q And if I could, going back to the attendant,

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1 though, you seem to indicate that, well, that the attendant
2 -- you seem to suggest that for some reason people wouldn't
3 listen to the attendant. Is that what you were trying to
4 suggest?
5 A Well, I think people will listen to the attendant
6 when it happens to coincide with their best interest and
7 that if you can show them where there's a pump that isn't
8 being filled, they may very well do that. I'll have to say,
9 when I was at Elkridge, I didn't see a whole lot of him
10 pointing people to a pump there, but -- but will they listen
11 to him when he's telling them to get out of line and go
12 drive away and come back and waste some more time here? I
13 think that's less likely.
14 Q But at Elkridge is there an attendant that is
15 specifically assigned to queue management?
16 A Well, there's an attendant who's at the station.
17 I assume that that, from what I understand, that all of
18 them, that that's part of their job.
19 Q No. In fact, I believe that Mr. Brann testified
20 or Mr. Hurlocker testified that that is not their job, that
21 their job is to be taking care of the customer at the pump
22 and monitoring, regulating that process and it is not queue
23 management, which is why Costco had specifically agreed to
24 an attendant during the peak hour to do just that.
25 A Well, if we're going to get into who remembers

1 what, I think I also remember him saying, if it ever backed
2 up, then they would bring out additional attendants at any
3 particular store. And certainly, I did see them back there
4 at the back at one point, but you know --

5 MR. GROSSMAN: Both of you are correct again.

6 THE WITNESS: Yes, thank you. I certainly didn't
7 recall someone saying --

8 MR. GROSSMAN: It's good to be able to say that.

9 THE WITNESS: I certainly didn't recall any
10 testimony that he was not --

11 MR. SILVERMAN: Both of you are wrong.

12 THE WITNESS: -- supposed to try to manage the
13 queue.

14 BY MS. HARRIS:

15 Q I mean, one of your scenarios was, if you had two
16 long lines of queues -- I'm looking at Exhibit 231 -- if the
17 two center line queues are very long, then it wouldn't allow
18 for people the opportunity to come over and go to either the
19 queues further to the east or the west, but wouldn't it in
20 fact be in someone's best interest to go over to one of
21 those queues? And if in fact the attendant were telling
22 them to go over there, why would they resist that?

23 A I'm not saying they would resist it. What I'm
24 saying is that just as with these other stations here, that
25 the queues get there -- one gets there, one line gets

1 longer, and the person there has, for whatever reason, the
2 car doesn't go out as fast and then another one comes and it
3 gets in a place and it backs up. People, they just get into
4 place helter-skelter, not necessarily in these nice single
5 little lines, and then as the more helter-skelter you get,
6 the easier it is to start backing up. People come in the
7 center; if they can't get over to the edges, it backs up.
8 That's all I'm saying. It's not that anybody's trying not
9 to go. I mean, I'm sure they don't have any great desire to
10 spend time in line there, but he can't get them out of the
11 queue line any faster than the cars get through the pumps
12 and leave.

13 Q And didn't -- wait. Wasn't there also testimony
14 that if in fact -- well, first of all, did, you'd recall
15 that Mr. Guckert testified that it would be, that there
16 would not be queues on the ring road if in fact the 49 cars
17 could be accommodated on the site, correct?

18 A Well, I think what Mr. Guckert was saying was that
19 based on -- well, if you could put 49 cars on a site and the
20 49 cars were all that were queuing up, then yes, you
21 wouldn't have cars in the ring road. But I think, again, a
22 lot of his testimony was based on his conception as to how
23 many cars there would be based on, as I say, going back to
24 Sterling and Elkridge and taking his idealized numbers and
25 then doing adjustments down -- I mean, he's doing a lot of

1 adjustments and a lot of changes and things like that and
2 coming up with these assumptions as to how many cars there
3 would be and therefore how many people that would be on it.
4 I don't think the official queuing numbers are 49, in any
5 case. I think, I think it would be extremely hard for us to
6 get 49 cars on there as opposed to, say, 45. But in any
7 case, what I'm saying is what we've been able to observe is
8 that it's not at all uncommon that you don't get -- if you
9 think you can get 45 on there, that you actually end up
10 start spilling over far before 45.

11 Q Okay. So assume for a moment that it's not a
12 perfect science and, in fact, you don't get the 49 within
13 the queue area.

14 A Or 45.

15 Q Or 45. There was testimony, nonetheless, that if
16 there were to be queues outside the queue area, then what
17 the queue attendant would do is let people know that they
18 could not queue on the ring road. Do you recall that?

19 A And that's what I'm saying. That, that, I think,
20 is the part where, if you suggest --

21 Q Okay.

22 A -- that people should go and drive away and come
23 back, that that's going to be very difficult for people to
24 be willing to do.

25 Q Right, because what you suggested is if you've

1 waited in line to get in there, you're not going to want to
2 turn away. But if the first person queuing is told you
3 can't queue there, then no one else is in line, waiting to
4 be queued, correct?

5 A Well, again, that assumes, in the first place,
6 that the attendant is going to come out there in the middle
7 of that ring road and be trying to tell those people,
8 especially the ones coming from the left-hand side, is going
9 to try to walk out there and tell them don't sit here. I
10 think that's going to be a little (a) difficult and (b) a
11 little hazardous for him as well.

12 Q How does this differ from private educational
13 institutions, which often have a condition that says during
14 pickup and drop-off, you need someone out on the public
15 road, managing queues?

16 A Well, for one thing, those usually would (a) run
17 for perhaps a half or so in the morning and the afternoon as
18 opposed to all day long, and also, as I understand, they
19 usually try to set things up so that they keep people away
20 from that. I mean, I'm not saying that you would never have
21 an attendant there, and I think, you know, sometimes you
22 have to have -- at the peak holiday times, we have, you
23 know, coming into the mall where they have, you know, people
24 to help do that, but I think it's really a different
25 situation. Do you set something up where you assume from

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1 day one that essentially eight, nine, 10, 12 hours a day
2 you're going to have this kind of problem and have somebody
3 there? I think that's a very different situation from
4 something saying, for a very short period of time, at the
5 drop-off and pickup time you're going to have, you know, an
6 issue.
7 MR. GROSSMAN: I don't know --
8 BY MS. HARRIS:
9 Q Let's go back to the photos that we --
10 MR. GROSSMAN: I'm going to stop you for a second
11 on, you said eight, nine, 10 hours a day you would have this
12 problem. I mean, I don't think anybody is suggesting that
13 there's always going to be backups.
14 THE WITNESS: I'm not sure that, I don't know --
15 MR. GROSSMAN: So it's only a period. There are
16 some peak times that --
17 THE WITNESS: Well, it will be intermittent times,
18 but I think if you looked at the chart that Mr. Sullivan put
19 in in his August report about the scaler, that he showed
20 that --
21 MR. GROSSMAN: Right.
22 THE WITNESS: -- I mean, it showed pretty high,
23 pretty consistent numbers for most of the time period from
24 10:00 a.m. to, say, 7:00 p.m. It wasn't, you know, it
25 didn't mean every minute during all that time, but it wasn't

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1 that there was only a very small peak of time. There was a
2 very high peak of time where they were operating at 90 to
3 100 percent of the maximum and that's the kind of level
4 where -- it doesn't take very much for a free-flowing issue
5 to all of a sudden become a backup issue.
6 MR. GROSSMAN: Okay.
7 BY MS. HARRIS:
8 Q Do you recall Mr. Guckert testifying that 50
9 percent of the time there would be no more than two cars in
10 the queue?
11 A I understand he said that. I also looked at the
12 fact that I believe he was using a number of hours when the
13 station was closed. At Sterling, for instance, I think he
14 was including hours after 7 o'clock on a weekend night when
15 the station wasn't open. So I think he had a lot of zeros
16 in there that really weren't appropriately there.
17 Q I want to go back to Exhibit 352, which was
18 randomly selected, just the most recent pictures that are on
19 Google Earth that we pulled, I'm sorry, the -- yes, it was
20 352. Take a look at these and tell me, count the cars --
21 MR. GROSSMAN: 352 or -- the ones you just marked
22 are 356.
23 MS. ROSENFELD: 352?
24 MS. HARRIS: Yes -- oh, I'm sorry, 356.
25 BY MS. HARRIS:

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1 Q Take a look at these and give me a sense of where
2 at these stations is there a situation that's reflective of
3 what you're imagining is going to happen most of the day at
4 Wheaton.
5 A Well, since I don't know what time of day these
6 pictures were taken, I have no idea whether they're going to
7 be consistent with that or not, whether these were taken
8 when the warehouse was open or not, for instance, what day
9 of the week these were taken. I can't find a --
10 Q Well, let's go to 356 --
11 MS. ROSENFELD: Objection. Mr. Grossman, I truly
12 don't see the relevance in -- we have no idea what kind of
13 volume these stations do. We don't know what time of day
14 they were taken. There's -- no correlation has been
15 established on cross-examination between the design of these
16 stations and the one that's before us. I just truly don't
17 see the relevance of this line of questioning to what's --
18 MR. GROSSMAN: Well, as to the design, it's clear
19 that, that you've introduced a number of pictures of ones
20 that have different designs. So that's a
21 good-for-the-gander question there. If they're relevant in
22 your evidence, they're relevant in hers. As to the time of
23 day, that's a much different question because I see from
24 just looking at 356(a), I don't know if I see any cars at
25 the gas station. I'm not sure whether it was open --

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1 MS. HARRIS: But I would --
2 MR. GROSSMAN: -- when it was taken. So I think
3 that time of day would be a significant factor to that
4 question because, if you're going to say are there any
5 problems and the gas station is closed --
6 MS. HARRIS: Well --
7 MR. GROSSMAN: -- I don't think that's fair.
8 MS. ROSENFELD: And the day of the week and the
9 volume that this particular gas station sells.
10 MS. HARRIS: Well, actually, if you look at
11 356(a), I'd make two observations. One is, there are cars
12 in the Costco parking lot, which suggests that the warehouse
13 is open and --
14 MR. GROSSMAN: The warehouse, but as I understand
15 it, the gas station --
16 MS. HARRIS: Is --
17 MR. GROSSMAN: Not --
18 MS. HARRIS: -- always open when the warehouse is
19 open.
20 MR. GROSSMAN: Okay.
21 MS. HARRIS: And then, second of all, if one looks
22 carefully, there are -- there is in fact a car in the far
23 right lane on 356(a) and there's, there's another, there's a
24 couple of cars nosing out.
25 MR. GROSSMAN: All right.

1 THE WITNESS: I mean, I, I do not suggest, and I
2 think what my own observations were, that it's not that
3 there is never a time when there is never cars lined up.
4 I'm just saying that the evidence that we have indicates
5 that most -- many times a day, many days, for many hours
6 there will be large numbers of cars lined up and causing
7 problems.

8 MR. GROSSMAN: But I'm going to have to respond to
9 the objection here. As to the time-of-day issues and so on,
10 I would agree that, that the relevance of this becomes much
11 more questionable if I don't know what time of day it is and
12 so on. So I'm not -- I'm going to overrule the objection to
13 the extent that the pictures show other stations, just like
14 the opposition's pictures did, but the amount of weight I
15 can give it in terms of showing anything is very much
16 reduced by the fact that I don't know when they were taken.

17 THE WITNESS: Right.

18 MR. GROSSMAN: So --

19 THE WITNESS: I mean, I look at the White Marsh
20 one, parking lot looks maybe half full, maybe less;
21 considerably less full, very -- relatively small numbers on
22 the Glen Burnie one, and I'd say, when I go up to Wheaton in
23 the morning at 6:00 a.m. or 7:00 a.m., there's a number of
24 cars there which, generally, I believe, probably are the
25 employee cars. So that, that number doesn't look that

1 inconsistent with that kind of a possibility.

2 The Brandywine, it's a pretty small area of the
3 parking lot that's shown there. Some of it is full, one
4 section; some of it, not too full. It has substantially
5 more cars than some of the other pictures that had less cars
6 there. The Durham one looks like not very many cars at all
7 -- again, could very well be before the store is open.

8 On the Richmond, Virginia, one, pretty full cars,
9 pretty full parking lot, looks like you have your tanker set
10 up right in the middle of the station, which is, looks like
11 an odd configuration for me for where you'd want to put your
12 tanker truck filling up, but it clearly looks like it's
13 blocking a lane or two of cars there being able to get in
14 the station, and they, they are backing up there behind the,
15 you know, from the, from the pumps. So I guess that's what
16 I could say about those.

17 MR. GROSSMAN: Okay.

18 BY MS. HARRIS:

19 Q Okay. I want to move on to the photos that you
20 submitted. When did you first become aware of the Costco
21 gas station?

22 MR. GROSSMAN: Of which Costco gas station?

23 MS. HARRIS: The proposed Wheaton Costco gas
24 station.

25 MR. GROSSMAN: Okay.

1 THE WITNESS: It was either very late 2009 or very
2 early 2010. I'm thinking early January 2010. Someone, it
3 might have been Donna Savage, told me about that they heard
4 that there was this proposal to build a Costco warehouse and
5 to have a gas station with it.

6 BY MS. HARRIS:

7 Q And the aerials that you, that you distributed,
8 Exhibits 345, 350, and 351, those are from Google Earth, is
9 that correct?

10 A Yes.

11 Q And you didn't necessarily choose the first image
12 that came up on Google Earth, is that correct?

13 A No. I was picking ones for a particular purpose,
14 which was to show the question of whether or not queuing
15 would necessarily always be nice and neat and take up the
16 maximum area. So I was picking ones where I could show some
17 issues with respect to the way the queuing could operate.

18 Q And so to get to those pictures, in fact, you
19 jumped over a number of pictures where they showed that
20 there was no queuing problem, is that correct?

21 A They were different times. Again, I was not
22 looking specifically for the issue of whether or not that I
23 was going to demonstrate from Google Earth, for a picture
24 taken once a year or less often, what the overall queuing
25 was at a station. I was looking for some pictures to

1 illustrate a particular point I was trying to make.

2 Q And that point being the worst-case scenario
3 possible?

4 A My point was what I've just said, which was to
5 illustrate that when you line cars up at a station, you
6 don't always get people to line up nice and neat, you'd take
7 up the maximum or the minimum space.

8 Q On Exhibit 345 -- well, I understand from your
9 testimony that one of the reasons that you're concerned
10 about the queuing is because of where the special exception
11 area is in relation to the residential area south, is that
12 correct?

13 A To the south, to the west, the pool, all of those
14 areas, yes.

15 Q Okay. And then if we go to Exhibit 345, are you
16 aware that in the northeast corner, that that is in fact
17 currently under construction for residential development?

