

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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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
May 6, 2013, commencing at 9:41 a.m. in the Rita Davidson
Memorial Hearing Room, 100 Maryland Avenue, Rockville,
Maryland.

Martin L. Grossman

Hearing Examiner

A P P E A R A N C E S

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E X H I B I T S

Exhibit No.		Marked/Received
114	Applicant's List of Witnesses	7
118	E-mail Schedule	7
119	Special Exception Plan Version 6	15
119(c)	Special Exception Plan Page 3 of 3	15
121	Aerial photograph of Wheaton Plaza, July 31, 2006	74
122	March 8, 2012 letter from Jim Agliata to Steve Silverman	89
123	Letter from Steven Silverman to Isaac Leggett dated 4/19/12	148

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Jim Agliata				
By Ms. Harris	33			
By Mr. Adelman			63	
By Ms. Rosenfeld			72	
Wes Guckert				
By Ms. Harris			112	
By Mr. Adelman				125
By Ms. Rosenfeld				132
Wayne Tucker				
By Ms. Harris	156			
By Mr. Silverman			170	
Daniel Goalwin				
By Ms. Harris	179			
By Mr. Silverman			217	
By Ms. Rosenfeld			232	
Gina Vopicelli				
By Ms. Harris	241			
By Ms. Rosenfeld			250	
By Mr. Silverman			270	

P R O C E E D I N G S

1
 2 MR. GROSSMAN: This is the third day of the 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 59G
 6 2.06 to allow petitioner to construct and operate an
 7 automobile filling station which would include 16 pumps.
 8 Subject site is located at 11160 Veirs Mill Road, Silver
 9 Spring, Maryland, Lot N, 631 Wheaton Plaza, parcel 10, which
 10 is also known as Westfield Wheaton Mall, Silver Spring,
 11 Maryland. It is in the C-2 zone, that's general commercial.
 12 The hearing was begun on April 26, 2013, and
 13 resumed on May 1, 2013. It was noticed to resume again
 14 today. The next scheduled hearing date is Tuesday, May 14,
 15 2013, in this room, in the COB Auditorium. This hearing is
 16 conducted on behalf of the Board of Appeals. My name is
 17 Martin Grossman. I'm the hearing examiner, which means I
 18 will take evidence and write a report and recommendation for
 19 the Board of Appeals which will make the decision in this
 20 case. Will the parties identify themselves for the record
 21 please?
 22 MS. HARRIS: Good morning. Pat Harris with Lerch,
 23 Early & Brewer here on behalf of the applicant, Costco.
 24 MR. GROSSMAN: Okay.
 25 MR. GOECKE: Good morning. Michael Goecke on

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1 behalf of the applicant, Costco.
2 MR. GROSSMAN: Mr. Goecke.
3 MR. SILVERMAN: Larry Silverman on behalf of the
4 Stop Costco Gas Coalition.
5 MR. ADELMAN: Dr. Mark Adelman on behalf of the
6 Stop Costco Gas Coalition.
7 MR. GROSSMAN: Okay.
8 MS. ROSENFELD: Michele Rosenfeld, here for the
9 Kensington Heights Civic Association and I would like to
10 note for the record that Ms. Cordry and Ms. Savage and
11 Eleanor Duckett either will not be here today or will be
12 arriving later this morning.
13 MR. GROSSMAN: All right.
14 MS. ADELMAN: Abigail Adelman, chair, Stop Costco
15 Gas Coalition.
16 MR. GROSSMAN: All right. Okay. Let me turn to
17 some preliminary matters. I'll note that Ms. Harris and Ms.
18 Rosenfeld agreed to the following briefing schedule, as have
19 the other participants by e-mail too. The e-mail schedule
20 is, should be marked, I haven't done that yet, as Exhibit
21 118. It is that by May 20, 2013, prior to the close of
22 business, each party exchange briefs with the other party on
23 those issues it has decided to brief. Copies will be
24 provided to the Hearing Examiner and by June 4, 2013, prior
25 to the close of business, each party may exchange reply

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1 briefs with copies to me.
2 (Exhibit No. 118 was marked for
3 identification.)
4 MR. GOECKE: Mr. Grossman, the first date.
5 MR. GROSSMAN: The first date is May 20, 2013,
6 option to file briefs and June 4 for any reply briefs on
7 issues of concern. Is there a problem with that Dr.
8 Adelman?
9 MR. ADELMAN: No, I just didn't understand you.
10 MR. GROSSMAN: Okay. We'll make that Exhibit 118.
11 It's the e-mail exchange subject to those dates. Okay. I
12 also received applicant's list of witnesses for today.
13 That's Exhibit 114 and resumes for Mr. Tucker and Mr.
14 Goalwin.
15 (Exhibit No. 114 was marked for
16 identification.)
17 MR. GROSSMAN: I presume you all received those.
18 No?
19 MR. SILVERMAN: Not aware that I received them.
20 MR. GROSSMAN: Ms. Harris?
21 MS. HARRIS: We provided, I believe, Abigail
22 Adelman from Stop Costco copies of the --
23 MS. ADELMAN: I did get them.
24 MR. GROSSMAN: Okay. All right.
25 MS. ROSENFELD: Excuse me, Mr. Grossman.

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1 MR. GROSSMAN: Yes?
2 MS. ROSENFELD: On the exhibit list, my typed copy
3 goes to 116. Can you tell me what Exhibit 117 is?
4 MR. GROSSMAN: Oh, 117 is dated May 3, '13. You
5 should have received copies of the updated exhibit list, but
6 received May 3, '13, e-mail from me to Pat Harris and other
7 hearing participants regarding testimony schedule.
8 MS. ROSENFELD: Thank you.
9 MR. GROSSMAN: It was just part of that e-mail
10 exchange. I tried to make sure that e-mail exchanges with
11 me and the parties are made part of the public record. I'll
12 slip up on occasion, but I try to do that to make sure that
13 anybody who wants to see what that exchange is can see it
14 and I also make sure that all of the organizational parties
15 are directly involved in any e-mail exchange.
16 MR. SILVERMAN: Mr. Grossman --
17 MR. GROSSMAN: Yes, sir?
18 MR. SILVERMAN: -- may I ask you a question? I
19 just don't know the answer. With regard to the ZTA, I'm not
20 sure whether legislative history is called for, the statute
21 isn't clear, but in cases where you get the legislative
22 history, how do you do it when much of the legislative
23 history is just on a video and not transcribed, let's say
24 the statements of the Council members and so on?
25 MR. GROSSMAN: All right. Well, that's an

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1 interesting question. I don't know that a video that's --
2 in other words, I'm not sure that the fact that some
3 evidence was presented to the Council at a committee
4 hearing, for example. It is necessarily considered part,
5 directly part of the legislative history. I mean you can
6 brief that issue and in terms of the video, in what format
7 is it recorded?
8 MR. SILVERMAN: I don't know yet. We're trying to
9 figure that out. It's on the Internet, I think, and I was
10 thinking just the statements of Council members. I mean if
11 you have Federal legislation, you can go to the
12 Congressional record, but all we have here is --
13 MR. GROSSMAN: Oh, I see what you mean.
14 MR. SILVERMAN: Yeah. Is it, should we just
15 transcribe what we think is relevant and put it in or --
16 MR. GROSSMAN: Well, you can do that. You can --
17 if you, if, in fact, it's a part of the legitimate
18 legislative history, then you could have it transcribed and
19 submitted as long as it's submitted enough in advance for
20 the other side to review it and submit explanatory parts or
21 other parts of the same exchange so that the picture is a
22 fair one. Opinions of individual members of legislative
23 bodies doesn't necessarily carry a tremendous amount of
24 weight in terms of interpreting the body's determination,
25 but I will let you and, you know, figure out in conjunction

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1 with other members of your group what you want to submit in
2 terms of legislative history.
3 MR. SILVERMAN: Well, my understanding is the
4 statute speaks for itself, but if it's --
5 MR. GROSSMAN: Right.
6 MR. SILVERMAN: -- ambiguous, then you can go
7 behind it.
8 MR. GROSSMAN: That's true. But the extent to
9 which you can go behind it by the individual opinions of a
10 body is another question, so -- but I will leave that to you
11 in terms of what you submit. I'm not predetermining what I
12 will consider or not consider. I'll hear from both parties
13 on whatever is submitted.
14 MR. SILVERMAN: Thank you, sir.
15 MR. GROSSMAN: Sure. All right. And I also want
16 to mention to you that an individual by the name of Andrea
17 Santy filed an opposition, a letter with photographs. It's
18 Exhibit 113 in the file. I don't know if you all are
19 familiar with the fact that that has been filed, but I just
20 wanted to let you know that I did receive it this last
21 Friday, I believe. All right. One more item. Ms. Harris,
22 would you please clear up some confusion for me as to what
23 is the current special exception plan because you've been
24 referring, I believe, to 54(f), F as in Frank. But I
25 noticed that my electronic copy of the plan that you also

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1 submitted is dated March 25, 2013, that's version 6. And
2 that is dated after Exhibit 54(f), F as in Frank, was filed.
3 I also noticed that 54(f) has the original proposed, not
4 original, but has a proposed pedestrian path along the south
5 ring road, whereas the one that I have the electronic copy
6 of, version 6, the ring road was, the proposed ring road was
7 removed. So I just want to make sure that we are
8 referencing the correct exhibit number on whatever you have
9 been referring to in this hearing.
10 MS. HARRIS: I need a moment to look at that. I
11 would note in our submission on March 26th --
12 MR. GROSSMAN: Yes.
13 MS. HARRIS: -- we did note the elimination of the
14 ring road and that was reflected at least on one of the
15 plans that was submitted on March 26th. It was the revised
16 landscape plan, 86(i), but that's not the special exception
17 plan. So just a moment.
18 MR. GROSSMAN: Right.
19 MS. ROSENFELD: Excuse me. Both of you have
20 mentioned the elimination of the ring road.
21 MS. HARRIS: I'm sorry.
22 MS. ROSENFELD: Is that mistaken --
23 MS. HARRIS: Pedestrian.
24 MR. GROSSMAN: Elimination of the pedestrian
25 path --

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1 MS. ROSENFELD: Okay. Thank you.
2 MR. GROSSMAN: -- on the ring road. If I said
3 elimination of the ring road, I misspoke. I mean the fact
4 that this elimination of the pedestrian path came up in the
5 testimony last week, but I wasn't aware at the time that
6 there was this apparent discrepancy between a number of the
7 special exception plan that was being cited to and the
8 actual current version of the special exception plan. So I
9 just wanted to make sure we're all talking about the same
10 plan.
11 MS. HARRIS: Do you, can we get back to you at the
12 break on that or do you want the answer now?
13 MR. GROSSMAN: Well, if you're going to use the
14 special exception plan during this hearing, we want to make
15 sure that we have the current plan. Was the one that you
16 were using that you called 54(f) last week, that did not
17 have the proposed pedestrian path, I believe. Is that
18 version 6 dated March 25, 2013, the one you were using last
19 week?
20 MS. HARRIS: And that was 54(f)?
21 MR. GROSSMAN: No, you, I think you were referring
22 to it as 54(f), but you had one on the board --
23 MS. HARRIS: Yes, and I'm looking through the
24 exhibit list for the one with that date. It looks like the
25 most recent one in the file of the special exception plan is

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1 54(f), but that that was subsequently, two things were
2 modified on that as reflected on the landscape plan and it
3 doesn't appear that the revised special exception plan
4 showing the elimination of the pedestrian path and the
5 extension of the wall of 46 feet which was noted in the
6 correspondence on March 26th is in the record.
7 MR. GROSSMAN: All right. Well, let's -- is
8 the -- would you take a look at the ones that are leaning
9 against the wall here, the large plans, and see if the one
10 you've been calling 54(f) is there and whether or not that
11 does show the changes?
12 MS. HARRIS: Well, not to confuse things, but this
13 has 54(h).
14 MR. GROSSMAN: Well, you may not be looking at --
15 H may be another --
16 MS. HARRIS: Yes. This is the overall
17 illustrative 54(f).
18 MR. GROSSMAN: What version?
19 MS. HARRIS: It's 54(f) and the recent update was
20 3/25.
21 MR. GROSSMAN: Yes. And that's version 6?
22 MS. HARRIS: Correct.
23 MR. GROSSMAN: Okay. But it's not --
24 MS. HARRIS: But I don't --
25 MR. GROSSMAN: That's not 54(f) then?

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1 MS. HARRIS: Correct.
2 MR. GROSSMAN: Because it can't be 54(f) and be
3 dated --
4 MS. HARRIS: Right.
5 MR. GROSSMAN: March 25.
6 MS. HARRIS: You are correct.
7 MR. GROSSMAN: All right. So let's give that a
8 new exhibit number.
9 MS. HARRIS: Should I --
10 MR. GROSSMAN: Let's call that -- up to 119.
11 MS. HARRIS: So mark this one 119?
12 MR. GROSSMAN: Yes. And is that -- what page of
13 the --
14 MS. HARRIS: Page 3 of 3.
15 MR. GROSSMAN: It's 3 of 3. So let's --
16 MS. HARRIS: And it's titled proposed special
17 exception.
18 MR. GROSSMAN: Right. Do you have the other two
19 pages of the latest version of it?
20 MR. SILVERMAN: Excuse me, Mr. Grossman, what are
21 we calling Exhibit 119?
22 MR. GROSSMAN: 119, the one she has, which is page
23 3 of 3, we're going to call 119(c).
24 MR. SILVERMAN: Page 3 of 3?
25 MR. GROSSMAN: The whole thing, 119 is going to be

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1 the special exception plan, version 6; special exception
2 plan version 6 dated March 25, '13. And --
3 (Exhibit No. 119 was marked for
4 identification.)
5 MS. HARRIS: But we don't have version 6 of 1 of 3
6 or 2 of 3, we can certainly get those.
7 MR. GROSSMAN: Okay. So we'll mark that 119(c)
8 because that's page 3 of it.
9 (Exhibit No. 119(c) was marked for
10 identification.)
11 MS. HARRIS: And then we need to provide any
12 new --
13 MR. GROSSMAN: That's correct.
14 MR. SILVERMAN: I'm still, Mr. Grossman, I'm still
15 a little --
16 MR. GROSSMAN: Yes.
17 MR. SILVERMAN: -- a little confused. What is the
18 special exception plan? Where do we find it now?
19 MR. GROSSMAN: The special exception plan is the
20 overall plan that will be approved or disapproved by the
21 Board of Appeals. It consists of three pages and it was
22 included in Exhibit 54 of the prior version, which is
23 Version 5. And then they amended it thereafter apparently
24 and in their amendment they removed the proposed pedestrian
25 path along the southern ring road, which was discussed last

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1 week in the hearing. And so the question was raised by Ms.
2 Rosenfeld about that as I recall during the testimony. She
3 questioned about that proposal removal.
4 I also, as I understand from Ms. Harris, that also
5 the newer plan extended the proposed wall you said?
6 MS. HARRIS: 46 feet.
7 MR. GROSSMAN: 46 feet. To the east or --
8 MS. HARRIS: East.
9 MR. GROSSMAN: To the east. So those were, I take
10 it, the two changes that were in the -- they did include it
11 in the electronic copy. As I say, that's why I picked up
12 the issue when I looked at the exhibit list compared to the
13 electronic copies of the exhibit that had been supplied to
14 me.
15 MR. SILVERMAN: And where would we find it in the
16 electronic?
17 MR. GROSSMAN: Well, I don't know how to exactly
18 refer you to it at this point. It was probably -- did you
19 distribute to, when you distributed electronic copies to me,
20 I presume you distributed electronic --
21 MS. HARRIS: Well, they had along the way
22 electronic copies, the compilation, we did not send to them
23 the compilation that you had requested.
24 MR. GROSSMAN: Okay.
25 MS. HARRIS: But we will certainly by tomorrow, if

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1 not by the end of today, have the hard copies to the
2 opponents.
3 MR. GROSSMAN: All right. Let's get them
4 electronic copies too just to --
5 MS. HARRIS: Okay.
6 MR. SILVERMAN: The compilation of?
7 MS. HARRIS: And electronic --
8 MR. GROSSMAN: I presume what Ms. Harris is
9 referring to is the fact that I request from all parties,
10 and it's a requirement of parties represented by counsel,
11 that they submit electronic copies to me of all plans in PDF
12 format and all textual documents, if available, in Word
13 format. If not available in that format, then in some text
14 readable what is now image PDF format for text documents.
15 But, and so that was submitted by Ms. Harris. I don't know
16 whether at that point she had already submitted it to your
17 group or not.
18 MR. SILVERMAN: So is there a map with the
19 extended wall and the removed pedestrian --
20 MS. HARRIS: What we shared with the opponent's
21 counsel that was a submission dated 3/26. It wasn't the
22 special exception plan, but it was a landscape plan that
23 reflected both of those changes.
24 MR. SILVERMAN: All right.
25 MS. HARRIS: And it was noted in the text of the

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1 letter. But we and, in fact, we have electronic copies we
2 can send right this moment --
3 MR. SILVERMAN: All right.
4 MS. HARRIS: -- of 1 through 3.
5 MR. SILVERMAN: So if we want to know what the
6 special exception plan is, we look at the landscape plans
7 submitted on --
8 MR. GROSSMAN: Apparently, according to what Ms.
9 Harris is saying, and I did not do a side-by-side comparison
10 myself, but Ms. Harris is saying that the landscape plan
11 reflected both that was filed on March 26, 2013, reflected
12 both of those changes.
13 MR. SILVERMAN: Thank you.
14 MS. ROSENFELD: And, Mr. Grossman, just for point
15 of clarification, is there an exhibit that shows where the
16 original wall stopped in the new section?
17 MR. GROSSMAN: Yes, some portion of Exhibit 54,
18 54(f) may be the one, but I'd have to look back to see.
19 Those exhibits that were filed upon the special exception
20 plan version 5 would be depict that.
21 MS. ROSENFELD: I see 54(f). My question is is
22 there any other exhibit that shows specifically where the
23 original wall ended and where the extension is?
24 MS. HARRIS: No, it's reflected on 54(f) and then
25 when you get the ones that we'll be sending later today or

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1 overnight, again, the side-by-side comparison, you couldn't
2 tell that the wall was extended. We don't have a separate
3 exhibit just showing the 46-foot section.
4 MR. GROSSMAN: But according to what Ms. Harris
5 said, the landscape plan itself would show those
6 differences, both previously submitted one exhibited within
7 exhibit -- is there a landscaping plan submitted with
8 Exhibit 54?
9 MS. HARRIS: 26(f). Well, originally? It was
10 54(k), but then again, as I just noted, it was, it was
11 updated by --
12 MR. GROSSMAN: Well, so, well, what I'm saying is
13 presumably you can compare 54(k) landscape master plan,
14 which was filed back in January with the landscape plan that
15 was filed on March 26th, is that correct?
16 MS. HARRIS: Correct.
17 MR. GROSSMAN: And that will show the distinction
18 between, it will show the extension of the wall, as well as
19 the removal of the proposed pedestrian path along the
20 southern ring road, correct?
21 MS. HARRIS: That is correct.
22 MR. SILVERMAN: Can I inquire?
23 MR. GROSSMAN: Yes, sir?
24 MR. SILVERMAN: The wall also has, plays a part in
25 the environmental studies, so is there an environmental

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1 study that takes account of the new wall?
2 MR. GROSSMAN: Ms. Harris?
3 MS. HARRIS: Well, that's certainly not our
4 contention that it plays a part in the environmental
5 studies.
6 MR. SILVERMAN: Well, it's referenced in the --
7 MS. HARRIS: And then the environment studies
8 worked on, based on -- to the extent the wall and the
9 extension of the wall were done for visual purposes. In
10 our, it's our position it has nothing to do with the
11 environmental issues.
12 MR. SILVERMAN: Well, we discussed -- I take it
13 the answer is that the environmental study does not deal
14 with the new wall.
15 MR. GROSSMAN: I think that's what Ms. Harris is
16 saying. She's saying that it's a visual issue, at least on
17 the eastern side.
18 MR. SILVERMAN: Yes, well, I -- whether it's
19 relevant to air pollution, we'll talk about --
20 MR. GROSSMAN: Right.
21 MR. SILVERMAN: -- at the appropriate time, but
22 their expert did not, did not address it in his report.
23 MR. GROSSMAN: I think that's what Ms. Harris is
24 saying.
25 MR. SILVERMAN: Okay. Thank you very much.

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1 MR. GROSSMAN: There are a lot of expert reports.
2 I didn't memorize them, so I want to make sure --
3 MR. SILVERMAN: Okay.
4 MR. GROSSMAN: -- you don't rely on my
5 recollection of what their expert said on the wall.
6 MR. SILVERMAN: Can I just say the multiple
7 reports and the later submissions make it difficult for a
8 group like ours that deal with a lot of citizens who are not
9 here for the hearing --
10 MR. GROSSMAN: All right.
11 MR. SILVERMAN: -- and try to explain what's going
12 on makes our lives very difficult.
13 MR. GROSSMAN: The multiple reports make it
14 difficult for everybody.
15 MR. SILVERMAN: Yes. Yes.
16 MR. GROSSMAN: But they are relevant to the
17 inquiries, so they're not excludable and as long as
18 everybody has time, and I think everybody has had time here
19 to review them all, I don't think everybody is prejudiced by
20 the fact that there were revisions. Dr. Adelman?
21 MR. ADELMAN: Mr. Grossman, looking at the
22 exhibits to which you're referring, I can't actually see it,
23 the pedestrian path, so I'm not sure I can see the removal
24 of the pedestrian path.
25 MR. GROSSMAN: Well, you have to look at the

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1 larger version probably in order to see it. It's hard to
2 see in a small version.
3 MR. ADELMAN: I'm using --
4 MR. GROSSMAN: What are you looking at, sir?
5 MR. ADELMAN: I was actually looking at the views
6 in the, to the path's long detailed views.
7 MR. GROSSMAN: You satisfied for the moment?
8 MR. ADELMAN: Yes.
9 MR. GROSSMAN: All right. I want to make sure
10 everybody has an opportunity to look at them. I don't want
11 anybody to be prejudiced by this apparent omission, so if
12 there are any problems regarding that, you know, let me
13 know. If the witnesses that are coming on today don't bear
14 on those issues, then that's fine. Let's plow ahead and
15 then anybody have a problem, just speak up and we'll deal
16 with it then. All right. Let me see.
17 Has there been any agreement by the parties
18 regarding the proposed site visit? Ms. Harris?
19 MS. HARRIS: Mr. Grossman, Michele Rosenfeld and I
20 had an opportunity to talk Friday afternoon. We shared with
21 her our suggested route verbally and then she was going to
22 coordinate with her team and obviously she probably has more
23 people to check in with. So I think we need a couple more
24 days if that's acceptable --
25 MR. GROSSMAN: Sure.

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1 MS. HARRIS: -- to coordinate the -- certainly
2 before the end of the week we'll be able to get to what you
3 requested.
4 MR. GROSSMAN: All right. That would be great.
5 Okay. Any other preliminary or procedural matters, Ms.
6 Harris?
7 MS. HARRIS: I, we have two. One was,
8 unfortunately, but realistically I think we will likely need
9 an extra day or two to complete this and I would prefer to
10 be able to identify that either, you know, today either now
11 or before the end of the day or at least get that in motion
12 so that we're not waiting until June 4th to add two more
13 days.
14 MR. GROSSMAN: Certainly. What I would suggest is
15 during some break in the hearing or after today's hearing
16 get together with the other parties and see if you have an
17 agreeable set of dates that you can pick out because I may
18 have some conflicts also and then share them with me by e-
19 mail with copies to the other organizational parties and
20 we'll try to figure out agreeable dates to everybody.
21 MS. HARRIS: Okay.
22 MR. GROSSMAN: All right?
23 MS. HARRIS: And should we coordinate, so just
24 provide the dates to you or should we coordinate with Ms.
25 Forbes or --

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1 MR. GROSSMAN: Well, coordinate with -- you can
2 send a copy to Ms. Forbes and Ms. Behanna-Moseley --
3 MS. HARRIS: Okay.
4 MR. GROSSMAN: -- at the same time.
5 MS. HARRIS: Okay.
6 MR. GROSSMAN: I usually try to copy them and then
7 we can figure it out.
8 MS. HARRIS: Okay. And then we had one other
9 matter that Mr. Goecke will take up which had to do with
10 your inquiry regarding admissibility of various exhibits.
11 MR. GROSSMAN: Okay.
12 MR. GOECKE: Right. Mr. Grossman, you had asked
13 us on May 1st to identify any exhibits that we might object
14 to --
15 MR. GROSSMAN: Yes.
16 MR. GOECKE: -- and this was after you told us on
17 day one that while the rules of evidence do not strictly
18 apply, it was sort of this equitable notion of fairness and
19 you don't want the parties to be surprised.
20 MR. GROSSMAN: Well, not just -- not just fairness
21 and surprise, but also the question of hearsay, reliability
22 is an issue and so that's -- I have to consider that in any
23 attempted admission of hearsay evidence.
24 MR. GOECKE: Absolutely. Absolutely. And so with
25 that in mind, we went and took a look at the exhibits and

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1 there are a handful that we think are inadmissible as
2 hearsay, 78(b), which is a statement from the Choose Clean
3 Water Coalition.
4 MR. GROSSMAN: Well, rather, Mr. Goecke, rather
5 than reading them out now, do you have that list in a typed
6 format and have you exchanged it with other counsel?
7 MR. GOECKE: I have a typed list. I have not
8 exchanged it with opposing counsel.
9 MR. GROSSMAN: Okay. Why don't you submit that
10 now, exchange it with opposing counsel and she'll have the
11 opportunity to reply.
12 MR. GOECKE: That's fine.
13 MR. GROSSMAN: Okay?
14 MR. ADELMAN: 78(b)?
15 MR. GROSSMAN: Well, I don't know what -- he'll
16 have more than one exhibit on the list, presumably, and
17 we're going to mark his submission here.
18 MR. ADELMAN: Let me just share them with us if
19 they're ours then, correct?
20 MR. GROSSMAN: I'm sorry, sir?
21 MR. ADELMAN: We will share them with the
22 Coalition if they are Coalition files.
23 MR. GROSSMAN: Absolutely, that's what I'm asking
24 you to do, yes. Okay. So I've been handed a list of
25 exhibits that have potentially objectionable hearsay and

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1 we're going to mark this, this is applicant's submission, so
2 we'll mark this as Exhibit 120 and that's applicant's list
3 of objectionable exhibits. And I think since the other side
4 is just seeing this now, we won't take up this issue until
5 the next session, any, until they have a time to respond to
6 that.

7 MR. GOECKE: Yes, if I could just briefly --
8 there's sort of three categories of objections that we have
9 that might be worthwhile to explain them now. And one is
10 the traditional hearsay, it's statements made by a party who
11 is not going to testify here. For example, there was a
12 letter from the MDE, a letter from the EPA and another
13 letter that was referenced from Dr. Manaro in the U.K. that
14 I'm not sure if that's technically going to be an exhibit,
15 but it has been referenced and we would object to that as
16 well.

17 There's also several scientific articles and
18 journals that are going to be relied upon and I know that on
19 day one you had sort of distinguished some hearsay
20 statements from those types of materials. And I would just
21 point your attention to 5803(b)(18), which is the learned
22 treatise exception to hearsay which says that those
23 materials may be relied upon if someone is qualified to
24 testify if that expert establishes that these materials are
25 reasonably relied upon in his or her field, but even then

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1 the documents themselves are not admitted into evidence.
2 The expert is merely allowed to read portions of those
3 exhibits into the record. So that would be our objection on
4 that ground.

5 And then there were several materials, as you'll
6 see on the list, that, in the form of pre-hearing
7 statements, the statements critiquing Costco's reports that
8 we would argue are not provided by an expert and so they're
9 inadmissible lay person opinions. And, you know, 5701, 702,
10 703, when you read them together, they limit what experts
11 can talk about and they limit what lay people can talk
12 about. And lay people can talk about facts that they've
13 experienced, their own perceptions, their own knowledge.
14 And if they're trying to opine on something that's within
15 everybody's, you know, a lay person's purview, or that falls
16 within the scope of expert or specialized knowledge, then
17 it's not proper for them to opine on those topics and so we
18 can talk about those with opposing counsel before we discuss
19 this further, but I just wanted to let you know that that's
20 what I thought process was.