18 A I'm sorry. 345?

19 Q 345, which is the Elkridge site.

20 A Find that picture.

21 Q So the area pretty much directly east, yes, the
22 top right corner of the entire graph's area.

23 A Find every other picture but that one. I'm sorry.

24 Could I just look at your copy for the moment? I'm sorry.

25 Q Certainly.

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1 A And where are you speaking now?
2 Q The entire graph's swath?
3 A Okay, the area that's several hundred feet away,
4 looks like? Don't really have a scale on that map, but
5 looks --
6 Q Well --
7 A -- certainly not 125 feet.
8 Q Is it not directly across the street from a
9 three-lane road from the special exception area or from the
10 gas area?
11 MS. ROSENFELD: Objection. Objection.
12 Mr. Grossman, we have no idea what the setbacks for these
13 residential homes might be. The closest house could be, you
14 know, scaled on this an inch away or the closest houses
15 could be six inches away. There's, there's no facts in
16 evidence here for her to testify about.
17 MR. GROSSMAN: Well, she can say that --
18 THE WITNESS: Well, yeah. I mean --
19 MR. GROSSMAN: -- I mean, I don't think it's a
20 basis for an objection, but --
21 THE WITNESS: I mean, the simple answer is --
22 okay. I'm sorry.
23 MR. GROSSMAN: -- but if she can't answer the
24 question, she can say she can't answer the question. It's
25 your exhibit. So --

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1 THE WITNESS: Right, but our exhibit did not say
2 about --
3 MS. ROSENFELD: Well, we --
4 THE WITNESS: -- future development, which I
5 really have no idea whether there is or is not any --
6 MR. GROSSMAN: But that's a perfectly acceptable
7 answer. If --
8 THE WITNESS: Right, and that's fine.
9 MR. GROSSMAN: -- you don't know anything about
10 it, then --
11 THE WITNESS: Right.
12 MR. GROSSMAN: -- then you can say that.
13 BY MS. HARRIS:
14 Q Assume for a moment, and just assuming, that under
15 your scenario the system breaks down and there ends up being
16 a queue on the ring road.
17 A Okay.
18 Q Is the ring road a public road or private road?
19 A It's a private road.
20 Q And the posted speed limit?
21 A I believe the posted speed limit, I think is 15.
22 Q And have you ever seen queues or backups on
23 parking lot access roads or roads internal to a regional
24 mall parking lot?
25 A Well, okay, for this particular mall -- and I

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1 wasn't going to get into all of my traffic -- but I would
2 say that, yes, since the Costco warehouse has been built, I
3 have seen quite a few times one line backing up, going out
4 from the infamous Intersection 16 going down to University
5 Boulevard and out -- out into University Boulevard, but I
6 will, I was going to save my details on that until my later
7 testimony, but I've seen that. Other than that, in other
8 malls, at other times, really lines backing up, I mean,
9 other than waiting at a traffic light to go out, generally,
10 no, I would, I would say, it would not be usual to see
11 queues in a --
12 Q You don't have a situation where, for instance,
13 take Westfield at Montgomery Mall where you're trying to
14 turn into a parking area. The cars turn -- there's two cars
15 in front of you, trying to turn in; you're waiting for that
16 car to turn --
17 A Well --
18 Q -- that's never happened to you?
19 A Well, if you -- that isn't really what I'd call a
20 queue -- if you say is there never a time where someone is
21 waiting to turn before you turn, no. I would say that, yes,
22 that has sometimes happened. I would also say, well, yeah,
23 okay, if you have more than one car turning left.
24 Q And it's a reasonable expectation of someone
25 coming to a regional mall area that, in fact, there may be

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1 two, three, four cars ahead of them before they get to
2 whatever destination they're headed to on that mall
3 property?
4 A Well, I would say one car or so, possibly. I
5 would say three, four, those kind of numbers, I would think
6 that was actually pretty unusual. I think -- you know, you
7 usually have two lanes going both directions in a ring road.
8 Usually you don't have long numbers of people waiting to
9 turn into one particular spot, got room to go around behind
10 somebody, which we're not going to have now if we only have
11 one lane going from west to east. So you're going to have
12 much more likelihood of cars backing up along there.
13 MS. HARRIS: I have no other questions. Thank
14 you.
15 MR. GROSSMAN: Okay. Any redirect?
16 REDIRECT EXAMINATION
17 BY MS. ROSENFELD:
18 Q Ms. Cordry, with respect to the time that the
19 attendants would be required during normal/ordinary times of
20 the year and ordinary days of the week, you stated that it
21 would be a limited, perhaps limited number of hours, but do
22 you have experience or personal observations of the traffic
23 volumes at the mall during the holiday season?
24 MR. GROSSMAN: You're talking about at Wheaton
25 Mall?

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1 MS. ROSENFELD: At Wheaton Mall.
2 THE WITNESS: Yes. Yes, because I, I do live just
3 a block and a half away and I --
4 BY MS. ROSENFELD:
5 Q And what are your observations of the traffic
6 levels at that time?
7 A Okay. At the entrances coming in, the one I -- I
8 typically use either one or two entrances, either the one
9 at, off of Veirs Mill by the Wendy's, which is actually the
10 closest one to my house, or the Valley View entrance. I
11 actually oftentimes go into Valley View because there are
12 three traffic lights between my house and coming into the
13 mall --
14 BY MS. ROSENFELD:
15 Q Actually, Ms. Cordry, I'd like you --
16 A Sure.
17 Q -- I'm really focused more on the traffic volumes
18 within this parking area --
19 A Okay. Oh, within the parking --
20 Q -- and in the vicinity of the special exception.
21 A Okay. Well, certainly, I would say, if we're not
22 talking about the entrances here -- and certainly at the
23 holiday season there are, they have, oftentimes have an
24 attendant at the entrance by the Wendy's simply because
25 there's such a short area there, that it backs up very

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1 easily at the holiday season. But other than that, I don't
2 believe I -- possibly, maybe occasionally an attendant up
3 here by the Penney's because, again, you have kind of a very
4 strange configuration here where it has to go around and it
5 can, and traffic is coming this way and traffic trying to go
6 this way, but other than that, I don't believe I've ever
7 seen attendants in the back portion of the mall, certainly
8 not back here, certainly not when there was the Hecht's
9 here, and we didn't have attendants trying to direct traffic
10 back there.
11 Q But in terms of the amount of usage of parking, of
12 the parking, surface parking area where, in that quadrant of
13 the mall where the special exception is to be located --
14 A Yeah, right.
15 Q -- how would you characterize the amount of
16 parking as compared with other times in the year?
17 A Well, we haven't really gone through a holiday
18 season with the Costco yet in there, but right now on a
19 Saturday, just a regular Saturday on the, on the off season,
20 so to speak, it typically will be very full, sometimes
21 overflowing onto the ring road, more or less spaces on
22 there. So I would certainly expect that as soon as the
23 holidays come, it is going to be full all the time.
24 Q And would you expect that during the holiday
25 season, with more cars at the mall site -- presumably a

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1 percentage of them members of the Costco gas station -- that
2 there would possibly be higher volume or higher usage of the
3 gas station itself?
4 A I would certainly expect so, yes.
5 Q And so given that, would you expect that there
6 would be a higher likelihood of, of queuing at that time of
7 year?
8 A Yeah. I think it's a given that, yeah, that the
9 higher the volume is, that the more you're going to have the
10 backups, the more you're going to have the overflow and the
11 spillage.
12 Q With a potential domino effect?
13 A Yes.
14 Q Okay.
15 MR. GROSSMAN: Any recross from the Coalition?
16 MS. ADELMAN: No, thank you.
17 MR. GROSSMAN: Any recross from the applicant?
18 MS. HARRIS: Just one moment. No.
19 MR. GROSSMAN: All right. Thank you, Ms. Cordry,
20 appreciate it. All right. So now I guess we're down to the
21 inimitable Dr. Adelman.
22 MR. SILVERMAN: Yes, drum roll.
23 MR. ADELMAN: Can we take about three minutes
24 while I connect the computer and all that?
25 MR. GROSSMAN: Absolutely, even four minutes for

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1 you, sir.
2 MR. ADELMAN: Four minutes, okay, that's great.
3 MR. GROSSMAN: Let's just break until 10 to 3:00,
4 and then you'll be all set up?
5 MR. ADELMAN: Even be ready to rock and roll.
6 MR. GROSSMAN: Okay.
7 (Whereupon, a brief recess was taken.)
8 MR. GROSSMAN: All right. Dr. Adelman, have you
9 finished your testimony yet?
10 MR. ADELMAN: Yes, I have. Any questions?
11 MR. GROSSMAN: All right. Would you state your
12 full name and address, please?
13 MR. ADELMAN: Yes, I will. I'm Mark Adelman. I
14 live at 3206 University Boulevard West in Kensington,
15 Maryland.
16 MR. GROSSMAN: All right. Would you raise your
17 right hand, please?
18 (Witness sworn.)
19 MR. GROSSMAN: All right. You may proceed. Well,
20 are you going to be questioned by --
21 THE WITNESS: By -- yes.
22 MR. GROSSMAN: -- somebody, or are you going to do
23 a narrative form?
24 THE WITNESS: I'm doing a narrative. I'm
25 appearing -- I'm testifying for the Coalition. So --

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: -- I presume Applicant and KHCA and
3 KVCA and lawyers will question me.
4 MR. GROSSMAN: Well, I think --
5 THE WITNESS: But I will not do --
6 MR. GROSSMAN: -- Ms. Duckett has ducked out. So,
7 so --
8 THE WITNESS: Okay. No one will lead me. There
9 was some discussion of that, and I said that trying to lead
10 an academician in testimony was a hopeless endeavor. I'll
11 lead myself. Let's see.
12 MR. GROSSMAN: All right, sir. This, I guess --
13 I, although you've certainly participated in this whole
14 proceeding, I don't think you've testified at all. Am I
15 right?
16 THE WITNESS: That's correct.
17 MR. GROSSMAN: Okay. All right. Well, I'm
18 anxiously awaiting.
19 THE WITNESS: Except for some times when I managed
20 to sneak in testimony on cross-examination.
21 MR. GROSSMAN: Well, that's fine. That was fine.
22 Okay.
23 DIRECT EXAMINATION
24 THE WITNESS: So let me start with -- well, let me
25 start by thanking the applicant's team for educating me. I

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1 learned a lot during this process so far.
2 MR. GROSSMAN: We've all learned a lot during this
3 process.
4 THE WITNESS: And let me thank you, sir, in
5 advance because I noticed you give people a lot of time
6 between thoughts.
7 MR. GROSSMAN: Some people.
8 THE WITNESS: Some people, yeah. So what I have
9 here is a rather unusual presentation, and I'm afraid a hook
10 is going to descend from the ceiling and pull me off the
11 podium, but I'm an academician; so I tend to talk a lot and
12 get ahead of myself. I've racked, or excuse me, racked, I
13 have 66 slides and I've already done you a favor: I have
14 not introduced a single new filing and there's not a single
15 fact --
16 MR. GROSSMAN: And I appreciate that.
17 THE WITNESS: -- that we have introduced. They're
18 all in the files already.
19 MR. GROSSMAN: And I actually went through your
20 slide show. So I --
21 THE WITNESS: Okay.
22 MR. GROSSMAN: -- I saw your Gurtek (phonetic sp.)
23 quote and --
24 THE WITNESS: And you still came to the hearing --
25 MR. GROSSMAN: And I still came.

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1 THE WITNESS: -- I'm impressed. Okay. Now, of
2 course, any PowerPoint talk, the bullet points are sort of
3 the baseline for what one's going to say, and it won't
4 surprise you to know that I have, in addition to the 66
5 slides, 20-some or almost 30-some pages of brilliant
6 comments that I intend to make, and if past history is any
7 lesson, I will forget every single one of them. So I
8 actually have in my notes an admonition to stop after every
9 slide to make sure that you have time to read the next slide
10 and that I have time to try and figure out what wisdom I'm
11 going to use.
12 MR. GROSSMAN: But as an educator, you know that
13 you don't have to read it all. You can just --
14 THE WITNESS: I don't intend to read anything --
15 MR. GROSSMAN: Thank you.
16 THE WITNESS: -- no. As a matter of fact --
17 MR. GROSSMAN: Okay.
18 THE WITNESS: -- that's my, that's my forte. I
19 learn it beforehand, and I give it the best shot I can.
20 MR. GROSSMAN: All right, excellent.
21 THE WITNESS: So, let's see. Okay. We have been
22 at this a very long time, and in the process I've learned a
23 number of things: number one, I will never be a lawyer;
24 number two, I'll never give expert testimony -- I have
25 expertise, but I'm not an expert -- number three, I am never

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1 going to understand the logic or the language of legal
2 proceedings, no matter how much I try, so -- and the fourth
3 thing I've learned is the title of this slide.
4 Now, I'm not -- this is Slide No. 1. I'm not
5 going to read most of these slides, but I do want to read
6 into the record or the transcript the title of this: An
7 Analysis of Costco's Case-in-Chief with Special Emphasis on
8 Its Land Use Report and Its Traffic Impact Analysis,
9 Reaching the Conclusion That the Applicant Has Failed to
10 Meet the Burden of Proof on Any of the Elements of the Code
11 Relevant to OZAH Case No. S-2863, and this is Part 1. This
12 slide is an example of an adage that people who present
13 professionally as scientists or educators often give to
14 younger college, which is, tell them what you're going to
15 tell them, then tell them, then tell them what you told
16 them. So that's what I'm going to tell you, sir --
17 MR. GROSSMAN: All right.
18 THE WITNESS: -- or I hope. Oops. And as you
19 know because of our e-mail exchanges, this is the first part
20 of a two-part presentation. There are a couple of reasons
21 why it's in two parts. The first is that because I have a
22 paralyzed vocal cord, which explains my weak voice, I really
23 couldn't give both parts on the same day. It simply
24 wouldn't be possible. The second is that the two parts are
25 really fundamentally different in content. And the second

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1 part, which will be, I guess, in November, 14th probably,
2 I'll be talking what I think is a fairly conventional kind
3 of presentation here, discussion here, which is, I'll be
4 deep down in the weeds about traffic impact, lots of facts.
5 This first part is, it's meant to be in an
6 appropriate format as a rebuttal to the land use report,
7 which, as you know, is a sort of overarching statement; it's
8 a summary statement. I guess Ms. Harris would call it a
9 conclusionary statement, the land use report, and my
10 rebuttal is pitched at that level.
11 I want to characterize what I'm going to say
12 before I get to the outline. There are two ways to look at
13 this. One is that this is an attempt of what I would call
14 close reasoning, and I tend to retain phrases. It took me a
15 while to figure out where I found the term close reasoning,
16 but I finally found the source, the definition, and if you
17 care, I can give you the URL for the definition I'm going to
18 read. So close reasoning is, quote, necessary when the
19 argument seeks to persuade the reader, or the listener,
20 rather than demonstrate that a particular conclusion is
21 inevitable. And the same source continues that the reasons
22 must show that the conclusion is the best that can be
23 reached rather than some absolute.
24 Now, in another sentence -- and it's actually much
25 more applicable -- what I'm going to be doing today is what

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1 I call an extended analogy, an analogy to the lecture I gave
2 every year -- the first lecture I gave every year to the
3 freshman in medical school when I was teaching. It was
4 meant to frame the course and I want to frame this whole
5 subject from my point of view. It's formulated in terms of
6 teaching adult learners, and I'll come back to an
7 explanation of what an adult learner is when I talk about my
8 credentials.
9 So this is an outline of the testimony, and as you
10 know, what I'm trying to do always, because I'm a scientist
11 and an educator, is to be as logical as I can, and we've
12 already had a brief discussion about how difficult it is to
13 be logical in something as intricately interwoven as this
14 is, this subject is, but I intend to try to force some logic
15 on this presentation. So this is Slide 3 now, and it's
16 simply a statement of the elements of the testimony as I
17 perceive it going forward, and if you don't have any
18 questions about the outline, I can proceed.
19 MR. GROSSMAN: You may proceed.
20 THE WITNESS: This obviously is a restatement of
21 my address, and below it is a picture, and this picture is
22 an example of killing two birds with one stone. It's dark,
23 I apologize. Let's see. Can I make this any brighter?
24 Probably not. Where I've put the pointer, which is upper
25 center of the field, is very, very close to our house, which

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1 is at the intersection of Hobson and University Boulevard.
2 Now, for reference, the special exception site is
3 all the way up here. It's actually off the edge of the
4 field of view to the upper right. And the reason I'm
5 showing you this slide and the reason I'm using it now --
6 and I will use it again in my traffic impact testimony -- is
7 to indicate that we live a very long way from the special
8 exception site. Most of the people who are appearing before
9 you in opposition, in fact, live a very long way from the
10 special exception site. I'm in no way a resident of the
11 neighborhood as defined by planning staff, for example,
12 although, of course, I do live in the neighborhood as
13 defined for purposes of the needs analysis.
14 Why is that important? I'm here testifying
15 because I think the special exception is not appropriate for
16 a number of reasons, which I'm going to talk about
17 momentarily, and not because it has any immediate, obvious,
18 crucial impact on me.
19 MR. GROSSMAN: What distance are you, is your
20 residence from the site?
21 THE WITNESS: I don't actually know. I would say
22 at least a mile.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: A mile?
25 MS. ADELMAN: A mile maybe, yeah.

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1 THE WITNESS: A mile. Let's put it this way:
2 There is no way that you can say it's in our backyard.
3 We're not -- there will be some small impact on us because
4 any increment in traffic to the mall means an increment in
5 traffic on University Boulevard and every increment is an
6 annoyance, a nuisance. But I'm really here, I've really
7 been participating in all this process for one simple reason
8 -- well, actually two simple reasons. One is that I'm
9 stupid and got sucked into it, and the second reason is that
10 I made a promise to my neighbors and, if I make a promise to
11 my neighbors, if I make a promise, period, I intend to keep
12 the promise.
13 The Slide No. 5 is a restatement of the oath, and
14 I wanted to make a point that, obviously, as a scientist and
15 an educator I always tell the truth. So I don't need to
16 take the oath when I walk in here. It's part of what I do.
17 But I also understand that it's sometimes very tricky to get
18 at the, quote, truth, and there's a certain reality of the
19 old saying that truth is in the eye of the beholder. So a
20 large part of what I'm going to be doing, I hope, in this
21 presentation, this testimony is to attempt to convince you
22 that there are different ways to see this issue.
23 MR. GROSSMAN: All right.
24 THE WITNESS: This is my résumé. I don't know if
25 you can read all of it. I do want to go down it in a bit of

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1 detail because, while I'm not an expert in any sense that
2 applies to these hearings, I have considerable expertise
3 that I think is relevant. And this is not a question of
4 tooting my own horn. This is a question of trying to make
5 the point that comments I'm making are based on the
6 extensive experience and, in some cases, formal training
7 that I have. So I believe -- I don't know how you're going
8 to define weight -- I believe they carry the weight that you
9 should assign to considerable expertise, and I want to
10 explain exactly what I mean. So I'm going to spend some
11 time on this slide, which is Slide No. 6.

12 MR. GROSSMAN: Well, you don't get the weight as
13 an expert without going through the qualification as an
14 expert.

15 THE WITNESS: I understand, and I want to be
16 very --

17 MR. GROSSMAN: So --

18 THE WITNESS: -- precise, I am not appearing as an
19 expert. I'm simply saying that, as you know, there are
20 levels of expertise --

21 MR. GROSSMAN: Yes.

22 THE WITNESS: -- and I want to make clear to you
23 the level of expertise I have. I am not testifying as an
24 expert.

25 MR. GROSSMAN: Well, in a sense, you're asking for

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1 your cake and eating it too, because --

2 THE WITNESS: Precisely.

3 MR. GROSSMAN: But we don't let that happen, in
4 fairness, because experts have to go through a qualification
5 phase, as you've seen with the other experts here. So, you
6 know, you'd be entitled to the weight that the force of your
7 testimony warrants.

8 THE WITNESS: That's fine. That's fine.

9 MR. GROSSMAN: Okay.

10 THE WITNESS: And I'll repeat: I have, I have
11 relevant expertise, and --

12 MR. GROSSMAN: Well --

13 THE WITNESS: -- I use language very precisely. I
14 say what I mean and I mean what I say, and to me, expertise
15 is a gradation of levels of qualification, if you will.

16 MR. GROSSMAN: It is, but it has a particular
17 meaning in the law --

18 THE WITNESS: Uh-huh.

19 MR. GROSSMAN: -- as which I have explained --

20 THE WITNESS: Uh-huh.

21 MR. GROSSMAN: -- on prior occasions. So that's
22 the way I'm using it.

23 THE WITNESS: I understand. So, first of all, I'm
24 the webmaster for the Coalition and that began in October of
25 2013 -- 2012. There's another error. Okay. That began

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1 October of last year. And what does a webmaster do? Well,
2 in my case, in a very short time period, I had to read, to a
3 certain level of understanding, every single document that
4 Costco had then filed, the various information available as
5 to the law, the code, rules of procedure, so forth and so
6 on. I had to organize it in a fashion that made it
7 accessible to people who had spent less time understanding
8 it, and I had to see it as a whole in order to make it a
9 website. It had to be done very quickly because we were
10 preparing to make a number of filings to planning staff --

11 MR. GROSSMAN: But let's -- you're giving me a lot
12 more background than I really need.

13 THE WITNESS: Okay, fine. I'm a civic activist
14 for nearly 20 years and that means I've done a lot of
15 testimony for the Board of Education and the County Council.
16 I'm an academician. I won't go into my research because
17 that's not crucial to this, but what it does mean is that I
18 have extensive experience doing critical analysis and
19 deductive reasoning. And I use the scientific method, I use
20 it all the time, and I think the scientific method is a
21 different way of testing a hypothesis than was used, for
22 example, by Mr. Cronyn and that's in court different, which
23 I'll come back to.

24 I'm an educator. I educated medical students for
25 37 years or more, and I taught specifically adult learners,

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1 and this is the point I wanted to make right now, and I hope
2 you'll let me clarify. An adult learner is not simply a
3 person who's old. An adult learner is -- and this is
4 education theory -- an adult learner is a person who has
5 already extensive formal educational training and is seeking
6 to learn about a specific topic or topics in order to solve
7 a specific problem. So my medical students were adult
8 learners. I'm an adult learner. You're an adult learner.
9 You, I've observed you, want to learn what you need to know
10 to solve a problem.

11 Adult learners have -- I have to phrase this
12 carefully -- certain attitudinal problems. When I say
13 attitudinal problems, I'm not talking about a bad attitude.
14 Adult learners, for very good reason, know that they know a
15 lot and that they have done many things and what they have
16 done they have done successfully. So there is a resistance
17 -- it's inherent to being an adult learner -- to thinking
18 about a topic which appears to be the same as previous
19 topics in a slightly different way, not radically different,
20 slightly different.

21 MR. GOECKE: Mr. Grossman, I would object to this
22 testimony as irrelevant. I'm not sure how this pertains to
23 the hearing.

24 MR. GROSSMAN: I agree with you that it's very
25 tangential to, but I'm going to give Dr. -- he's sat here

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1 through the whole process, and I'm going to give him some
2 leeway in the way he wants to approach this. So --
3 THE WITNESS: Right. Then --
4 MR. GROSSMAN: But we do want to try to hone in on
5 the --
6 THE WITNESS: Fine. Then I'll --
7 MR. GROSSMAN: -- points that your trying to
8 make --
9 THE WITNESS: I'll move on.
10 MR. GROSSMAN: -- rather than the background
11 issues.
12 THE WITNESS: Fine. I'll skip that one entirely,
13 and I may come back to this slide, Slide No. 8, Why Testify?
14 Now, Mr. Grossman, you've observed that you have a plethora
15 of factual information. I have not added more to your
16 burden, deliberately, because I think in many cases too many
17 facts get in the way of seeing the answer to the question.
18 That's a premise that I use with my medical students all the
19 time, and I know it works. Very often, simply stepping
20 back, seeing the forest and the trees, in fact, is the
21 solution to the question.
22 Two quotes here, or one quote and one statement.
23 The first bullet point is what Ms. Harris said in her
24 opening statement. I'm not going to read it. You have it.
25 It's in the transcript. That's a direct quote.

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1 MR. GROSSMAN: Right.
2 THE WITNESS: The second statement, I think, is
3 more accurate. I'm not going to read it either, but I'd
4 like you to.
5 And now, this is a slide that, to me, is so
6 central to my argument that I made a poster. It's my one
7 display of that slide because I want you to see Gurtek's
8 quote every time you look at the screen with my slides.
9 It's a slide that I showed to my medical students every
10 year, and most of them objected to it, didn't get it but
11 eventually came to me and said I finally got it, I
12 understand what you're saying. So bottom line, I want you
13 to see things the way I see them.
14 So now I'm going to go through a couple of points
15 that have to do with elements of the process that you're
16 following, which I -- well, you know them better than I do,
17 but I'm seeing them in a different way. So, first of all,
18 the burden of proof: the applicant has to show that for
19 each relevant element of the zoning code, that the applicant
20 has, by a preponderance of the evidence, satisfied,
21 et cetera, et cetera, et cetera. Preponderance of the
22 evidence is, as I understand it, 51 percent, and the
23 opposition doesn't have to prove anything. Our job is, as I
24 understand it, to help you see the facts and help you see
25 them perhaps in a way different from what the applicant

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1 would have you see them, but we don't have to prove
2 anything. Our job is to help you understand the factual
3 basis upon which you will make your decision.
4 MR. GROSSMAN: You don't have the burden of
5 persuasion, the burden of proof, but I wouldn't necessarily
6 equate that with not having to prove anything.
7 THE WITNESS: Okay, convince, we do have to
8 convince you.
9 MR. GROSSMAN: Well, you may have to produce
10 evidence that rebuts sufficiently what has been put on by
11 the other side. So I wouldn't say --
12 THE WITNESS: Fine.
13 MR. GROSSMAN: -- you don't have to prove
14 anything.
15 THE WITNESS: Okay. And just a trivial point, I
16 frankly have thought about this a great deal, and I don't
17 envy you your job and I don't understand how you're going to
18 determine 51 percent, and you know where I'm going. That
19 is, to a scientist, determining 51 percent versus 50 percent
20 is not easily done. If I had a balance and I were told to
21 weigh out 51 percent saturated solution of sodium chloride,
22 I'd know exactly how to do that. And by the way, I'd point
23 out, I think someone made a reference to a sports --
24 something about a tie or being equal. I think you said at
25 one point earlier that you were going to give each side the

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1 right to make their point so it was a tie, and I would point
2 out that 50 percent, 50 percent, rather than 51 percent, is
3 a tie and in many, many cases the tie goes to the home team
4 and we're the home team. Okay.
5 MR. GROSSMAN: I wouldn't get too caught up on the
6 51 percent versus 50-and-a-half percent or 52 percent.
7 That's not really the point. The point is that the
8 applicant has the burden of persuasion. So that's just the
9 point. It's put in terms of 51 percent just to show that
10 they must prove their case. That's the concept.
11 THE WITNESS: Fine. My point is that --
12 MR. GROSSMAN: But all the evidence goes toward
13 that. I mean, it's --
14 THE WITNESS: Uh-huh.
15 MR. GROSSMAN: -- conceivable that the opposition
16 puts in evidence that I would feel weighs against them.
17 It's just that all the evidence is what has to be balanced.
18 THE WITNESS: Absolutely. Absolutely, I would
19 expect nothing else. In the original filing -- by the way,
20 I tried, whenever possible, to actually list the OZAH
21 exhibit number so that people who wanted or cared to follow
22 what I'm saying could look at the exhibit number -- but in
23 our original filing, in rebuttal of this land use report, we
24 asserted that the applicant had not met the burden of proof
25 on any of the elements or the code that they're required to

1 When I said that the filing was filled with
2 misleading statements, I was not saying that Applicant was
3 deliberately misleading. I'm saying that if you read the
4 filing at multiple points, the words you read -- and words
5 matter to me -- will, I believe, mislead you. I don't know
6 if they'd mislead you, but I believe they'll mislead you.

7 MR. GROSSMAN: Okay. So what specific points are
8 you talking about?

9 THE WITNESS: So the first point I want to make is
10 that this, this testimony is not introducing anything that
11 was in the previous, or almost anything that was in,
12 originally in 87(b). These are new points. I stand by all
13 of the previous points. In fact, I reread that document and
14 I think it stands for itself. It made a number of, I
15 believe, valid points.

16 This is a statement of what I'm not covering
17 today. I'm not going to use this as an opportunity to do a
18 detailed critique of every element of the land use document
19 because it contains references to other documents by the
20 applicant which will be addressed in great detail by other,
21 and others in opposition. When I come back for Part 2, I'm
22 going to be specifically introducing reasons why the facts
23 asserted in the traffic impact analysis should not be given
24 any weight. I'm making a couple of very brief comments
25 about a number of things.

1 The neighborhood needs analysis, Ms. Cordry has
2 covered this very much in detail. I just want to point out
3 that regardless of whether you decide that there is or is
4 not a need for the proposed gas station, there is no way
5 that you can reject that that need is going to be satisfied
6 for the, for the bulk of the residents of the neighborhood.
7 That need, if it exists, only will be satisfied for the
8 members of Costco and that's a small percentage, 25 percent
9 of all the residents of the neighborhood.

10 Now, a couple of things. First of all -- and you
11 may think this is cutting words too finely -- but your staff
12 or you yourself recognized this difference, even though you
13 may not have realized it. This is not a land use report.
14 This is a projection. This is a plan. Your staff called it
15 a land planning report and that's correct. And the reason
16 I'm raising that point is that if the applicant views this
17 as a land use report, which it does, it views it as, in
18 essence, a done deal.

19 MR. GROSSMAN: I think you're slicing the salami
20 too fine here in your effort to closely define words. It's
21 just a term, once again, a term of art. Land use is an area
22 of the law. And so when somebody files a land use report,
23 they're talking about a report that addresses that area of
24 the law.

25 THE WITNESS: If you, sir, have --

1 MR. GROSSMAN: I think you're overly concerned
2 with that type of language use. I agree with you, words
3 matter, but in this case, they don't. In this case, the
4 title Land Use Report as distinguished from Land Planners'
5 Report or Land Planning Report, is a distinction without a
6 difference.

7 THE WITNESS: I disagree, sir. Someone --

8 MR. GROSSMAN: Fair enough.

9 THE WITNESS: -- on your staff or you changed that
10 title. There was a reason for it.

11 MR. GROSSMAN: Someone on my staff probably.

12 THE WITNESS: Okay. All right. The graphic,
13 which was in OZAH 86, page 18, has a couple of circles.
14 Those circles are labeled with the numbers 200 and 400. If
15 you look at that graphic, because those numbers are not
16 labeled, not defined as either radius or diameter, it's
17 misleading because the natural tendency is to look at that
18 figure and say the distance between, for example, the
19 special exception site and the nearest house, which is down
20 here, excuse me, the lower center of the slide, is close to
21 400 feet. In fact, because of the way this slide is, the
22 figure is labeled, you are being misled. Unless, unless you
23 saw that and you understood that and you weighed it that
24 way --

25 MR. GROSSMAN: Well, my vague recollection is that

1 he was questioned, Mr. Gang was questioned on the stand
2 about what the circles meant, as I recall --

3 THE WITNESS: Uh-huh.

4 MR. GROSSMAN: -- as to what those distances were.
5 I don't recall --

6 THE WITNESS: My recollection --

7 MR. GROSSMAN: -- the detail of that, but I'd have
8 to go back to the transcript to --

9 THE WITNESS: My recollection is that the argument
10 had to do with exactly how many feet. It was not, not the
11 more global question of whether it's radius or diameter. It
12 was an argument about five or 10 or 15 feet, and I'm talking
13 about a factor of two, which is a large amount.

14 MR. GROSSMAN: But in what sense is that an issue
15 here? I understand the distance between the closest home
16 and the site is a critical figure in the case, but I don't
17 understand the point you're making.

18 THE WITNESS: Okay. I am, I am trying to make the
19 point that there's a consistent thread of misleading
20 statements and, in the aggregate, they mislead the reader or
21 the listener, possibly, I do not know, but I want to
22 establish that there is a pattern of misleading statements.