21 MR. GROSSMAN: Right. In this kind of proceeding,
22 often we get a lot of lay opinions. And usually I admit
23 them if it's not a hyper-technical area, I will admit them
24 and give them the weight which I believe is appropriate
25 given that they are lay opinions. After all, in a zoning

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1 matter, the opinions of the community often will be the
2 opinions of the community, not necessarily just a fact
3 matter. So they are something that is considered to be
4 admissible in this type of proceeding for the, given the
5 appropriate weight.

6 But I think that I'm certainly going to give the
7 opposition an opportunity to reply orally now, but I'm
8 obviously also going to give them the opportunity to submit
9 something and to reply more extensively later to the
10 categories that you've suggested. Mr. Silverman?

11 MR. SILVERMAN: Yes, I, we have some pretty
12 unusual lay witnesses here. We have people who are, have a
13 lifetime of training in the scientific disciplines.

14 MR. GROSSMAN: Yes.

15 MR. SILVERMAN: And the people quite capable of
16 researching topics in any area of science and doing an
17 accurate and reliable report on the state of scientific
18 opinion today.

19 MR. GROSSMAN: Right. You have an impressive
20 group of people, there's no disputing that.

21 MR. SILVERMAN: Yes.

22 MR. GROSSMAN: There's another question in terms
23 of groups providing expert opinions as a requirement that in
24 the zoning ordinance and the rules that the other side be
25 given expert opinions in advance so that they have an

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1 opportunity to prepare. That was done so here, so that
2 fairness issue has been accomplished. There's also a
3 question in terms of a general way in which civil
4 proceedings are conducted that experts have to be qualified
5 and subject to a voir dire on the subject before their
6 opinions submitted can be considered expert opinions in the
7 classical sense. So there's somewhere in between here, the
8 learned opinions of your, the people in your groups fit and
9 we'll have to figure out what is the appropriate way to
10 treat those.

11 MS. ROSENFELD: And, Mr. Grossman, I'll reserve my
12 response to --

13 MR. GROSSMAN: Okay.

14 MS. HARRIS: -- a written response. I also have
15 not been prepared on behalf of KHCA on this, the objections.

16 MR. GROSSMAN: Okay.

17 MS. HARRIS: And we'll prepare that list and
18 exchange it so that we can address all of those issues in
19 our next hearing --

20 MR. GROSSMAN: All right.

21 MS. ROSENFELD: -- comprehensively.

22 MR. GROSSMAN: And I'd say one more word about the
23 treatise issue. One of my concerns about the idea of
24 hearsay is that this reliability issue and when you're
25 talking about a treatise, it hasn't been prepared with an

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1 eye towards this proceeding. There's a -- there's less of
2 an issue of bias and that sort of thing to be concerned
3 about, so the reliability of it is enhanced compared to
4 other documents that may have been prepared and submitted
5 for this particular proceeding. So I balance that too.
6 Hearsay is more relaxed in this proceeding by virtue of the
7 Montgomery County Administrative Procedures Act than it is
8 in an ordinary civil proceeding governed by either the
9 Maryland or the Federal Rules.
10 In any event, we'll give the parties an
11 opportunity to submit their, the opposition parties an
12 opportunity to submit their objections and also reply to the
13 list and I also want to give the -- if you have a list as
14 well, Ms. Rosenfeld, I want to give the applicant an
15 opportunity to reply to whatever you submit.
16 MS. ROSENFELD: Certainly.
17 MR. GROSSMAN: And then we --
18 MS. ROSENFELD: And we will circulate that to the
19 applicant --
20 MR. GROSSMAN: All right.
21 MS. ROSENFELD: -- at the end of next week so they
22 have an opportunity to review it.
23 MR. GROSSMAN: That would be great. Okay. All
24 right then.
25 MR. SILVERMAN: Can we have a time frame on this?

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1 MR. GROSSMAN: You mean when you would make your
2 submissions?
3 MR. SILVERMAN: Yes.
4 MR. GROSSMAN: Okay. What's --
5 MS. ADELMAN: A response?
6 MR. SILVERMAN: Our response to these.
7 MR. GROSSMAN: What time frame would be good for
8 you, gentlemen?
9 MR. ADELMAN: That's when you mean, right?
10 MR. SILVERMAN: Yes, you're looking for written
11 statements to these responses, to these objections?
12 MR. GROSSMAN: You don't have to make a response
13 in writing. That's an option that I'm giving you. It's not
14 an absolute requirement.
15 MR. SILVERMAN: Well, how about at our May 17th
16 meeting we'll provide something? Is that all right?
17 MR. GROSSMAN: We have May 14 and then May 17 is
18 the one after the next one, is that -- I don't have that
19 calendar in front of me.
20 MR. SILVERMAN: Yes, let me just consult. Let's
21 do it for the 14th because I want to use it against them.
22 The 14th would be better. We'll have it --
23 MR. GROSSMAN: By May 14th?
24 MR. SILVERMAN: -- bring it up --
25 MR. GROSSMAN: That would be fine.

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1 MR. SILVERMAN: Okay.
2 MR. GROSSMAN: Certainly. Certainly.
3 MR. GROSSMAN: Okay. Ms. Harris, Ms. Goecke, do
4 you have any further preliminary matters?
5 MS. HARRIS: We do not.
6 MR. GROSSMAN: All right. So let's turn to the
7 Stop Costco Gas Coalition. Did you have any other
8 preliminary matters you wish to raise?
9 MR. SILVERMAN: No.
10 MR. GROSSMAN: All right.
11 MR. SILVERMAN: No thank you, sir.
12 MR. GROSSMAN: Ms. Rosenfeld, did you have
13 anything preliminary?
14 MS. ROSENFELD: No, sir. Thank you.
15 MR. GROSSMAN: Okay. And Kensington View Civic
16 Association is not present here today, as such, a
17 representative? So, Ms. Shear?
18 MS. SHEAR: We have no comment.
19 MR. GROSSMAN: All right. Thank you, Ms. Shear.
20 Now you're welcome to come forward also if you wish to.
21 MS. SHEAR: These seats are more comfortable.
22 MR. GROSSMAN: All right. Can I sit in them?
23 MS. SHEAR: You have common-day problems.
24 MR. GROSSMAN: All right. Okay. All right then.
25 Let's turn to our first witness of the day.

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1 MS. HARRIS: Thank you. It's Mr. Jim Agliata, who
2 is vice president of development for Westfield Corporation.
3 MR. GROSSMAN: All right.
4 THE WITNESS: Is this where you want me?
5 MR. GROSSMAN: Yes, sir. Thank you. Would you
6 raise your right hand please?
7 (Witness sworn.)
8 MR. GROSSMAN: All right. You may proceed, Ms.
9 Harris.
10 MS. HARRIS: Thank you.
11 DIRECT EXAMINATION
12 BY MS. HARRIS:
13 Q Mr. Agliata, can you please introduce yourself to
14 Mr. Grossman and tell him a little bit about your background
15 with Westfield Corporation?
16 A Certainly. My name is Jim Agliata, vice president
17 for Westfield Corporation. My background, as I previously
18 said, architecture, so I'm a registered architect for the
19 state of Texas for a while. I worked for May Department
20 Stores for many years, about 10 years in the department
21 store billing department for them and then in 1998 went to
22 Westfield as development director and then eventually got
23 promoted to vice president of development.
24 My responsibility is the expansion of the
25 redevelopment of malls in the southeast region, so that

1 includes the ones in the Maryland and southern Florida, and
2 also looking at the long-term vision of these malls so we
3 don't just look at, you know, what they are today, but what
4 they can be in 10 or 15 years. So the developer is looking
5 at the, what the opportunities are to enhance that asset.

6 Q Thank you. And can you please provide a little
7 bit about background about Westfield Corporation itself?

8 A The Westfield Corporation is a product-based
9 company. We're worldwide. Our main headquarters is in
10 Australia. We have over 120 malls nationwide. In the
11 United States, our headquarters is in Los Angeles and we
12 have just under 50 malls, about 49 malls in the United
13 States that we own and operate. And the mall owners and
14 operators, we really don't venture into a lot of different
15 areas and we do have some office buildings and facility
16 properties and things like that.

17 MR. GROSSMAN: All right.

18 BY MS. HARRIS:

19 Q Can you please provide a little bit of background
20 about Westfield Mall, I mean Westfield Wheaton Mall.

21 A Wheaton Mall? Yes. Wheaton Mall, we purchased it
22 in either '97 or '98, I'm not exactly sure of the exact
23 time, but it was about then. And at the time we purchased
24 it, it was a one-level mall. It had a truck tunnel
25 underneath it and it had a Montgomery Ward. Montgomery Ward

1 had an entire batting order of TBA's all on the outcrop, so
2 right about where the gas station is being planned.

3 It had a J.C. Penney. It had Hechts. It had the
4 old Giant that was part of, it was actually part of the mall
5 and had a Bally's. So when we purchased it, we looked at it
6 and said, well, how -- we need to increase this asset, the
7 property asset. So in early 2000's, we started looking at
8 how to improve that asset or how to expand it, and what
9 could we do to try to expand the mall.

10 Macy's wasn't in the market at the time. Macy's
11 wasn't in Montgomery County, it was owned by Federated
12 Department Stores, now called May Company, but at that time
13 they weren't, so Macy's was trying to get into the market
14 and we had an opportunity, an agreement with the market. So
15 we went to the County and developed a plan that added a
16 Macy's. We relocated the Giant, we planned the Giant out in
17 the parking lot. We relocated the Bally's Health Store,
18 which is now L.A. Fitness, with Bally's Health store, health
19 club. Then we added the Macy's. At the same time, we took
20 out the whole truck tunnel, dug down and added about 150,000
21 square feet and basically made it a traditional, 2-level
22 mall, two stories, about 175 stores. There were four
23 anchors at the time and with J.C. Penney, Macy's, Hecht's
24 Department Store and that became Target. So when Montgomery
25 Ward went out of business and they sold the lease to Target

1 and it became Target.

2 Q And has there ever been any gas stations on the
3 Wheaton Mall?

4 A There was when we bought the, when we bought the
5 property there was a Shell gas station right where the
6 Wendy's is located now. And actually the Wendy's came
7 before this body here, I think, in a period of time, I
8 forget, because it had the drive-thru for the body when we
9 got the Wendy's approved.

10 MR. GROSSMAN: It came before my body, in fact.

11 THE WITNESS: Well, okay, and Anthony Lessee
12 (phonetic sp.) worked with me, next to the one they
13 presented at the time, I might even have done it.

14 BY MS. HARRIS:

15 Q Thank you. In 1999, Westfield secured adequate
16 public facilities for approximately 580,000 additional
17 square feet for the mall which raised the total to
18 approximately 1.8 million square feet. Can you please
19 explain the records with respect to that?

20 A Yes. When we, obviously, like I said before, we
21 always looked at how to increase the value of the property,
22 how to make it a better property, a better mall. So we
23 wanted to look at the opportunity to get as much square
24 footage as we can and, you know, the malls these days can
25 get extra anchor stores. The anchors are really the

1 catalyst that drive the mall. So if you get extra anchor
2 stores and expand the mass, the mass of the mall, provided
3 the mall would be doubled, like Tyson's is a huge mall, over
4 two million square feet, they did very well. So we looked
5 at the opportunity to get that more square footage by doing
6 some offsite work, which we did and then we were able to
7 acquire those, or earn those rights to build that extra
8 square footage.

9 Q And since that time, what -- besides the Costco,
10 what other additional stores have been added once you
11 secured that APF?

12 A Yes, well, to go back a little bit in time, we
13 added CVS. It was a Shoney's restaurant. We wanted to get
14 rid of Shoney's, so we added in CVS in that spot. We added
15 the Bally's, like I said, to the parcel when we did this.
16 We added a Macy's. We put a Giant in, a brand new, 45,000
17 square foot Giant. The Sears parcel there was an Office
18 Depot and then it became a Sears, our parcels, we added
19 that. And then what happened was when May Department Store
20 was bought, excuse me, when Federated bought May Department
21 Stores, Federated now had a Hecht's Department Store and a
22 Macy's Department Store. They didn't want both locations,
23 so they gave back or we actually purchased the Hecht's
24 Department Store from them, so we had control over that
25 space and then we went out in the market to look at another

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1 opportunity.

2 And we talked to many different opportunities. We

3 had an LOI with Wal-Mart and we talked to Costco, BJ's, and

4 we felt that the Costco was the best opportunity for the

5 mall to bring in the right customer, a little differentiated

6 than the customers that are there right now.

7 And so we did that. And in securing Costco, we

8 were able to secure the Dick's Sporting Goods and Dick's

9 Sporting Goods opened up. That was one of the ones that was

10 quote, pendency in their lease that they wanted to make sure

11 Costco was going to come to the mall. That was, brought in

12 male customers. Basketball, Dick's is a male customer kind

13 of parcel and more of a male customer than a fashion

14 department store.

15 And we're actually currently almost about to sign

16 a lease with another mini-anchor. There's another 25,000

17 square foot next to Dick's, underneath Costco. We don't

18 have an official lease, so I can't give out the name, but

19 it's a national retailer that we're about to sign a lease

20 with.

21 MR. GROSSMAN: What exactly is the relevancy,

22 other than what his background of this, to whatever decision

23 I have to make?

24 MS. HARRIS: I mean ultimately Mr. Agliata's

25 testimony is going to go to sector plan compliance. They

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1 were very involved in the sector plan and so I wanted to

2 just give a little bit of background --

3 MR. GROSSMAN: I see.

4 MS. HARRIS: -- before we lead up to that.

5 MR. GROSSMAN: All right. Thank you.

6 MS. HARRIS: Thank you.

7 BY MS. HARRIS:

8 Q Can you please explain the hours of operation, not

9 specifically, but generally for the uses that currently

10 exist on the mall?

11 A It's a pretty wide range. I think the health, the

12 health club opens up at 5:00 a.m., so they're one of the

13 earliest. I think Giant probably opens up at 6:00 a.m. and

14 then I think it goes to midnight and also closes on

15 Saturdays at 12:00. So I think in general the mall is in

16 operation, some part of the mall is in operation from 5:00

17 a.m. to midnight, probably Fridays and longer on the

18 weekends.

19 Q And are there existing drive throughs on the mall

20 site currently and, if so, can you please identify those?

21 A Yes. Yes. There are three drive throughs right

22 now. There's the Wendy's, which I mentioned was one of the

23 special exceptions. To get, there's a Wells Fargo Bank,

24 which is in the strip center right in between Giant and the

25 north office tower there were Starbucks Coffee and I don't

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1 know if you're familiar with it, but it's right there. And

2 then CVS has a drive through also for their prescriptions.

3 So we have three current drive throughs on the property.

4 Q And if the station is approved, they'll still

5 remain approximately 160,000 square feet of development

6 rights per the APF approval. What are Westfield's

7 intentions with respect to that?

8 A Well, we'd like to expand the mall again. I think

9 there's an opportunity to put, we're in negotiations right

10 now with a national theater chain to come and bring in a

11 brand new theater that could be, you know, and have 16

12 screens, we're doing one at Montgomery Mall, it's a trend

13 that's going in the malls right now to have these theaters

14 that are bringing life to our entertainment centers. So

15 we're in discussions with a theater chain right now.

16 We're in active discussions with other mini acres.

17 I think one of the difficulties along, in Wheaton and along

18 Veirs Mill is to find the 20,000 square foot box and have

19 the site capacity to do that. So we have that capacity, so

20 we're in active discussions with a lot of opportunities.

21 Q Thank you. Mr. Guckert testified briefly about

22 the parking wing of the Westfield obtained in 2012. Can you

23 please explain what the impetus was for your pursuit of that

24 waiver?

25 A Uh-huh. Well, there was unutilized parking spaces

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1 on the site. I have an office there. I'm in the north

2 office, so I see it every day. So, and I think we had some

3 studies done that were, I think two, or less than two per

4 thousand parking spaces being utilized and we were doing

5 peak hours right around two. So that was one factor. The

6 other factor is we started dealing with Montgomery County

7 and other counties and jurisdictions throughout the country,

8 not just Montgomery County, are starting to say we don't

9 want to see a parking lot, we want to go ahead and reduce

10 that parking. So as evidenced from our standpoint, the

11 County was heading towards 4,000 too as a parking ratio on

12 properties like this. So instead of, you know, building a

13 new parking garage, building parking that wasn't going to be

14 utilized, we went back to the County and said we don't need

15 the parking, we'd like to get a waiver.

16 Q Thank you. Can you please explain the impact of

17 Costco on other tenants in your building to secure other

18 leases and the Costco warehouse generally actually?

19 A Yes. Well, Costco is a --

20 MS. ROSENFELD: Mr. Grossman, again, to follow-up

21 on your comment, I just don't see the relevance of this to

22 the special exception itself.

23 MR. GROSSMAN: Well, counsel for the applicant

24 explained that it will be relevant to the overall argument

25 they wanted to make regarding compliance with the sector

1 plan. So I'm going to give them the leeway to introduce
2 additional evidence on this point if they wish to. You may
3 proceed.

4 BY MS. HARRIS:

5 Q So the question was what was the impact of the --
6 what has been the impact on the other tenants with respect
7 to the Costco coming to the mall?

8 A Very positive. There was tenants that
9 specifically came to the mall because of Costco. Panera
10 Bread was one of the ones that said when we --

11 MS. ROSENFELD: I'll object to this on the grounds
12 of hearsay.

13 MR. GROSSMAN: All right. Sustained, unless you
14 have a response.

15 MS. HARRIS: We'll move on from that.

16 BY MS. HARRIS:

17 Q Does Westfield have any other sites with a Costco,
18 with a Costco warehouse and gas station?

19 A Yes, we do.

20 Q And --

21 A In Sarasota, Florida.

22 Q And can you explain a little bit the -- can you
23 explain that situation?

24 A We opened that in August of last year. It's a
25 Costco, very similar in size, maybe it's 5,000 square feet

1 less, but very similar footprint. It was an old Dillard's
2 Department Store which we tore down and added the Costco
3 there and that one has a gas station. The gas station is up
4 and operating. It's a very similar condition as on the, you
5 know, in a mall condition, entering through the mall and
6 then entering at the Costco. They have the gas station out
7 in the parking field and, you know, there's residential
8 around it, multi-townhouse residential right around it.
9 It's almost an identical situation to what we have over
10 here.

11 MR. GROSSMAN: Okay.

12 THE WITNESS: It was created very well and we're
13 very happy with it.

14 BY MS. HARRIS:

15 Q Thank you. Can you explain what impact the Costco
16 gas station will have on the mall and its tenants?

17 A Well, I think any time you get more, more people
18 driving on the site and experiencing both sides of the
19 center, I think it's good. We think the gas station is a
20 good opportunity for to bring other customers. We feel that
21 certain customers will come to Wheaton just for gas and if
22 we could bring another customer onto the project and maybe
23 they'll go buy something at Macy's or something else, that's
24 a benefit to the project. So we can get them coming into
25 that side of the property, experiencing the back side of

1 that property and seeing the Panera or anything else, I
2 think that's a good thing.

3 Q Were you -- there was testimony previously about
4 potential, or the lack of any potential congestion at the
5 southwest corner with respect to parking. Did you have any
6 concerns about that, regarding the gas station on the
7 southwest corner of the mall?

8 A No, no major concerns. Obviously, we always, we
9 had a traffic engineer study it. Wes Guckert was assessing
10 it and studied it and we felt comfortable with the results
11 of that traffic study and had no problems with it.

12 Q And if the subject special exception is not
13 approved, what are Westfield's plans for the southwest
14 corner of the mall?

15 A We probably will get another pad use since we do
16 have approval to put a pad there. So we'll probably look at
17 other pad uses or try for some other pad use.

18 Q Once Westfield had identified that Costco was
19 going to come to the mall, can you please explain the
20 improvements that were made to the mall site?

21 A One of the things we wanted to do was make sure
22 parking and the situation were balanced. So we had an
23 existing parking structure that was to the east of where the
24 Costco was being planned. It was three levels. It has a
25 lower level, which was a grade below Costco, it has a middle

1 level which tied into the Costco level and has upper level.
2 We wanted to make sure that parking structure was going to
3 be heavily utilized or equally utilized. And we didn't want
4 all the parking concentrated on one side, on the west side.
5 So we created a pedestrian bridge and three, excuse me, two
6 oversized elevators in the existing garage so that the
7 Costco customers who go in and park in that garage, they
8 could either walk, they could park on the second level, walk
9 straight across the ramp right into the mall entrance to the
10 Costco or they could take the elevator if they parked on the
11 third level and also on the first level. There's also kind
12 of a skeet ramp up to the second level. We added a bunch of
13 siding on the property to make sure, to push people on that
14 side and to make sure that they were on the east side of the
15 property, they even go in the garage and have access to the
16 Costco.

17 Q I want to move on to discussions regarding the
18 recently adopted Wheaton sector plan. Can you please
19 explain the timing of that and what Westfield's involvement
20 was in the sector plan?

21 A I may not have all the dates but it was probably
22 in 2009 when the Planning Board actually rezoned to us or
23 the planning staff rezoned to us, we're going to redo the
24 sector plan. We already were the land owner. We want to
25 get your input. The first plan came up. We were there

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1 looking as a CR zone to the whole property. We were very
2 concerned about that. That didn't work for our vision of
3 the property. So we met with staff and said, you know, we
4 have an existing mall. We have actually \$280 million
5 invested in this existing mall. We see it, we have long-
6 term obligations, long-term leases with Target. Eventually
7 Costco, they would come, Macys existing and J.C. Penney. We
8 don't see the mall we acquired to be changing.
9 The County staff had said, well, we really want
10 to, it would be really important for us to have a transition
11 because right now the mall sits by itself and the central
12 Wheaton business district sits across the street, how do we
13 work out a transition together? And that was one thing that
14 we were, we were supportive of that we need to have a
15 transition zone between the Wheaton central business
16 district and the mall, but the mall itself would stay as a
17 mall.
18 So over a course of time, we came up with a plan
19 where, with them, working with the staff and we went to the
20 hearings and the workshops where a sliver of the mall on the
21 east side would be CR zone and then the main 75 percent of
22 the mall would stay C-2. And so all of us, and the staff at
23 the time, we thought that was the best of both worlds
24 because you could have your busy mall operate and you could
25 also create this transition zone that would open its doors

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1 to the Wheaton central business district.
2 Q And did this ever, and the types of discussions
3 you had with planning staff, did that effort continue
4 through with counsel staff and counsel members themselves?
5 A Yes, it did.
6 MS. ROSENFELD: Again, Mr. Grossman, this is all
7 hearsay. The sector plan says what it says.
8 MR. GROSSMAN: All right. Do you want to respond
9 to that? I take it that's an objection?
10 MS. ROSENFELD: That's an objection. Thank you.
11 MS. HARRIS: But I think the whole issue in this
12 case is what, the sector plan says what it says, but it's
13 open to interpretation clearly and I think the witness who
14 was involved in the sector plan process in what it
15 ultimately provided for with respect to this property, it
16 knows intimately what occurred. I mean he was present at
17 the meetings with planning staff, council staff, council
18 members and then ultimately the adoption of the sector plan.
19 MR. GROSSMAN: I'm going to overrule that
20 objection. I think the witness indicated he was a
21 participant in this process. He's talking about his own
22 observations of the process. I don't think that that at
23 this point they have attempted to introduce statements of
24 others to prove the truth of what's in those statements. So
25 I don't take it as technical hearsay from most of what he

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1 has said. And to the extent that there is some hearsay
2 here, I'll give it the weight it deserves under the
3 circumstances. I mean hearsay -- the fact that somebody
4 says something outside of this room does not automatically
5 render it into hearsay. It's hearsay if it's offered to
6 prove the truth of the assertion that was made outside of
7 the room. And so far he's really just talking about a back
8 and forth as to what gave rise to the plan from his
9 standpoint. So I don't see that as, much of it as technical
10 hearsay. So I'm going to overrule the objection.
11 MR. SILVERMAN: Mr. Grossman, I just have a
12 request, if you remember, your careful ruling when we
13 present witnesses who participated in the plan.
14 MR. GROSSMAN: I would remember it, but each
15 ruling is determined by the particular type of statement
16 that's in question --
17 MR. SILVERMAN: Thank you, sir.
18 MR. GROSSMAN: -- and we try to be fairly liberal
19 in what is allowed in because this is not a trial by jury
20 and I'll be able to assess the weight to be given different
21 things as I go over the evidence in preparation of my
22 report. But we do want to make sure that we have this
23 fairness aspect and this, the fact that we're not trying to
24 evaluate things, statements made by people who are not
25 available to be cross-examined and that sort of thing. So

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1 all of that applies. In any event, you may go ahead.
2 MS. HARRIS: Thank you.
3 BY MS. HARRIS:
4 Q Based on your last response, is it correct to say
5 that the vast majority of the mall was intended to remain
6 simply that, as the mall, and it was only the portion along
7 Veirs Mill Road that as a result of the sector plan could
8 redevelop into mixed use type development?
9 MR. GROSSMAN: Well, I'm going to stop you for a
10 second there. What was intended, you're talking about what
11 his perception of the intent, of the plan as opposed to -- I
12 mean what is intended by it, I'm not sure that he can be the
13 opinion person for that.
14 MS. HARRIS: Yes, true.
15 MR. GROSSMAN: So you might want to -- if what
16 you're saying is what his impression of it was, I'll allow
17 that.
18 BY MS. HARRIS:
19 Q What was your impression?
20 A Well, my Westfield impression was the mall can
21 stay as the mall and, yes, the 75 percent there that was
22 existing was going to stay at the mall, as Westfield's long-
23 term plan.
24 Q And the Planning Board letter that was issued as a
25 result of the February 28th Planning Board proceeding noted

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1 that while one of the intentions of the C-2 --
2 MR. GROSSMAN: February 28th --
3 MS. HARRIS: 2012, excuse me.
4 MR. GROSSMAN: Okay.
5 BY MS. HARRIS:
6 Q That the intention was, one of the intentions was
7 to ensure that the existing mall would not become non-
8 conforming, that it, was that, but was there more, in fact,
9 was it your impression that there was more, in fact, than
10 simply precluding the mall from becoming non-conforming with
11 respect to the continued C-2 development?
12 MR. GROSSMAN: Hold on one second. That's --
13 MS. HARRIS: C-2 zone?
14 MR. ADELMAN: Are we referring to February 28,
15 2012, or --
16 MR. GROSSMAN: That's what --
17 MR. ADELMAN: -- 2013?
18 MS. HARRIS: I'm sorry.
19 MR. GROSSMAN: That's what Ms. Harris --
20 MS. HARRIS: I misspoke. 2013.
21 MR. GROSSMAN: All right. So you're talking about
22 the Planning Board's letter regarding this case?
23 MS. HARRIS: Yes.
24 MR. GROSSMAN: Okay. All right. Well, hold on a
25 second. Let me take a look at that. Now there is a letter

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1 from the chair, from Francois Carrier to me, dated March 27,
2 2013. Is that what you're referring to?
3 MS. HARRIS: Exhibit 89.
4 MR. GROSSMAN: Okay. I thought you said February.
5 MS. HARRIS: Well, I misspoke. It was the
6 February proceeding, but the letter was dated March, yes.
7 MR. GROSSMAN: Okay. Okay. So the --
8 MS. HARRIS: So I'm referring to Exhibit 89.
9 MR. GROSSMAN: Right. Okay. So hold on one
10 second. And what particular part of this letter are you
11 referring to?
12 MS. HARRIS: There's a provision that talks,
13 there's a statement that talks to the fact of the non-
14 conforming, that the intent was to show that the mall did
15 not become non-conforming.
16 MR. GROSSMAN: What page and paragraph?
17 MS. HARRIS: I need to find that. It's on page 2,
18 the bottom of the carry over paragraph which says that it
19 was not rezoned to CR because area would have non-conforming
20 use problems for the existing mall.
21 MR. GROSSMAN: Hold on. Bottom of which
22 paragraph?
23 MS. HARRIS: The carry over paragraph.
24 MR. GROSSMAN: Okay.
25 MS. HARRIS: Right, the four lines up.