23 MR. GROSSMAN: What is that particular --

24 THE WITNESS: The factual --

25 MR. GROSSMAN: What is that misleading me to

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1 believe then? I don't quite understand your point.
2 THE WITNESS: It leads you to think in terms of
3 houses that are further from the special exception site than
4 they in fact are. It leads you to think in a general sense
5 that the problem is less than it is.
6 MR. GROSSMAN: I don't, I truly don't follow that.
7 Was there -- I can't recall. On that particular figure, is
8 there something that says whether that's feet, yards,
9 whatever, meters? Is there something on there that --
10 THE WITNESS: It says, it says 200 feet. That's
11 it, or 400 feet.
12 MR. GROSSMAN: I don't see -- where is it on
13 there? I don't see it from here, from this distance.
14 THE WITNESS: Excuse me. This is No. 27.
15 MR. BRANN: It's very difficult to see,
16 Mr. Grossman, but there's 200 feet right here and then 400
17 feet --
18 MR. GROSSMAN: Right.
19 MR. BRANN: -- right there.
20 MR. GROSSMAN: Okay. You're raising the point of
21 whether or not the 200 feet and 400 feet distances are
22 radius or diameter; is that what you're saying?
23 THE WITNESS: Right.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: Precisely, and what the impact is on

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1 your thinking of the difference.
2 MR. GROSSMAN: Okay. All right. So, and you're
3 suggesting that the actual, the references here are to
4 diameter rather than to radius?
5 THE WITNESS: Yes.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: I'm saying that that is the only
8 way --
9 MR. GROSSMAN: Right.
10 THE WITNESS: -- that you can interpret those
11 figures but they're not labeled that way and the natural
12 tendency is to assume radius --
13 MR. GROSSMAN: Right.
14 THE WITNESS: -- and therefore the natural
15 tendency is to see this -- remember the Gurtek slide -- to
16 see this as a statement that the closest house is close to
17 400 feet away when in fact it's much less than 200 feet.
18 MR. GROSSMAN: I understand. To me, this is -- it
19 would have been a significant point if it weren't for the
20 fact that we clearly established and I had witnesses testify
21 as to what the precise distance was to the closest house.
22 So I don't see this as a -- I see this as a labeling issue
23 and, as you say, misleading but not intentionally. You're
24 not claiming it was intentional, but -- you call it sloppy
25 or intentional. The point is that, that we got the correct

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1 information. So I just don't see this as a big issue.
2 THE WITNESS: And my point, and I'm trying to be
3 very careful, is that -- let me back up. We all know that
4 this is not your typical gas station, a request for approval
5 of siting a typical gas station. And the fact that we're in
6 -- what is this? Hearing No. 18? The fact that we're doing
7 this process is an inherently, recognition that this is a
8 very atypical, I don't want to say unique, but close to
9 unique case; that the way in which any hearing examiner -- I
10 don't know how you think, I cannot know how you think -- any
11 hearing examiner who's used to, who routinely evaluates this
12 kind of application is going to have an inherent, I don't
13 want to say bias, an inherent way of seeing things, and
14 there is an expectation, which is at a level which I don't
15 think any human being can in fact recognize without having
16 it pointed out, that this is about a gas station and there's
17 a series of numbers that have to be evaluated and there's a
18 cumulative effect of misleading statements, which I don't
19 know -- and that's why I'm testifying -- I don't know if you
20 have overridden that inherent predisposition.
21 MR. GROSSMAN: Okay. So what's the next one after
22 this?
23 THE WITNESS: Uh-huh. I guess that speaks for
24 itself, Slide 28. Fundamentally, it's not just a gas
25 station.

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1 The motion for summary disposition that I filed --
2 and by the way, I'll be re-filing it with the Board of
3 Appeals -- was based on a fact which is now known to be
4 changed and which I maintain and continue to maintain, by my
5 reading of Section 10.2 of your rules of procedure,
6 justifies the motion I made. On that third bullet point,
7 the error in the statement originally that the number of
8 entrances to the mall were three on University and two on
9 Veirs Mill Road was a trivial error and it's been corrected,
10 but the revised land use report still contains the statement
11 that there are three entrances on Veirs Mill and two
12 entrances on University Boulevard. Now, that's factually
13 correct, but it leads to the impression of a level of degree
14 of access which does not exist, because the three entrances
15 on Veirs Mill all funnel to one bottlenecking point, and
16 I'll spend more time on that when I talk about traffic
17 impact.
18 I think a number of people have talked about
19 Bullet Point 1 in Slide 30, and that is that the consistent
20 reference to the Montgomery Ward business was, in my mind,
21 misleading. It conveyed the notion that there was
22 previously an automotive service center, and for most people
23 an automotive service center is equatable with a gas
24 station. There was none, never was, and even if there had
25 been, it was not in that location. So this is a misleading

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1 statement.

2 The numbers of visitors have been revised upward,
3 quite significantly. I don't have -- let's see. I should
4 have referenced -- excuse me while I find it. This is OZAH
5 198. It's the addendum or memorandum from Mr. Flynn, on the
6 back of which, the last page, page 5, he quotes the current
7 estimate from, provided by Westfield, as to how many
8 visitors there are to the mall. The number has tripled
9 since the original estimate.

10 If you look at those numbers, the number for the
11 Costco store is 4,146. The original number provided was in
12 the range of 4,000. I am not asserting that anyone has
13 misrepresented the numbers, but it's very hard for me to
14 believe that the tripling of the clientele, patronage to the
15 mall, could not have in fact been primarily due to the
16 opening of the Costco store. And the original estimate for
17 the number of patrons to the Costco store was much less.

18 MR. GROSSMAN: And what was the original estimate?
19 THE WITNESS: I knew you'd ask that, but I can't
20 remember the number.

21 MS. CORDRY: Are you talking specifically for the
22 Costco store? I don't think we had a breakout before that
23 testimony.

24 THE WITNESS: I believe the original number was in
25 the range of 5,000, but I'm not sure because that was

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1 never --

2 MR. GROSSMAN: Well, I don't understand. You said
3 it's 4,146 --

4 THE WITNESS: Currently.

5 MR. GROSSMAN: -- that's the number you just gave
6 me. So why something in the --

7 THE WITNESS: Currently the number on this chart
8 is 4,146.

9 MR. GROSSMAN: Right.

10 THE WITNESS: If the patronage of the mall has
11 increased by a factor of three and the bulk of that increase
12 or a very large percentage of that increase is due to the
13 opening of a warehouse store -- which I believe it must be,
14 because what else has changed substantially in that period
15 of time? -- how can the number for the patronage of the
16 store be only 4,000? How can it not have also increased by
17 a factor of two or three?

18 MR. GROSSMAN: I don't follow that logic. I don't
19 understand what you're saying, and if you haven't gotten me
20 numbers, if you don't have numbers to back up what you're
21 saying, I can't --

22 THE WITNESS: There is no number. That's my
23 point. That's my precise point. There is no number for
24 comparison. The only number we're provided is in this
25 chart, which is page 5 of --

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1 MR. GROSSMAN: You said 4,146 is the patronage of
2 the Costco store.

3 THE WITNESS: Right.

4 MR. GROSSMAN: And what is misleading about that
5 number?

6 THE WITNESS: Well, I'm asking you to apply some
7 simple logic. If the estimate that Westfield provided as to
8 the total number of visitors to the mall was originally
9 13,000, it is now 44,000, that's a threefold increase.

10 MR. GROSSMAN: So you're saying 13,000 was the
11 number that Westfield originally --

12 THE WITNESS: Precisely.

13 MR. GROSSMAN: -- said was the mall patronage?
14 THE WITNESS: Correct.

15 MR. GROSSMAN: In what period of time?
16 THE WITNESS: That was, that was on their average
17 weekday and that was what was in the original report, the
18 original land use report.

19 MR. GROSSMAN: Okay. And now it is what?
20 THE WITNESS: According to this filing, 44,202.

21 MR. GOECKE: Which filing, please?
22 THE WITNESS: This is Exhibit 198.

23 MR. GROSSMAN: Yes, I think, you didn't -- I don't
24 think you said these numbers before. So that's why --
25 THE WITNESS: Okay. I'm sorry. I apologize. I

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1 am looking at OZAH Exhibit No. 198. That's the filing by
2 Mr. Flynn. And on the back page, which is page 5, he has
3 Exhibit 4, which, when we questioned him, he said were
4 numbers provided to him by Mr. Agliata, and they were, I
5 believe, given to him on May 1st of 2013.

6 MR. GROSSMAN: And you're suggesting that since
7 the original projection of average weekday mall population
8 was 13,000 and now it's 44,000, that that increase should
9 have been reflected in the Costco numbers?

10 THE WITNESS: Precisely.

11 MR. GROSSMAN: And what difference does it make to
12 me if they are or they are not?

13 THE WITNESS: The patronage of the Costco store
14 gives, by a computation of roughly a factor of, roughly a
15 division by three, the expected patronage of the gas
16 station, because the number being used is approximately 30
17 percent of the patrons of the store who will patronize the
18 gas station.

19 MR. GROSSMAN: I know, but if the figure for
20 Costco is accurate of 4,146 --

21 THE WITNESS: Uh-huh.

22 MR. GROSSMAN: -- what difference does it make to
23 me if the, if there were some variance between the
24 original --

25 THE WITNESS: I'm saying to you --

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1 MR. GROSSMAN: -- Wheaton Plaza estimate and the
2 current Wheaton Plaza estimate? Aren't we just concerned
3 with the, with the estimate for the Costco --
4 THE WITNESS: No. Neither number is an estimate.
5 The numbers that I've quoted to you are numbers that have
6 been observed.
7 MR. GROSSMAN: Okay, observed numbers.
8 THE WITNESS: Okay. The number that has been
9 reported as observed as of May is 4,000 for the store.
10 That's very, very close to the number that was provisionally
11 assumed to be the patronage of the store.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: Okay? But the number of patrons to
14 the mall has tripled.
15 MR. GROSSMAN: So what, is my question. I mean,
16 why does that affect anything I have to evaluate? Why does
17 the number of --
18 THE WITNESS: It calls into question the accuracy
19 of the number for the Costco store. Where did it come from?
20 MR. GROSSMAN: Well, if you said it's not based on
21 an estimate but based on a count, that's where it came from,
22 according to the testimony.
23 THE WITNESS: Have you been provided any
24 information other than a count, the number on a chart?
25 MR. GROSSMAN: I, to tell you the truth, I don't

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1 recall if all the paperwork provides me with anything other
2 than a count or, or testimony, but where does this, where
3 does this get me?
4 THE WITNESS: Then I'd ask you to entertain the
5 possibility that there's an error in that number --
6 MR. GROSSMAN: Well --
7 THE WITNESS: -- and to consider requesting
8 accurate numbers or proof that --
9 MR. GROSSMAN: You can --
10 THE WITNESS: -- the number is correct.
11 MR. GROSSMAN: You're welcome to introduce any
12 evidence that the, that the opposition wants to introduce,
13 challenging a number of what's anticipated at the gas
14 station, if that's your point ultimately, that it's 30
15 percent of the Costco store amount, but you want me to go
16 through a calculation, estimating what it might have been
17 if, you know, if there is some error in the numbers, and I
18 don't think I should do that. I'll rely on the evidence
19 that's presented to me and any cross-examination that, that
20 throws that into doubt or any other contrary evidence
21 that --
22 THE WITNESS: So if I understand -- and please
23 correct me if I'm wrong on this -- if I understand, you're
24 saying if I want to convince you that the count is in error,
25 I must provide you counts that we did?

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1 MR. GROSSMAN: Or show me where the error is in
2 their count --
3 THE WITNESS: Which --
4 MR. GROSSMAN: -- not by an assumption. If I had
5 to guess, I would say that one of the mall estimates or what
6 you're reporting to me of what was originally said as 13,000
7 average weekday and now they're saying 44,000 average
8 weekday, one of those is not accurate, either because you're
9 reporting it incorrectly or because they stated it
10 incorrectly. That's what I, if I had to make an assumption,
11 rather than the Costco count, just would be my guess, I
12 think, but I don't need to guess.
13 THE WITNESS: Okay. I can assure you, I can
14 assure you that I'm not reporting it incorrectly because the
15 44,000 is here, it's in your, in your files, and the 13,000
16 is also in your files because it's part of OZAH 10. So
17 there is no error in --
18 MR. GROSSMAN: OZAH 10 being the original land use
19 report?
20 THE WITNESS: Yes, precisely.
21 MR. GROSSMAN: Yes. Well, that might have been a
22 mistake in the original land use report. I don't know. I
23 mean, the applicant can respond to that and straighten it
24 out if that's the case.
25 THE WITNESS: Okay. You've read my entire filing,

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1 is that correct?
2 MR. GROSSMAN: You mean your slide show?
3 THE WITNESS: The slide show.
4 MR. GROSSMAN: Yes, I read --
5 THE WITNESS: Fine. Then I won't belabor these
6 points because I think you'll find them not relevant,
7 although I may come back to them.
8 MR. GROSSMAN: And I'm quite sure we entered it as
9 an exhibit also.
10 THE WITNESS: Yes, you did. It's Exhibit -- I
11 have the number. It's 321(a).
12 MR. GROSSMAN: Fine. Yes.
13 THE WITNESS: And I know you read it because you
14 questioned me about the Part 1 and Part 2.
15 MR. GROSSMAN: Right.
16 THE WITNESS: And you also are one of the few
17 people who ever went to my website and, my own website, and
18 questioned me about slime mold.
19 MR. GROSSMAN: Well, I got it from your --
20 actually, I got it from your résumé.
21 THE WITNESS: Ah, okay.
22 MR. GROSSMAN: Your résumé indicated, gave a name
23 which I didn't recognize for -- which was repeated a number
24 of times in your, in your résumé of studies that you had
25 done. So I just looked up what the term meant, and it

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1 turned out to be slime mold. But I, I didn't know what it
2 -- many heads was the second part of it --
3 THE WITNESS: Right.
4 MR. GROSSMAN: -- a Latin word for --
5 THE WITNESS: Right.
6 MR. GROSSMAN: -- multi-cabeza or whatever.
7 THE WITNESS: Actually, the translation is
8 terrible monster with many heads.
9 MR. GROSSMAN: Right.
10 MS. ROSENFELD: Sounds like this case.
11 THE WITNESS: So --
12 MR. SILVERMAN: Sounds like the case.
13 THE WITNESS: -- I want to put the pointer on, I
14 think we're on Slide 32. I'm not going to go through this
15 immediate past history factual record because I think you
16 will not be pleased with some of the points I'm making. So
17 I'm going to go down to the very bottom.
18 MR. GROSSMAN: Well, it's not a question of
19 whether I'm pleased with any points you're making. I just
20 want to get material before me that's relevant, that is,
21 that will bear on issues that I have to decide. It's --
22 THE WITNESS: Thank you.
23 MR. GROSSMAN: -- not a question of pleased or not
24 pleased.
25 THE WITNESS: Thank you, and that was precisely

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1 what I was waiting for you to say. You have said numerous
2 times that you want facts that are relevant, that will help
3 you reach the decision or the recommendation that you must
4 make.
5 MR. GROSSMAN: Right.
6 THE WITNESS: I believe in your mind the two
7 things are linked, and I'm asserting that in many cases what
8 you believe is an irrelevant fact is in fact one of the
9 facts that'll be most helpful, and the converse, that many
10 of the --
11 MR. GROSSMAN: I understand. I think we have a
12 difference there in approach. I think that you're tending
13 to point out things that I think are very peripheral to the
14 real issues that, that are central to the way I see this
15 case. That, that might be part of the problem.
16 THE WITNESS: It may be. Okay. I want to be very
17 clear, the opposition is specifically opposing the siting,
18 the specific siting of the gas station because that siting
19 will produce all of the non-inherent adverse impacts. And
20 if you'll permit me just a moment, I wanted to make the
21 point by analogy how important the specific siting is.
22 That's a bottle of soda. I take a swig of soda repeatedly
23 when I'm talking. As you know, soda is acidic. If I drink
24 soda --
25 MR. GROSSMAN: I don't know that, by the way, but

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1 go ahead.
2 THE WITNESS: If I drink soda, I'm pouring acid
3 into my stomach, and my stomach is already acid and there's
4 no problem. If I spill this soda, suppose I were not
5 sitting at a Formica table, on a very nice table --
6 MR. GROSSMAN: But at a nuclear power plant.
7 THE WITNESS: Right. Not on a nuclear power
8 plant. If I spilled this soda on your favorite, very nice
9 table, with a nice wood veneer --
10 MR. GROSSMAN: Yes.
11 THE WITNESS: -- it causes serious damage. It
12 isn't the gas station per se that we're objecting to. It's
13 the precise siting.
14 MR. GROSSMAN: I understand.
15 THE WITNESS: I'm skipping a number of slides
16 because -- I'm now on Slide 34. There's been a lot of
17 discussion about possible conditions, and I know that
18 whether you recommend approval or denial, or I presume,
19 excuse me, I presume that whether you recommend approval or
20 denial you will recommend conditions.
21 MR. GROSSMAN: Yes, and I -- actually, you're not
22 presuming that. I stated that because I actually liked the
23 fact that the technical staff did that, and I think it's
24 actually advisable in a case like this and I plan to follow
25 that same format, but there may be many other or different

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1 conditions that the parties would come up with that, you
2 know, are suggested for the Board of Appeals to consider if
3 it were to determine to grant the special exception.
4 THE WITNESS: Fine. And then I want to make two
5 assertions. The first is that -- and I believe you've heard
6 this same testimony from a number of other in opposition --
7 the way Applicant has constructed the siting of the gas
8 station is such that whatever change is made to the siting
9 introduces a problem, and many of the problems cannot be
10 resolved by any condition.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: Moreover, the point that has been
13 made repeatedly is that there are so many conditions that
14 it's almost impossible to give credence to the notion that
15 they can be enforced.
16 Now, I understand, I understand that from your
17 point of view it is not within your authority, apparently,
18 to consider the probability that such conditions can be
19 enforced. I questioned you about this way back when I was
20 asking procedural questions. It was a concern of mine when
21 I spoke to planning staff, with whom I had extensive
22 discussions. It remains a concern of mine because of the
23 following -- I'm saying something very trivial -- this
24 entire proposal is about projections. There are very few
25 numbers that have actually been measured. We have a, we had

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1 baseline data, for example, for the traffic in the road
2 system, baseline being based on measurements made on one
3 day. All the other numbers are projections. The queuing is
4 projections. The volume of gasoline to be sold is a
5 projection --
6 MR. GROSSMAN: Right.
7 THE WITNESS: -- and so forth and so on. So
8 you're fundamentally operating based on a set of facts which
9 are not facts. They're projections. I understand that.
10 That's --
11 MR. GROSSMAN: Right.
12 THE WITNESS: Obviously, how can you judge whether
13 or not to allow something to be built without considering
14 how it's going to function?
15 MR. GROSSMAN: Right.
16 THE WITNESS: But from my point of view, and I
17 think from a number of people in opposition, to say or to
18 imply or to insist that you do not have the authority or do
19 not feel you have the authority to consider the
20 ramifications of numerous conditions which, in the
21 aggregate, probably cannot be enforced or arguably cannot be
22 enforced, I don't understand --
23 MR. GROSSMAN: Well, I think you may be
24 overstating what I said. Sure, if a condition is not
25 capable of being enforced, then it probably doesn't make

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1 sense as a condition. I don't know what specifically you're
2 referring to. My point I think I was probably addressing
3 was whether or not -- saying that this is not an enforcement
4 proceeding, that is -- that's something that would take
5 place in a later scenario.
6 So this may have come up with some statements
7 about what was happening in Costco's warehouse or something,
8 and I think I may have made a comment about that, but that
9 was not -- the warehouse itself was not before me, and
10 besides, this is not an enforcement proceeding. This is to
11 see if the special exception will be granted --
12 THE WITNESS: I understand.
13 MR. GROSSMAN: -- but I think you may have
14 projected more into what I said than what I actually said.
15 THE WITNESS: How do I say this? Give me a
16 moment. When the applicant tells you it projects a volume
17 of sales of approximately 12 point whatever million
18 gallons --
19 MR. GROSSMAN: Right.
20 THE WITNESS: -- you accept that projection as a
21 reasonable estimate. You, I believe, assign some range; in
22 other words, one does not presume that they could be held to
23 12.27 million, which is --
24 MR. GROSSMAN: Well, they could be held to, they
25 could be held to a maximum --

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1 THE WITNESS: Okay.
2 MR. GROSSMAN: -- at any given period of time.
3 THE WITNESS: My point is that in all of the
4 projections that have been proffered, there is some inherent
5 uncertainty which you accept --
6 MR. GROSSMAN: Certainly.
7 THE WITNESS: -- as would anyone. The aggregate
8 uncertainty -- which, by the way, uncertainties multiply,
9 because the uncertainty of one goes to answer the next and
10 so and so on and so on.
11 MR. GROSSMAN: Statistically speaking, yes, okay.
12 THE WITNESS: Right, statistically -- well, that's
13 reality. Similarly, the uncertainty as to whether or not
14 something can be enforced is an estimate. There are some
15 enforcements which we are certain of. If you, for example,
16 if you attempted to construct a nuclear reactor, I'm fairly
17 certain that it would be enforced, but there are a whole
18 bunch of other uncertainties. And someone's already spoken
19 to the question of how can you be sure that, for example,
20 the condition that Costco will take action to make sure that
21 backup-friendly queue into the road will be enforced? How
22 can you be certain or to what level of --
23 MR. GROSSMAN: Well, I can't be certain, but there
24 are enforcement mechanisms, and people do call the
25 Department of Permitting Services and say there are people

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1 backing up on the roadway all the time or whatever, and then
2 they send out an inspector, or whatever the problem is, it
3 happens with some frequency, and then show-cause orders can
4 be issued and are issued by DPS, saying, you know, or a
5 notice of violation I guess would be the initial step,
6 saying you need to correct this violation. And if
7 corrections aren't made, there can be a show-cause order
8 issued why some other action won't be taken. So yes, there
9 is an enforcement mechanism. Can I guarantee you that it's
10 going to work perfectly? No, of course not.
11 THE WITNESS: No, of course not, and I'm not, I'm
12 not suggesting that you should be able to any more than I'm
13 suggesting that you should be able to say Costco's projected
14 sales are accurate to five percent, 10 percent. What I'm
15 saying is if you accept uncertainty in some of the
16 projections, you must also, I believe, consider the
17 uncertainty of the enforceability of the conditions.
18 MR. GROSSMAN: But to what end is this argument
19 going? What is it specifically that you are suggesting to
20 me?
21 THE WITNESS: I am --
22 MR. GROSSMAN: Rather than telling me about, you
23 know, philosophy of how to analyze this, what are you
24 specifically suggesting?
25 THE WITNESS: I don't believe this is philosophy,

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1 but I'll leave that aside. I believe it's practicality.
2 For example -- and this may be because I cannot make my
3 point as forcefully I'd like to -- it appeared to me, and
4 perhaps I'm wrong, that Mr. Core made a very important point
5 when he spoke about human nature and the questionable nature
6 of the assertion that the queuing diagram is accurate,
7 because people don't in fact line up bumper to bumper --
8 MR. GROSSMAN: Right.
9 THE WITNESS: -- I think that's a valid point.
10 Well, if --
11 MR. GROSSMAN: I already said, when -- after
12 Ms. Cordry testified, I said I accepted that as a valid
13 proposition.
14 THE WITNESS: Fine. Then let me point out -- no.
15 Let's see. The point about the agents running out, agents
16 running out to enforce the queuing has already been made.
17 The reality, for example, of the enforcement of noise
18 regulations, we can have 100 people come in here, I don't
19 know what purpose it would serve, to tell you what you
20 already know, which is that if there's noise in your
21 neighborhood and you call and complain, the chances that you
22 will get that noise corrected before it's done and gone are,
23 I can't say zero, but they're very small.
24 MR. GROSSMAN: I don't know that that's the case.
25 THE WITNESS: Okay. I won't belabor the point

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1 anymore. Fine, I'm on Slide No. 36, and we had a discussion
2 of this briefly in my cross-examination. You have in your
3 files, I've forgotten the exhibit number --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- a letter which says, in essence
6 -- I believe this is accurate -- that the building of the
7 pedestrian path is a condition of approval of the special
8 exception. And I ask you, in essence, why is it a condition
9 of approval? It's a totally separate issue.
10 MR. GROSSMAN: This is something that the
11 community has wanted. So I urged the applicant to take a
12 look at -- what came to me, when they first presented this
13 case in April, was there was no pedestrian path along the
14 southern ring road. I understood from the community that
15 that's something they wanted. So I asked the applicant to
16 look at that, to see if that was something that could be
17 arranged. And after a number of iterations, they ultimately
18 agreed to one that, I believe, that the community would find
19 acceptable and technical staff found acceptable.
20 Why -- I don't understand your questioning that,
21 why is that a condition of the special exception. That
22 would be something that would be, would apparently
23 ameliorate some of the potential problems that were
24 observed, or that the community fears would occur in terms
25 of pedestrians if there was a gas station approved. So

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1 that's why it would be potentially a condition.
2 THE WITNESS: It was my understanding that the
3 pedestrian path was part of the original application. Am I
4 incorrect?
5 MR. GROSSMAN: It was, as I recall, it was not
6 part of the application at the time that the hearing began
7 on April 26, 2013. It may have been part of the original
8 application, but when the -- I believe it was amended prior
9 to the first hearing date and removed -- am I correct about
10 that, Ms. Harris, that the, the application was amended
11 prior to the first hearing date and removed the proposed
12 pedestrian path along the southern ring road?
13 MS. HARRIS: That's correct.
14 THE WITNESS: That is not my recollection. My
15 recollection is the pedestrian path was removed after the
16 hearings had begun.
17 MS. ROSENFELD: No, no. I believe it was removed
18 after the Planning Board --
19 MS. ADELMAN: Right.
20 MS. ROSENFELD: -- concluded its hearing and
21 before the hearings --
22 MS. ADELMAN: Right.
23 MS. ROSENFELD: -- before the Hearing Examiner
24 commenced.
25 MR. GROSSMAN: Before April 26 or whenever.

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1 THE WITNESS: I apologize. I'm incorrect.
2 MS. CORDRY: And to be completely accurate, it was
3 not an amended application. It was simply a new document
4 file that didn't include the pedestrian path. So it wasn't
5 like a formal amendment process. It was just, disappeared.
6 MS. ADELMAN: It was Point E, if I remember
7 correctly.
8 MR. GROSSMAN: Well, we consider it as -- when
9 they file new plans, they change a plan like that, that's
10 considered an amendment to the application.
11 MS. CORDRY: Well, I thought there usually, had to
12 actually file a request to be allowed to amend and so forth.
13 In any case, that's, that's the process, yes.
14 MR. GROSSMAN: Usually what happens is people
15 file, either they file a letter, requesting an amendment, or
16 they file, amending, documents amending it, and we send out
17 a notice saying that they have moved to amend. We treat it
18 as a motion to amend, wait 10 days to see if there's
19 opposition.
20 So that's usually the way -- of course, this case
21 is different in a lot of ways because there are many days of
22 hearings; so changes can be made and there's plenty of time
23 for people to respond. But in any event, so I don't, I
24 don't understand your point about the condition of the --
25 THE WITNESS: Obviously, I've not made it clearly

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1 enough; so I will move on.
2 MR. GROSSMAN: Well, I'm not telling you to move
3 on. I'm just telling you I don't understand what you're --
4 why do you ask whether, why is that a condition of the
5 special exception? It is a condition that was suggested as
6 something that would help the community if, in fact, the
7 special exception were approved. I don't understand why you
8 addressed that. Why does that become a point with you, sir?
9 THE WITNESS: I am obviously not capable of
10 explaining it to you. I can give it a try, but --
11 MR. GROSSMAN: I can't believe that you're not
12 capable of explaining it. So tell me why it is an issue for
13 you. Why do you -- this is the second time, I believe, that
14 you brought this up. Why is it that that's an issue for
15 you?
16 MS. ROSENFELD: Mr. Grossman, in the interest of
17 time, maybe I can ask the question a different way. Is your
18 concern or your issue that they are not, they've not
19 promised to provide the path, even if there is no special
20 exception? Is that --
21 THE WITNESS: Precisely.
22 MS. ROSENFELD: -- your bone of contention?
23 MS. CORDRY: Yes.
24 THE WITNESS: Precisely.
25 MS. CORDRY: It's the opposite concern. Why --

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1 MR. GROSSMAN: Well --
2 MS. CORDRY: -- should it be only if you -- why
3 should it be contingent on the special exception?
4 MR. GROSSMAN: I see, and as I think I explained
5 to you before, the only reason I have any sway over the
6 pedestrian path is because of the special exception. The
7 pedestrian path is outside of the site of the special
8 exception. If -- other than the relationship of Costco to
9 Westfield, that's the only reason that that comes before me
10 as part of the special exception, so I have any ability to,
11 and the Board has any ability, to approve something with
12 regard to the special exception. That's why it's before me
13 -- it's before me in that way. It's not before me as just
14 Westfield acting alone. So that's the only way.
15 The Board -- neither the Hearing Examiner nor the
16 Board of Appeals can require a pedestrian path as part of
17 this special exception process if it does not grant the
18 special exception. It cannot just issue a resolution. That
19 would be unlawful. That would be an unlawful resolution
20 because the issue is not before them except in the special
21 exception.
22 THE WITNESS: Okay.
23 MR. GROSSMAN: It may be before some other part of
24 the government, it may be before the Board of Appeals in
25 some other kind of proceeding, but the only reason it's

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1 before them in this proceeding is because of the special
2 exception. I really don't understand your confusion on that
3 point.
4 THE WITNESS: Fine. Moving on to Slide 37, I just
5 want to focus for a moment on the first bullet point. I'm
6 not sure you'll consider this relevant, but let me try.
7 Applicant has made a consistent argument that this gas
8 station has special value because it has no other services
9 except to provide gas in a convenient, cost-effective,
10 et cetera, manner --
11 MR. GROSSMAN: Right.
12 THE WITNESS: -- but recently Applicant has begun
13 to repeatedly make the assertion that the gas station has
14 eye washes and has testified, in essence, or questioned, in
15 essence, that this is a valuable service, and I'm saying
16 this is inconsistent and misleading. The gas station is
17 either not providing additional services because that's
18 valuable or it's providing eye washes because that's
19 valuable.
20 MR. GROSSMAN: Well, this is another example,
21 Dr. Adelman, where I see this as a distinction without a
22 difference. It has no impact, whatever, on any
23 recommendation I would make, and I can't imagine why you
24 would think it would, whether there's an eye wash or not at
25 the station.