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1 MR. GROSSMAN: Okay. It looks like actually what
2 they did is they forgot a space. It's actually not the
3 paragraph, but paragraph, but it's probably the next
4 paragraph that they didn't put a space between there, I
5 think. So and then the last line, well, next to the last
6 line specifically, they noted that -- is that what you're
7 talking about?
8 MS. HARRIS: Yes.
9 MR. GROSSMAN: Specifically, they noted that at
10 the time of the most recent sector plan update the main part
11 of the mall was not rezoned to CR because that area would
12 have non-conforming use problems for the existing mall which
13 cannot meet all the development standards of the CR zone.
14 That's the sentence you're --
15 MS. HARRIS: Correct.
16 MR. GROSSMAN: -- referring to?
17 MS. HARRIS: Yes.
18 MR. GROSSMAN: And what was your question again?
19 MS. HARRIS: Now I'm going to rephrase my question
20 to make it clearer.
21 BY MS. HARRIS:
22 Q In Westfield's efforts in retaining the C-2
23 portion of the mall, for the majority of the mall, was your
24 intent more than simply to assure that the property was not,
25 would not become non-conforming?

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1 A Well, our intent was to be able to maintain this
2 mall as the mall and utilize the excess capacity we had got
3 approved when we did the offsite board approval. So we
4 wanted the right to expand it and we wanted the right to
5 keep it as a mall.
6 Q So it wasn't simply to maintain the status quo,
7 but also to include more development on the mall?
8 A Correct.
9 MR. GROSSMAN: All right, but leading, but nobody
10 objected to it.
11 MR. SILVERMAN: Whose intention, I'm sorry.
12 MR. GROSSMAN: He said the intention of Westfield.
13 MR. SILVERMAN: Of Westfield?
14 MR. GROSSMAN: Yes.
15 BY MS. HARRIS:
16 Q Now you previously noted that portions of the, a
17 small portion of University and Veirs Mill were rezoned the
18 CR zone. What is Westfield's intention with respect to
19 those portions that are now CR?
20 A Not sure yet. Time will tell. It really depends
21 on what happens across the way, but if we can put an office
22 building there or a public building, a hotel or other
23 retail, we will. We were really hoping to -- the future as
24 to Wheaton development, the city of Wheaton development.
25 Q And if, in fact, those portions do redevelop as

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1 you just described, do you see any adverse impact to the
2 remaining C-2 portion of the mall?
3 A No.
4 Q And why would that be, can you expand on your
5 answer?
6 A As I mentioned before, we think they could
7 operate, you get the best of both worlds, you get the mall
8 to operate and you could also have the advantaged area and
9 the mixed use and it transitions into the Metro station and
10 the downtown central Wheaton district. We see it as a win-
11 win for everybody.
12 MR. GROSSMAN: Well, this is essentially on the
13 eastern side?
14 THE WITNESS: Yes. Yes.
15 BY MS. HARRIS:
16 Q During your various meetings with staff regarding
17 the sector plan, were there any discussions regarding the
18 converted ring road?
19 MR. GROSSMAN: Let me interrupt. Make sure
20 everybody please have your cell phone turned off so that we
21 don't have interruptions.
22 MR. ADELMAN: Mr. Grossman --
23 MR. GROSSMAN: Dr. Adelman.
24 MR. ADELMAN: -- I'm not clear. What's the
25 relevance of Westfield's concern about the CR versus C-2

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1 zone? The sector plan speaks to the entire area, whether --
2 it's not clear to me how Westfield itself is concerned about
3 impact on the C-2 zone versus the CR zone. I think the
4 issue is to obtain, the issue to obtain is relevant to the
5 overall picture of the sector plan.
6 MR. GROSSMAN: It may or may not be. I'm not sure
7 yet either, but I'm going to give them the leeway to develop
8 their argument regarding the sector plan compliance. And so
9 if they wish to put in some evidence in this regard, I would
10 allow them to do it.
11 MS. HARRIS: I wanted -- our land use planner,
12 when he finally testifies, will pick up on that thread, but
13 I wanted --
14 MR. GROSSMAN: Okay.
15 MS. HARRIS: -- Mr. Agliata to lay the
16 foundation --
17 MR. GROSSMAN: Right.
18 MS. HARRIS: -- as to what, if he had any
19 concerns.
20 MR. GROSSMAN: And I'm allowing you to do that.
21 MS. HARRIS: Thank you.
22 BY MS. HARRIS:
23 Q During the sector plan discussions that you had
24 with Planning Board staff or counsel staff, Planning Board
25 members, was there any discussion about converting the

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1 private ring road to a public road?
2 A Yes, there was one workshop where that was
3 discussed and we objected to that and felt that that was
4 very detrimental to our property and that we needed to
5 control the ring road. We had property on both side of that
6 ring road and we even demanded that the traffic on our side
7 of the ring road.
8 Q Have --
9 MR. GROSSMAN: Hold on one second. You said this
10 is the concerning the proposal to add a pedestrian path?
11 THE WITNESS: No, no, I wanted to make the ring
12 road a public street.
13 MR. GROSSMAN: Oh, I see. Okay. So you were --
14 THE WITNESS: Taking it and make it a public
15 street and we were like --
16 MR. GROSSMAN: And you were opposed to that? You
17 wanted to control your ring road?
18 THE WITNESS: That's right.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Yes.
21 MR. GROSSMAN: Okay.
22 BY MS. HARRIS:
23 Q As you know, the County is going through a zoning
24 rewrite process and has Westfield been involved in that
25 zoning rewrite process?

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1 A Yes, we have.
2 Q And what, can you describe your discussions to
3 date with respect to the future zoning of the mall site?
4 A Yes.
5 MR. GROSSMAN: Now hold on one second. How is
6 that going to be something I can factor in?
7 MS. HARRIS: Because the Planning Board staff at
8 one point said, well, they're in the zoning rewrite, this
9 could be CR. This could be the CR zone. And --
10 MR. GROSSMAN: But, whatever, the zoning rewrite,
11 it's an ongoing process that hasn't, it doesn't have
12 anything at this point directly impacting --
13 MS. HARRIS: I think if you hear what the intent
14 of the current intent, and I agree with you that nothing has
15 been adopted yet, but the current intent is very consistent
16 with discussions thus far in terms of the existing and
17 future uses of the mall.
18 MR. GROSSMAN: I don't --
19 MR. SILVERMAN: Now we have Ms. Harris giving
20 hearsay evidence.
21 MR. GROSSMAN: Well, hold on. Before I deal with
22 the hearsay question, just on the relevancy issue, you're
23 saying what the current intent is of a plan that hasn't been
24 adopted, it's barely being introduced now to the Council to
25 even look at, so I'm not sure where that goes. It could

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1 change radically before it, it's adopted, if it is adopted.
2 So I just don't know that it's going to tell me anything.
3 MS. HARRIS: To the extent it factored -- I don't
4 disagree with you, but it clearly factored into the Planning
5 Board's discussion and their decision wrongly, I would
6 suggest, so therefore to the extent that --
7 MR. GROSSMAN: You mean the fact that into the
8 Planning Board's vote on this issue?
9 MS. HARRIS: Yes.
10 MR. GROSSMAN: And what particular part of the
11 letter, Exhibit 89, are you referring to?
12 MS. HARRIS: Well, let me look and I would note --
13 MR. GROSSMAN: Okay.
14 MS. HARRIS: -- there was an eight, 6-hour
15 hearing, so I don't know that all parts of it got
16 reflected --
17 MR. GROSSMAN: Right.
18 MS. HARRIS: -- in a 3-page letter.
19 MR. GROSSMAN: But the only before me from the
20 Planning Board is the technical staff report and the letter
21 of March 27, 2013. The record, the rest of the record
22 before the Planning Board is not before me unless it's
23 directly introduced here. If it's not, the testimony there
24 is not under oath and so generally is not a part of our
25 proceedings.

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1 MS. HARRIS: Okay.
2 MR. GROSSMAN: I think we have quite enough paper
3 without the --
4 MS. HARRIS: I would not disagree with you.
5 MR. GROSSMAN: -- their --
6 MS. HARRIS: Okay. If I could have just one
7 moment just to re-read through these.
8 MR. GROSSMAN: Sure. Go ahead.
9 MS. HARRIS: Well, I would note on page 2, the
10 first full paragraph --
11 MR. GROSSMAN: Yes?
12 MS. HARRIS: -- says they found that although the
13 current Wheaton Mall with 40-year leases is autocentric, the
14 overall vision of the Wheaton sector plan is to move Wheaton
15 towards a TO, transit-oriented development and that any
16 redevelopment of the mall should not perpetuate its current
17 suburban-style land use pattern dominated by automobiles.
18 MR. ADELMAN: Please read the letters as they are
19 so we can note our objections as we go through the letters?
20 If it's a paragraph, could we please have it read as it is
21 rather than we speak to so we can find it.
22 MR. GROSSMAN: I think she just read it, a section
23 from that paragraph. Is that correct, Ms. Harris?
24 MS. HARRIS: Yes.
25 MR. ADELMAN: I apologize.

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1 MR. GROSSMAN: I don't see how that sentence
2 segues you into introducing evidence about what you conceive
3 of as the ongoing process for the zoning rewrite.
4 MS. HARRIS: Well, okay. And then at the last
5 sentence of that paragraph says,
6 "The sector plan asserted that the main
7 portion of the property could be rezoned for mixed
8 use development as part of the comprehensive
9 rewrite of the County zoning ordinance underway at
10 the time of plan adoption."
11 MR. GROSSMAN: Right, but that scale, that's
12 certainly closer, but the problem is that they're saying
13 that that's, that's a sentence in the sector plan itself.
14 So I'm not sure that anything that's been discussed about
15 what might happen with the rezoning is going to help us in
16 any way.
17 MS. HARRIS: Okay. We'll move on.
18 MR. GROSSMAN: I think we have, you know, we have
19 enough material here in terms of discussions of the sector
20 plan to try to discern what the intent of the sector plan is
21 without trying to speculate as to what the zoning rewrite
22 might eventually be. So --
23 MS. HARRIS: That -- okay. That is fine.
24 MR. GROSSMAN: I just don't know that it's going
25 to get us anywhere --

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1 MS. HARRIS: Okay. I understand.
2 MR. GROSSMAN: -- without, except for confusion.
3 BY MS. HARRIS:
4 Q Is there any concern by Westfield that the Costco
5 gas station will adversely affect or deter the development
6 of either the C-2 zone mall portion which functions as a
7 mall or those portions of the mall that were rezoned as CR?
8 A None whatsoever.
9 Q And in approving the lease with Costco, Westfield
10 clearly understood the, all of the uses that Costco would
11 bring in terms of its overall operation, is that correct?
12 A (No audible response.)
13 Q Do other major -- okay. Projecting out to the
14 future, what factors will be necessary in your mind, having
15 been a long-term property owner in Wheaton, to transform
16 Wheaton Mall site into a transit-oriented development, mixed
17 use area?
18 A Well, as I mentioned before, the mall, if it
19 stayed a mall, people, it's autocentric, they drive to the
20 mall. So as far as the 75 percent, it stays the mall, as
21 far as we're concerned it's going to stay a mall. The area
22 that, this rendition, that's the CR zone. That obviously
23 could take on its own nature and it depends on what happens
24 in that development over the next 20 years.
25 Q And will the construction of the proposed gas

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1 station in any way influence the ultimate development,
2 redevelopment of the mall?
3 A Not that I can see.
4 Q And those major, the major factors that
5 potentially would influence the redevelopment are separate
6 and apart from the gas station?
7 A That's correct.
8 Q Thank you.
9 MS. HARRIS: I have no other questions for Mr.
10 Agliata.
11 MR. GROSSMAN: Okay. Cross-examination. Does the
12 opposition have a particular person you want to lead off
13 with cross-examination, Dr. Adelman?
14 MR. ADELMAN: If I could have the microphone so --
15 MR. GROSSMAN: Yes. Let's see if we can connect
16 that up for you, sir.
17 MS. HARRIS: We don't have Wes here.
18 MR. GROSSMAN: We had Mr. Guckert the last time,
19 was able to find the on switch, so we gave him his
20 unofficial engineering, civil engineering degree.
21 MR. ADELMAN: Thank you. Thank you very much.
22 MR. GROSSMAN: I don't think that's working yet.
23 Is it plugged in, sir? There you so. It takes a second to
24 warm up. It's working now. Thank you.
25 MR. ADELMAN: And since I'm kind of a rookie at

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1 this, I'm used to sort of planning my questions the night
2 before. I've gotten lost in how we know who is going to be
3 called each day.
4 MR. GROSSMAN: Well, there was an exchange between
5 the parties and your wife, I believe, had the, has got a
6 copy of it and had, it had a, with this witness listed
7 first.
8 MR. ADELMAN: Okay. These will have no logic, the
9 list as I read the --
10 CROSS-EXAMINATION
11 BY MR. ADELMAN:
12 Q And, Mr. Agliata, you've stated that Westfield
13 owns 49 malls, is that correct?
14 A In the United States, correct.
15 Q In the United States. Two questions about that.
16 In any of the malls that you own, have you placed a Costco
17 gas station in the immediate proximity to a Costco warehouse
18 store?
19 A Yes, we have one opened, as I mentioned, in
20 Sarasota, Florida. It opened in August of last year.
21 Q Okay. By proximity, could you give us a feeling
22 for distance?
23 A From the gas station to the --
24 Q Store.
25 A -- store? It would be a guess. I don't know. It

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1 would be a guess. I don't know, do you want me to guess?
2 Q Fine with me.
3 MR. GROSSMAN: No, we don't want you to guess.
4 THE WITNESS: Okay. I don't know.
5 BY MR. ADELMAN:
6 Q Fine. Do you agree, do you think it would be less
7 than 200 feet?
8 MR. GROSSMAN: He said he didn't know.
9 MR. ADELMAN: Fine. Thank you.
10 BY MR. ADELMAN:
11 Q Okay. The Shell gas station to which you
12 referred, which portion of the mall was that in?
13 A It's where the Wendy's is located currently.
14 Q Okay. And that, forgive me, I can't picture --
15 A It's along Veirs Mill.
16 Q It's on Veirs Mill? So it's on the opposite side
17 of the mall from the proposed special exception site, is
18 that correct?
19 A It's along Veirs Mill.
20 Q Okay. Can you explain the relevance of your
21 comments as to the existence of drive through businesses in
22 the mall?
23 A I don't understand the question.
24 Q You spoke to the existence of at least three drive
25 through businesses?

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1 A Oh, drive through, okay.
2 Q I'm sorry. I'm sorry.
3 A I thought you said dry food, I'm sorry.
4 Q Right.
5 A Drive through, well, we just, we have a CVS with
6 that, that has as drive through pharmacy.
7 Q Okay.
8 A And we have a bank that has drive through, it's
9 Wells Fargo.
10 Q Okay.
11 A It has, I think, two drive through components to
12 that. And then we have Wendy's that has a drive through for
13 food pick-up.
14 Q Okay. Are we to infer that that is in any way
15 equivalent to a drive through gas station of this sort?
16 A I'm not qualified to answer that question.
17 Q As to the theater complex, I know you can't tell
18 us about things that are under negotiation, can you give us
19 a feeling where about the theater complex is likely to be
20 placed?
21 A We're still under negotiations. I don't know.
22 There's a couple options we're looking at.
23 Q Fine. Thank you. With respect to the parking
24 labor, if I understand, is it the intention of Westfield to
25 divide adequate property to its customers to have lots as

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1 full as possible, but not so full as to cause inconvenience,
2 is that correct?
3 A That's correct.
4 Q Okay. You recognize, do you not, that convenience
5 is not simply a matter of availability of spots, but
6 availability of spots in proximity to a store, for example,
7 that a customer wishes to patronize?
8 A Well, I think that's a difficult yes or no
9 question because --
10 Q All right.
11 A -- in a mall site you have 6,000 parking spaces.
12 Somebody is going to park farther away. Everybody wants to
13 park close in. So if you were calling that convenience, you
14 can't have convenience for everybody. There's going to be
15 certain patrons that have to park farther away. That's the
16 nature of a mall.
17 Q I understand. I'm just, I'm hoping to establish
18 the notion that convenience for many Costco, when compared
19 to the mall, is a matter of having access to parking spaces
20 in reasonable proximity, for example, another customer at
21 Costco would choose to have --
22 MR. GROSSMAN: Well, this has to be, this has to
23 be a question.
24 MR. SILVERMAN: A question.
25 MR. ADELMAN: It wasn't a question?

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1 BY MR. ADELMAN:
2 Q In your opinion, is it likely that a customer of
3 Costco would reasonably be expected to choose to park, to
4 park his or her car in the WMATA lot and then walk to
5 Costco, get a cart, remove the goods, walk back from the
6 Costco store to go out on the lot?
7 A We see carts all over the place. As a matter of
8 fact, we have carts, we have -- the carts, we're finding
9 them all over the mall, including the WMATA garage,
10 including the garage over by Macys, including the North
11 Office Towers. So people are getting around using those
12 carts in different parts of the mall, in different parking
13 access. The majority, do the majority want to park closer
14 to Costco? Sure, but they're -- obviously you have a mall
15 where people are coming from all sites of the mall. And
16 it's being done right now.
17 Q Thank you. As to the parking lot now, shopping
18 carts that you've seen, you have no way, have you, of
19 knowing who was a particular cart from the Costco store to
20 the parking lot, could it have been someone else, could it
21 not?
22 A I don't know who pushed that cart. We assume it's
23 a Costco customer, but don't know for sure.
24 Q All right. Thank you. I believe you've given us
25 an overview of your business plan. Can you explain to me

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1 the relevance of your business plan to the interests of the
2 ring road?
3 A Well, they seem to, doing the sector plan, the
4 neighborhood was active, just like we were active, in what
5 the plan would be. As a matter of fact, they were very
6 supportive of a C-2 zone because they didn't want the CR
7 zone back by the west side of the parking, because
8 originally when the sector plan was being talked about by
9 the planning department, they encouraged us to build housing
10 and multi-family housing right up through the edge of the
11 ring road. I mean the County really wanted us to develop
12 that whole west side and we said, no, you know, that's going
13 to stay a parking lot. It's not going to be, go up like the
14 Camby on the east side. So, you know, we sat side by side
15 with the residents during those hearings.
16 Q You have admitted, have you not, that your
17 comments as to sector planning are hearsay, you participated
18 in the dialogue as to the sector plan?
19 A Well, I don't know --
20 MR. GROSSMAN: Hold on one second. Hold on one
21 second. Hold on. You say he's admitted that they're
22 hearsay? Hearsay is a very particular thing. I don't know
23 that he's admitting an admission as to its legal status as
24 hearsay. So --
25 BY MR. ADELMAN:

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1 Q Am I correct in stating that the intention of
2 Westfield in its participation in the discussion of the
3 sector plan is not necessarily the intention of the other
4 people who participated in the sector plan preparation.
5 A I can only address what was the intention of
6 Westfield, and which I did.
7 Q I understand you objected, did you not, to the
8 suggestion that converting the ring road to a public road?
9 A That is correct.
10 Q That is correct. From the discussions with the
11 planning staff and others involved in this sector plan
12 preparation, do you have any knowledge as to why the
13 proposal wasn't made to convert the ring road to a public
14 road?
15 A No.
16 Q Would it make a difference to you if the road was,
17 the current road was a private road?
18 A Yes, that's why we had objection to it.
19 Q And why would it make a difference to you?
20 A Because we owned it. We wanted to be able to
21 control it. We wanted to be able to, if we wanted to change
22 it or alter it, we wanted to have complete control of our
23 properties. We own Giant grocery store on the other side,
24 there's office buildings. That ring road bisects our
25 property. We wanted to control it. We own it. We don't

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1 want to give away control.
2 Q That road, however, is in some sense already a
3 public road, is it not?
4 A It is not. It is a private road.
5 Q Fire and police need access to it and they use it
6 routinely, do they not?
7 A That doesn't make it a public road. It's
8 privately owned by Westfield.
9 Q But it's being used by the public, is it not?
10 A I don't disagree that the public uses it, no
11 different than another public entity, I mean another private
12 entities like it could be a private stadium, it could be a
13 private theater. They use the corridors of the mall. The
14 public uses the corridors of the mall. We own the mall.
15 Firemen walk through and visit our mall. We have police
16 officers that walk the corridors of our mall. That doesn't
17 make it owned by the public.
18 Q I wasn't suggested it was owned by the public.
19 One of your concerns as the owner of, or representative of
20 the ownership of the mall is the safety and comfort of the
21 patrons, is it not?
22 A Yes.
23 Q To the extent that increased traffic on the ring
24 road might create increased problems as to safety, for
25 example, of pedestrians, would you not be concerned about

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1 the possibility that the road being a private road did not
2 afford the opportunity to install, for example, traffic
3 lights at every intersection of multiple pedestrian pathways
4 to protect the safety of the patrons?
5 MR. GROSSMAN: I'm going to -- that assumed a lot
6 of things that I don't think are in evidence about whether
7 or not traffic lights can be put there and do you plan to
8 put evidence in to that extent?
9 MR. ADELMAN: No, I'll withdraw the question, I
10 don't.
11 BY MR. ADELMAN:
12 Q Can you tell us how frequently accidents occur on
13 that right-of-way?
14 A I cannot. I don't have --
15 Q Do you know of any happening in the last month?
16 A Me, personally, no.
17 Q As your -- you're a vice president of Westfield,
18 are you not?
19 A That is correct.
20 Q Do you not, in fact, have accident reports on a
21 regular basis?
22 A I do not.
23 Q You do not?
24 A I personally do not. I'm on the development side,
25 not the operations side.

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1 Q Do you have any knowledge of safety issues
2 involved?
3 A I have no personal knowledge of that.
4 Q Lastly, you referred to Westfield as a property
5 owner, right?
6 A Yes.
7 Q That is, is it not a different sense of the word
8 property owner than most people would understand?
9 MR. GROSSMAN: What does that mean?
10 BY MR. ADELMAN:
11 Q For example, a resident of a home?
12 MR. GROSSMAN: I don't understand that question.
13 What do you mean is it a different -- does Westfield own the
14 property? I don't understand your question.
15 MR. ADELMAN: I apologize. I withdraw.
16 MR. GROSSMAN: Ms. Rosenfeld, do you have
17 questions?
18 MS. ROSENFELD: Yes, I do. Thank you.
19 MR. GROSSMAN: All right.
20 BY MS. ROSENFELD:
21 Q Mr. Agliata, you testified about the Sarasota,
22 Florida site. Do you know if that project was approved
23 through a special exception or if it was a by-right
24 development?
25 A It was a by right development.

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1 Q Do you have any idea what the approval stamp is
2 for --
3 A No.
4 Q -- for that project?
5 A I can't recall.
6 Q Were you personally involved in the approval
7 process?
8 A Yes.
9 Q Do you know if the development standards were the
10 same development standards that are present in this case
11 here today?
12 A It didn't have to go through a special exception,
13 so I'm not sure of the question.
14 Q Do you know if there were records and findings in
15 terms of compatibility and safety and economic values and --
16 A There is similar to what Montgomery County does
17 and Sarasota County, it's in the county, it's for the
18 county, the jurisdiction they govern. They do a design and
19 public facility review and they have to have a traffic study
20 done. I'm not sure it's worded the same way. It's similar
21 processes, except the gas station is not a special
22 exception, it's, they allow them by right. So it's just
23 part of the process.
24 Q So if you meet the setback standards and the
25 height standards and the other --

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1 A Right.
2 Q -- dimensional requirements of the zone and their
3 adequate public facilities review, then you're allowed to
4 move forward to a building permit?
5 A That's correct.
6 Q Thank you. I believe you testified that you had
7 been at Westfield since 1998, is that correct?
8 A Yes.
9 Q Was the Montgomery Ward facility that you
10 mentioned earlier operational on the site at the time?
11 A Yes, it was. I believe it changed to Target in,
12 if I recall correctly, it's 2000.
13 MR. GROSSMAN: Careful of the wires.
14 BY MS. ROSENFELD:
15 Q Mr. Agliata, this is a new exhibit.
16 MR. GROSSMAN: All right. We'll mark it then
17 Exhibit 121.
18 (Exhibit No. 121 was marked for
19 identification.)
20 BY MS. ROSENFELD:
21 Q Mr. Agliata, that is an aerial photograph of the
22 mall site. Does it look generally familiar to you?
23 A Yes, it does.
24 Q And in looking at that aerial photograph, do you
25 see a -- is the Montgomery Ward facility located in that

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1 photograph?
2 A The Montgomery Ward building is kind of cut off.
3 It's on the bottom half of the building, of the sheet.
4 MR. GROSSMAN: Just so we make sure that it's
5 identified for the record, this is, it appears to be, it's
6 an imagery date on it, July 31, 2006, is that correct,
7 counsel?
8 MS. ROSENFELD: That is correct.
9 MR. GROSSMAN: So this is an aerial photograph of
10 a portion of Wheaton Plaza, correct?
11 BY MS. ROSENFELD:
12 Q And, Mr. Agliata, do you see the tire, the tire
13 and battery repairs facility on this --
14 A Yes.
15 Q -- photograph?
16 A Yes, I do.
17 Q And can you please identify where geographically
18 it's located on the site?
19 A It's in the parking field between what was, used
20 to be Hecht's, which is shown on this drawing, and the
21 Montgomery Ward. It's the rectangular building, office
22 building.
23 Q Is it located in the southwest parking quadrant on
24 this photograph?
25 A Yes.

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1 Q Is it located north, approximately north of where
2 the proposed Costco gas station would be?
3 A Yes.
4 MR. GROSSMAN: Do I assume that north on this
5 photograph is where the holes are in the page?
6 MS. ROSENFELD: Yes, I believe --
7 MR. GROSSMAN: All right.
8 MS. ROSENFELD: -- that's true.
9 MR. GROSSMAN: Oh, okay.
10 BY MS. ROSENFELD:
11 Q And the text imagery date, 7/31, 2006, would be
12 the southern site of the photograph?
13 A Okay.
14 Q And, Mr. Agliata, are you familiar, were you -- do
15 you have any personal familiarity with the operations of
16 the -- what exactly did you call this facility, the
17 Montgomery Ward?
18 A Tire and battery, TBA, tire, battery and
19 accessories.
20 Q Tire, battery and accessories? Were you
21 personally familiar with their operations at this location?
22 A No.
23 Q Was it an operation when you joined Westfield in
24 1998?
25 A Yes.

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1 Q And did you ever have occasion to personally
2 observe the activities at that location?
3 A No.
4 Q And did you have any personal knowledge of any
5 their leasing or operational restrictions or permissions?
6 A No.
7 Q So you have no personal knowledge as to how much
8 traffic was generated by this use?
9 A No.
10 Q You have no personal knowledge as to their hours
11 of operation?
12 A No.
13 Q You have no personal knowledge as to whether or
14 not there was ever any queuing associated with the facility?
15 A No.
16 Q You have no personal knowledge -- are you aware of
17 whether or not that they sold gas at that facility?
18 A I am not aware of it.
19 Q Do you have any knowledge whether the work was
20 done inside the building or outside of the building?
21 A I believe the work was done inside the building.
22 Q There are two exhibits that Costco has presented
23 in support of this application, Exhibit 10, which is a land
24 use report, and Exhibit 16, which is a home value report.
25 And they have, they both have estimates of the number of

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1 visitors to the mall on particular days. Are you familiar
2 with these, those numbers?
3 A I have not seen those exhibits or those reports.
4 Q So you did not -- did you provide these numbers to
5 any of the experts?
6 A In don't know what -- I haven't seen those
7 reports. I don't know what those numbers are to be honest
8 with you, but we provided numbers to both the residents and
9 Costco during the process about what we -- the pedestrians,
10 because we count before they walk through the doors and
11 we've given counsel that.
12 Q Okay. And what are your counts?
13 A It depends on the day. What, do you want a range?
14 Q What's an average weekday?
15 A An average weekday, again, depends on the week,
16 but it could be anywhere from 8,000 customers to 20,000
17 customers a day.
18 Q And --
19 MR. GROSSMAN: In the mall overall?
20 THE WITNESS: Yes. And this is, you have to
21 understand, it's counting people through the doors. We
22 don't -- that's the only vehicle we do. We do people
23 counter so, you know, you don't know if it's an employee or
24 what, but if you count the total by pass through the doors.
25 BY MS. ROSENFELD:

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1 Q And an average count for visitors on a weekend?
2 A It could be changing now with Costco, but probably
3 20 to 30,000, 20 to 30,000 people right now. It could be
4 more at the holidays. I mean there's so much variation on
5 the days and time of year and the holidays and it's very
6 difficult to put, you know, one number out there.
7 Q Specific numbers. No, I understand, and a range
8 is fine. If a range of visitors is the appropriate answer,
9 then that's the one I'd like you to give. And on holidays,
10 peak holidays, what would the average range be?
11 A It could be 40, 40,000 customers, maybe more. We
12 haven't been through the holiday with Costco, so we'll see.
13 Q Does the mall itself have any rules that limit
14 idling tractor trailers at loading docks?
15 A We have what's called a lease, this doesn't answer
16 it, but we have lease agreements and in the lease agreements
17 we ask that the stores maintain a certain amount of quiet
18 enjoyment. So if there is trucks out there that are
19 unusually noisy, then our security guards are encouraged
20 then to have them move along.
21 Q And do your security guards determine what is,
22 quote, unusually noisy?
23 A Their, I guess, their feeling at the time.
24 Q Their subjective --
25 A Their subjective view.

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1 Q -- view at the moment? Do you have any rules that
2 prohibit idling tractors overnight on the mall property?
3 A We instruct our security guards if there, if
4 they're not in a truck dock or not associated in a truck
5 dock, if they're in the parking lot, we advise the security
6 guards to knock on their windows and move them along.
7 Q And do your security guards patrol the parking
8 lots on a regular basis?
9 A Yes, we patrol 24 hours a day.
10 Q And are idling trucks allowed when they're parked
11 in the ring road?
12 A It depends on the situation. Sometimes there's
13 trucks that will idle. It's different ports higher if
14 there's a truck in the dock and a truck has to get out of
15 the dock before the new truck can go in, they could be
16 idling for a short time.
17 Q Are any of the trucks that deliver goods or
18 produce to the mall refrigeration trucks?
19 A I don't know for sure, but I would imagine so.
20 Q Are there any limitations on whether or not
21 refrigeration trucks can run their refrigeration units?
22 A Again, no specific --
23 MR. GROSSMAN: Ms. Rosenfeld, what is that, is the
24 relevance of that?
25 MS. ROSENFELD: Mr. Grossman, I submit that this

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1 is going to go to noise issues, the noise associated and
2 emissions, both associated with idling trucks and associated
3 with running refrigeration generators.
4 MR. GROSSMAN: For the gas station?
5 MS. ROSENFELD: Of the mall and --
6 MR. GROSSMAN: No, what I don't understand is how
7 does that bear on the question of whether or not a special
8 exception should be allowed for this proposed gas station?
9 MS. ROSENFELD: Well, it has a bearing in two
10 ways. Number one, noise has a cumulative effect and so one
11 question for the analysis is whether noise from the gas
12 station combined with the noise from the background noise
13 from the mall, in fact, violates County noise standards.
14 And in addition to that --
15 MR. GROSSMAN: Are you going to have evidence to
16 that effect, that it violates --
17 MS. ROSENFELD: Yes, we intend -- we intend to
18 present evidence on that.
19 MR. GROSSMAN: All right.
20 MS. ROSENFELD: And, in addition, we also intend
21 to present evidence that there is a cumulative effect of the
22 idling of these vehicles, in addition to the impact of this
23 gas station itself, it has health and environment effects.
24 And I think Mr. Sullivan's materials go to that, I, Mr.
25 Sullivan and Mr. Cole, their analysis.

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1 MR. GROSSMAN: I'm going to let you proceed with
2 it, but I mean the question here is whether the gas station
3 should be permitted, not whether Costco warehouse should be
4 permitted or other things that would require a refrigerator
5 truck, so I'm not sure that it's going to really have any
6 bearing on this. So go ahead.
7 MS. ROSENFELD: I understand.
8 MR. GOECKE: And one other point, Mr. Grossman.
9 To the extent that they have exhibits, I've got to establish
10 this evidence. I don't think we've seen anything on a
11 cumulative effect of noise or, either in the trucks and
12 other portions of the mall property, so I would just ask
13 that we have fair notice of that as well.
14 MR. GROSSMAN: All right. What about that? Do we
15 have any evidence that's been already --
16 MS. ROSENFELD: We have not submitted any
17 documentary evidence on that point.
18 MR. GROSSMAN: All right. Do we have anything
19 that's been submitted that, from your organization that gave
20 notice to the applicant that this is something that an
21 expert would be testifying about?
22 MS. ROSENFELD: We are not going to be presenting
23 expert testimony on the noise issue and we certainly have
24 provided ample evidence in the form of Dr. Cole with respect
25 to the cumulative effect of emissions.

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1 MR. GROSSMAN: I understand on the emissions
2 point, just on the noise point. Are you, they're suggesting
3 that the gas station, if allowed, would make significant
4 noise?
5 MS. ROSENFELD: We believe that the testimony will
6 show that the gas station in addition to the existing noise
7 levels at the site could violate the noise ordinance for the
8 County.
9 MR. GROSSMAN: Could violate?
10 MS. ROSENFELD: Mr. Grossman, I'm going to spend
11 extensive time on this.
12 MR. GROSSMAN: All right. Well, I --
13 MS. ROSENFELD: And my line of questioning on this
14 point is concluded.
15 MR. GROSSMAN: Okay. Okay. Thank you.
16 BY MS. ROSENFELD:
17 Q You testified that you, yourself, did not receive
18 accident reports, reports of vehicle accidents at the mall,
19 is that correct?
20 A That's correct.
21 Q Does anybody at the mall receive those reports?
22 A If anybody does, it's Matt Berry, the general
23 manager.
24 Q In laying out the design for the parking and
25 pedestrian path along the ring road, is that a design that

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1 is under the control, the Costco gas, of the Costco
2 applicant or is it under the control of Westfield Mall?
3 A Westfield controls the parking lot.
4 Q Have you been involved in the design of, the
5 design of reconfiguration of the parking areas on the mall?
6 A When you say involved in design, we hired Boehler
7 Engineering to do the original design of the Costco and the
8 gas station.
9 Q Are you familiar with the plans that were filed at
10 the original application, the one that was withdrawn last
11 year?
12 A I'd have to see it. I don't know the numbers by
13 reference.
14 Q Specific to the pedestrian path, do you recall if
15 there was a pedestrian path along the curb line of the ring
16 road on the southern portion of the site in that
17 application?
18 A I don't know. I didn't pay attention to the
19 application. I don't know. I can't tell you if it was in
20 there or not because I never looked at it, their
21 application. There was other drawings there, but that's
22 their application.
23 Q If there were changes to the parking striping,
24 would those be changes under your control?
25 A If they were going to change the parking lot, they

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1 would ultimately have to get our approval to change the
2 parking lot.
3 Q Does that include changes to the striping on the
4 ring road?
5 A Yes, it does.
6 Q It would seem to me a prudent thing for Costco to
7 have your approval on the final special exception plan
8 before they submit the --
9 A We're in support of what Costco submitted. Are
10 you asking me again? We are.
11 Q Okay.
12 A You're asking me if I had specific knowledge there
13 was a site plan that they submitted and I do not.
14 Q Were you in support of -- are you aware that the
15 final plans add a pedestrian path on --
16 A There was lots of discussion.
17 Q -- the ring road?
18 A We had a walk through with the pedestrians and
19 that, and if we go back two years ago, we talk about the
20 option of putting a pedestrian path along the ring road.
21 Some people liked it, some people didn't. Over the course
22 of a couple years, there was discussion about putting a
23 pedestrian path along the ring road.
24 Q Are you aware of the fact that there was a
25 pedestrian path in the site plan application materials until

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1 Exhibit 54(h) was submitted on March 25, 2013?
2 A I did not see the actual application that they
3 submitted, so the answer is, no. I testified that I did
4 not, I didn't review their application, didn't see their
5 application.
6 Q Did you participate in the proceedings before the
7 Montgomery County Planning Board?
8 A Yes.
9 Q Were you familiar with the plan that was presented
10 to the Planning Board?
11 A On the special exception?
12 Q Yes.
13 A No. I mean I'm familiar with it, but I didn't go
14 and look at it in detail.
15 Q And yet you testified in support of it?
16 A Yes.
17 Q But you didn't know you were supporting it?
18 A No, we were supporting the gas station.
19 Q I have a copy of it --
20 A I don't think I even testified to the special
21 exception. I went to the Planning Board to testify, but it
22 wasn't at the special exception process. So I don't want
23 people to think I was at the hearing testifying when the
24 Planning Board voted on the special exception. I wasn't.
25 Q Okay. I should have been more clear.

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1 A Okay, I'm sorry.
2 Q My question --
3 A I wasn't sure what --
4 Q My question was were you there when --
5 A Okay. I'm sorry.
6 Q -- the special exceptions were presented to the
7 Planning Board?
8 A No.
9 Q So you were not present at that hearing?
10 A I was not present at that hearing.
11 Q Okay. Thank you.
12 A Sorry about that.
13 Q I do have a letter dated March 8, 2012, signed by
14 Mr. Jim Agliata to Mr. Steven Silverman.
15 MS. ROSENFELD: Mr. Hearing Examiner, I only have
16 one copy of this letter. May I read a portion of this and
17 then present it to opposing counsel for their review or
18 should they look at it first?
19 MR. GROSSMAN: Let them look at it and do you plan
20 to produce that letter for -- it's not in evidence yet, is
21 that --
22 MS. ROSENFELD: It is not in evidence. I simply
23 want to ask him a question about one sentence in here.
24 We'll be happy to introduce it as evidence.
25 MR. GROSSMAN: So what's the date of this letter?

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1 MR. SILVERMAN: March 8, 2012, she said.
2 MR. GROSSMAN: And to whom is it addressed?
3 MS. ROSENFELD: Mr. Steve Silverman.
4 MR. GROSSMAN: Okay. Ms. Rosenfeld, while, did
5 you -- would you move the microphone away because I'm
6 concerned about the wires stretching across there.
7 MR. SILVERMAN: Thank you.
8 MR. GROSSMAN: Just put it right on the stage here
9 so it doesn't stretch across the floor while it's not being
10 used, so thank you.
11 MR. GOECKE: Mr. Grossman, we would object to
12 these, that this, the questioning is going to be about a
13 portion of the letter that I think was already been deemed
14 to be irrelevant to these proceedings, the proposed
15 pedestrian walkway. That's no longer part of the special
16 exception.
17 MR. SILVERMAN: I don't think there's any
18 deemings.
19 MR. GROSSMAN: I'm sorry, Mr. Silverman?
20 MR. SILVERMAN: I'm sorry. I didn't mean to
21 interrupt you as you were about to say something.
22 MR. GROSSMAN: No, what were you going to say?
23 MR. SILVERMAN: I don't think anybody deemed
24 anything irrelevant. They've changed their mind in the
25 middle.

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1 MR. GROSSMAN: Let me take a look at this letter
2 while -- okay.
3 MS. ROSENFELD: It's a letter from --
4 MR. GROSSMAN: Let's mark it as an exhibit so we
5 can turn to it. It will be Exhibit 122 and it's a March 8,
6 2012 letter from Jim Agliata to Steve Silverman of the
7 County's Department of Economic Development.
8 (Exhibit No. 122 was marked for
9 identification.)
10 MR. GROSSMAN: All right. As to the objection,
11 let's find out what the question is before we know what
12 your view is, whether there's an objection. So what
13 was the question, Ms. Rosenfeld, I'm sorry?
14 BY MS. ROSENFELD:
15 Q Mr. Agliata, you testified just a few moments ago
16 that you even had a series of, or at least one meeting with
17 individuals to walk the site and one of the issues that was
18 raised in your discussion was the addition of a pedestrian
19 path, is that correct?
20 A That's correct.
21 Q And I have here a letter, March 8, 2012, to Mr.
22 Steve Silverman, Montgomery County, Department of Economic
23 Development, signed by yourself, Jim Agliata. Are you
24 familiar with this letter?
25 A If I could read it again, would that be okay?

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1 MR. GROSSMAN: She'll show it to you.
2 THE WITNESS: I don't have my glasses on.
3 MS. HARRIS: Do you want mine?
4 MR. GROSSMAN: We didn't say we'd make it easy.
5 THE WITNESS: Yes, I know. Yes, I'm aware of
6 this.
7 BY MS. ROSENFELD:
8 Q On page 2 of 2 of this letter, at the top
9 paragraph, it reads, D, pedestrian access. Starting with
10 the second full sentence, it says,
11 "On October 7, 2011, Westfield, Costco and
12 several residents participated in a walking tour
13 of the site to identify any specific concerns the
14 residents had. One item requested was the
15 addition of a walking path along the south edge of
16 the ring road. After reviewing the request,
17 Westfield offered to modify the existing ring road
18 and parking adjacent to the ring road to create 3-
19 foot crossed pathway of existing asphalt. Over
20 the last year, Westfield has also installed
21 additional crosswalks between Giant and Target to
22 address pedestrian access in these areas."
23 What prompted Westfield's participation in this
24 community meeting?
25 A We had a public meeting at Tenneyson Pool where

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1 people were asking about pedestrian pathways and walkways
2 and one of the suggestions was, well, let's just go walk the
3 site. You know, it's a big site. Everybody wasn't familiar
4 with it where you could look at a plan and understand it.
5 So we thought it was a good idea to walk the site, so we
6 said, great, let's do it.
7 Q And were these community meetings linked in any
8 way to Montgomery County's grant of \$4 million to Westfield
9 mall?
10 MR. GOECKE: Objection.
11 MR. GROSSMAN: On what ground?
12 MR. GOECKE: Foundation.
13 MR. GROSSMAN: Were they linked to Montgomery
14 County's request? Was it your understanding that it was
15 linked?
16 THE WITNESS: No.
17 MR. GROSSMAN: Let's phrase it that way.
18 THE WITNESS: Well, I don't know linked is a -- we
19 had an obligation under the Economic Growth Fund to meet
20 with residents and try to work out some differences if
21 practical.
22 MR. GROSSMAN: All right.
23 MR. GOECKE: I think we're just getting far
24 afield. I mean this whole line of questioning, we've
25 already established that the top left pedestrian walkway,

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1 which was never a part of the special exception, was listed
2 on the plan, but it wasn't part of the special exception and
3 now we're getting further afield as to other tangential
4 issues related to the special, to this whole process.
5 MR. GROSSMAN: I don't understand, Mr. Goecke.
6 How can --
7 MS. HARRIS: Well, if I may --
8 MR. GROSSMAN: Hold on one second. How can you
9 say it wasn't part of the special exception if it was
10 included in the special exception plan?
11 MS. HARRIS: Well, if I could?
12 MR. GROSSMAN: Yes.
13 MS. HARRIS: The boundary of the special exception
14 was specifically identified as the, and I can't recall the
15 square footage exactly --
16 MR. GROSSMAN: Oh, I see.
17 MS. HARRIS: -- 38,000, but it's outside the
18 perimeter of the land area that is subject to the special
19 exception. It was shown on one of the plans that was
20 submitted initially.
21 MR. GROSSMAN: Yes.
22 MS. HARRIS: And then it was then eliminated.
23 But, you know what, I think one thing that's important here
24 is there were two things going on at the same time that
25 there were --

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1 MS. ROSENFELD: Wait, wait, wait, wait, wait.
2 MR. GROSSMAN: Well, let her finish, Ms.
3 Rosenfeld.
4 MS. HARRIS: But there were two very separate
5 things. One had to do with Westfield and the relationship
6 to the neighborhood and the \$4 million dollars. The second
7 thing, which was separate and apart, was the gas station.
8 And now I think in the line of questioning we have an
9 attempt to sort of converge those two things.
10 MS. ROSENFELD: Well, Mr. Grossman, I suggest that
11 it's Costco itself that merged these two. If you look at
12 Exhibit 87, 86(d), Costco introduced as an exhibit in this
13 case the Economic Development Fund Agreement by and between
14 Montgomery County and the Wheaton Plaza Regional Shopping
15 Center, LLP. They brought this issue to their, not us.
16 MR. GROSSMAN: Okay. Do you want to respond to
17 that, Ms. Harris?
18 MS. HARRIS: We haven't moved that exhibit into
19 evidence.
20 MR. GROSSMAN: All right. Well, here's the thing.
21 I think that, number one, even though the originally
22 proposed pedestrian path is not on the special exception
23 portion of the, of Wheaton Plaza, it is something that was
24 proposed in conjunction by the applicant in conjunction with
25 its special exception application and there are portions of

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1 special exception applications that occur outside of the
2 exact site area in any number of special exceptions such as
3 traffic, modifications to roads and so on. The very, the
4 green wall you proposed is outside of your special exception
5 site. So you can't say it's not part of the special
6 exception plan.
7 MS. HARRIS: But I think what's even more relevant
8 is the fact that we've already established that it is no
9 longer part of the special exception plan, so it seems
10 somewhat irrelevant that we're still talking about something
11 that's not part of the special exception plan.
12 MR. GROSSMAN: Well, now we're talking about a
13 separate issue. But, first of all, responding to what Mr.
14 Goecke said about, that it's not part of the plan, in fact,
15 it was part of the plan. You can't say it was never part of
16 the plan, even though --
17 MR. GOECKE: I misspoke. I apologize.
18 MR. GROSSMAN: -- even though it as offsite.
19 Secondly, as to whether or not it's relevant since it has
20 been discontinued, there -- one of the concerns that's been
21 raised here is the concern about pedestrians. So the
22 question of whether or not it's improvident or not to remove
23 that plan certainly would be part of the discussion here.
24 I'm certainly not going to limit the questioning about that
25 given that factor and especially since it was part of your

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1 plans up through, that were filed in January not in the
2 prior case, but in this case. So that's my ruling on it.
3 She can question about this issue.
4 BY MS. ROSENFELD:
5 Q Mr. Agliata, I know you weren't present, but are
6 you aware that there was a Planning Board hearing on this
7 special exception in February of 2013?
8 A Yes.
9 Q And the current plan, the current special
10 exception application plan that I think has been finally
11 identified as Exhibit 54(i)?
12 MR. GROSSMAN: No, I think the current one is
13 going to be 119 and then (c) is the page 3 that we have that
14 had been discussed previously, although we talked about it
15 at the very beginning as a preliminary matter.
16 BY MS. ROSENFELD:
17 Q Exhibit No. 119(c), which is dated March 25, 2013,
18 do you have any personal knowledge as to why the pedestrian
19 path, which has been removed, after the Planning Board
20 reviewed this plan?
21 A Westfield did raise some concerns over a sketch,
22 Westfield planning had it wider than, potentially had it
23 wider than three feet. When we met with the residents and
24 had the walk through and per this letter --
25 MR. GROSSMAN: This letter being --

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1 THE WITNESS: The --
2 MR. GROSSMAN: -- Exhibit 122?
3 THE WITNESS: -- 122.
4 MR. GROSSMAN: Yes.
5 THE WITNESS: Exhibit 122.
6 MR. GROSSMAN: Right.
7 THE WITNESS: We measured it at 3-foot wide, a
8 pedestrian pathway, which seemed to us to work within the
9 parking stall configuration along the permanent road. There
10 was a plan that I saw that widened that and we had some
11 concerns over that. We raised that to Costco. That's the
12 specific knowledge that I have on it.
13 BY MS. ROSENFELD:
14 Q And do you know which plan that was?
15 A It was a sketch plan that we saw. It wasn't a
16 formal submission. It was just an engineer sketch plan.
17 Q And when did you see that plan?
18 A I don't recall the date.
19 Q A week ago? A month ago?
20 A It was several months ago.
21 Q Do you know if it was before or after the Planning
22 Board review?
23 A I don't recall.
24 MR. GROSSMAN: That raises a question in my mind.
25 Which plan was presented, Ms. Harris, to the Planning Board

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1 technical staff? If the Planning Board meeting or their
2 letter to me, Exhibit 89, is it? Yes, it's dated March
3 27th, but their meeting was actually before that. They must
4 have been looking at a plan, 54(f) I presume, which had the
5 pedestrian path in it, is that correct?
6 MS. HARRIS: I'm not sure, but I can tell you that
7 prior to the Planning Board hearing we had a meeting with
8 staff on a number of things, including -- and the ring road
9 was raised and it was a question that staff had raised, why
10 are you showing this, I don't believe that it's relevant to
11 your case and so I think we should eliminate it and they
12 said I think you should. And then --
13 MS. ROSENFELD: Is Ms. Harris testifying?
14 MR. GROSSMAN: Hold on.
15 MS. HARRIS: -- whether it was reflected on a plan
16 that, the actual physical plan that was before the Planning
17 Board, I don't know the answer to that. But, certainly,
18 staff knows that at that time it had been eliminated.
19 MR. GROSSMAN: Okay. In answer to your question
20 as to whether or not the counsel is testifying, there's a
21 provision in the zoning ordinance which says that any
22 statement of counsel in a special exception proceeding is
23 binding on counsel. So even though she's not a sworn
24 witness, due to the peculiarity of that, that statutory
25 provision, they'd be bound by anything that she says that is

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1 relied on in my report.
2 In any event, so you're suggesting that technical
3 staff --
4 MS. ROSENFELD: In this case, I would object to
5 this hearsay.
6 MR. GROSSMAN: Okay.
7 MS. ROSENFELD: She's submitting it for the truth
8 of the matter.
9 MR. GROSSMAN: She's submitting it to suggest that
10 technical staff was aware that the, that they were
11 eliminating the pedestrian path. I don't know that the
12 Planning Board was aware. Was there anything said in front
13 of the Planning Board to alert the Planning Board that you
14 were planning to eliminate a pedestrian path?
15 MS. HARRIS: I don't believe so, but I also do not
16 recall any discussion whatsoever about the pedestrian path
17 in front of the Planning Board.
18 MR. GROSSMAN: All right. See, my -- given the
19 dates of the, of the various plans, since version 5, which
20 is the one you filed, 54(f), was the only one, I believe, in
21 terms of a special exception plan that would have been
22 available to the Planning Board at the time. Whatever they
23 had from them must have had the pedestrian path along the
24 ring road in it. Even the landscape plan that you submitted
25 on March 26, which you say showed the elimination of the

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1 proposed pedestrian path and the ring road, that would have
2 been well after the Planning Board considered it.
3 So I will say that by code provision, this matter
4 at some point will have to be presented back to the Planning
5 Board or they have to have the opportunity to comment on it
6 by statute. So you can figure out exactly how logistically
7 that would happen, but that's a requirement of the zoning
8 ordinance.
9 MR. SILVERMAN: Mr. Grossman, excuse me --
10 MR. GROSSMAN: Yes, Mr. Silverman?
11 MR. SILVERMAN: -- since we're having testimony
12 from counsel table, we were not aware that the pedestrian
13 path was going to be eliminated at the time of the Planning
14 Board hearing. I think that --
15 MS. CORDRY: What was there to comment on?
16 MR. SILVERMAN: And had we been aware, we would
17 have commented on it.
18 MS. ROSENFELD: I, Mr. Grossman, I do have a few
19 more follow-up questions for Mr. Agliata, but I -- could we
20 take a brief break so I could take a look through your
21 exhibits before I finalize my questions? I only have
22 several remaining.
23 MR. GROSSMAN: Okay. It's now -- it's 16 minutes
24 to. Let's say we'll come back at 5:12?
25 MS. ROSENFELD: That would be fine. Thank you.

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1 MR. GROSSMAN: All right.
2 (Recess)
3 MR. GROSSMAN: And I mentioned -- we're back on
4 the record now. I mentioned just before we broke that the
5 statute requires resubmission. The provisions I'm referring
6 to, if there's a change in the plans, Zoning Ordinance 59A
7 4.24 --
8 MS. HARRIS: Can you repeat that?
9 MR. GROSSMAN: Yes. Zoning Ordinance Section 59A
10 4.24, amendment of petition provides -- I'll read the last
11 sentence which pertains.
12 "Each proposed amendment must also be
13 referred to the Planning Board under Subsection
14 59A 4.48(c). Nothing in this section prohibits
15 the Board during the hearing or any time before
16 the record is closed in requesting applicant to
17 revise any aspect of the proposal."
18 I just read the last two sentences.
19 Then the section referred to, 59A 4.48(c)
20 provides,
21 "After the Planning Board or its technical
22 staff has issued its initial report and
23 recommendation, the applicant must transmit to the
24 Planning Board a copy of any subsequent amendment
25 to the petition. The record must remain open for

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1 a reasonable time to provide an opportunity for
2 the Planning Board or its staff to comment.
3 Within that time, the Planning Board or its staff
4 must comment on the amendment or state that no
5 further review and comment are necessary."
6 So logistically when you have a change like this
7 and where conceivably there may be other changes as a result
8 of or in the course of this hearing, I guess you have to
9 make a decision as to whether or not you want to wait until
10 the last hearing date or whatever to send this over to the
11 Planning Board and its staff noting that the changes or you
12 want to do it now in case there are no further changes and
13 give them time to comment or say that they have no comment
14 and give everybody else an opportunity to reply as well.
15 They have to keep the record open for at least 10 days after
16 that. So I'll let you think about that and decide our next,
17 you know, let us know at our next meeting.
18 MS. HARRIS: Thank you.
19 MR. GROSSMAN: Okay. Ms. Rosenfeld, you were
20 questioning. Mr., Dr. -- you have a question? Oh, okay. I
21 see you shaking your head. All right. Ms. Rosenfeld.
22 MS. ROSENFELD: I do have -- I do have just
23 several more questions for Mr. Agliata and then, Mr.
24 Grossman, I would like to address your point about returning
25 the plan to the Board --

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1 MR. GROSSMAN: Okay.
2 MS. ROSENFELD: -- the timing of that.
3 MR. GROSSMAN: All right.
4 BY MS. ROSENFELD:
5 Q Mr. Agliata, on the issue of the parking waiver,
6 at one point when the Westfield submitted a request for a
7 parking waiver, I believe that you submitted a very detailed
8 schematic that shows the exact location of all of the
9 parking spaces on the mall site. Are you familiar with that
10 exhibit?
11 A We submitted a site plan, yes.
12 Q And was that site plan, did that site plan show
13 the number of parking spaces that existed before the waiver
14 was granted?
15 A I think it, I believe. Again, I don't have it in
16 front of me, but I believe it showed the potential build
17 out, including the gas station where it was on the previous
18 location.
19 Q Once you received the waiver, how many parking
20 spaces are you -- what's the minimum number of parking
21 spaces you're required to have on the site?
22 A It's 4,000, the lower number, it's right around
23 6,000.
24 Q The Costco warehouse, what is the whole width of a
25 parking space on the Westfield Mall parking pass?

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1 A I believe it's 8 1/2 feet or 9 feet. I don't
2 remember if it's 8 1/2 or 9 feet. They vary, but some of
3 them should be 8 1/2 to 9 feet.
4 Q And what, is there a different size associated
5 with parking spaces allocated to the Costco warehouse?
6 A Yes, there are strictly ones that are 10 feet
7 wide.
8 Q And why are those spaces wider?
9 A One, Costco asked for them. Two, I think they
10 asked for them because their carts are larger.
11 Q Because their carts are larger? And have you
12 prepared a schematic as part, a site plan as part of this
13 special exception application to demonstrate that you can
14 meet the minimum number of parking spaces on the property
15 after the gas station is built?
16 A Did we prepare an exhibit for who?
17 Q For purposes of this special exception
18 application?
19 A No, we have not.
20 Q What evidence do you have that you can meet the
21 minimum number of parking spaces required under the waiver
22 if this special exception application is approved?
23 A Well, I believe we're just shifting the gas
24 station and we do have a plan that shows the gas station
25 shift with the parking counts internally, it hasn't been

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1 submitted as evidence though.
2 Q So at this point in time there's no evidence in
3 the record that you can satisfy the minimum parking
4 requirements through, through any --
5 A Again --
6 MR. GROSSMAN: Hold on one second? Yes. You say
7 no evidence in the record. You're asking him whether he's
8 read the entire record? There was evidence submitted at an
9 earlier hearing regarding this orally from Mr. Guckert, if I
10 recall. So aren't you assuming something that's contrary to
11 the record?
12 MS. ROSENFELD: Oh, I'll --
13 BY MS. ROSENFELD:
14 Q Would you submit an exhibit that shows that you
15 can fit the requisite minimum number of parking spaces on
16 the Westfield Mall site if the special exception application
17 is approved?
18 A Yes.
19 MR. GROSSMAN: According to my notes, the
20 testimony that a minimum number of spaces would be 5,999 and
21 number of total spaces would actually be 6,079? That's in
22 my notes.
23 MS. CORDRY: I think that's correct.
24 MR. GROSSMAN: So --
25 THE WITNESS: I think that's right.