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1 THE WITNESS: That's not, that isn't the point.
2 It's not a question of whether there is or isn't an eye
3 wash. It's the inconsistency in the applicant's
4 presentation of its case.
5 MR. GROSSMAN: Well, frankly, I haven't seen them
6 make any big point about eye washes. I mean, I don't know
7 what exactly you're looking at, but if they did, it just
8 wasn't, have any significance to me, warranting any of my
9 attention.
10 THE WITNESS: Fine. I'm going to skip the second
11 bullet point for now. This is Slide 38. We're past the
12 halfway point, and I think it'll go faster now. Section 2
13 of the land report asserts there's no vehicular or
14 pedestrian connections between the mall parcel and the
15 adjacent neighborhood --
16 MR. GROSSMAN: Right.
17 THE WITNESS: -- and that is advanced as an
18 argument as to why the impacts on the neighborhood are
19 minimal, because there's no vehicular or pedestrian
20 connection, but that's factually incorrect.
21 MR. GROSSMAN: I think as far as the pedestrian
22 connection, it appears to be incorrect because there's
23 been --
24 THE WITNESS: Certainly in terms of vehicular,
25 because it's been observed that Applicant or -- someone

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1 hired work crews to do work on the stormwater management
2 pipes, and those vehicles went through the forest buffer
3 zone.
4 MR. GROSSMAN: That's not a vehicular connection,
5 Dr. Adelman, seriously now.
6 THE WITNESS: It is the same type of vehicular
7 connection as to paths that pedestrians walk to go between
8 the mall parcel and the neighborhood.
9 MR. GROSSMAN: Once again --
10 THE WITNESS: Okay.
11 MR. GROSSMAN: -- I do not consider that to be a
12 vehicular connection. The fact that some equipment may have
13 been used to fix something there, to me, does not make a
14 vehicular connection with the mall in the sense that we
15 would reasonably apply it to whether or not there is a
16 problem with an interaction between traffic on the mall and
17 people in the neighborhood. Yes, I just -- as far as the
18 pedestrian aspect of that, I agree, there's been testimony
19 that people do access the mall. So, there is pedestrian
20 access. That's --
21 THE WITNESS: Okay.
22 MR. GROSSMAN: -- that's a different story.
23 THE WITNESS: This slide, Slide 39, makes the
24 point that I made previously, I got myself out of sequence,
25 about the mismatch between the numbers as to average daily

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1 visitors. So if you're at all interested in that issue,
2 it's Slide 39, and I referenced both of the exhibits that
3 are relevant. Whoops, sorry.
4 MR. GROSSMAN: Well, take that back one second.
5 THE WITNESS: Yeah.
6 MR. GROSSMAN: All right. So the number, the
7 13,500 came from Mr. Gang's report, Section 2. Have we
8 figured out that, the source?
9 THE WITNESS: No, 13,500 came from the land use
10 report.
11 MR. GROSSMAN: Right, Mr. Gang's report.
12 THE WITNESS: I'm sorry. I --
13 MR. GROSSMAN: Yes.
14 THE WITNESS: -- wasn't listening. Thank you.
15 MS. HARRIS: Now, unfortunately, for all the files
16 that we have over there, 198 is not in there. So we need to
17 check that and we'll get back to you.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: If it's of any use to you, this is
20 198.
21 MR. GROSSMAN: No, it's okay. It's okay.
22 THE WITNESS: Okay, fine. Okay. Go on?
23 MR. GROSSMAN: All right. Yes. Let me see what
24 -- hold on one second. So which figure in your mind,
25 Ms. Harris, is correct? Is it the 44,202, which is in 198,

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1 or the, Section 2 of Mr. Gang's original report where he's
2 quoted by Dr. Adelman as saying it's 13,500, and are they
3 referring to the same --
4 MS. HARRIS: Well, in Mr. Gang's report, it noted
5 an average of between 13 and I think it was 20 or so during
6 the normal days and then a potential 40,000 during the
7 holidays. So I want to see what 198 says in the context of
8 the 44,000.
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: I'm just not sure until I look at
11 both reports.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: To be precise, I can in fact show
14 you the specific numbers in Mr. Gang's original report.
15 MR. GROSSMAN: I believe you. I'm not saying
16 you're misquoting it. I'm just saying that -- I was just
17 asking Ms. Harris for an explanation in the difference in
18 the numbers relied on by Mr. Gang and Mr. Flynn. That's
19 all.
20 THE WITNESS: Okay, fine.
21 MS. HARRIS: But I would, to go to that point a
22 little further, I would note -- and you were correct,
23 Mr. Grossman -- that the number that was quoted for Costco
24 was an actual number that --
25 MR. GROSSMAN: Account --

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1 MS. HARRIS: Account.
2 MR. GROSSMAN: -- that Clicker account or
3 whatever.
4 MS. HARRIS: Yes.
5 THE WITNESS: I'm not going to go into the sector
6 plan in any detail. Opposition has people who are going to
7 testify on this matter in great detail. In fact, I'd say to
8 you clearly that for each of the issues I'm raising, I'm
9 raising one point, which I believe the people who are doing
10 the main testimony, the heavy lifting, so to speak, will be
11 covering in more detail. I just want to make the point that
12 the issue of aut centrality of the mall versus the desire
13 for transit-oriented development --
14 MR. GROSSMAN: I'm sorry. What was the word you
15 used? The issue of what of the mall?
16 THE WITNESS: The statement that the mall is
17 aut centric --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- is a fact, no question. The
20 statement that the sector plan is a reflection of the broad
21 community's desire to move towards more transit-oriented
22 development is also a fact.
23 MR. GROSSMAN: Right.
24 THE WITNESS: There is a balance between the two,
25 and part of what you will, I guess, in your --

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1 MR. GROSSMAN: Opine upon, right.
2 THE WITNESS: You will opine upon, is the question
3 of whether the proper balance has been, has or has not been
4 struck if this --
5 MR. GROSSMAN: Right.
6 THE WITNESS: -- is allowed to, if this is
7 approved or if you recommend approval.
8 MR. GROSSMAN: Right.
9 THE WITNESS: But what is complicating, in my
10 mind, the issue is that at the same time that Applicant is
11 asserting that this is an autocentric mall --
12 MR. GROSSMAN: Yes.
13 THE WITNESS: -- which is true, it is ignoring, I
14 believe, perhaps it hasn't even thought about it, the fact
15 that simultaneously with proposing something that has
16 brought already more cars to the mall and with the special
17 exception, if it's improved, approved, will bring still more
18 cars -- incrementally, but more cars -- to the mall,
19 Applicant or Applicant's partner, I'm not sure what phrase
20 you would use, Westfield, has received permission to reduce
21 the number of parking spaces. When you bring more cars to a
22 mall and reduce the number of parking spaces, you're
23 creating, inherently, an additional burden on traffic.
24 There's no way to escape that. Both, both documents are in
25 evidence in your files --

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1 MR. GROSSMAN: Yes.
2 THE WITNESS: -- and that's an inherent conflict.
3 It goes to the case of whether, the issue of whether or not
4 this proposal is or is not in conformance with the sector
5 plan, and I'm asserting that it is not. And I'm not
6 introducing a new fact. I'm pointing out that one needs to
7 consider those facts in that grouping.
8 MR. GROSSMAN: See, I think it's an issue.
9 Parking is an issue. Traffic is an issue. I don't view the
10 parking issue as a, particularly as a sector plan issue.
11 Analytically, I don't think that's the appropriate place for
12 me to evaluate the parking problem. You see it in a
13 different light. I understand that and I'm not saying it's
14 not arguable there. I just think, analytically, it's more
15 effective to analyze the parking situation under a different
16 heading.
17 There's already enough under the sector plan
18 issues to debate. I don't think parking is so much a sector
19 plan issue. One could argue it. I'm not saying it's
20 unrelated. Clearly, it's related because the question of
21 autocentric and not is a sector plan issue. I just think,
22 analytically, it makes sense to treat it in a different
23 cubbyhole.
24 THE WITNESS: All right. Then all I ask, sir, is
25 that when you retire to your chambers and all of us are free

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1 to --
2 MR. GROSSMAN: They don't give you chambers. I
3 get an office.
4 THE WITNESS: When you retire to your office and
5 you put on your smoking jacket and you open up the box of
6 what will be --
7 MR. GROSSMAN: They don't let me smoke anymore
8 either.
9 THE WITNESS: Okay. They'll be 500 or more
10 documents which you'll be reviewing and thinking about, and
11 I hope that you'll remember that point and one or two others
12 that I've made, because it is not my presumption that I'm
13 going to convince you to reject our, excuse me, recommend
14 rejection. It's my goal, fundamentally, to ask you to look
15 at things from a different perspective when you do your
16 evaluation. And if you will consider that, fine.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Now, this is a point about
19 conformance with the sector plan that I want to spend just a
20 couple of minutes with because I think the issue has gotten
21 confused. This has to do with, in my mind, the overlapping
22 issues of the forest buffer and landscaping. I want to be
23 very clear, this is not about whether or not the FCP, Forest
24 Conservation Plan exemption was or was not valid. We've
25 gone over that. I'm not going there.

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1 MR. GROSSMAN: Right.
2 THE WITNESS: What I'm pointing out is that the
3 sector plan manifestly impose an obligation on everyone to
4 protect the forest buffer. Whether or not there's a
5 required plan for how to protect it, that doesn't eliminate
6 the need, the desire, the goal to protect the forest buffer.
7 And I would say that absent evidence that the applicant's
8 landscaping plan will not damage the forest buffer, that
9 there's good reason to believe, in fact, it will damage the
10 forest buffer.
11 MR. GROSSMAN: And what is that good reason?
12 THE WITNESS: I'm about to show you. Thank you
13 for --
14 MR. GROSSMAN: Okay, because they did present
15 evidence that they won't damage the forest buffer.
16 THE WITNESS: I know and I can test that evidence.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Okay. So there is going to be work
19 done on the fence as it's being constructed.
20 MR. GROSSMAN: Right.
21 THE WITNESS: I know something about sonotubes.
22 The notion that you can dig the holes for sonotubes standing
23 on only one side of the property line with no impact at all
24 on the other side of the property line, which is the border
25 edge of the forest buffer, to me, is simply not credible. I

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1 don't see how it can be done. People are going --
2 MR. GROSSMAN: And you have a, you have expertise
3 in landscaping and landscape architecture --
4 THE WITNESS: I have sufficient layman's knowledge
5 to know that if you're going to dig a hole for a sonotube to
6 put in a support post, you can't stand on one side; someone
7 has to stand on the other side of the line. That person
8 standing on the other side -- and, by the way, I think that
9 the argument has presented that it's a minimal impact that
10 won't be a problem. I think that understates the
11 probability that it will in fact cause damage.
12 MR. GROSSMAN: But your thinking that is not
13 evidence, actually.
14 THE WITNESS: I understand that.
15 MR. GROSSMAN: So is there evidence that you will
16 be introducing that that will create a problem?
17 THE WITNESS: Well, in a sense, the next line is
18 evidence, not to the sonotube issue, but to the issue of
19 maintenance of the forest buffer. So --
20 MR. GROSSMAN: What's the next line you're talking
21 about that's --
22 THE WITNESS: Right here.
23 MR. GROSSMAN: Pardon me?
24 THE WITNESS: Right here. Excuse me. This slide.
25 MR. GROSSMAN: Oh, the next slide, okay.

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1 THE WITNESS: These are two pictures. They're
2 both taken from exhibits that are in your files.
3 MR. GROSSMAN: Uh-huh.
4 THE WITNESS: The first one is an exhibit that
5 Mr. Gang filed, a series of pictures he took. And this one,
6 which I've labeled, is a picture he took of the, of a region
7 in the forest buffer. On the right -- I'll explain the
8 left-hand one in just a second -- on the right, this is a
9 picture that Mr. Sheveiko took after the stormwater outfall
10 pipe had been repaired and, in Mr. Sheveiko's observations,
11 was failing. And the picture was one that we questioned
12 Mr. Willard about, not the picture, but the issue --
13 MR. GROSSMAN: Right.
14 THE WITNESS: -- that that tree had root damage;
15 its root system had been damaged.
16 Now, Mr. Willard said that in his opinion the
17 damage was probably done by pedestrians walking past.
18 Mr. Sheveiko observed and photographed -- and it's in that
19 exhibit, 87(j) -- that a small equipment vehicle was used in
20 the forest buffer to do the repair of the stormwater, which
21 it is my understanding -- I don't have a document, but
22 perhaps I could get it -- that planning staff specifically
23 requested that no vehicles be used while the stormwater
24 repair work was -- the stormwater outfall pipe repair work
25 was being done.

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1 MR. GROSSMAN: How does that affect the drilling
2 of the sonotubes --
3 THE WITNESS: Whatever work is -- I'm sorry.
4 MR. GROSSMAN: How does that affect the drilling
5 of the sonotubes in terms of their effect on the forest
6 buffer?
7 THE WITNESS: They both go to the same issue,
8 which is that any work done at the border of or within the
9 forest buffer runs the risk of damaging the root systems of
10 the trees.
11 MR. GROSSMAN: But that was actually within the
12 forest buffer and doing a completely different type of thing
13 from what I understand the testimony was.
14 THE WITNESS: And I am not -- remember, this is a,
15 this is an attempt at a bigger picture --
16 MR. GROSSMAN: I think this is a speculation based
17 on a non-analogous situation, is what I see it as. I don't
18 see that as evidence. I don't see the fact that when they
19 repaired some stormwater outlet in the middle of the forest
20 buffer, that that may have, may or may not have had effect
21 on the tree roots, that that means that putting up the
22 sonotubes for the wall at the very periphery of the buffer
23 is going to have a deleterious effect on the buffer in light
24 of the testimony of an expert who said it will not.
25 THE WITNESS: And this is a failure on my part to

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1 make the point clear; so let me rephrase. I am saying that
2 the observations of various citizens have demonstrated that
3 work being done of the sort that will be done in or at the
4 edge of the forest buffer will cause damage to the trees in
5 the forest buffer.
6 MR. GROSSMAN: And what evidence of the
7 observations of the citizens indicate that the drilling of
8 the sonotubes will damage the forest buffer?
9 THE WITNESS: I have none on that. I'm pointing
10 to the --
11 MR. GROSSMAN: That's the relevant issue --
12 THE WITNESS: Fine.
13 MR. GROSSMAN: -- because they're not claiming
14 that they're going to go into the buffer and do anything.
15 They're doing something on the periphery of the buffer.
16 THE WITNESS: But -- ah, this is a case of my not
17 making it clear -- they're going to be doing landscaping in
18 the forest buffer at the edge.
19 MR. GROSSMAN: Well, they're going to be adding,
20 as I understand, they're going to add some landscaping to
21 the forest buffer at the request of -- that's in the, it's
22 in the sector plan and I think, also, that the --
23 THE WITNESS: Uh-huh.
24 MR. GROSSMAN: -- that the technical staff asked
25 them. So they're adding additional buffer. And that's --

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1 THE WITNESS: Absolutely, and that's admirable.
2 MR. GROSSMAN: -- that's a problem?
3 THE WITNESS: No, no, not at all. It's --
4 MR. GROSSMAN: I'm really --
5 THE WITNESS: -- it's admirable, but it cannot be
6 done without using equipment that in all probability will
7 cause damage to the --
8 MR. GROSSMAN: Wait a minute. So -- wait a
9 minute. You're saying that they should or should not add
10 the additional landscaping, which you say is admirable?
11 THE WITNESS: I'm saying they should add it in a
12 way that is regulated by knowledgeable staff and --
13 MR. GROSSMAN: And who says it won't be?
14 THE WITNESS: The stormwater, the stormwater
15 outfall wasn't.
16 MR. GROSSMAN: I don't, I don't see the --
17 THE WITNESS: Okay. Okay. Thank you.
18 MR. GROSSMAN: -- the connection. I really, it's
19 not that you're not making -- it's not you're not explaining
20 to me. I believe that there is not a point to make there --
21 THE WITNESS: Okay.
22 MR. GROSSMAN: -- and, you know, it's another one
23 of those things that, that there just isn't evidence to
24 support the speculation that you're suggesting.
25 THE WITNESS: Okay. By the way, does it seem

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1 relevant to you that the engineering report contain no
2 substantive engineering documents? Is that in any way
3 relevant to you?
4 MR. GROSSMAN: I don't know what that means.
5 THE WITNESS: It means that the report --
6 MR. GROSSMAN: They had, they --
7 THE WITNESS: -- the report did not contain
8 Mr. Tucker's technical report. It contained an incorrect
9 report which was substantively corrected, but in the
10 corrected version of the engineering report, no reference is
11 made to Mr. Tucker's proper report. Similarly, the
12 engineering report contains no reference of any sort to
13 Mr. Golan's document or testimony, and Mr. Golan testified
14 about an operations safety training manual, not in any way,
15 shape, or form a technical document. Does that, does that
16 seem at all relevant to you?
17 MR. GROSSMAN: Well, it might be relevant if you
18 showed me that it has some impact on the plans here. Is
19 there a connection? Is there some impact you're telling me
20 as to what --
21 THE WITNESS: Yeah. Yeah.
22 MR. GROSSMAN: And what is that impact?
23 THE WITNESS: And that is about -- the assertion
24 is that the groundwater, that, excuse me, that the
25 stormwater management system will protect the forest buffer

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1 from negative impact of materials released from the gas
2 station -- that's the testimony -- and that involves two
3 aspects: one, the underground elements of the stormwater
4 management system and, two, Costco's assertion that its
5 attendants will mop up any spills that form on the surface
6 rapidly. If it rains, which happens, no attendants are
7 going to be standing out there in the rain, mopping up
8 spills. Those spills will run off the surface into the
9 stormwater management pipe, which goes to the forest buffer,
10 the outfall pipe.
11 There's been no evidence introduced that that
12 protective mechanism in fact works. In fact, there's been
13 no enforcement, and people have -- again, I don't have a
14 specific document -- people have reported, Mr. Sheveiko
15 reported that stormwater outfall --
16 MR. GROSSMAN: Well, let's hear, we'll hear from
17 Mr. Sheveiko on whatever he said.
18 THE WITNESS: Okay. Mr. Tucker's report -- which,
19 by the way, when it was corrected, was excellent and we
20 stipulated to that report -- that report, however, is a
21 projection. I want you to consider two aspects of that
22 projection.
23 Mr. Tucker reported that he had done, I believe,
24 six test borings, and they are, they are in some sense a
25 random or non-random sample of the underlying soil.