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1 MR. GROSSMAN: I usually can't read my notes after
2 a couple of days, so that was pretty good.
3 BY MS. ROSENFELD:
4 Q With respect to the -- are you familiar with the
5 Montgomery County's grant of \$4 million to Westfield to
6 attract Costco --
7 A Yes.
8 Q -- to this site? Was one condition of the grant
9 of that money that you provide adequate parking under the
10 agreement?
11 A I don't recall that being a specific requirement
12 under that agreement. I'd have to look at the, there's an
13 Exhibit D that was attached that talks about the
14 requirements into the date of it, I don't recall that. I'd
15 have to read the Exhibit A or B that was attached to the
16 Economic Development Fund Agreement.
17 Q Exhibit A or B to the agreement itself?
18 A Yes. Those were the lists of requirements.
19 Q If you'll indulge me one moment please?
20 MS. ROSENFELD: Mr. Grossman, I'm going to present
21 the witness with Exhibit 86(d) --
22 MR. GROSSMAN: Okay.
23 MS. ROSENFELD: -- which I believe is the document
24 you were referencing, the Economic Development Fund
25 Agreement. Review that and let me know if that answers your

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1 questions, refreshes your memory.
2 MR. GROSSMAN: I couldn't hear your question.
3 MS. ROSENFELD: I would like to know if that
4 document refreshes his memory.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: Yes.
7 BY MS. ROSENFELD:
8 Q And the answer?
9 A Yes, I mean it refreshes my memory.
10 Q And the answer to my question?
11 A Can you repeat your question?
12 Q Yes. Are you required to document to the County
13 that you can provide adequate parking under the waiver?
14 A It says the final project budget of the, will be
15 not less than \$15 million and I'll read through the --
16 evidence that construction has commenced on the project,
17 evidenced by issuance of building permit, evidence that
18 recipient have executed a construction contract with a
19 general contractor or certification from receipt that is
20 acting as general contractor, except recipients commitment
21 to make commercially and reasonable efforts to procure
22 approximately \$7 million, applying, or subcontracting worth
23 competitors located in Montgomery County. A copy of
24 recipient's registered articles of incorporation. Developer
25 and Council will send written confirmation to the County

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1 certifying that the lease with Costco Wholesale Corporation
2 has been executed for a period of 10 years. That's, meet
3 the conditions of the grant according to Exhibit A.
4 MR. GROSSMAN: Ms. Rosenfeld, do you have some
5 other provision in there that you're referring to so you
6 could --
7 THE WITNESS: You're referring to an exhibit?
8 MS. ROSENFELD: No, no, I was asking if you were
9 aware of it. You seemed to think it was in there.
10 THE WITNESS: I read through the grant conditions.
11 MS. ROSENFELD: Okay.
12 THE WITNESS: And I read that.
13 MS. ROSENFELD: Okay. Mr. Grossman, just one
14 moment.
15 MR. GROSSMAN: Sure.
16 BY MS. ROSENFELD:
17 Q Mr. Agliata, did you receive a response from
18 Montgomery County to the letter dated March 8, 2012, that we
19 just discussed?
20 A I don't recall.
21 Q Do you recall if there was a letter that addressed
22 the conditions of the grant and whether or not they had been
23 satisfied?
24 A I don't recall.
25 Q Do you recall a letter from Steve Silverman to Mr.

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1 Leggett authorizing release of the funds to Westfield? Do
2 you recall being --
3 A Yeah.
4 Q -- copied on it?
5 A I recall. I recall seeing a letter, but I don't
6 recall what it all said to be honest with you. I recall
7 seeing it.
8 MR. GROSSMAN: What are we getting at with this
9 line, Ms. Rosenfeld?
10 BY MS. ROSENFELD:
11 Q Do you recall what in that letter that, the letter
12 confirmed that Westfield Costco have attempted to address in
13 good faith the issues of the loading dock, delivery truck
14 issues, traffic flow, pedestrian access and building
15 elevations and design?
16 A I don't recall the specifics of that letter. If
17 you have a copy of the letter, I'd be happy to read it, but
18 I don't, I don't recall. I know there was letter. It was
19 an internal letter between Steven Silverman and County
20 Executive Leggett, I think. I don't recall. If you have an
21 exhibit, I'll be happy to read it.
22 MR. GROSSMAN: What's -- what are you getting at,
23 Ms. Rosenfeld?
24 MS. ROSENFELD: That the pedestrian access issues,
25 mainly the path, were part of the condition of obtaining the

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1 first release of \$2 million of the grant.
2 MR. GROSSMAN: Well, how does it -- I mean if you
3 have a document that establishes that and that's in the
4 record or that you want to put in the record, that's fine.
5 Why question this witness's recollection when he, about it?
6 I'm not sure where that gets us.
7 MS. ROSENFELD: I do not have a hard copy of that
8 letter at the moment. We could come back with a hard
9 copy --
10 MR. GROSSMAN: That's up to you if you want to --
11 MS. ROSENFELD: -- after lunch.
12 MR. GROSSMAN: -- put it in the record, but I'm
13 just not sure where the recollection of this witness, which
14 is very general on the subject, helps you or helps anybody
15 to the extent it's relevant.
16 MS. ROSENFELD: Mr. Grossman, that's the last
17 topic that I have for cross-examination for this witness.
18 MR. GROSSMAN: All right.
19 MS. ROSENFELD: If we could bring a hard copy back
20 after the lunch break, then just to question him on that one
21 issue?
22 MR. GROSSMAN: All right. Well, we're not going
23 to --
24 MS. ROSENFELD: I'd ask for your indulgence.
25 MR. GROSSMAN: We're going to try to get Mr.

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1 Guckert in before we break for lunch --
2 MS. ROSENFELD: Oh, okay.
3 MR. GROSSMAN: -- because he is here. He couldn't
4 keep himself away.
5 MS. ROSENFELD: In which case, if we could have
6 Mr. Guckert testify and we could complete his testimony and
7 then bring Mr. Agliata back for that one remaining issue on
8 cross-examination?
9 MR. GROSSMAN: Yes. Well, I'm just not sure what,
10 what you get out of this witness in having him say he
11 recalls or doesn't recall what's in the letter.
12 MS. ROSENFELD: Which is -- I agree, which is why
13 I think we could speed things up if I could just provide him
14 with a copy of the letter.
15 MR. GROSSMAN: But if this is a letter between Mr.
16 Silverman and Mr. Leggett, he's not an authorized recipient
17 of --
18 MS. ROSENFELD: He was copied.
19 MR. GROSSMAN: Well, even if you were copied on
20 it, what does it establish, assuming that he got the copy of
21 the letter, which he says he recalls, but doesn't recall the
22 particulars? What does that establish in the record?
23 MS. ROSENFELD: It establishes that Westfield
24 Costco had committed to providing a pedestrian path as a
25 condition of obtaining the first \$2 million to locate Costco

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1 at this site.
2 MR. GROSSMAN: Pedestrian path along the southern
3 ring road?
4 MS. ROSENFELD: Yes, that's correct.
5 MR. GROSSMAN: Okay. And so you're suggesting
6 that --
7 MS. ROSENFELD: That there was --
8 MR. GROSSMAN: He's being questioned about his
9 recollection of that will establish what Westfield then
10 agreed to --
11 MS. ROSENFELD: Established the --
12 MR. GROSSMAN: -- as opposed to what the letter
13 says?
14 MS. ROSENFELD: Established the commitment that
15 Westfield made to providing the pedestrian --
16 MR. GROSSMAN: I don't want a restriction on it.
17 MR. SILVERMAN: Mr. Grossman.
18 MR. GROSSMAN: I just don't want to get too far
19 afield on things that are not germane here, especially by
20 the witness who said he just recalls in a general sort of
21 way and just questioning him about it as opposed to using
22 the document itself, if that establishes that. Mr.
23 Silverman?
24 MR. SILVERMAN: I just wanted to say that
25 particular letter was a legal requirement of the ordinance

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1 as saying that Steve Silverman, the Economic Development
2 Director, had to write to the County Executive, so it's not
3 just a letter, it's a finding that allowed the money to be
4 released. Without it, there could be no release.
5 MR. GROSSMAN: So I take it that the position of
6 the opposition in general is that you want that pedestrian
7 path on the southern ring road?
8 MS. ROSENFELD: Yes.
9 MR. GROSSMAN: Do you also not want the pedestrian
10 path where they've suggested that there would be one along
11 an east-west pedestrian path further north in the parking
12 lot?
13 MS. ROSENFELD: I think --
14 MR. GROSSMAN: You want both?
15 MS. CORDRY: We would certainly want both, as a
16 matter of parking lot design, it's rather unsafe to not have
17 a pedestrian path alongside that drive access road, but
18 that's a completely separate thing from additional unsafety
19 of not having it along the ring road.
20 MR. GROSSMAN: I understand. Okay.
21 MR. SILVERMAN: The other point is that we expect
22 that -- we put a lot of effort into the Planning Commission
23 hearing and we expect that whatever the Planning Commission
24 should pass on these things too and we have whatever
25 opportunities we have.

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1 MR. GROSSMAN: Well, we already said that it's a
2 requirement of the zoning ordinance that the Planning Board
3 and its staff must receive a copy of the amended plan and
4 then they can comment or not as they prefer, which is what
5 it says in the code. All right. Is there any -- should we
6 do a redirect of this witness now or wait until after if
7 there's an additional question that you have? Is there a
8 redirect you have now?
9 MS. HARRIS: I have no redirect.
10 MR. GROSSMAN: Okay.
11 MS. HARRIS: But subject to that last question.
12 MR. GROSSMAN: Right. All right. So why don't
13 we, we let this witness relax a bit here and we'll call Mr.
14 Guckert back to the stand. Is that agreeable here since he
15 had some additional testimony, Mr. -- thank you. You're not
16 yet released fully, you're just, you're in abeyance.
17 THE WITNESS: Can I call the office to let them
18 know timing?
19 MR. GROSSMAN: Feel free to step out of the room
20 because we're going to torture Mr. Guckert.
21 (Witness sworn.)
22 MR. GROSSMAN: Welcome back, Mr. Guckert.
23 MR. GUCKERT: Thanks.
24 MR. GROSSMAN: You're still under oath.
25 MR. GUCKERT: Yes, sir.

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1 MR. GROSSMAN: All right. Now who, where did we
2 leave off, with Ms. Harris?
3 MS. HARRIS: I think it was redirect of Mr.
4 Guckert.
5 MR. GROSSMAN: All right. Then you may proceed.
6 REDIRECT EXAMINATION
7 BY MS. HARRIS:
8 Q Good morning, Mr. Guckert.
9 A Good morning.
10 Q You testified that although not required, you did
11 test the ring road intersections and that they indicated a
12 level of service A and then in response to the zoning
13 hearing examiner's question, I believe you interpreted that
14 to mean minimal with no delays. But for those that are not
15 familiar with levels of service, can you give the relative
16 importance of a level of service A as it relates to other
17 levels of services that it could have been that those
18 intersections could have been?
19 A Yes. Level of service A, Mr. Grossman, is a
20 condition whereby there is minimal delay. As an example,
21 you pull up to an intersection, internal is what we're
22 talking about here, and there is typically on the average
23 less than 10 seconds delay per car overall. Some cars may
24 have 20 seconds delay and some cars may have none. Some
25 cars, two out of three cars or one out of three cars may

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1 have a 30 second delay and the other two cars have none. So
2 it's an average delay passing through an intersection of 10
3 seconds or less as compared to level of service F condition,
4 which, where you might experience an average of 80 to 90
5 seconds average delay for a vehicle passing.
6 Q So is a level of service A to be equated to grade
7 school where you can't get better than an A?
8 A Correct.
9 Q Okay. Thank you. Mr. Adelman was concerned that
10 you did not evaluate the intersection of Drum and University
11 because it wasn't signalized. You did, however, testify
12 that you did, or your, that you did test the intersections
13 to the east and west of Drum, is that correct? And if so,
14 what did those show?
15 A They, those intersections fall within the LATR
16 guidelines. Different levels of service during different
17 peak hours. Do you want me to go through them?
18 Q Well, if you could identify the intersection
19 immediately to the east and to the west and indicate what
20 those CLV's are?
21 A Okay. Give me one second to find that. Got it.
22 MR. GROSSMAN: What page are you on?
23 THE WITNESS: Well, you could look at page 30 and
24 31.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: And the County no longer uses level
2 of service. The County only uses acceptable or CLV,
3 critical lane volume, ranges as a standard acceptable or
4 unacceptable. And so --
5 MR. GROSSMAN: You mean for purposes of LATR?
6 THE WITNESS: Correct. If you look at, on page 31
7 of my report which is the evening peak hour, the 193 at
8 Valleyview is, would, has 751 CLV, which equates to level of
9 service A. You go to Newport and it's 819, which is
10 intersection 3, and that was also level of service A.
11 BY MS. HARRIS:
12 Q Okay. Thank you. Your LATR also indicated that
13 there was more than adequate capacity APF to handle the gas
14 station and this may be a tricky mathematical question and,
15 in fact, I don't know if you can answer it. It may be
16 difficult to answer, but do you have a sense of how many
17 customers would need to come to the station on a daily basis
18 before exhausting the available APF?
19 A I do not. It would be an enormous number that
20 would have to come to the gas station on a daily basis to
21 resolve the level of service, E or F, depending on where you
22 are in the policy area, an enormous number.
23 Q Okay. There were many questions by Mr. Adelman
24 regarding the pedestrian crossings along the northern
25 portion of the center. How many additional peak hour cars

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1 are attributable to the station that are coming, and he was
2 particularly concerned about the intersection, I believe it
3 was Valleyview and the ring road, how many additional peak
4 hour cars are attributable to the gas station that are
5 coming in that western side?
6 A I'll have to go, I'll have to go get a different
7 report. Let me repeat the question and make sure I
8 understand. You want to know how many cars with a gas
9 station are coming in to Valleyview entrance?
10 Q Correct.
11 MR. GROSSMAN: What different report are you now
12 referring to?
13 THE WITNESS: Well, I was referring to some notes.
14 Okay. Same report --
15 MR. GROSSMAN: Okay.
16 THE WITNESS: -- I just did not have the entire
17 document.
18 MR. GROSSMAN: I see. Okay. Still exhibit 11(a)?
19 THE WITNESS: Yes.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: Mr. Grossman, if you go to page 23,
22 24 --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- there are a series of exhibits
25 and you've got about 28 peak hour trips, new trips and

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1 another 60, so say 90, 90 peak hour trips would be coming in
2 at the Valleyview entrance on the ring road.
3 MR. GROSSMAN: What number is the Valleyview
4 entrance?
5 THE WITNESS: That is No. 16.
6 MR. GROSSMAN: Okay.
7 BY MS. HARRIS:
8 Q So that translates to a car every how many seconds
9 or minutes?
10 A Well, you've got 90 in an hour, so you've got
11 3,600 seconds in an hour, so you've got a car every four
12 minutes.
13 Q So in your opinion --
14 A Four or five minutes.
15 Q -- does an additional car every four to five
16 minutes cause a pedestrian conflict along the northern
17 portion of the ring road?
18 A In my opinion it does not.
19 Q Thank you. I want to turn now to the issue of gas
20 deliveries. Were you present when Mr. Brann testified first
21 thing on April 26th regarding the number of daily gas
22 deliveries that the station would get?
23 A I do not recall that I was there then.
24 Q Do you have any independent information that would
25 cause you any reason to contradict what Mr. Brann had

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1 testified to with respect to daily gas deliveries?
2 A Well, he said he wasn't there.
3 Q Right, but I'm wondering, but --
4 A Unless he's read the record.
5 Q Excuse me?
6 A You're asking me if he, you're asking me to
7 contradict what Mr. Brann said when he said he wasn't there
8 when he said it, so unless he's read the record since then,
9 how would he know the answer to that? How would he have any
10 information by which he could agree or contradict?
11 Q Well, let me change the question. Do you have
12 independent information that would cause you to have better
13 information about daily gas deliveries than Mr. Brann?
14 A No.
15 Q Okay. That's all I wanted to establish with that.
16 There was extensive discussion regarding the ring road and
17 potential parking along the ring road and pedestrian access
18 of those vehicles. You conducted observations on April
19 27th, is that correct?
20 A Yes.
21 Q And what day of the week was that?
22 A Saturday.
23 Q And how soon after the initial opening of the
24 store?
25 A The store opened, I think, on April 10th. This is

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1 April 27th, so 17 days.
2 Q And I believe that both you and Mr. Brann noted
3 that there was still, quote, a surge, from the initial
4 opening occurring, is that correct?
5 A My experience would be that a surge could occur
6 30, 60, 90 days after the opening. Quite frankly, not just
7 the Costco store, but of any new type of facility like this.
8 Q And can you please refresh our memories in terms
9 of your testimony in terms of how many cars were parked
10 along the ring road during that Saturday?
11 A Certainly. There were none in the vicinity of the
12 Costco store or the proposed special exception area. There
13 were some, as I recall, on the west side by the pool area.
14 Q Okay. You testified that vehicles will be able to
15 come in and out of parking spaces to the west of the station
16 while gas is offloading, correct --
17 A Correct.
18 Q -- being delivered? Were you aware that your
19 response to this question was consistent with Mr. Duke's who
20 had prepared a truck turning radius?
21 MR. GROSSMAN: What's the point in asking that,
22 whether he was aware that it was consistent or inconsistent
23 or somebody else? What is, what does that gain us?
24 MS. HARRIS: It, I'll strike that question.
25 MR. GROSSMAN: All right.

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1 BY MS. HARRIS:
2 Q You testified briefly regarding the warehouse
3 deliveries.
4 A Deliveries of the warehouse themselves.
5 Q To the warehouse, yes. And I think this went to
6 the issue of safety.
7 MR. GROSSMAN: All right.
8 BY MS. HARRIS:
9 Q Are you aware of when the warehouse, what the
10 warehouse hours of operation are?
11 A The warehouse hours of operation?
12 Q Yes. It's when the customer can come into the
13 station.
14 A Into the station?
15 Q I'm sorry, when the customer can come into the
16 warehouse.
17 A My recollection is that they have about 9:30 or
18 10:00 a.m. store opening.
19 Q Okay. And are you familiar with when the
20 warehouse receives its deliveries?
21 A I have been advised as part of the work that I was
22 doing here that the deliveries would occur --
23 MS. ROSENFELD: Objection. Hearsay.
24 THE WITNESS: -- before --
25 MR. GROSSMAN: Hold on. Hold on one second. Are

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1 we offering this to prove when these deliveries would occur
2 or are we offering it to prove what this witness based any
3 conclusions on?
4 MS. HARRIS: The --
5 MR. GROSSMAN: That determines whether or not it's
6 hearsay.
7 MS. HARRIS: The latter.
8 MR. GROSSMAN: Okay. Then he can answer that for
9 that purpose. It's not going to establish when the
10 deliveries are, but it's going to establish that which he
11 bases his conclusions on.
12 THE WITNESS: And what, as part of my
13 investigation of the operation of the warehouse I ask so
14 that I have a knowledge of that and that the warehouse
15 deliveries will occur prior to the store opening for
16 customers.
17 MR. GROSSMAN: All right.
18 MS. HARRIS: Okay.
19 BY MS. HARRIS:
20 Q And then can you also, can you also tell me what
21 the number of anticipated customers there are to the gas
22 station during the hours of 6:30 and when the deliveries to
23 the store?
24 MR. GROSSMAN: So do you want to repeat that or
25 start that question from the beginning again?

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1 MS. HARRIS: Okay.
2 BY MS. HARRIS:
3 Q The -- what I'm trying to establish is the number
4 of, the anticipated customers to the station --
5 MS. ROSENFELD: Objection. Leading the witness.
6 MR. GROSSMAN: Well, let me -- she's --
7 MS. ROSENFELD: She can ask --
8 MR. GROSSMAN: She's telling me what she's trying
9 to establish, so let me hear what she's trying to establish
10 here and then we can hear what the question is.
11 BY MS. HARRIS:
12 Q What are the anticipated number of customers to
13 the gas station prior to the warehouse opening?
14 MR. GROSSMAN: Okay. Well --
15 MS. ROSENFELD: So --
16 MR. GROSSMAN: All right. That's the question.
17 What are the anticipated number of visitors to the gas
18 station prior to the warehouse opening? Did I state that
19 correctly?
20 MS. HARRIS: Yes.
21 MR. SILVERMAN: Yes.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: I would have to go back and
24 calculate that. I do not have that at my fingertips.
25 MS. HARRIS: Okay. Then I'll bend that line of

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1 questioning.
2 THE WITNESS: I just don't have it at my --
3 MS. HARRIS: Okay.
4 THE WITNESS: -- fingertips.
5 BY MS. HARRIS:
6 Q Okay. Just the last line of questioning has to do
7 with your expertise, how long have you been a traffic
8 consultant?
9 A 41 years.
10 Q And you've had extensive training and experience,
11 is that correct?
12 A Yes.
13 Q And your training and experience is what you
14 qualified you to exercise discretion in some of your
15 analysis, is that correct?
16 MR. GROSSMAN: Why are we going back on the
17 last -- it amounts to another voir dire of a witness who has
18 already been accepted as an expert. I don't understand.
19 MS. HARRIS: Because I think that there are a
20 number of times when he did indicate that it was in his best
21 judgment, professional judgment, and also I'm a little
22 concerned that there may be subsequent traffic testimony
23 that doesn't have the benefit of Mr. Guckert's vast
24 experience and training.
25 MR. GROSSMAN: And these are questions that go to

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1 his qualifications and he's, we've already passed that
2 point. And I believe you have his resume in the record?
3 MS. HARRIS: Yes, I do.
4 MR. GROSSMAN: All right. I think that's
5 sufficient to establish his length of experience. He's
6 testified before being accepted as an expert to his
7 lengthy --
8 MS. HARRIS: Okay.
9 MR. GROSSMAN: -- experience.
10 MS. HARRIS: Okay. That concludes my questions.
11 MR. GROSSMAN: All right. Any recross that goes
12 directly to the redirect and --
13 MR. ADELMAN: Mr. Grossman, could I have the
14 microphone?
15 MR. GROSSMAN: Yes. Yes. Thank you. I'm sorry
16 about our logistical arrangements here, but I'm concerned
17 about leaving that wire stretched across the path when
18 you're not using it.
19 MR. ADELMAN: Right. I'll try not to --
20 RECCROSS EXAMINATION
21 BY MR. ADELMAN:
22 Q Good afternoon, Mr. Guckert.
23 A Good afternoon.
24 Q Good to see you again. Mr. Guckert, do you mind
25 if I ask a question that isn't, in fact, I believe all my

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1 questions were on redirect.
2 MR. GROSSMAN: I'll try, but I'll leave it mostly
3 to Ms. Harris to, or Mr. Goecke to make an objection if they
4 have one.
5 BY MR. ADELMAN:
6 Q Well, perhaps I'll start with a question I didn't
7 think I would ask, but starting as to expertise, Mr.
8 Guckert, perhaps I'm making a mistake here, which I'm not an
9 expert, I am a scientist, if you would look at page 13 of
10 Exhibit 11(a)? And if you could do some simple math for me?
11 Could you add these, the number of cars? These are, is that
12 the number of cars that enter from Valleyview to
13 intersection 16 at the p.m. peak hour? It's very fine
14 print, but I read it as 169, is that correct?
15 A Yes.
16 Q And then am I correct in stating that the number
17 that goes straight through intersection 16 proceeding to the
18 southeast in the direction of the special exception site, is
19 that number 58?
20 A Correct.
21 Q Could you add those two numbers together?
22 A 58 and the 169?
23 Q 169, yes. So I don't take a chance with that.
24 A 227.
25 Q Good. And could you now look at --

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1 A Did I pass?
2 Q You passed. Excellent. And no question about
3 your mathematical expertise. There are questions about that
4 little circle in the lower right center of the same page.
5 A Yes.
6 Q What is the number of cars crossing that 4:00 p.m.
7 peak?
8 A 130 eastbound.
9 Q Right. Could you subtract 130 from 227?
10 A Certainly. It should be 97.
11 Q 97? So 97 cars entered the, that segment of the
12 ring road, did they not?
13 A 97 cars went into the parking lot.
14 Q Excuse me. 227 cars entered the ring road from
15 intersection 16, is that correct?
16 A Yes, that was the question you asked before.
17 Q All right.
18 A Is that what you mean?
19 Q Yes.
20 A Yes.
21 Q And I'm trying to establish, and 130 riding along
22 on that same, on the ring road past the site for the special
23 exception, is that correct?
24 A That's correct.
25 Q What happened to the 97 cars?

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1 A They went into the parking lot.
2 Q But you did not provide any counts of cars going
3 into the parking lot and when I specially asked the
4 question, you told me there wasn't an intersection, did you
5 not, and therefore you did not counts, did you not?
6 A No, sir, I did not.
7 Q I guess we have to look at the record to be sure.
8 But I'm going to ask you a different question then. If it
9 is that intersection and there are cars going into that
10 intersection, where are the counts?
11 A Are we going back over --
12 Q No, we're --
13 A -- the earlier testimony or the redirect?
14 Q Well, the redirect had to deal with in this case
15 your expertise as to traffic matters. My question is if
16 cars pass from one point to another, but they start at one
17 point and don't get to the other, how --
18 A They went into the parking lot.
19 Q Fine.
20 MR. GROSSMAN: All right. Hold on one second.
21 Mr. Guckert is, quote, subtly hinting that you're outside of
22 the scope of the redirect.
23 MR. ADELMAN: All right.
24 MS. HARRIS: I would object because I would agree
25 with --

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1 MR. GROSSMAN: And I think he's correct about
2 that. However, I'm going to let you do that if it's a point
3 that you have an issue about, you're really curious about.
4 He said, his answer is that the rest of the cars went into
5 the parking lot. I'm not sure what your problem was. Why
6 is that a problem?
7 MR. ADELMAN: The problem is that when I
8 originally asked about the counts and, Mr. Grossman, you
9 will recall that I started my questioning by pointing out
10 that we had no data on the parking lot other than data for
11 cars going into or out front the parking lot and I began my
12 questioning back then, it's the same question essentially,
13 by asking about that little circle, where the numbers, where
14 the cars could go in the parking lot?
15 MR. GROSSMAN: Right.
16 MR. ADELMAN: I'm still --
17 MR. GROSSMAN: So he just, he's saying that that's
18 what happened to the rest of them. He's not saying, he's
19 not saying that a he had a particular separate box in which
20 he specified the numbers going for the parking lot. He's
21 saying that's what happened in answer to your -- if I
22 understand you correctly?
23 THE WITNESS: That's correct.
24 MR. GROSSMAN: Okay. He's saying that's what
25 happened, if that's your inquiry, where are the rest of the

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1 cars? They went into the parking lot.
2 BY MR. ADELMAN:
3 Q And did not counts then of -- Ms. Harris asked
4 you, did she not, to confirm that you had counted traffic,
5 traffic volumes at a number of ring road intersections, did
6 she not?
7 MR. GROSSMAN: Well, once again, are you further
8 going into stuff that was --
9 MR. ADELMAN: I'm following up on Ms. Harris's
10 question.
11 MR. GROSSMAN: As to his expertise?
12 MR. SILVERMAN: No.
13 MR. ADELMAN: No, I'm sorry. Excuse me. I've
14 lost -- my next line of questioning --
15 MR. GROSSMAN: Yes.
16 MR. ADELMAN: -- goes to Ms. Harris's having
17 raised again the matter of not having counted lane
18 volumes --
19 MR. GROSSMAN: Oh, okay. I see.
20 MR. ADELMAN: -- at a number of intersections it's
21 the only --
22 MR. GROSSMAN: Okay. Okay. Then you can go ahead
23 and ask your question.
24 BY MR. ADELMAN:
25 Q Did you not?