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1 Obviously, until the construction actually commences, we
2 won't know what the underlying soil is like. That involves
3 excavating the asphalt, and at that time, let's suppose that
4 there's some probability that the soil will not be adequate.
5 Well, of course, Costco will come in and remove all of the
6 soil -- if necessary, tons of soil -- and replace it. While
7 that work is going on, that's going to be a considerable
8 nuisance, burden, whatever you want to call it, on the
9 neighborhood and that probability is the kind of probability
10 I'm asking you to consider.
11 MR. GROSSMAN: Well, it is an interesting question
12 as to whether or not the construction of something for a
13 special exception -- assuming we had a special exception
14 that would not cause any adverse effects but the
15 construction of it would create noise or whatever, is that a
16 problem? The code is actually silent on that issue, and
17 this is a form of that question. It is something that has,
18 has occurred in the past but not in the context of a special
19 exception in a rezoning, the question of where there's a lot
20 of inconvenience to people. As I say, it's, it's somewhat
21 up in the air because there really isn't anything in the
22 code that says that the construction of a special exception
23 must not create a nuisance, that is, noise, et cetera.
24 I'm going to break for five minutes. We'll come
25 back at 20 to.

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1 THE WITNESS: Fine.
2 (Whereupon, a brief recess was taken.)
3 MR. GROSSMAN: Okay.
4 THE WITNESS: Two things, Mr. Grossman. Number
5 one, I appreciate your patience. I'm going to cut short by
6 eliminating a couple of slides, but the point about what
7 would happen during construction of the site or after the
8 site --
9 MR. GROSSMAN: Right.
10 THE WITNESS: -- I have a second a slide and that
11 goes to the issue of, presuming the special exception is
12 approved --
13 MR. GROSSMAN: Yes.
14 THE WITNESS: -- and the gas station is built, it
15 is a fact that in this county there are numerous instances
16 of concrete cracking. I've been told -- and I will go to
17 the mall and document and submit it to you as a separate
18 filing -- that there are already cracks at various places in
19 and around the vicinity of the Costco warehouse store and
20 the proposed SE site. But whether or not they currently
21 exist, the reality is that concrete pouring in this county
22 has a rather unfortunate history.
23 Now if, at some point, after the gas station is
24 constructed --
25 MR. GROSSMAN: Yes.

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1 THE WITNESS: -- cracks appear, significant cracks
2 in the concrete pad, this goes to the issue of how is that
3 going to be fixed. Of course it will be fixed. Costco is
4 not going to go out of business. It's going to fix them,
5 but the fixing will require excavation in the middle of a
6 parking lot that is heavily used, and that, again, will be
7 another issue of nuisance, considerable nuisance.
8 MR. GROSSMAN: I don't think that I can count that
9 as nuisance. In other words, yes, it's possible that
10 concrete can crack. I don't think I can count as nuisance a
11 speculative crack in concrete for a station that hasn't yet
12 been built and the necessary repairs to it. So I wouldn't
13 count that as nuisance.
14 And in terms of the construction, I have this
15 recollection, actually, in a special exception case, that I
16 did try to impose or recommended a condition concerning
17 construction of, near an old-age home or something rare and
18 that the Board rejected it in saying that the noise controls
19 for the county and county law was sufficient to cover it.
20 That's my vague recollection. I'm not sure it's the case,
21 but I mean, if there are conditions in terms of
22 construction, reasonable conditions that the opposition
23 wants to suggest, you know, I'd certainly consider it if
24 that's, you know -- I don't know that that's particularly
25 possible in this type of situation, but --

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1 THE WITNESS: The opposition -- well, I can't
2 speak for KHCA. The Coalition is not interested in
3 proposing what conditions. It's our fundamental assertion
4 that no number of conditions can make this a proper siting
5 for this gas station.
6 MR. GROSSMAN: No, I understand that. I'm not, I
7 don't think that proposing a condition undermines your clear
8 position that you're opposed to the gas station itself.
9 THE WITNESS: In this site.
10 MR. GROSSMAN: At this site, yes. I don't think
11 that suggesting that if the, if the Board decides to approve
12 a special exception, that there might be conditions that
13 would be, that would be beneficial to the neighborhood
14 undermines your position that you're opposed to the gas
15 station at this site.
16 THE WITNESS: Now, let's see. I'm going to skip,
17 I believe, several slides. I wanted to make a couple of
18 comments about Mr. Sullivan's report. I am not going to
19 assert any expertise with respect to the substance of
20 Mr. Sullivan's report. I want to give you a specific
21 example of the fact that Mr. Sullivan, because he is not a
22 scientist, has not plotted his data properly, and I want to
23 give you a specific example of how that leads to an
24 erroneous conclusion.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: Okay. So this is specifically Slide
2 29 in his PowerPoint testimony. His exhibit number I
3 managed to lose. Does it matter? It's in the exhibit in
4 which he gave you all the PowerPoint slides. Do you need to
5 have that exhibit number?
6 MR. GROSSMAN: Well, you can tell me what your
7 point is, and then I'll see if I can --
8 THE WITNESS: Okay. My point is that --
9 MR. SILVERMAN: This is the --
10 THE WITNESS: -- this data is plotted incorrectly.
11 MR. SILVERMAN: This is the same exhibit that
12 Mr. Goecke handed to me, is that --
13 THE WITNESS: The data is plotted --
14 MR. SILVERMAN: -- about comparing different
15 stations?
16 MS. ROSENFELD: No.
17 MR. SILVERMAN: No. Oh, I'm sorry.
18 THE WITNESS: I'm sorry. I'm --
19 MR. SILVERMAN: I can't see it too well.
20 MS. ROSENFELD: No.
21 THE WITNESS: Okay, fine.
22 MR. GROSSMAN: What's your point with regard --
23 THE WITNESS: Yeah, the plotted --
24 MR. GROSSMAN: This is Sullivan Slide No. -- was
25 this his second slide? Was this his revised slide

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1 presentation or his original?
2 THE WITNESS: It's the same slide in both.
3 MR. GROSSMAN: Okay. And so it's --
4 THE WITNESS: Okay. And --
5 MR. GROSSMAN: -- Slide No. 29, Actual Trend in PM
6 2.5 --
7 THE WITNESS: Right, and this is --
8 MR. GROSSMAN: -- Measured Concentration,
9 Background.
10 THE WITNESS: Fine. This is plotted so that the
11 low point on the y-axis is eight. The data should be
12 plotted so the low point is zero, and this is not a trivial
13 point. Let me show you first the next slide which is simply
14 a comparison of what the data looks like if it's plotted as
15 Mr. Sullivan did or if it's plotted as I as a scientist and
16 any other scientists would plot it.
17 This, in this case the axis goes to zero -- and
18 I'll show you this in more detail in a second -- and the
19 conclusion that one reaches from this slide is that the
20 levels of PM 2.5 are proceeding very steeply towards zero,
21 but in fact, if you plot the data properly, you get a
22 totally different impression which is that the trend line is
23 quite shallow and is in no way, shape, or form likely to
24 reach zero in the near future.
25 MR. GROSSMAN: I forget. Is this one of your, did

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1 you do a slide to show --
2 THE WITNESS: Yes. Yes. Yes.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: This is Slide, I'm now on Slide 55.
5 I'm almost done.
6 MR. GROSSMAN: Okay. Hold on one second. Let me
7 take a look at that. Okay.
8 THE WITNESS: And I have a better demonstration of
9 this in the following two slides.
10 MR. GROSSMAN: Right. Hold on one second here.
11 THE WITNESS: Uh-huh.
12 MR. GROSSMAN: I can't read the left-hand column
13 on your page 55.
14 THE WITNESS: Right. That's because, I apologize,
15 but I didn't have a graphics program that would allow me to
16 take his data that way; so I've re-plotted it. So, for the
17 time being, just ignore that slide and we'll go on, because
18 I'm going to show you the point more clearly, where you can
19 read everything.
20 MS. CORDRY: Well, yours is just showing from zero
21 up to 15, is that correct, on your, on your, the right-hand
22 slide there?
23 THE WITNESS: Precisely. On the left-hand side,
24 it goes from eight to 15. On --
25 MR. GROSSMAN: And yours goes from zero?

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1 THE WITNESS: Exactly.
2 MR. GROSSMAN: Yes. It doesn't look like a zero,
3 that's all, just --
4 THE WITNESS: It's because I was attempting to
5 use --
6 MR. GROSSMAN: Okay.
7 THE WITNESS: -- a graphic clip from his
8 software --
9 MR. GROSSMAN: All right.
10 THE WITNESS: -- wasn't exactly comparable.
11 MR. GROSSMAN: Okay. So your point is that the
12 curves look a lot flatter when you start from zero? Is that
13 your point?
14 THE WITNESS: Right, and not just look a lot
15 flatter, are a lot flatter. The data is in fact
16 demonstrating that the trend line is not what Mr. Sullivan
17 would have you believe, but I can make the point more
18 clearly if you'll let me show you the next two slides, which
19 are almost the final slides.
20 MR. GROSSMAN: All right.
21 THE WITNESS: So the next slide is a slide in
22 which I've put some X's on points about Mr. Sullivan's slide
23 to which I as a scientist would object. The most important
24 one is the large red X at the, the origin of Mr. Sullivan's
25 plot, which I have my pointer on now. I've explained why

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1 that's inappropriately done.
2 The second point is that Mr. Sullivan chose to
3 show you data from three different sites, clusters of
4 monitors at three different sites --
5 MR. GROSSMAN: Right.
6 THE WITNESS: -- and I would argue that if you're
7 interested in the proposed special exception, you should
8 show the data only for Rockville because that's the closest
9 site. Now, you can argue that point, but I want to, I want
10 to make clear to you that the data, when plotted, as I will
11 show you on the next slide, is much clearer and gives you a
12 manifestly different conclusion.
13 MR. GROSSMAN: Ms. Sheveiko seemed to disagree
14 with you on that. She said why didn't he use Arlington.
15 THE WITNESS: Well, I'm --
16 MR. GROSSMAN: I thought that's what she said --
17 THE WITNESS: I'm not --
18 MR. GROSSMAN: -- for the --
19 THE WITNESS: I can't testify about what
20 Ms. Sheveiko said. I'm, I'm actually not arguing about the
21 specific data but, rather, the way it's been plotted, which
22 is misleading, and the next slide shows you the data
23 properly plotted. This is Slide No. 57, and here the data
24 has been plotted, just the Rockville data. This is the data
25 actually taken from Mr. Sullivan's filing. He provided that

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1 data to us. I simply plotted it, plotted it with the proper
2 x-axis and as close as I could with my graphic package to
3 the, excuse me, from the proper y-axis and as close as I
4 could with my graphics package, I don't have his, with the
5 same x-axis. And the point I'm making, if you look at the
6 line, is that the trend not only is much more shallow but,
7 in fact, if you look at the points, the near-term points for
8 2010, '11, '12, in fact it's not clear that the trend is
9 down at all; in fact, one could argue that the trend is
10 going up slowly. I'm not saying that. I'm saying that in
11 fact the data don't support the assertion that there's a
12 rapid decrease in PM 2.5 and that's because of --
13 MR. GROSSMAN: Well, it's interesting, however,
14 that on -- Mr. Sullivan's slide for Rockville shows the
15 trend up --
16 THE WITNESS: Uh-huh.
17 MR. GROSSMAN: -- from 2010 to 2012 --
18 THE WITNESS: Right.
19 MR. GROSSMAN: -- whereas your slide shows much
20 less.
21 THE WITNESS: Because his slide distorts the
22 steepness of the curve.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: The data, however, when plotted
25 properly -- and this is my primary assertion. I am not

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1 attempting to testify as an expert. Dr. Cole is the expert.
2 He's going to go over this in immense detail. My point is
3 that because Mr. Sullivan is not a scientist -- I'm not, I'm
4 not saying he's intentionally misleading you. I'm simply
5 saying, in my opinion, he doesn't understand to plot the
6 data and -- how to plot the data -- and, if you plot the
7 data properly, the conclusion you draw is that the trend
8 line is anything but steep and downward, approaching zero.
9 It's very close to flat. And, in fact, if there were error
10 bars, which there should be, it's entirely possible the line
11 would be flat, I don't know. The data that's been proffered
12 doesn't allow you to draw the conclusion that Mr. Sullivan
13 would have you draw.
14 MR. GROSSMAN: Would you disagree that the
15 Arlington trend line is considerably down?
16 THE WITNESS: Hang on a second. Arlington is
17 green, and I would say it's considerably down, but in fact,
18 I would look at the next slide, excuse me, and I would say
19 it's considerably down but it's still unlikely that at
20 Arlington the PM 2.5 will approach zero in the next 20
21 years.
22 MR. GROSSMAN: I understand the point you're
23 making. I think the way something is displayed can change
24 your apprehension of what it's showing.
25 THE WITNESS: Fine, thank you. That's the only

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1 point I'm trying to make.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: I'm going to skip these slides. I'm
4 not going to belabor this point. I continue my assertion
5 that the way Dr. Chase's report was filed and the names
6 given to the documents are relevant; that, in fact -- I'll
7 be very forceful -- I believe Applicant believed with good
8 reason that health impact was not a major issue, did not
9 make a, what I would call, serious effort to demonstrate the
10 absence of health impact and, because it didn't make a
11 serious effort, it didn't in fact demonstrate that point.
12 You know from my questioning of Dr. Chase, from my
13 objections to his being admitted as an expert, and I'm now
14 saying, again, Dr. Chase's report should be given, if not no
15 weight, almost no weight as to health impact. And the
16 reason I'm stressing that is that, as you know, for the bulk
17 of the opposition, the health impact is the most important
18 issue, the most important issue and, on that most important
19 issue, which the Council did weigh in on -- not as well as
20 we'd like, but they're a political body; they have to make a
21 compromise -- on the most important issue, which the Council
22 weighed in, Costco did not present a convincing report that
23 there was no health impact in any way, shape, or form.
24 MR. GROSSMAN: Well, I'll reserve any opinion on
25 that until I hear from all the health experts.

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1 THE WITNESS: Fine. I think -- ah, I did want to
2 make one last point. You had -- the date is wrong, by the
3 way. On July 31st you heard testimony from 17 individual
4 citizens, and I pointed out to you that 13 of them testified
5 in support of Costco --
6 MR. GROSSMAN: Right.
7 THE WITNESS: -- three against, and one wasn't
8 clear. If you reread the testimony --
9 MR. GROSSMAN: Mr. Scharman was clear. He doesn't
10 take a position one way or the other.
11 THE WITNESS: He doesn't take a position. I was
12 trying to be --
13 MR. GROSSMAN: He's not unclear.
14 THE WITNESS: -- trying to be thoughtful. Okay,
15 fine. The 13 individuals who testified on behalf of Costco
16 all fundamentally made the same point. They wanted a
17 convenient, clean, quality gas station that sold gas
18 inexpensively --
19 MR. GROSSMAN: Right.
20 THE WITNESS: -- from your point of view. It was
21 the same point. The wording was slightly different. It was
22 the same. In contrast, the three people, these three
23 individuals who spoke in opposition gave very detailed
24 testimony. One testified in considerable detail as to
25 health risk --

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1 MR. GROSSMAN: Right.
2 THE WITNESS: -- one, a gas station owner,
3 testified in considerable detail as to why he felt that the
4 assertions that this was such a valuable gas station for the
5 neighborhood was not in fact so valuable --
6 MR. GROSSMAN: I recall all of that testimony.
7 THE WITNESS: Right. And the third testimony
8 by --
9 MR. GROSSMAN: Mrs. Sheard.
10 THE WITNESS: -- Ms. Sheard, who, by the way, from
11 my point of view, knows more about land use issues than I
12 will ever, ever, ever know --
13 MR. GROSSMAN: And land planning issues.
14 THE WITNESS: Okay, and land planning issues, went
15 to the issues that I've been attempting to develop, which is
16 that -- I don't know the exact words she used, but the
17 fundamental point was, approving this proposal should not be
18 done without giving very careful attention to the
19 implications of the proposal into the future. I'm not sure
20 she spoke to the issue that I'm concerned about which is a
21 forcibility of control, of conditions, but she clearly spoke
22 to the notion that this whole exercise is about a special
23 exception proposal about which we in fact know very little
24 and that while in many situations projecting into the future
25 is a relatively straightforward exercise, this particular

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1 situation is in no way a straightforward exercise and one
2 should be especially careful about thinking about the
3 implications of taking this kind of action.
4 MR. GROSSMAN: I happen to agree with that point.
5 I think this is different than a lot of special exceptions
6 because there are more, I don't want to say imponderables,
7 but maybe that's -- ponderables, let's say that.
8 THE WITNESS: Okay. Well, the last slide is the
9 same as the first slide. I thank you for listening to me.
10 I realize that in some cases I haven't convinced you.
11 Perhaps in other cases I have, but I wanted you to consider
12 in the aggregate what the implications of this filing are
13 and the fact that all of these factors are interrelated.
14 They, they cannot be considered in isolation. They have to
15 be evaluated as a package. All of the small questions add
16 up to one very large question, and I don't believe, I really
17 firmly do not believe that Applicant has met the burden of
18 proof. Thank you.
19 MR. GROSSMAN: Okay. All right. Does Kensington
20 Heights wish to brutalize this witness?
21 MS. ROSENFELD: I have no cross-examination.
22 Thank you.
23 MR. GROSSMAN: All right. Let me ask: Court
24 Reporter, can, do you all want to stay late? I don't know.
25 How long do you anticipate your --

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1 MR. GOECKE: Not long, a few minutes.
2 MR. GROSSMAN: Oh, okay. Can you stay for a few
3 minutes?
4 THE REPORTER: Sure.
5 MR. GROSSMAN: All right, thank you. All right.
6 Then go ahead, Mr. Goecke.
7 MR. GOECKE: Thank you.
8 CROSS-EXAMINATION
9 BY MR. GOECKE:
10 Q Dr. Adelman, you take exception with the way
11 Mr. Sullivan presented information in his report, but you
12 don't dispute the actual numbers that he provided, do you?
13 A I can't dispute them. I have made no measurements
14 of my own. So I can't address that. I wasn't questioning
15 the accuracy of the numbers. I have no information. I was
16 questioning the conclusions drawn from the numbers. I'm not
17 stating that the numbers are accurate or inaccurate.
18 Q And you also question his use of certain numbers
19 as well, don't you?
20 A I question --
21 Q And I can be more specific. You think that it's
22 appropriate only to use the PM 2.5 levels from Rockville as
23 opposed to Beltsville and Arlington?
24 A I think they should be shown separately and
25 explained separately. I chose to address the Rockville data

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1 because I believe that it's the closest, but that's not the
2 point. The point is that by putting all three sets of data
3 on the same graph, you confuse the issue.
4 MR. GROSSMAN: I don't have any problem with his
5 putting three on the same graph. I have a little bit more
6 concern about the, whether or not the display, showing the
7 deeper curve, is suggestive of something that's deeper than
8 warrants the display. But the fact that he put all three on
9 the graph together, to me, is not worthy of criticism. Go
10 ahead.
11 BY MR. GOECKE:
12 Q And is it your recollection that Mr. Sullivan
13 testified the trend was going down towards zero?
14 A I can't actually remember what he said. I believe
15 that, I believe his filings were intended to convey the
16 notion, or I can't say what he intended. I can only say
17 that his filing is misleading. Whether he intended to
18 mislead or not is not the question. I'm saying that the
19 filing, the graph presented, when he displayed it, conveys a
20 misleading notion of what the trend is.
21 Q So that's your interpretation, that it conveys a
22 misleading conclusion, because you think it suggests that
23 the trend is going towards zero?
24 A I wouldn't call it an interpretation. It's my
25 scientific assessment of the way the data was plotted.

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1 Q You kept saying that he didn't plot the
2 information properly. Is there only one way that you can
3 plot this type of information?
4 A I can't say there's only one way. When a
5 scientist --
6 Q Thank you.
7 A I'll finish. When a scientist plots data, he has
8 a number of options, he or she has a number of options and
9 he or she makes a good-faith effort to plot the data in a
10 way that is most accurately representative of, quote,
11 reality or truth. I don't believe Mr. Sullivan chose the
12 best way, which is what I would call proper.
13 Q Okay. And did you testify that Mr. Sullivan is
14 not a scientist?
15 A Well, let's put it this way: He has no degree in
16 science and, based on my assessment of that graph and a few
17 others -- I could've, I could've belabored the point, but
18 I'm not getting into Mr., to Dr. Cole's testimony -- based
19 on my assessment of a number of his graphs, he doesn't
20 handle data the way scientists with whom I'm familiar, which
21 is a fair number, would handle the data. So he's not
22 functioning from my point of view in the scientific mode.
23 Q So is it that you don't think he's a scientist, or
24 do you -- you think he's not acting scientifically here?
25 I'm confused.

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1 A Well, no, if -- it depends, I guess, on your
2 definition of scientist. To me, a scientist is a person who
3 has training as a scientist, is recognized as a scientist.
4 To my knowledge, Mr. Sullivan, didn't testify as an expert
5 as a scientist.
6 Q Is meteorology a science?
7 A Yes.
8 Q And so a meteorologist would be a scientist?
9 A He has a degree in meteorology?
10 Q He has been a meteorologist for 39 years.
11 A I didn't ask you -- that's not my question. My
12 question is, does he have a degree in meteorology?
13 Q So if he doesn't have a degree in meteorology,
14 he's not a scientist?
15 A Well, how do I put this? Is -- meteorologists
16 give weather reports, do they not?
17 Q I'm sorry?
18 A Meteorologists give weather reports, do they not?
19 Q Do meteorologists give weather reports? I think
20 they do.
21 A Okay. Are the meteorologists who give weather
22 reports scientists?
23 Q I think they are.
24 A Oh. Well, we have a very different assessment of
25 what constitutes a scientist; so we disagree.

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1 MR. GOECKE: Indulgence just one moment.
2 MR. GROSSMAN: Sure.
3 MR. GOECKE: No further questions.
4 MR. GROSSMAN: Okay. All right.
5 MR. SILVERMAN: Can I redirect? Thank you.
6 REDIRECT EXAMINATION
7 BY MR. SILVERMAN:
8 Q There's a discussion of scientists, Dr. Adelman.
9 You said that scientists, I think you said -- correct me if
10 I'm wrong -- that scientists use error bars.
11 A Yes.
12 Q Would you tell me what that means and how you
13 think Mr. Sullivan or Dr. Chase, for that matter, should
14 have used error bars?
15 A Well, for example, in the, in that graph, in the
16 data -- and this slide re-plotted his data -- I would have
17 liked to have had error bars because, when you draw a line
18 through data points, the slope of the line or the way you
19 connect the dots is dependent upon error -- dependent on
20 error uncertainty. Scientists recognize uncertainty in all
21 data. In some cases, the data is sufficiently reproducible,
22 precise, free of error that the data point itself
23 encompasses the error bar, but it is more traditional to
24 show a dot with a bar that extends vertically from the upper
25 limit of certainty to the lower limit of certainty. And

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1 depending on what the error bars are, in this particular
2 data set, for which I don't have error data, it's impossible
3 to tell whether it's appropriate to connect the dots, as is
4 done here, or to draw a horizontal line or a line that
5 slopes downward or a line -- another way of plotting this
6 data, for example, would be to show error bars and have
7 three lines: one, the most probabilistic interpretation,
8 and two other lines that indicated how the data would be
9 interpreted if the error was the minimum value and how the
10 data would be interpreted if it was the maximum value.
11 Q Is this sort of like storm-tracking of hurricanes
12 when they're far out?
13 MR. GROSSMAN: Well, you don't have to give
14 analogies. I understand the point.
15 MR. SILVERMAN: Okay. All right. I'm just trying
16 to understand it.
17 BY MR. SILVERMAN:
18 Q And how would a scientist go about determining
19 what the error bar is for, let's say, PM 2.5?
20 A In this case, if I understand, Mr. Sullivan got
21 all of his data from published studies. I don't believe he
22 did these studies himself. So, he'd look at the data and he
23 would provide an average with a range of standard deviation
24 based on the data set that he had available, and he would
25 use that standard deviation to indicate an error bar.

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1 I have not moved on to the original data. I found
2 it hard enough to find the points that I plotted here in
3 Mr. Sullivan's filing. So I didn't go to the original
4 source because I wasn't after the question of did he have
5 accurate data. I simply assumed the data were accurate
6 because I had no basis for challenging the accuracy.
7 Q Well, when you're doing scientific investigations
8 or presenting papers or demonstrations, how, how prominent a
9 place do you give the issue of error in your discussions, as
10 a scientist?
11 A It's, in most cases -- I can think of some cases
12 where it's not particularly important -- but in most cases,
13 it's crucial, especially if you're making a conclusion based
14 on a data set and you want to convince the, your scientific
15 peers that you've proven the point. Then you show them
16 that, number one, my measurements are reproducible; number
17 two, that my equipment has been calibrated, et cetera,
18 et cetera, et cetera, and I know that any one data point has
19 a precision of, pick a number, of .1 percent, whatever,
20 because often in science you are presenting a paper and you
21 are in fact arguing with people. I mean, it's a play
22 argument, but you're arguing with people because you're
23 intending to say the conclusions that so-and-so drew are
24 wrong, mine are correct, the reason they're correct is
25 because my data is accurate and his is not or hers is not

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1 accurate. So error bars are essential.
2 Now, there are situations where error bars are
3 simply irrelevant. I mean, if you're just describing the
4 color of something, nobody's going to be interested in what
5 the error is in the wavelength of light, but in most
6 situations, the error bars are essential.
7 Q Thank you.
8 MR. GROSSMAN: Any recross?
9 MR. GOECKE: No.
10 MR. GROSSMAN: All right. Thank you, Dr. Adelman,
11 appreciate your presentation. Okay. Is there anything else
12 that we need to discuss prior to adjourning today?
13 MS. ROSENFELD: I do have some exhibits I'd like
14 to enter.
15 MR. GROSSMAN: Oh, yes, the exhibits. The
16 exhibits.
17 MS. ROSENFELD: The exhibits, and I --
18 MR. GROSSMAN: How come you didn't bring this up
19 earlier?
20 MS. ROSENFELD: And, actually, I have -- there's
21 two ways we can do it. We can submit these now. I suspect
22 there are others we're going to be submitting in advance.
23 If, if I send these into you -- most of these I've already
24 given you in hard copy, and the others I can get to you.
25 MR. GROSSMAN: Yes, send them in. We'll

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1 exhibitize them.
2 MS. ROSENFELD: If we could get an exhibit list in
3 advance of the hearing and not just the morning of, I think
4 it would help us --
5 MR. GROSSMAN: Well, yes. The problem is that we
6 often have been getting exhibits very close to do that.
7 MS. ROSENFELD: Too late to do that. I understand
8 that.
9 MR. GROSSMAN: So, yes, but certainly, we would --
10 MS. ROSENFELD: But if I get these to you in
11 advance, rather than taking time tonight --
12 MR. GROSSMAN: We can give you the exhibit
13 numbers, yes, sure.
14 MS. ROSENFELD: Okay. Is that acceptable to --
15 MS. HARRIS: Are they new, just so I'm clear, are
16 they new exhibits?
17 MS. ROSENFELD: Three of these are the Federal
18 Register documents that I gave you in hard copy and that you
19 have --
20 MS. HARRIS: Okay.
21 MS. ROSENFELD: -- and I'm happy to give you
22 copies of what I do have here. They're charts. Some of
23 these you do not have, but I expect that they will be
24 testified to later. I'm happy to go ahead --
25 MS. HARRIS: Well, for the things that we don't

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1 have, yes, I think it would be helpful to have them now, if
2 we could.
3 MS. ROSENFELD: Okay. I'll go ahead and give you
4 your copies now, or we can --
5 MS. HARRIS: That's fine.
6 MR. GROSSMAN: Okay. That's fine, and then you
7 can file them --
8 MS. ROSENFELD: And then you can just correlate
9 them to the exhibit numbers later.
10 MR. GOECKE: Yes, that's fine.
11 MS. ROSENFELD: Does that work for you?
12 MS. HARRIS: Yes, that's fine.
13 MS. ROSENFELD: Okay.
14 MR. GROSSMAN: Because I don't plan to look at
15 them tomorrow. I'm going, flying up to see my grandchildren
16 this weekend. So that's --
17 MS. ROSENFELD: I understand. Okay.
18 MS. ADELMAN: You're not going to wait until
19 Halloween?
20 MR. GROSSMAN: We're going to be close enough, as
21 I understand it. That reminds me of a joke, but I'm going
22 to, I'm going to refrain from telling it.
23 MS. HARRIS: We could use some humor.
24 MR. GROSSMAN: All right. Is there anything else
25 that we need to handle before we adjourn?

1 (No audible response.)
2 MR. GROSSMAN: All right. Then we will reconvene
3 here on November 14. We'll, we know we at least will have
4 Mr. Silverman's continuing cross-examination, and we'll have
5 Mr. Core's continuing cross-examination, or
6 cross-examination, I should say, and I guess you'll supply
7 me with more specifics about who will be the other
8 witnesses --
9 MS. ADELMAN: Yes.
10 MR. GROSSMAN: -- at that point. All right, then,
11 thank you. We are -- I'm sorry?
12 MS. ADELMAN: You do have my preliminary list,
13 though, don't you, Mr. Grossman?
14 MR. GROSSMAN: Yes. Yes. You handed that out
15 last time. All right. Anything further?
16 MR. GOECKE: No.
17 MR. GROSSMAN: Then, thank you, we are adjourned.
18 MR. SILVERMAN: Thank you, sir.
19 (Whereupon, at 5:18 p.m., the hearing was
20 adjourned.)
21
22
23
24
25

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of Costco Wholesale Corporation
Special Exception No. S-2863
OZAH No. 13-12

By:

Wendy Campos, Transcriber

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