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1 A No.
2 Q She did not ask you that, she did not remind you
3 of that? She did not --
4 A That's not my recollection of her redirect.
5 MR. ADELMAN: Mr. Grossman --
6 MR. GROSSMAN: Well, that's what he said. It's
7 not his recollection of the redirect.
8 THE WITNESS: It's not my recollection of the
9 redirect.
10 BY MR. ADELMAN:
11 Q Okay. My next line of questioning, a different --
12 Ms. Harris did ask you, did she not, or did on redirect
13 raise again the point about driving and made additional
14 observations, is that correct?
15 A That's correct.
16 Q These additional observations are intended to
17 provide, are they not, clarity as to the amount of traffic
18 on the southernmost portion of the ring road now that the
19 store has opened, is that correct?
20 A One of the things.
21 Q One of the things. Fine. Do you as an expert on
22 matters of traffic impact understand that if that set of
23 data is, in fact, offered for submission, I as a scientist
24 will almost certainly object to that data?
25 MR. GROSSMAN: No, that's not a -- I'm not going

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1 to allow that question. Do you want him to say what you
2 might object to? That's, that's not an appropriate
3 question.
4 MR. ADELMAN: I wish to state for the court that
5 I'm concerned about wasting the court time. We're waiting
6 for data which will be submitted, I will be forced to object
7 to that data. I just wanted to state that.
8 MR. GROSSMAN: Okay. You've stated that.
9 MR. ADELMAN: Thank you. No further questions.
10 Thank you, Mr. Guckert.
11 MR. GROSSMAN: All right. Any recross from
12 Kensington Heights Civic Association?
13 BY MS. ROSENFELD:
14 Q Mr. Guckert, you testified, I believe, that there
15 only deliveries, truck deliveries to the warehouse in the
16 morning before the store opens. Did I understand your
17 testimony correctly?
18 A That was what I, that is correct, that was my
19 testimony.
20 Q And who gave this information to you?
21 A Costco.
22 Q And which individual at Costco?
23 A It was one of two or three different people. I
24 don't recall exactly which.
25 Q And which --

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1 A I couldn't -- it would likely have been Mr. Brann
2 or Mr. Eshida.
3 Q Or Mr. who?
4 A Eshida.
5 Q Did I understand you to testify that when you went
6 out to personally view the site after the warehouse opened,
7 that there were no vehicles parked on the southern side of
8 the ring road in the parallel parking spaces?
9 A Correct.
10 Q Are there, in fact, parallel parking spaces marked
11 for --
12 A Correct.
13 Q -- the entire length? Is it --
14 A In the area of the special exception, yes.
15 Q And can you please show me on that exhibit that I
16 think is now 111 where those parking spaces are located?
17 A They're located along --
18 MR. GROSSMAN: Well, hold on one second. Let's --
19 can we put that up on a --
20 MS. HARRIS: We don't have an easel up here.
21 MR. GROSSMAN: We don't?
22 THE WITNESS: I have one. I have it. Do you want
23 it?
24 MR. GROSSMAN: Were the ones that were here before
25 from our office or were they ones that -- oh.

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1 THE WITNESS: Would you like me --
2 MR. GROSSMAN: If you have one, that would be
3 great so we can all see it.
4 THE WITNESS: Mr. Grossman, I think you did not
5 have one because of the question.
6 MR. GROSSMAN: Well, I'm sure we don't have a neat
7 one like that, but --
8 THE WITNESS: Referring now to Exhibit, it's
9 marked 119(c).
10 MR. GROSSMAN: That's correct.
11 THE WITNESS: Okay?
12 MR. GROSSMAN: Yes.
13 THE WITNESS: Details that parking that's along
14 the west side. There are T's, Mr. Grossman, they're called
15 T's and L's where when you designate parking spaces both
16 horizontally and vertically --
17 MR. GROSSMAN: Okay.
18 THE WITNESS: -- and longitudinally. And so the
19 parking spaces along the west side mark that go up to and
20 stop just west of the north-south travel aisle, and I'm
21 pointing to an area on the plan that says relocated, no
22 parking, fire lane sign, that is approximately where the
23 parallel parking T's and L's are marked.
24 MR. GROSSMAN: Okay.
25 BY MS. ROSENFELD:

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1 Q And when you were on the site, did you personally
2 observe whether or not those T's and L's were, in fact,
3 painted on the ground?
4 A My recollection was they were.
5 Q With respect to truck deliveries to the warehouse,
6 do you know when they resume deliveries in the evenings?
7 A I do not recall. My recollection in my discussion
8 is that the deliveries resumed or are supposed to resume
9 after the store closes.
10 Q And did you get that information from one of the
11 same two gentlemen, Mr. Brann or Mr. Eshida?
12 A Yes.
13 Q And how many on average during a weekday, how many
14 trucks make deliveries to the warehouse?
15 A I do not have that information.
16 Q And on average how many trucks make delivery to
17 the warehouse on weekends?
18 A No, that's, this is, I did not have that
19 information.
20 Q There were two different questions. One was for
21 weekdays --
22 A The same answer.
23 Q -- and one was for weekends.
24 MS. ROSENFELD: Thank you. I have no further
25 questions.

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1 MR. GROSSMAN: Okay. All right. Then, oh, I
2 guess that Mr. Guckert is going to need to come back with
3 his additional --
4 MS. HARRIS: Yes, and I'm glad you brought that up
5 because if we, scheduling wise we need to identify that
6 date.
7 MR. GROSSMAN: Okay.
8 MS. HARRIS: Should we do that now or should we
9 work it out later?
10 MR. GROSSMAN: Well, let's talk about that for a
11 second. What are we, what does it look like is the date on
12 which this material would be available?
13 MS. HARRIS: Are you close to finalizing
14 materials?
15 THE WITNESS: Yes.
16 MS. HARRIS: Do you think it would be possible
17 sometime this week to have it completed and so that we can
18 distribute it?
19 THE WITNESS: Completed this week? Yes.
20 MR. GROSSMAN: And --
21 MS. HARRIS: So I guess one question is how much
22 time do we get to evaluate the materials?
23 MR. GROSSMAN: All right. So I'll hear from Dr.
24 Adelman first. What about -- how much time would you need
25 to evaluate these additional measurements that have been

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1 made since the Costco warehouse?
2 MR. ADELMAN: I believe 10 days is a normal amount
3 of time, am I correct?
4 MR. GROSSMAN: Well, 10 days is the, is a minimum
5 that's specified in the statute if you are going to amend
6 the petition. And we want to consider this an amendment of
7 the petition. What we're going to try to do is give you
8 whatever time is necessary to be fair. So 10 days would be
9 fine.
10 MR. ADELMAN: Okay. That's fine.
11 MR. GROSSMAN: All right. What about, Ms.
12 Rosenfeld?
13 MS. ROSENFELD: I would -- 10 days is fine.
14 MR. GROSSMAN: Okay. And you hinted more than
15 broadly that you have an objection to this, these new
16 measurements and what's the nature of your objection? So we
17 might as well hear that now too. You haven't seen them yet,
18 so I'm not sure -- it can't be particularized to the
19 measurements themselves.
20 MR. ADELMAN: I don't wish to testify, so I don't
21 know how to -- can you hear me?
22 MR. GROSSMAN: I can hear you. If you think that
23 this is something that's going to, in effect, invoke your
24 testimony as you answer me here, I can put you under oath
25 now and we'll consider what you say as part of your

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1 testimony.
2 MR. ADELMAN: I don't think I have to do that. I
3 believe that in order to achieve an accurate picture of
4 traffic on the ring road, one has to measure a number of
5 intersections. From the comments that Mr. Guckert has made,
6 I believe he has not done that.
7 MR. GROSSMAN: I see. So your objection to, that
8 you anticipate the new measurements is based on the
9 methodology, you're challenged to the methodology that Mr.
10 Guckert is using, is that --
11 MR. ADELMAN: Exactly.
12 MR. GROSSMAN: I see. Okay. All right. So I
13 guess we'll, we'll await that based on your testimony at the
14 time. Okay. So you suggested, Mr. Guckert, that this week,
15 so that would mean by the 10th or so --
16 THE WITNESS: Yes.
17 MR. GROSSMAN: So that would be, the 20th would be
18 10 days. What's our next session, the 20th or after. Let's
19 see.
20 MS. HARRIS: It's the 14th, the 17th, the 20th.
21 MR. GROSSMAN: We have it on the 20th?
22 MS. HARRIS: Yes, but I believe Mr. Guckert may be
23 out of town.
24 THE WITNESS: I am out of town the 20th.
25 MR. GROSSMAN: All right.

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1 MS. HARRIS: And when do you return?
2 MR. GROSSMAN: What's --
3 THE WITNESS: There's a hearing -- according to my
4 schedule, a May 23rd schedule from here.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: And so I'd be available the morning
7 of May 23rd.
8 MR. GROSSMAN: All right. So does that sound good
9 to everybody on the morning of May 23rd. Mr. Guckert, by
10 the end of this week, we'll produce and you will be given a
11 copy of his new measurements and then you'd have, in effect,
12 13 days, almost two weeks, to go over them before he
13 testifies and he'd appear on the morning of May 23 to be
14 questioned regarding that. Is that agreeable? You have to
15 answer yes or no, sir.
16 MR. ADELMAN: Yes. Yes, Mr. Grossman.
17 MS. ROSENFELD: Yes, Mr. Grossman.
18 MR. GROSSMAN: Okay. All right then. Then we are
19 done by this week. We'll get the -- and you make sure, Ms.
20 Harris, that everybody gets a copy of Mr. Guckert's new
21 measurements by the end of this week?
22 MS. HARRIS: Yes.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: May I ask, do you also want a CD of
25 the data?

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1 MR. GROSSMAN: I do.
2 THE WITNESS: Okay. And how about the other
3 people?
4 MR. GROSSMAN: Sure.
5 THE WITNESS: Very well. So you want hard copies
6 and CD's?
7 MR. GROSSMAN: Yes.
8 THE WITNESS: And you as well, sir?
9 MR. GROSSMAN: I'd appreciate it, yes.
10 THE WITNESS: Very good.
11 MS. HARRIS: And, Mr. Grossman, I have a
12 procedural question.
13 MR. GROSSMAN: Yes, ma'am.
14 MS. HARRIS: As you know, there's probably 40 or
15 50 parties of record for this case and up until the start of
16 the hearing, every time we filed something new, we've sent
17 all those parties of record. Should we continue to do that
18 or should we just simply, or should we just make sure that
19 everyone that's represented here, and I assume --
20 MR. GROSSMAN: Yes, I think for purposes of the
21 hearing, it's those who are participating in the hearing
22 that you would have to be communicating with just to make
23 sure that everybody and every member of the public and
24 certainly all the people who has asked to become parties of
25 record here, which is a very loosely defined term under our

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1 statute, have access to it. Everything that happens here
2 will be a matter of the public record. Every document that
3 is filed will be in our public record subject to being
4 reviewed. And I don't know when you have sent your e-mails
5 in the past. You obviously haven't sent e-mails to
6 everybody in the world, so --
7 MS. HARRIS: No, but hard copies of filings --
8 MR. GROSSMAN: Yes.
9 MS. HARRIS: -- were all sent.
10 MR. GROSSMAN: But you haven't sent hard copies,
11 for example, of the traffic impact analysis to every --
12 MS. HARRIS: They received it on a CD.
13 MR. GROSSMAN: Oh, on a CD. Okay. I don't know.
14 Let me hear from the opposition on this. Ms. Rosenfeld,
15 what do you think is the most efficient way and fair way of
16 doing this because now we have participants in the hearing
17 and obviously so many of the people who requested to be
18 parties of record, and I put that in quotes, are not going
19 to directly appear here. Is there any reason that CD's have
20 to be sent to all of these people who have done it or is it
21 sufficient, as I think it is frankly at this point, but I'll
22 ask your opinion on it, is it sufficient to have the record,
23 have the hard copy and have an electronic copy and we have
24 the record which is open to public view and every
25 participant in the hearing here gets a copy, hard and

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1 electronic? I would also note that if I'm not incorrect,
2 the Stop Costco Gas Coalition puts all these documents on
3 their website as well, is that true? So we have that in
4 addition, an additional way of reaching everybody. Ms.
5 Sheard?

6 MS. SHEARD: It might be useful to just have a
7 letter or an e-mail go to the rest of the participants
8 telling them the subject and where it is.

9 MR. GROSSMAN: I don't have, well, participants is
10 fine. I'm talking about there are maybe 100 people who in
11 your community who have asked to designate themselves as,
12 quote, parties of record. That's a very loose term in the,
13 in this particular type of administrative proceeding. So it
14 does create difficulties which we discussed early on in
15 terms of the logistical problems of sending copies of things
16 like this transportation report to everybody.

17 MS. SHEARD: I agree to your statement that just
18 send copies to those who are participating?

19 MR. GROSSMAN: Yes.

20 MS. SHEARD: It would include the owner who is not
21 here, but just notify the other people by e-mail or mail
22 that new records have been submitted and where to find them
23 online.

24 MR. GROSSMAN: Well, I don't have e-mail addresses
25 to everybody.

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1 MS. SHEARD: Oh, okay.

2 MR. GROSSMAN: And that's why I'm saying that the
3 way that, to be calculating the best way to get the word out
4 to all of the people in the public, including all of those
5 who have asked to be parties of record here, number one,
6 everybody who is participating gets a copy of everything
7 hard and electronic. Everybody else, things are published
8 both on the Stop Costco Gas Coalition website and they're in
9 the public record here, a hard copy and in the transcript
10 for reference. Is that a sufficient methodology?

11 MS. ROSENFELD: And, Mr. Grossman, I would like to
12 ask that the people who received both the CD and the hard
13 copies include Karen Cordry and Dan Sheveiko and Donna
14 Savage as they have been participating and sitting through
15 these proceedings.

16 MR. GROSSMAN: The only problem I have with that
17 is if they are, in fact, participating as part of an
18 organization, in fairness, you know, I don't think there
19 should be any expense of reproducing so many hard copies for
20 people who are participating as part of the organization.

21 MS. CORDRY: CD's are fine.

22 MR. GROSSMAN: Okay.

23 MS. CORDRY: It's just that some of these files
24 are very large. I'm trying to --

25 MR. GROSSMAN: Yes.

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1 MS. CORDRY: -- pull them down off of a website
2 is, can be very time-consuming.

3 MR. GROSSMAN: So make sure we include those
4 people as receiving the CD's.

5 MS. HARRIS: Repeat the last -- Karen --

6 MS. CORDRY: Karen Cordry --

7 MS. HARRIS: Okay.

8 MS. CORDRY: Danila Sheveiko --

9 MS. HARRIS: Okay.

10 MS. CORDRY: -- Donna Savage --

11 MS. HARRIS: Okay.

12 MS. CORDRY: -- I'm sure Eleanor Duckett.

13 MR. GROSSMAN: Okay. Eleanor Duckett is
14 representing the Kensington View Civic Association and the
15 others are here as part of the Kensington Heights Civic
16 Association. All right. Yes, sir?

17 MR. ADELMAN: Just a clarification. I've been
18 sending letters to PLR's. I received when I first brought
19 material to your office, one spreadsheet of DOR's, I
20 received an updated one.

21 MR. GROSSMAN: Okay.

22 MR. ADELMAN: But that updated one only has about
23 50 people. These are entered more than 100.

24 MR. GROSSMAN: I was just told a round number. I
25 haven't looked over the list.

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1 MR. ADELMAN: Oh.

2 MR. GROSSMAN: Somebody told me it's 50 to 100
3 people have requested to be parties of record. I don't
4 know.

5 MR. ADELMAN: You could ask your office to send me
6 whatever is the most current so I'm not missing some people?

7 MR. GROSSMAN: All right.

8 MR. ADELMAN: Thank you.

9 MR. GROSSMAN: And you're certainly welcome to
10 communicate with the administrative staff any time and ask
11 for that. I'm sure they'll be happy to accommodate you.

12 The -- I mean this is a problem that I believe actually you
13 discussed with our office early on because you had the
14 opposition, in effect, the opposition organizations had
15 their own logistical problem because they didn't want to go
16 to the expense for obvious reasons of having to send copies
17 to everybody who has designated themselves a, quote, party
18 of record. So it created logistical problems not just for
19 my office, but also for the opposition groups. So we try to
20 work out a system in which would make sure that anybody who
21 was interested in this case had access to all of the
22 documentation in the record and the people who are direct
23 participants in it would be directly receiving copies of
24 things.

25 I might note that the statutory provisions support

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1 this kind of approach in that when we produce our final
2 report and recommendation, we are required to send out a
3 notice letter of the fact that the report and
4 recommendations be produced to those who participated in the
5 hearing, not to everybody who sent a letter in in the case.
6 And then we put our report and recommendation up on the
7 website for anybody who wants to, the full report and
8 recommendation for anybody who wants to read it.
9 Okay. Well, it's 1:00 and we're finished with Mr.
10 Guckert for the time being and when we come back from lunch,
11 I guess we turn back to Mr. Agliata.
12 MS. HARRIS: Mr. Grossman, if there's only,
13 there's only one last question. Can we do that now just so
14 Mr. Agliata --
15 MR. GROSSMAN: If they have they --
16 MS. HARRIS: -- can depart?
17 MR. GROSSMAN: -- you have the --
18 MS. CORDRY: It's coming.
19 MS. HARRIS: Okay.
20 MS. CORDRY: We should have it, we should
21 definitely have it after lunch, but somebody said around
22 1:00.
23 MR. GROSSMAN: Okay. Well, Mr. Agliata, make sure
24 that Ms. Harris buys you lunch then if she's making you
25 stay.

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1 MR. GOECKE: We'll take care of it.
2 MR. GROSSMAN: All right. It's 1:05 now. How
3 about we come back at 1:45? Thank you.
4 (Recess)
5 MR. GROSSMAN: We all ready to go back on the
6 record? We are resuming. I wish to mention that for those
7 of you who criticized the fact that I held the last hearings
8 on days that were much too sunny outside, it's gloomy today.
9 MR. SILVERMAN: Thank you.
10 MR. GROSSMAN: All right. So I guess where we
11 left off, do we have the document now that we were waiting
12 for?
13 MS. ROSENFELD: We do. Thank you.
14 MR. GROSSMAN: All right. Let's see that. I'll
15 ask Mr. Agliata to take the stand again. You're still under
16 oath, Mr. Agliata.
17 THE WITNESS: Yes, sir.
18 MS. ROSENFELD: Mr. Grossman, I'm going to give
19 you a copy of a letter dated April 19, 2012 --
20 MR. GROSSMAN: Okay.
21 MS. ROSENFELD: -- from Mr. Steven Silverman to
22 Mr. Isaac Leggett.
23 MR. GROSSMAN: Okay.
24 MS. ROSENFELD: And Mr. Agliata has a copy of this
25 letter as does Ms. Harris.

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1 MR. GROSSMAN: Okay. This would be Exhibit 123.
2 (Exhibit No. 123 was marked for
3 identification.)
4
5 MS. ROSENFELD: Actually --
6 MS. HARRIS: You gave us one, the next letter.
7 BY MS. ROSENFELD:
8 Q Mr. Agliata, have you had a chance to take a look
9 at this letter dated April 19, 2012?
10 A Yes, I have.
11 Q And looking on page 2 at the bottom at the cc list
12 where it says Jim Agliata, Westfield, would that be you?
13 A It's me.
14 Q Okay. And what is your understanding of the
15 purpose of this letter?
16 A My understanding is it's a letter from Steve
17 Silverman, the executive designee, to the County executive
18 saying that he fulfilled his duties as the executive
19 designee unless they had fulfilled their duties as requested
20 for the two million dollars.
21 Q And this letter is directly related to the
22 agreement listed as Exhibit 86(i)? One moment please.
23 86(i) in the record, 86(d) in the record, I correct myself.
24 It's the Economic Development Fund Agreement by and between
25 Montgomery County and the Wheaton Plaza Regional Shopping

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1 Center. Is this letter in any way related to that Economic
2 Development Fund Agreement?
3 A Yes.
4 Q And how is it related?
5 A I think it was as part of the County Council when
6 they adopted it, asked for an executive designee to make
7 sure that Westfield and Costco Management and the residents'
8 representatives make a, get together to make sure the
9 residents' views had been considered without impinging on
10 the economic viability of retail planning and retail design
11 in operations of Westfield, Costco, or any retail store in
12 the mall.
13 Q And on page 1 of that letter, the first paragraph,
14 the last full sentence says, the resolution language is as
15 follows. And then it has language in italics. Would you
16 please read the first two sentences of that paragraph?
17 A Guide me to that again, please.
18 Q Excuse me?
19 A Guide me to that allegation again please.
20 Q Oh, on the first page?
21 A Yes.
22 Q The last, the first full paragraph says, the
23 resolution language is as follows, and then there's a
24 paragraph in italics. Would you read the first two
25 sentences of those, that italicized paragraph please?

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1 A "This resolution appropriates \$2 million in the
 2 Economic Development Fund for the Westfield Costco
 3 project. The Department of Economic Development,
 4 DED, (or the Department of Finance) must not
 5 disperse or encumber these funds until Westfield
 6 management has had a community meeting with
 7 residents who live near the Wheaton Westfield
 8 shopping mall. The County Executive must
 9 designate a specific staff member to participate
 10 in this meeting and otherwise consider residents'
 11 ongoing concerns."
 12 Q Okay. And skipping the following paragraph, going
 13 to the last full paragraph that starts with, in the process
 14 outlined in the preceding paragraph, the executive's
 15 designee must make a good faith effort to see that the
 16 following issues are addressed, what is listed under Item D
 17 of that paragraph please?
 18 A Pedestrian pathways.
 19 Q Okay. And going to page 2 of this letter, the
 20 third paragraph, the second full paragraph starting with,
 21 October 19, 2011, --
 22 A Uh-huh.
 23 Q -- the second sentence in there states that,
 24 Westfield's Costco responded to KHCA, Kensington Heights
 25 Civic Association, outlining what it would do, attaching

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1 detailed plans covering what they will or are doing in
 2 connection with the items contained in the Council
 3 resolution. In the following paragraph, would you please
 4 take a look at that and tell me if in the view of Mr.
 5 Silverman, Westfield Costco had addressed issues of
 6 pedestrian access?
 7 A I'm not sure -- do you want me to read the
 8 paragraph or --
 9 Q If you could just read it and summarize whether or
 10 not --
 11 A I'll read it.
 12 Q -- Mr. --
 13 A I can't summarize what Mr. Silverman was thinking.
 14 MR. GOECKE: I would object. The document speaks
 15 for itself.
 16 MR. GROSSMAN: I would agree with that.
 17 Sustained.
 18 BY MS. ROSENFELD:
 19 Q In the second to the last paragraph, does the
 20 letter state that Westfield Costco has attempted to address
 21 in good faith the issues of the loading dock, delivery
 22 issues, traffic flow, pedestrian access and building
 23 elevations and design?
 24 A It says, I'll read, quote,
 25 "In my opinion, Westfield Costco has

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1 attempted to address in good faith the issues of
 2 the loading dock, delivery truck dock issues,
 3 traffic flow, pedestrian access and building
 4 elevation in the zone."
 5 Q And in your opinion, strike that. Is it your
 6 understanding that pedestrian access was addressed, at least
 7 in part, through provision of a pedestrian pathway along the
 8 southern side of the ring road?
 9 A I'm not sure of your question. We never installed
 10 a pedestrian pathway. That was a proposal that we put out,
 11 a FIFA-wide proposal. There was a number of questions that
 12 the KCA had progressed on. It says,
 13 "On October 19th, KCA sent a letter to
 14 Westfield Costco outlining requests regarding
 15 parking, pedestrians and buffer issues. On
 16 November 10th, Westfield Costco responded to
 17 KCA's, outlining what they would do in a detailed,
 18 attached plan covering what they will do or are
 19 doing in connection with the items contained in
 20 the Council resolution.
 21 "On January 12, 2012 -
 22 this is Steve Silverman's answer,
 23 "I received an e-mail from Danila Sheveiko
 24 outlining his personal responses. I have not
 25 received any official response from KHCA and nor

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1 did Westfield ever receive any response to our
 2 proposal."
 3 Q And the following paragraph starts with,
 4 "I have now received a letter dated March 8,
 5 2012, from Westfield to Costco further outlining
 6 their response to the issues raised by the
 7 community that are subject to the Council
 8 resolution."
 9 Correct?
 10 A That's correct.
 11 Q And the following sentence, which we've already
 12 read --
 13 MR. GROSSMAN: We've gone over these sentences.
 14 The objection was sustained before that the document speaks
 15 for itself. We don't have to keep on reading the same
 16 sentences over and over again or a document that speaks for
 17 itself.
 18 BY MS. ROSENFELD:
 19 Q Based on this letter, did Montgomery County
 20 release \$2 million in funding?
 21 A Yes, they did.
 22 MS. ROSENFELD: I have no further questions.
 23 MR. GROSSMAN: I'll ask a question. Is it your
 24 understanding that the pedestrian issue, apparently that's
 25 what Council is aiming at, was sufficiently addressed in

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1 this, for this site?
2 THE WITNESS: You have to understand when counsel
3 made that comment for all pedestrian access, it wasn't, they
4 weren't focusing on, actually that's, as far as timing. I'm
5 not even sure if they even talked about the walk around the
6 outside. See, we did a subsequent walk with the residents,
7 tracking --
8 MR. GROSSMAN: You're talking about the pedestrian
9 walkway on the southern --
10 THE WITNESS: Correct.
11 MR. GROSSMAN: -- part of the ring road?
12 THE WITNESS: But you've got to understand,
13 there's a lot of pedestrian walkways throughout the center.
14 We added crosswalks for the Costco customers for people
15 walking across the site. So we did all those, which we
16 feel, obviously, that we met those obligations.
17 MR. GROSSMAN: All right. Does anybody else have
18 a further cross-examination question just on the question I
19 just asked the witness?
20 (No response.)
21 MR. GROSSMAN: Seeing none, we --
22 MS. CORDRY: Wait.
23 MR. GROSSMAN: Oh, I'm sorry.
24 MS. ROSENFELD: One follow-up question. Going
25 back to the March 8th letter, which is Exhibit No. 122, if

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1 you could go to page 2 of that letter under D?
2 THE WITNESS: I don't, it was here, but somebody
3 moved it.
4 MR. GROSSMAN: I did. I'm guilty. Here we go.
5 Do you got a copy? Okay?
6 THE WITNESS: Okay.
7 BY MS. ROSENFELD:
8 Q Under paragraph D, could you please take a look at
9 the third sentence in my paragraph and read that into the
10 record?
11 MR. GROSSMAN: Well, it's already in the record if
12 the document is going to be in the record. If not, then
13 reading it wouldn't be proper, so --
14 BY MS. ROSENFELD:
15 Q Did Westfield, according to this letter, did
16 Westfield offer to modify the existing ring road and parking
17 adjacent to the ring road to create a 3-foot cross-hatched
18 pathway on the existing asphalt?
19 A Yes, we did.
20 MS. ROSENFELD: I have no further questions.
21 MR. GROSSMAN: Anything else? All right. Thank
22 you very much, Mr. Agliata. I'm sorry we had to make you
23 wait until after lunch.
24 THE WITNESS: Need this one back?
25 MR. GROSSMAN: No, I have a copy of that, thank

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1 you. Any reason why this witness cannot be excused?
2 (No response.)
3 MR. GROSSMAN: You are excused, sir. Thank you
4 very much for taking your time. All right. You were going
5 to call Mr. Tucker next?
6 MS. HARRIS: Yes.
7 MR. GOECKE: Yes.
8 MR. GROSSMAN: Okay. All right. Mr. Tucker.
9 Please have a seat. Raise your right hand.
10 (Witness sworn.)
11 MR. GROSSMAN: All right. You may proceed, Ms.
12 Harris.
13 MS. HARRIS: Thank you.
14 DIRECT EXAMINATION
15 BY MS. HARRIS:
16 Q Can you please introduce yourself to Mr. Grossman
17 and tell him where you work?
18 A My name is Wayne Tucker and I work at Cardinal ACC
19 in Columbia, Maryland. I am a technical engineer by trade.
20 I have 13 years of experience in the field. I have a
21 bachelor of science degree in civil engineering, as well as
22 a master's degree in civil engineering with a geo-technical
23 emphasis. As I said, I have about 13 years of experience
24 dealing with a pretty wide variety of different types of
25 projects, institutional, energy-related, telecom, retail

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1 similar to Costco sites, commercial buildings, private,
2 residential buildings, that kind of thing.
3 MR. GROSSMAN: All right. And I'm not, I don't
4 presume you're calling this witness as an expert per se, you
5 are calling him in response to a request by the opposition,
6 is that correct, Ms. Harris?
7 MS. HARRIS: Well, it wasn't -- yes and yes. It
8 was in response to their issues, but he is an expert in geo-
9 technical engineering, so I would call, I would request him
10 as an expert witness.
11 MR. GROSSMAN: Okay. Do you have a copy of his
12 resume?
13 MS. HARRIS: That was submitted on --
14 MR. GROSSMAN: Oh, that's correct, you did submit
15 that and I made it part of the record.
16 MS. HARRIS: Right, last week.
17 BY MS. HARRIS:
18 Q Can you explain a little bit what your actual job
19 is at ATC?
20 A Basically I am a geo-technical engineer by trade.
21 As I said, I initiate and direct, as well as oversee the
22 geo-technical explorations that are conducted for various
23 clients to evaluate sub-surface conditions whether they be
24 soil, groundwater, lot conditions at a project site. We
25 look at those types of conditions in relation to the type of

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1 structure that is being planned at a site and we provide
2 recommendations for the support of various buildings and
3 structures.
4 Q Thank you.
5 MS. HARRIS: I would offer Mr. Tucker as an expert
6 in the field of geo-technical engineering.
7 MR. GROSSMAN: All right. Questions regarding
8 this witness's expertise in the field?
9 MR. SILVERMAN: I just had --
10 BY MR. SILVERMAN:
11 Q Yes, in your resume, you reference the Silver
12 Spring Gateway development and it says that Mr. Tucker was
13 also engaged in the design and monitored the installation of
14 the sub-slab, passive vapor venting system that was
15 installed in accordance with applicable Maryland Voluntary
16 Clean-up Program, VCP, regulations. Can you tell us what
17 you mean by that?
18 A Basically for that project as part of the, as part
19 of our agreement with the County and the state in the
20 Voluntary Clean-up Program, I believe there were, there was
21 groundwater contamination at the site and it was becoming
22 volatilized in the soil and the gas was moving up through
23 the soil. And as part of the agreement, we designed the
24 building to have a series of passive collection pipes
25 underneath the slab where we would take the gas underneath

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1 the slab and exit it away from occupied areas.
2 Q So you have some experience with sub-surface
3 hazard, waste situations?
4 A Not in the remediation of the waste per se. This
5 was kind of an isolated topic, if you will.
6 Q Okay.
7 MR. GROSSMAN: Any other questions regarding this
8 witness's expertise?
9 BY MS. ROSENFELD:
10 Q How many gas station projects have you worked on?
11 A I would say just off the top of my head, I would
12 say the majority have been for Costco. I want to say
13 probably -- I'll say I do work all over the place in several
14 different states. I want to say I've gone anywhere between
15 seven and 10.
16 Q And --
17 A And this is in Maryland, D.C., Virginia, New
18 Jersey, Connecticut.
19 Q And you designed the tank system?
20 A I did not.
21 Q Who designs the tank system?
22 A I believe Costco typically has a consultant that
23 does that.
24 Q So what is your role in this project?
25 A My role is predominantly to do test borings in the

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1 vicinity of these tanks down to a sufficient depth below to
2 the level at the bottom of these tanks to determine what
3 type of soils are there, whether they're suitable or not
4 suitable for support and whether there's any evidence that
5 groundwater is present in those locations.
6 MS. ROSENFELD: I have no further questions.
7 MR. GROSSMAN: Have you ever testified as an
8 expert before?
9 THE WITNESS: No.
10 MR. GROSSMAN: And you are licensed in the state
11 of Maryland?
12 THE WITNESS: I am, sir.
13 MR. GROSSMAN: As an engineer?
14 THE WITNESS: Yes, sir.
15 MR. GROSSMAN: Is there a separate classification
16 for licensing for a geo-technical engineer?
17 THE WITNESS: Not in Maryland, no.
18 MR. GROSSMAN: Is there another, other
19 jurisdictions have such a sub-classification in licensing?
20 THE WITNESS: Yes. California and I believe
21 Alaska does too.
22 MR. GROSSMAN: Okay. Are you licensed there also
23 or --
24 THE WITNESS: No, sir.
25 MR. GROSSMAN: All right. Based on this witness's

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1 credentials as outlined by him in testimony and questioning,
2 as well as his resume, I accept Mr. Tucker as an expert in
3 geo-technical engineering.
4 MS. HARRIS: Thank you.
5 BY MS. HARRIS:
6 Q Did Costco hire ATC to work at Wheaton Mall?
7 A Yes.
8 Q And what did they hire you to do?
9 A They hired us to advance a series of test borings
10 for the gasoline station. We did several borings in the
11 vicinity of the proposed canopy structure which, obviously,
12 needs foundation support. We did two borings in the
13 vicinity of and then proposed infiltration test station and
14 we did two borings in the location of the proposed tank.
15 Q And what was your specific role in that?
16 A My specific role was to coordinate drilling
17 activities, field activities to make sure that the
18 appropriate people were on site and to coordinate our onsite
19 work with the adjacent construction which was happening at
20 the Costco facility at that time. There was some
21 construction going on. They were trying to make sure we
22 were doing our work and staying out of the general
23 contractor's way.
24 Q Thank you. You testified in response to Ms.
25 Rosenfeld's question just a moment ago about soil borings.

1 Can you describe why a soil boring is necessary?
 2 A A soil boring or any number of soil test borings
 3 are necessary first and foremost to evaluate what type of
 4 soils or rock that you're supporting a proposed structure
 5 on. The idea is to get an idea of what type of soil through
 6 a visual classification and also through the density of
 7 material, whether it's suitable for support of building,
 8 whether it be through a shallow foundation, weak foundation
 9 system, whatever is required. And also the test borings
 10 also are advanced to determine depths to groundwater and
 11 depths to refusal, refusal meaning where auger flights can
 12 no longer be advanced in the ground which is often
 13 indicative of excavation difficulties during construction.
 14 Q Okay. And how do you actually physically conduct
 15 a soil boring?
 16 A Basically you have either a truck mallet or a,
 17 like a skid mallet, drill bit, and you have a series of 5-
 18 foot long, hollow stem, metal augers that are augured into
 19 the ground and in the first 10 feet typically what we do is
 20 we auger about two feet or so and then we bring in a split
 21 spoon sampler that's 2-foot long and it's advanced in the
 22 ground using the standard penetration test method where a
 23 140-pound hammer is lifted 30 inches in the air, it's
 24 dropped off on to the spoon and you measure the penetration
 25 of the spoon every six inches and that process is repeated

1 as you go further into the sub-surface.
 2 Q And can you identify why you would do a soil
 3 boring? I think you touched on that, but what are the
 4 specific reasons? What are you looking for when you do
 5 that?
 6 A As far as the standard penetration test is
 7 concerned, you are looking for SPTN values, penetration
 8 resistance --
 9 MR. GROSSMAN: What SPTN values?
 10 THE WITNESS: It's the number of blows required to
 11 advance the split spoon sampler six inches.
 12 MR. GROSSMAN: Okay. What does that tell you?
 13 THE WITNESS: It gives you an idea as to the
 14 density and the compressibility of the soils that are
 15 present.
 16 MR. GROSSMAN: Okay.
 17 BY MS. HARRIS:
 18 Q Are you also testing for groundwater depths when
 19 you do that?
 20 A Yeah, that we can do that through any number of
 21 methods. What we normally do is let's say we wanted to do
 22 the borings of 40 feet below the ground surface, we'll have
 23 the augers in place and we'll make an initial reading of the
 24 groundwater at the time we finish and then the augers are
 25 pulled out and we'll make another measurement, you know, of

1 groundwater depth after all the augers are pulled out and
 2 that's another measurement. And then every once in awhile
 3 you will find traces of groundwater when the spoon is
 4 physically in the ground. Sometimes it will be saturated
 5 and we'll note that as water on the spoon.
 6 Q Okay. Did you have water on the spoon in this
 7 case?
 8 A Yes, we did actually, in one of the borings in the
 9 tank area, I believe we encountered it at 33 1/2 feet.
 10 Q So that, would that mean that the groundwater,
 11 that's the first indication of groundwater, is 33 1/2 feet
 12 as well?
 13 A Typically, yes.
 14 Q Okay. And was there anything unique or can you
 15 explain briefly what you found in terms of the soil
 16 conditions?
 17 MR. GROSSMAN: Before you do, when you said, you
 18 answered Ms. Harris's question, you said typically. She
 19 asked you whether or not the finding of a wet spoon at 33
 20 1/2 feet indicated that that's where the groundwater first
 21 and you answered typically. What does that mean?
 22 THE WITNESS: Well, when we do different test
 23 borings --
 24 MR. GROSSMAN: Yes.
 25 THE WITNESS: -- the groundwater surface is not

1 consistent. In other words, if we do one boring here and we
 2 do another boring 50 feet away --
 3 MR. GROSSMAN: Yes.
 4 THE WITNESS: -- we're not expecting the
 5 groundwater level depth to be consistent at that, at both of
 6 the locations.
 7 MR. GROSSMAN: Okay. But I guess what you're also
 8 saying is that if, in fact, the spoon were wet at 33 1/2
 9 feet, that that would indicate that there was water at that
 10 test, but it may be that it's higher or lower 50 feet away?
 11 THE WITNESS: Yes.
 12 MR. GROSSMAN: Okay.
 13 BY MS. HARRIS:
 14 Q Did you test other places where it was higher than
 15 33 -- closer to the surface than 33 feet?
 16 A No, I believe the only evidence of water, of
 17 groundwater at the site was at that one boring where we
 18 encountered it on the spoon.
 19 MR. GROSSMAN: And where was that boring located?
 20 THE WITNESS: I believe it was G-3.
 21 MR. GROSSMAN: Do we have some indication of where
 22 that is on the terrace site?
 23 MS. HARRIS: Well, we did submit a geo-technical
 24 report, so it's likely in there.
 25 MR. GROSSMAN: Okay.

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1 MS. HARRIS: If would need time to go through,
2 back through there and look. Can he identify -- do you have
3 a general sense of a location of G-3?
4 THE WITNESS: It was within the tank area.
5 BY MS. HARRIS:
6 Q So using Exhibit 119, I believe --
7 A Well, let's see.
8 MR. GROSSMAN: 119(c)?
9 THE WITNESS: This is the tank area and I believe
10 G-3 was here if I'm not mistaken.
11 MR. GROSSMAN: Okay. So it's in the western side
12 of the site, of the special exception site, and pretty much
13 centered on the western side, is that a fair description?
14 THE WITNESS: Yes, yes.
15 MR. GROSSMAN: Okay.
16 BY MS. HARRIS:
17 Q And can you explain the soil conditions that you
18 discovered in your, from your tests?
19 A Generally speaking, I believe we encountered two
20 different soil categories. We initially encountered an
21 artificial layer of fill underneath the existing asphalt in
22 the area to I believe a maximum depth of about seven feet
23 and then underneath what we were characterizing as the fill
24 is residual soil which resulted from the in-place weathering
25 of the bedrock and that material is typically silty sand,

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1 sandy silt and some inclusions of clay.
2 Q Okay. And you testified a moment ago about the
3 groundwater depth. Can that level vary?
4 A It can, yes.
5 Q And what would cause it to -- what would cause it
6 to vary and by how much?
7 A Variations in local groundwater conditions,
8 infiltration rates, seasonal and climactic variations.
9 Q Okay.
10 A Again, there's no real one answer to that
11 question, but I would say maximum of about five feet.
12 Q Okay. And have you read Mr. Silverman's report?
13 I'm referring to Exhibit 87(k). And can you please comment
14 on that?
15 A Yes, I did. I was, there was one aspect of the
16 letter that I was somewhat confused about. There is a
17 reference to a honeycomb applifiers. I'm not necessarily
18 sure what that means and I do apologize. I'm just genuinely
19 not sure what is meant by that. But the article that was
20 used in reference, I believe it was a USGS publication from
21 1964, most of that publication appears to be legitimate and
22 what I would expect to see from the United States Geologic
23 Survey.
24 The only thing I found relatively lacking with it
25 is it was published in 1964 and as you and I and everyone

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1 know, Montgomery County is under a lot of development over
2 the years and the superficial geology in a lot of cases has
3 changed and I don't know that you can necessarily rely on
4 the document from 1964.
5 Q Is it -- so in other words, because of the amount
6 of development, the development changes pervious and
7 impervious situations?
8 A It changes impervious and pervious areas, recharge
9 rates, depths to perch and stack groundwater and things like
10 that. So --
11 Q So instead of relying on a document from 1964 in
12 place of that, is it correct to say that the soil boring
13 test --
14 MR. GROSSMAN: Hold on. That's too leading.
15 MS. HARRIS: Okay. What would you, if you can't
16 rely on a 1964 map, what would you rely upon?
17 THE WITNESS: I would do a search. The United
18 States Geologic Survey has quite a number of dated, raw data
19 and superficial geologic maps in their inventory. If I were
20 looking to make a more informed judgment of the situation,
21 that's what I would do.
22 BY MS. HARRIS:
23 Q And in your professional judgment, is there any
24 reason based on the geo-technical analysis that you perform
25 that the Costco gas station could not be located at this

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1 location?
2 A No.
3 Q Thank you.
4 MS. HARRIS: I have no further questions.
5 MR. GROSSMAN: What's the depth of the tanks that
6 will be there?
7 THE WITNESS: I was told that the maximum tank
8 depth was approximately 20 feet.
9 MS. HARRIS: And, Mr. Grossman, our next witness
10 is going to get into that part of it in more detail.
11 MR. GROSSMAN: Okay. When you say the maximum
12 depth, you're talking about the bottom of the tank, of the
13 bottom depth of the tank would be? What did you say, how
14 many feet?
15 THE WITNESS: 20 feet.
16 MR. GROSSMAN: 20 feet? Is that what you're
17 saying? Okay. So are you saying that the water level would
18 be at least 13 feet or so below that if, at that particular
19 area?
20 THE WITNESS: Yes.
21 MR. GROSSMAN: Okay.
22 MR. SILVERMAN: Could you repeat that? I didn't
23 quite hear.
24 MR. GROSSMAN: I asked if the water level that
25 they observed and his boring of 30 1/2 feet would be

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1 my apologies. I mean until the line of questioning the
2 other day, we never really thought that that was an issue
3 and it was simply never cited that the update wasn't
4 provided.
5 MR. GROSSMAN: Okay.
6 MS. HARRIS: We have it. We can probably get it
7 by the end of the day as well to the, or by tomorrow.
8 MR. GROSSMAN: Can we move to a different witness?
9 MS. HARRIS: Certainly.
10 MR. GROSSMAN: -- until he can resume later, is
11 that --
12 MS. HARRIS: Do we need to establish how much time
13 is necessary for them to review that so we know when to
14 bring this witness back?
15 MR. SILVERMAN: Could I ask the witness a question
16 not related directly to borings?
17 MR. GROSSMAN: Sure.
18 MR. SILVERMAN: Well, one partially related.
19 BY MR. SILVERMAN:
20 Q The level of effort in 2010, could you estimate
21 what that was?
22 A In terms of --
23 Q The hours you spent, the cost of your work and so
24 forth?
25 A I don't have that exact information.

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1 Q Do you have, do you know what the work you did in,
2 the end of 2012, the later study of this site now under the
3 date?
4 A Yes, it's the new borings that we did at the
5 updated location of the station. Yes, we did, we did two
6 borings that were extended to 40 feet, two shallow borings
7 for the infiltration facility and then we did two technical
8 borings for the County.
9 MR. SILVERMAN: All right. Well, we'll stop now
10 and wait to look at his report so we can question further on
11 it. Thank you.
12 MR. GROSSMAN: I'm not even seeing Exhibit 13 in
13 our file. I presume it's here somewhere.
14 MS. HARRIS: Well, the geo-tech report was
15 attached to the BOLO report.
16 MR. GROSSMAN: Yes, but I'm not --
17 MS. HARRIS: Oh, okay, you don't see the BOLO
18 report?
19 MR. GROSSMAN: I'm not seeing Exhibit 13. I'm
20 seeing it in our exhibit list, but I'm not seeing it in the
21 file. Maybe I'm just missing it in going through. Let me
22 take a look. I'll tell you what, just, when you produce the
23 additional information, make sure we get another hard copy
24 of Exhibit 13 just so we make sure the file has it.
25 MS. HARRIS: Okay.

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1 MR. GROSSMAN: I mean it's conceivable it's just
2 in here and I'm missing it, but -- all right. So shall we,
3 shall we move directly to --
4 MR. SILVERMAN: We can, but I --
5 MR. GROSSMAN: -- to the next witness or --
6 MS. HARRIS: Assuming that we provide that report
7 tomorrow, I'm just trying to, for logistical purposes trying
8 to figure out how much time they need so we'll know when to
9 bring back Mr. Tucker.
10 MR. GROSSMAN: Right. Let me turn to Ms.
11 Rosenfeld for a second. Are you going to have questioning
12 of this witness as well, Ms. Rosenfeld?
13 MS. ROSENFELD: I may have some limited follow-up
14 questions, but Mr. Silverman is really going to be taking --
15 MR. GROSSMAN: All right.
16 MS. ROSENFELD: -- the lead on this witness.
17 MR. GROSSMAN: So how much time would you need to
18 study the materials once they get it to you which I presume
19 they can do today, is that correct?
20 MS. ROSENFELD: Yes.
21 MS. HARRIS: Today or tomorrow at the latest.
22 MR. GROSSMAN: Okay.
23 MR. SILVERMAN: Well, the next hearing is the
24 14th, I believe, and if we had the stuff, the information
25 this evening or tomorrow morning, we would be prepared on

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1 the 14th.
2 MR. GROSSMAN: Okay. Shall we plan on that?
3 MS. HARRIS: Well, the only suggestion I would
4 have is not the 14th only because Mr. Sullivan is going that
5 day and it may make sense because he has lengthy testimony.
6 MR. GROSSMAN: Okay.
7 MS. HARRIS: We have isolated him for a day.
8 MR. SILVERMAN: I concur with that.
9 MR. GROSSMAN: All right.
10 MR. TUCKER: What day is that?
11 MS. HARRIS: I don't know. Hold on. Friday,
12 Friday.
13 MR. TUCKER: Sure. I mean --
14 MS. HARRIS: Can we put this witness on first
15 thing? It's probably best.
16 MR. GROSSMAN: Okay. So May 17, 9:30.
17 MS. HARRIS: Thank you.
18 MR. GROSSMAN: All right. I thank you, Mr.
19 Tucker. I'm sorry we're going to have to make you come
20 back. Return that to them please.
21 MS. ROSENFELD: Ms. Harris, Mr. Grossman, as I
22 recall, the 17th is not an environmental free day, is that
23 correct?
24 MR. ADELMAN: It's correct.
25 MS. HARRIS: It is not.

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1 MS. ROSENFELD: I really would, I really would
2 prefer to have Mr. Sullivan finish his testimony continuing
3 from the 14th to the 17th before we call Mr. Tucker back
4 only because Mr. Sullivan has such limited availability.
5 MS. HARRIS: I'm fine with that.
6 MS. ROSENFELD: We could bring him later that day
7 or when Mr., if Mr. Sullivan is finished on the 14th, I
8 don't have a problem with bringing him back, I just --
9 MR. GROSSMAN: You want to make then Mr. Tucker
10 for the afternoon on May 17th? Would that --
11 MS. HARRIS: That's fine.
12 MR. GROSSMAN: -- be a better thing?
13 MS. HARRIS: Yes.
14 MR. GROSSMAN: Okay. Is that okay with you, Mr.
15 Tucker?
16 MR. TUCKER: Sure. What time?
17 MS. HARRIS: Well, we'll check in with you.
18 MR. GROSSMAN: Yes, we'll play it a little bit by
19 ear, but you can assume somewhere around 2:00 p.m. or 3:00
20 p.m. I'm sure we'll get some witness here that will
21 actually finish. I had this feeling of treading water, but
22 not quite gaining anything.
23 MS. HARRIS: Our next --
24 MR. GROSSMAN: All right.
25 MS. HARRIS: -- witness is Mr. Dan Goalwin.

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1 MR. GROSSMAN: Okay. Mr. Goalwin. You get the
2 hot seat. Would you raise your right hand please?
3 (Witness sworn.)
4 MR. GROSSMAN: All right. Ms. Harris.
5 MS. HARRIS: Thank you.
6 DIRECT EXAMINATION
7 BY MS. HARRIS:
8 Q Can you please introduce yourself to Mr. Grossman
9 and tell him where you work?
10 A My name is Daniel B. Goalwin. I work for Barghas
11 Engineers. We're a civil engineering and architecture firm
12 that specializes in gas station design and civil engineering
13 in general.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: I currently am the director of
16 architectural service; my profession is architect. I have
17 the specialty in gas station design.
18 BY MS. HARRIS:
19 Q And can you provide us some information about your
20 background in terms of where you went to school, how long
21 you went?
22 A I went to, I graduated from Berkeley with an
23 architectural baccalaureate degree. I was registered as an
24 architect in 1988 in California and I've been designing gas
25 stations since 1984.

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1 MR. GROSSMAN: Is there a licensure requirement in
2 Maryland for architects?
3 THE WITNESS: For architects? Yes.
4 MR. GROSSMAN: And are you licensed in Maryland?
5 THE WITNESS: No, I'm not.
6 MR. GROSSMAN: All right. So what do you do when
7 you are performing your task for a gas station in Maryland?
8 THE WITNESS: We are a nationwide firm. We have
9 licensure within the firm. Licenses and seals the drawings
10 that are submitted to the, you know.
11 MR. GROSSMAN: I see. So it's not your seal that
12 goes on there?
13 THE WITNESS: That's correct.
14 MR. GROSSMAN: Another engineer who is, or
15 architect who is certified?
16 THE WITNESS: Yes.
17 MR. GROSSMAN: And who would that be in this case?
18 THE WITNESS: That's a good question because I
19 don't know which one of our -- we have several.
20 MR. GROSSMAN: Okay. All right. I'm sorry. Do
21 you want to continue your questions?
22 BY MS. HARRIS:
23 Q Do you have any sub-specialties in terms of your,
24 you said you're a licensed architect. Any sub-specialties
25 in petroleum?

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1 A Yes. Again, as I stated, I've worked in the field
2 since 1984 and my specialty is petroleum systems design.
3 Q And have you ever testified as an expert in the
4 field of architecture within your specialty of gas station
5 design?
6 A Yes, I have. Generally, when I've done expert
7 witness testimony it's been for eminent domain cases related
8 to gas stations, but I've represented numerous gas station
9 customers and I'm in a planning applications, entitlements,
10 discretionary approvals.
11 MS. HARRIS: I would move Mr. Goalwin to be an
12 expert in the field of architecture with a specialty in gas
13 station design.
14 MR. GROSSMAN: All right. Questions regard this
15 witness's expertise?
16 MS. ROSENFELD: Yes.
17 BY MS. ROSENFELD:
18 Q What jurisdictions are you qualified as an expert?
19 A As an expert?
20 Q Yes.
21 A California and Washington.
22 Q Washington, D.C.?
23 A Washington, the state of.
24 Q And what experience do you --
25 A Excuse me, I'm not quite sure if there are

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1 qualification requirements in every state.
2 Q Have you ever testified in court as an expert?
3 A Yes.
4 Q And in what states?
5 A California.
6 Q And that would be, be in the eminent domain cases
7 you referenced?
8 A Yes, actually I also did it in Washington.
9 Q Again, on eminent domain?
10 A Yes, eminent domain.
11 Q And were those cases involving valuation?
12 A No, they were involving impact to the gas station
13 due to government agents.
14 Q And what experience or expertise do you have with
15 respect to operations, the safety training of Costco
16 employees?
17 A I'm not qualified in the operations and safety
18 training of those Costco employees, but I am aware that they
19 are trained in accordance with operations requiring the
20 operation of the gasoline facility and here in Maryland that
21 there is a certification process for operations.
22 Q Do you have any firsthand knowledge of Costco's
23 operations safety training protocols?
24 MS. HARRIS: Objection.
25 MR. GROSSMAN: Well, do you have any knowledge?

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1 MS. ROSENFELD: I'm -- any, within the scope of
2 his expertise is he qualified to testify as an expert?
3 MS. HARRIS: This witness is being put on for his
4 expertise pertaining primarily within the realm of storage
5 tanks, not operational components of Costco.
6 MR. GROSSMAN: All right. I understand. And I
7 tend to agree with that, but I'll let her ask the question.
8 Ms. Rosenfeld, would you repeat that question if you want it
9 answered?
10 MS. ROSENFELD: Yes.
11 BY MS. ROSENFELD:
12 Q Do you have any firsthand knowledge about Costco's
13 operations safety training programs?
14 A Can you define firsthand?
15 Q Training of the gas station attendants in safety
16 measures and operational measures related to the day-to-day
17 operations of the gas station itself.
18 A No.
19 MS. ROSENFELD: Mr. Grossman, may I have just a
20 moment to consult with Mr. Silverman?
21 MR. GROSSMAN: Sure.
22 MS. ROSENFELD: Mr. Grossman, I believe that from,
23 with respect to the Kensington Heights Civic Association, in
24 any event, I could ask Mr. Brann about whether he was
25 qualified to testify about operations, safety and training

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1 and he indicated that he was not. I was under the
2 impression that Mr. Goalwin was being brought forward to
3 testify on that issue. I do not have any questions related
4 to the design features of the tanks. Mr. Silverman may, but
5 I have no questions for this witness.
6 MR. GROSSMAN: So are we discussing a logistical
7 question here as opposed to deciding on whether or not he is
8 qualified as an expert in architecture with a specifically
9 gas station design specialty? I mean that's the, that was
10 the question on the floor.
11 MS. ROSENFELD: I'm going to accept him as an
12 expert on petroleum gasoline tank design.
13 MR. GROSSMAN: All right. Anybody else have any
14 questions regarding his expertise in this area?
15 BY MR. SILVERMAN:
16 Q Are you a geologist?
17 A I am not a geologist.
18 Q Are you familiar with the geology of Montgomery
19 County?
20 A I am not.
21 Q Well, does the -- do you think geology, what's
22 going on underground is relevant to what you do know?
23 MS. HARRIS: Objection.
24 MR. GROSSMAN: Yes, let's, well, it does --
25 MR. SILVERMAN: Yes. I just don't understand what

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1 --
2 MR. GROSSMAN: -- you listed, I understand. Hold
3 on one second.
4 MR. SILVERMAN: -- his expertise is.
5 MR. GROSSMAN: Hold on, Mr. Silverman. You listed
6 him here regarding, you said regarding station
7 infrastructure, including underground tanks -- that's in
8 Exhibit 114 of your agreement as to the order of the
9 witnesses -- and I'm not sure that he pertains specifically
10 to what Ms. Rosenfeld was referring to, that is operations,
11 so I'm not sure precisely why he's here unless he's here in
12 response to a different question other than the one that she
13 raised. What about it?
14 MS. HARRIS: No, he's here and is mainly, and I
15 believe one of part of your 20 questions were Mr.
16 Silverman's Exhibit 87, which had to do with underground
17 storage tanks and geo-technical --
18 MR. GROSSMAN: Right.
19 MS. HARRIS: -- to Mr. Tucker and Mr. Goalwin's
20 testimony sort of dovetails with Mr. Tucker getting to the
21 sub-surface geo-technical --
22 MR. GROSSMAN: Okay.
23 MS. HARRIS: -- situation and then Mr. Goalwin
24 testifying about the specific infrastructure that's going
25 there.

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1 MR. GROSSMAN: Right. Then I don't think there's
2 anything wrong with Mr. Silverman's question that goes to
3 the, his knowledge of geology and its impact on gas tanks
4 here because he is presumably being called as an expert to
5 discuss things related to that. So I think that goes to his
6 expertise. So we'll let him answer the question. Do you
7 want to pose that again, Mr. Silverman, so he knows what you
8 mean?
9 BY MR. SILVERMAN:
10 Q Is geology relevant to a finding of safety or
11 adequacy of an underground gas tank?
12 A It is relevant, it is relevant to the installation
13 of the tanks and the difficulty there.
14 Q And you get involved in that?
15 A I do.
16 Q So, and have you studied the geological maps of
17 Montgomery County, this quadrant?
18 A I have not. I rely on, the geo-technical
19 engineering provided that information to me.
20 Q So you relied on Mr. Tucker?
21 A In this case I would rely on Mr. Tucker.
22 Q Did you?
23 A Did I rely on him for this site? We haven't --
24 Q Yes.
25 A -- designed the site yet, so --

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1 Q You haven't designed the site?
2 A I haven't designed this site in this location yet.
3 The geo-technical study just became available.
4 Q So what have you done with regard to this site?
5 MR. GROSSMAN: Well, let's --
6 MR. SILVERMAN: Excuse me. Excuse me.
7 MR. GROSSMAN: Hold on one second, Mr. Silverman.
8 This, is going a little bit beyond --
9 MR. SILVERMAN: Yes.
10 MR. GROSSMAN: -- the question if his expertise.
11 Now I let you -- to broaden out your questioning on the voir
12 dire, but now you're really talking about the specifics of
13 this case.
14 MR. SILVERMAN: I just, I'm just trying to figure
15 out what he's really going to testify about that's relevant
16 for this site.
17 MR. GROSSMAN: Well, let's figure out, first of
18 all, if he is an expert, if you have any questions regarding
19 his expertise as an architect with a specialty in gas
20 station design? That's really what the question before us
21 right now in the voir dire is.
22 BY MR. SILVERMAN:
23 Q Just, would you explain the word design?
24 A Design?
25 Q Yes, in this context.

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1 A In the context of designing the petroleum system
2 or the facility?
3 Q Yes.
4 A It's to put the underground storage tank system,
5 including the storage suspense and monitoring and, well, and
6 the control of the gas station.
7 Q And you have not yet designed the gas, the tanks
8 and the petroleum system for this site, is that right?
9 A Not specifically for this site.
10 MR. GROSSMAN: Well, one doesn't have to be, one
11 doesn't have to be the expert who has done the particular
12 site to be an expert. So are you objecting to his expertise
13 as an architect and somebody who specializes in gas station
14 design?
15 MR. SILVERMAN: Well, I'm sure he has an expertise
16 at something and I just want to understand the limits of it
17 and I think we do understand the limits of it.
18 MR. GROSSMAN: Okay.
19 MR. SILVERMAN: It's very limited in the context
20 of this case, but it may be very broad in other ways.
21 MR. GROSSMAN: All right. Do you object to his
22 being accepted as an expert in architecture with a specialty
23 in gas station design?
24 MR. SILVERMAN: No, we'll accept that.
25 MR. GROSSMAN: Okay. All right. And based on the

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1 witness's testimony and his resume, Exhibit 115, as well as
2 his responses to the questioning during voir dire, I accept
3 him as an expert in architecture and gas station design.
4 All right.
5 MS. HARRIS: Thank you.
6 MR. GROSSMAN: All right.
7 BY MS. HARRIS:
8 Q How long has your company been consulting with
9 Costco, for Costco I should say?
10 A Since 1996.
11 Q And is there a significance, is 1996 significant
12 in terms of Costco?
13 A No, not particularly, except that I believe they
14 were just getting started in their gas station program at
15 the time.
16 Q So you've consulted with them since the inception
17 of gas stations?
18 A Since, yes, basically since the beginning of the
19 gas station program.
20 Q Do you only consult with Costco or does your
21 company branch out and consult with other gas stations as
22 well?
23 A We consult with all kinds of gas station, major
24 oil companies, retailers who have fuel. Our list includes
25 BP and on the west coast there, they are branded Arco,

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1 Shell, Chevron, Kroger (phonetic sp.) companies, Safeway,
2 title entities, independents, we do them all.
3 Q Okay. Can you explain specifically how Barkhausen
4 assists Costco?
5 A Certainly. We are there, we develop their co-
6 typical masters and standards that are used across the
7 country and internationally actually in Canada. We are also
8 responsible to permit the gas stations, we call it the
9 peripheral permitting the air qualities, the Department of
10 Ecology or Department of Environment permits throughout the
11 nation. So we have all their peripheral permitting across
12 the country and into Canada.
13 Q Thank you. I want to talk a little bit about the
14 underground storage tanks and are you familiar with Costco's
15 underground storage tank system?
16 A Absolutely.
17 Q Can you please tell us about it?
18 A Their current prototypical standard is to use
19 three 30,000 gallon, double-wall storage tanks. Their
20 current standard is to use eight, multi-purpose dispensers
21 or eight islands for 16 fueling positions. The underground
22 storage tanks and piping are secondarily contained and the
23 dispensers have other dispensers contain, and vents. So
24 everything in the entire system is secondarily contained and
25 continuously monitored with electronic monitoring systems.

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1 Q When you say secondarily contained, can you
2 explain that in layman's terms?
3 A That means that literally we have an inner-tank
4 and an outer-tank that contains it or we have an inner-pipe
5 and an outer-pipe that contains it and those spaces are
6 electronically monitored continuously.
7 Additionally, Costco uses other monitoring
8 systems. They have an in-tank gauge, which is an automatic
9 tank gauging device and they use specialized or, I'm sorry,
10 they use a pressure line detector on the main platform,
11 which is the, which is a pressurized line that delivers the
12 product to the dispensers.
13 Q And how is the placement of an underground storage
14 tank determined on the site?
15 A The primary driver in locating tanks is to locate
16 the tanks where they are not in conflict with the gasoline
17 operations or fueling of the customers. So we generally
18 place the tanker outside the stacking field and in a spot
19 where they can be easily defended by the red cleat.
20 Q Do soil conditions play a part in determining the
21 location of that --
22 MR. GROSSMAN: Hold the answer to that. You said
23 not in conflict with the stacking field. What is the
24 stacking field?
25 THE WITNESS: It's where the cars are lined up to

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1 pour the gas.
2 MR. GROSSMAN: Okay. I think we referred to it as
3 the queuing box.
4 THE WITNESS: Queuing area.
5 MR. GROSSMAN: Yes. Stacking field, queuing box.
6 THE WITNESS: Yes.
7 MR. GROSSMAN: So, so and in this case, looking at
8 Exhibit 119(c), it's on the board, is that the case? Is the
9 other fuel tanks located so that they're not in conflict
10 with the queuing box?
11 THE WITNESS: It's with respect to the delivery,
12 so in this case the delivery drivers would be parked outside
13 the queuing box out here unloading from these tanks below,
14 tankers on the right-hand side. So you would come in off
15 the ring road, turn here, position himself one time and then
16 start off loading product to these tanks. So he would be
17 outside the stacking box or queuing box of the --
18 MR. GROSSMAN: Okay. So it's the tanks themselves
19 don't have to be outside the box?
20 THE WITNESS: No.
21 MR. GROSSMAN: They're underground? It's just --
22 THE WITNESS: Right.
23 MR. GROSSMAN: -- the area where the truck would
24 park as to the outside of the queuing?
25 THE WITNESS: We want to try to -- I'm sorry, I

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1 should have made that clear.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: We try to place the tanks primarily
4 where the delivery drivers aren't interfering with the
5 operations of the facility.
6 MR. GROSSMAN: Okay. Thank you.
7 BY MS. HARRIS:
8 Q So my question had to do with soil conditions and
9 whether those dictate, whether the soil conditions ever
10 dictate the location of the UST's?
11 A Yes, they never dictate the location, just how we
12 intend, how we, the measures we have to go through to
13 install the tank.
14 Q So in this case you -- when you -- well, let me
15 back up and ask you another question. There was some
16 discussion about the fact that you hadn't specifically
17 designed this site yet. When would you specifically design
18 the subject site?
19 A After we assume we're approved here at the special
20 exception and it's adopted by the Board of Appeals, then
21 would be engaged to meet the design.
22 Q But you would never plan your, you never embark on
23 design prior to the necessary approvals, is that correct?
24 A Correct.
25 Q So when you get to that point, you will have, you

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1 will have reviewed the geo-tech report to determine how to
2 place them or where to place them?
3 A Well, as I stated --
4 Q Not where, how?
5 A Yeah. How.
6 Q Okay.
7 A It won't dictate where, it will just dictate what
8 measures we have to go through to, for the excavation of the
9 tanks themselves to have to shore, to keep the hole and the
10 different criteria.
11 Q Do you have a sense at this point how deep, and I
12 believe the other witness just testified, so that's what, if
13 you can clarify that, how deep the tanks would be in this
14 case?
15 A His estimate was a little deeper than I would
16 expect. I would expect that we would be, worse case, 18
17 feet deep.
18 Q Okay. Is there anything, do you have any
19 knowledge or have any reason to believe that the placement
20 of the tanks on this Wheaton site would in any way be
21 problematic or vulnerable?
22 A No.
23 MR. GROSSMAN: I'm going to ask you the same
24 question I asked Mr. Tucker. That is, when you say it's 18
25 too deep, you mean that's the level of the bottom of the

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1 tank?
2 THE WITNESS: That's correct.
3 MR. GROSSMAN: Okay.
4 BY MS. HARRIS:
5 Q And is there anything with respect to the
6 groundwater level that would make it inherently risky?
7 A Well, as Mr. Tucker indicated in his testimony,
8 groundwater was, what, 33 1/2 feet and then he thought it
9 might rise five feet, so we're not even close to where the
10 tanks are. But it really doesn't matter. If the
11 groundwater were to rise up and be within the whole,
12 literally the tanks can be submerged under water without any
13 difficulty and they would still operate just fine.
14 Q So that if, in fact, somehow, some way the
15 groundwater rose more than 13 feet, 15 feet now, that's
16 still would not present a problem?
17 A No, because one thing that Costco does regardless
18 of whether the groundwater conditions are as they install
19 concrete hold down and we always check the buoyancy factors
20 to make sure that the tanks -- even if that tank hole were
21 to fill up with water, that tank wouldn't come out of the
22 ground no matter -- the only concern we would have from the
23 groundwater is not a point in this case.
24 Q Have you ever either on behalf of Costco or
25 someone else actually installed a tank under water?

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1 A Yes, we have. We've actually had to have
2 personnel in scuba gear go down and inspect the hold down
3 anchors to make sure that the pea gravel had, you know, been
4 placed sufficiently under the tank in accordance with the
5 tank and the tank manufacturer's instructions.
6 MR. GROSSMAN: Well, let me -- in terms of, you're
7 saying the tanks would function just fine even if submerged,
8 what if there were a leak that got through both levels of
9 the, both walls of the tank, wouldn't the gasoline then
10 enter the water supply or the groundwater?
11 THE WITNESS: We'd have to recapture that water,
12 yes.
13 MR. GROSSMAN: Okay. And I would assume that
14 would be problematic from your standpoint as well, would it
15 not?
16 THE WITNESS: But our intent is to make sure those
17 tanks don't leak.
18 MR. GROSSMAN: I understand that. I think that
19 anticipating the questioning you're getting from the
20 opposition, that's a concern they have raised in this case
21 is the potential effect on groundwater here. And so I guess
22 that's, it's not just a factor that the tanks can function
23 underground, it's what happens if there's a catastrophic
24 failure of some sort that enables gasoline to escape the
25 groundwater. How often does that happen by the way?

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1 THE WITNESS: Not very often anymore. That's the
2 advent of the double-wall tanks and monitoring systems.
3 Today, technology has improved immensely.
4 MR. GROSSMAN: Well, are there figures that are
5 available as to how frequently there are leaks from double-
6 wall tanks?
7 THE WITNESS: I'm sure each state may have a
8 record of that. They may keep track of that and I don't
9 know if there's a national --
10 MR. GROSSMAN: EPA --
11 THE WITNESS: -- EPA, yes, I don't know. Yes,
12 maybe the EPA has that. I've never run across it.
13 MR. GROSSMAN: Okay. All right. Ms. Harris.
14 BY MS. HARRIS:
15 Q Along that same line of reasoning, or questioning,
16 so in your experience both with Costco and that wide range
17 of other companies that you identified, have you ever had
18 experience of a leak or has the advent of the double-wall
19 tanks?
20 A No.
21 Q And how long have you been in practice doing this?
22 A Since 1984.
23 Q So if, in fact, remote as it may be, there were to
24 be a leak in the double-wall system, can you identify what
25 other devices, monitoring devices or systems are in place

1 and what would happen?
 2 A Well, you mean after a leak --
 3 Q Yes.
 4 A -- how would we detect the leak?
 5 Q Yes.
 6 A Well --
 7 Q That's the question.
 8 A Okay. But remember that we will be immediately
 9 aware there's a leak because of the electronic monitoring
 10 system, so we'll be aware that there is a potential that
 11 contamination has entered the water system. In this case,
 12 water isn't in the tank hold, so it's going to be in the
 13 VADO, we'll call it the VADO zone, the soil zone and that's
 14 where it's going to be. So if there's no water in the hole,
 15 we have to rely on our monitoring system. If our monitoring
 16 system says that there was a leak, then we -- now one thing
 17 about, that I should point out about the tank system, these
 18 underground storage tank angular spaces which is the space
 19 between the inner-tank and outer-tank is filled with brine
 20 solution. So if there is a breach in the outer wall of that
 21 tank, we will lose brine and the monitor will go off.
 22 If there is a breach into the inner-tank, then
 23 that brine will enter the tank and an alarm will go off. So
 24 we're going to know that there's product in the water. We
 25 don't need a monitor to tell us that there's going to be

1 product there. We know that we've had a full breach. We
 2 know what's in there. And then the next step is, you know,
 3 is an emergency management.
 4 MR. GROSSMAN: Well, what exactly is the
 5 monitoring system? Is it the system you talk about that is
 6 brine between the two walls. Is part of your monitoring
 7 system something that it can detect brine leakage?
 8 THE WITNESS: Yes, so -- exactly. So it's a level
 9 sensor, so a loss of brine sets off the sensor to our
 10 Peterman system that's, that's notifying the attendant, the
 11 third-party and the warehouse that there's been a leak.
 12 MR. GROSSMAN: If there's a leak in the inner-
 13 wall, won't the pressure of the gasoline liquid keep the
 14 brine level up to its normal level?
 15 THE WITNESS: No. Actually the brine is heavy and
 16 it will push its way in.
 17 MR. GROSSMAN: I see. And so how far does the
 18 brine level have to go down before the leak is detected?
 19 THE WITNESS: It's literally within a gallon.
 20 MR. GROSSMAN: Is that the only monitoring system
 21 or are there other monitoring systems you have?
 22 THE WITNESS: For the tank, that's the only
 23 monitoring system.
 24 MR. GROSSMAN: Okay.
 25 THE WITNESS: But for other locations, we have

1 probes that are in the sink tops or in the dispensers or in
 2 the vent, those are to detect any leaks that are in the
 3 piping.
 4 MR. GROSSMAN: Okay.
 5 THE WITNESS: So the piping is all along and it
 6 goes back to the tank and there's a monitoring there that
 7 senses liquid and if there's a leak and it senses that.
 8 MR. GROSSMAN: All right. Going back to the
 9 tanks, theoretically, at least if the brine level goes down
 10 either because of a leak into the tank, inner-tank or leak
 11 to the outside, you will be automatically notified
 12 electronically, is that the idea?
 13 THE WITNESS: Yeah.
 14 MR. GROSSMAN: And does everything shut down then
 15 automatically also?
 16 THE WITNESS: Yes. Everything is shut at that
 17 point. There is another, the automatic tank gauges, I
 18 forgot to mention that. So inside the tank there's a lot of
 19 tank gauges also and a float with a sensor. So if brine
 20 enters the tank, that flow level is going to go up and if
 21 we're not getting a delivery, it's going to go into that as
 22 well.
 23 MR. GROSSMAN: Okay. All right.
 24 BY MS. HARRIS:
 25 Q You mentioned in addition to the tank monitoring,

1 you briefly mentioned additional monitorings on other
 2 portions of the system, is that right?
 3 A Right. And so --
 4 Q Can you please explain that in a little bit more
 5 detail?
 6 A So the tank is an entire system of delivery to the
 7 dispensers, so it doesn't stop the tank. The tanks have
 8 piping, the piping goes to the dispensers and the three
 9 pipes that come from the tank are the product delivery, the
 10 vent which is a tank vent and it goes and it actually vents
 11 the tank pressure and then the third recovery. When you go
 12 to fill up at a gas station, we have recovery valves that
 13 are there that draws vapor back in and returns them back to
 14 the tanks. They have those three types of pipe.
 15 Now Costco secondarily contains all of those.
 16 That's not a requirement of the state of Maryland. That's a
 17 requirement of Costco to secondarily contain all of them.
 18 MR. GROSSMAN: You're talking about the island
 19 permeator, is that what --
 20 THE WITNESS: That's, I haven't referred to --
 21 MR. GROSSMAN: Oh, okay.
 22 THE WITNESS: So the product recovery lines are
 23 secondarily contained. They're all sloped back some so
 24 they're located at the tank and that stump is a little
 25 sensor that's connected to the same monitor to monitor the

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1 leaks for the tanks and it goes into a lock that emulates
2 when that shows up in those locations. Now because the
3 pipe, it slopes, we have areas under the dispenser that we
4 also have to contain and get monitored. In that, in that
5 other dispenser container it tells if there's any local
6 leakage in that area and, you know, below the dispenser. So
7 if there's anything that happens at the dispenser, any leaks
8 in the water, property, we're going to know about it and it
9 will shut that down and we'll have to investigate it.

10 There's also a vent termination box over by the
11 vent risers where the vents come in and then they transition
12 to above-grade and there's a sump there that's also
13 monitored, the sensor. So the entire underground system is
14 continuously electronically monitored and secondarily
15 contained in this case, and that's why we're confident that
16 we're not going to have a leak or be concerned about the
17 leaking.

18 Q You just indicated that the double containment is
19 above and beyond what's required, is that correct?

20 A For the vent vapor.

21 Q And are there other measures that Costco employs
22 that are above and beyond compared to the regular
23 requirements?

24 A Well, the fact that they use that automatic tank
25 gauge is an upgrade to the system because technically you

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1 only have to manually stick the tank, but Costco's
2 preference is that they don't manually stick the tank
3 because you're introducing bacteria to gasoline or, you
4 know, continuous, anything on a tank and poking a stick into
5 a tank is just never a good idea. So they actually prefer
6 not to use the manual gauge. They prefer to use the
7 automatic gauge.

8 They also use a pressure line leak protector on
9 the product line, so it goes, the required line leak
10 detector is a mechanical system. It's just a crude sensing
11 device that if it notices that there was a discharge that's
12 inconsistent with the flow that it's used to, it will
13 actually slow the flow of the gasoline down, but a pressure
14 line detector actually senses and it is calibrated to sense
15 a loss in pressure and shut the system down. So that's
16 another upgrade.

17 Another Costco improvement to the standard is the,
18 under the dispensers, as I said, is a containment box. And
19 in that box there is a fire snuffer. It actually put fire
20 pressure on there even though it's not required and that is
21 simply to have that extra level of fire protection at the
22 dispenser. We also have those in the tank sumps and in the
23 vent sumps. So everywhere that people aren't always able to
24 look at, we have a fire suppression system inside those
25 sumps.

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1 MR. GROSSMAN: How does a fire snuffer work?
2 THE WITNESS: If it senses a fire, it discharges
3 an agent and --
4 MR. GROSSMAN: It's a chemical snuffer?
5 THE WITNESS: A chemical snuffer, yes. And I
6 think that's about it.
7 BY MS. HARRIS:
8 Q All right. Are you familiar with the process of
9 removing UST's and also, and if so, can you please describe
10 how that would occur?
11 A Yes.
12 MR. SILVERMAN: The underground storage tanks?
13 THE WITNESS: So underground storage tanks, you
14 know, are, insulation and removal of those are dictated by
15 the International Fire Code of the NFPA and they have
16 guidelines on how it is that these tanks are removed. It's
17 actually a very simple process. It's gas-free, remove the
18 tank, excavate down to the tank, remove the tank, take it
19 somewhere, have it destroyed. And by destroying it, it
20 means they're cutting it up. If it's metal, it's used as
21 scrap metal. If it's a plastic tank, then it's melted down
22 and used somewhere else.
23 MR. GROSSMAN: Are these going to be metal or
24 plastic?
25 THE WITNESS: These are fiberglass tanks.

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1 MR. GROSSMAN: How do you -- you said you take the
2 gas out and then you inert the tank. How do you inert the
3 tank?
4 THE WITNESS: They do that by condensing the
5 vapors down with dry ice and then drawing it all out and
6 then in some states they actually require triple rinsing of
7 it, so after you got it inerted, they have you cut open the
8 tank, go in there, rinse the tank out before you transport
9 it, but by and large you just inert the tank until it's down
10 to a certain level. They plug it, except for leaving maybe
11 an eighth of an inch or a quarter inch hole and it's vented
12 and off to the destruction yard it goes.
13 MR. GROSSMAN: All right. Now how do fiberglass
14 tanks compare to metal tanks in terms of their durability
15 and so on?
16 THE WITNESS: A very stable system. They are a
17 very stable underground environment. I would say probably
18 steel tanks are stronger, but then have the corrosion issue,
19 so they're the preferred method of underground storage these
20 days.
21 MR. GROSSMAN: The fiberglass?
22 THE WITNESS: Yes.
23 MR. GROSSMAN: Okay.
24 MS. HARRIS: Has Costco --
25 THE WITNESS: And if the steel tank industry is

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1 listening, I'm sorry.
2 MR. GROSSMAN: We won't tell them you said it.
3 BY MS. HARRIS:
4 Q So the fiberglass is state-of-the-art for
5 underground storage tanks?
6 A In my opinion, yes, they are.
7 Q Okay. Has Costco had occasion to relocate any
8 stations, thus requiring the removal of underground storage
9 tanks?
10 A Yes, when they couldn't achieve any longer at
11 their current location, they relocated their gas station to
12 another part and had to remove the tanks.
13 Q And so --
14 MR. GROSSMAN: They couldn't achieve what at their
15 current location?
16 THE WITNESS: They couldn't achieve the volume --
17 MR. GROSSMAN: Oh, I see.
18 THE WITNESS: -- and they had too much demand.
19 They didn't have enough land, so they moved to a bigger
20 piece.
21 MR. GROSSMAN: Okay.
22 BY MS. HARRIS:
23 Q Does -- in your opinion, does the removal of a
24 tank in any way interfere with the future use of the piece
25 of property?

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1 A Not in any way that I can think of.
2 Q Now one quick question about the actual
3 deliveries. Can you explain how the gas is actually
4 unloaded from the truck?
5 A Well, as I stated before, you know, gasoline
6 delivery trucks have their load, unload generally on the
7 passenger side of the truck, so the tanker will make its way
8 to the end of the storage tank location. People park once
9 and the hose has about an 18-foot reach. So as long as all
10 of those are within the back area, he doesn't have to move.
11 He then takes out his delivery elbow and connects
12 it to the 4-inch riser. That connects the hose to the 4-
13 inch riser and he walks back to the tank and then he
14 connects the hose to the bottom loader. Now that bottom
15 loader, you know, could be a number of things. It could be
16 a padlock or a twist seal lock or whatever it is. So once
17 that is connected to the loader, a twist seal, a padlock,
18 whatever it is, he can pull the lever and then delivery of
19 the product can commence into the tank.
20 I give you that step though. In this case we have
21 a vapor recovery exchange, one riser. So he has to hook two
22 hoses up. He has the delivery hose and he has the vapor
23 recovery hose and both of those need to be connected before
24 he can actually deliver the product.
25 MR. GROSSMAN: All right. They have to be or the

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1 system will not turn on?
2 THE WITNESS: So --
3 MR. GROSSMAN: Or he would have to be because
4 that's just for future --
5 THE WITNESS: If the product hose is, so, yes, on
6 the product delivery hose itself, that one has to be locked
7 in place before you can load it. The vapor recovery nozzle,
8 that's the one area where he has the opportunity to not have
9 it attached, but its barrel doesn't move because it slows
10 down his delivery if he doesn't get it connected.
11 MR. GROSSMAN: And, well, is that vapor recovery
12 thing, is that the air permeator you're talking about?
13 THE WITNESS: No.
14 MR. GROSSMAN: That's --
15 THE WITNESS: I forgot about that one.
16 MR. GROSSMAN: Yes.
17 THE WITNESS: I'm so sorry. You were excited to
18 hear about the air permeator and I --
19 MR. GROSSMAN: It sounds like a very catchy name,
20 so I was hoping that you --
21 MS. HARRIS: I knew.
22 THE WITNESS: Okay. So, yes, and actually it's a
23 good segue for the deliveryman. So that pretty much
24 explains it, you know, foreign vander coupling, thrust, gas
25 about 800 gallons a minute and that's as much as it gets

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1 now.
2 MR. GROSSMAN: Does he have to fill up each tank
3 separately?
4 THE WITNESS: No, he, the tanker has compartments,
5 so he may be carrying, you know, 91 octane and 87 octane and
6 in this case he can have that compartment feeding that one,
7 he can have the other compartment feeding the other one and
8 Costco uses a duel fuel arrangement, meaning they can
9 actually unload product twice as fast because they've got
10 that additional unload feature.
11 MR. GROSSMAN: How many tanks is he going to be
12 filling up?
13 THE WITNESS: Well, he can either pump the one or
14 he can fill two or he can fill all three at one time if he
15 wanted to.
16 MR. GROSSMAN: Okay. But can he fill all three at
17 once is what I'm getting at?
18 THE WITNESS: Yes.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Yes. Okay. So as the driver, you
21 know, is delivering gas to the tanks, there's pressure,
22 there's pressure vapors that are building up in the tank and
23 they go out when they approach, fill up at that time and
24 that's where the air, that and in conjunction with the vapor
25 vacuums that they use at the pump aisles to add pressure to

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1 the tank, well, that pressure forces those vapors, you know,
2 out through the vent. However, Costco uses the air
3 permeator which is a membrane system. So all the pressure
4 is pushing the vapors into this membrane. The membrane is
5 capturing those vapors and then those vapors are condensing
6 in that membrane and returning back to the tank.
7 What makes it through that membrane is there and I
8 don't really understand the exact science of how that works,
9 but apparently the air molecule makes it, but the
10 hydrocarbon molecule does not. And that is another upgrade
11 in the system that I forgot to mention in this case.
12 MR. GROSSMAN: I tried twice.
13 THE WITNESS: I know.
14 MR. GROSSMAN: This is not helping me.
15 THE WITNESS: I'm sorry.
16 BY MS. HARRIS:
17 Q Are there any other upgrades? I mean you focused
18 on the second --
19 A I may be refining as we go.
20 Q The secondary containment, the air permeator,
21 double line, can you think of any other measures that Costco
22 employees that are above and beyond? Is the sensitivity of
23 the monitoring system different than most other stations?
24 A They do, Costco does set the sensitivity up and
25 monitors well within any of the other gas station customers

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1 that I have worked with.
2 Q And so what does that mean exactly?
3 A It's more sensitive to weight. I mean so a
4 temperature variation might actually set off a Costco
5 monitor, whereas other stations sort of calibrate it so that
6 temperature variations and pressure don't get noticed.
7 MR. GROSSMAN: Wouldn't vapors escape when they're
8 filling up the tanks?
9 THE WITNESS: Well, that's what the air permeator
10 is trying to do, but there's actually a vent cap and so the
11 way it works, there's vapors in the holding space of the
12 tank, which is the free space of the tank and those are
13 pushed out through there. And there's a vent cap on there
14 and there's a certain crack in pressure that, you know, once
15 the pressure builds up to a certain point, it doesn't want
16 to jeopardize the tank. It pops the pop on the vent cap and
17 then that will then go out, but the air permeator will --
18 MR. GROSSMAN: How explosive is that, what vapors
19 escape? If somebody happens to be foolishly walking along
20 smoking a cigarette and that --
21 THE WITNESS: Well, there, well, I would, I would
22 be concerned about somebody who smokes a cigarette walking
23 by because it's 12 feet above grade minimum and I think
24 they're actually higher than that, so the vapors are going
25 up and he's just walking by, so there won't be any vapors

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1 where he is per se that would ignite it. He would have to
2 actually ignite right at the very top just like igniting a
3 torch.
4 MR. GROSSMAN: Those vapors are lighter than air?
5 THE WITNESS: Well no, they ultimately will
6 settle, I believe. They'll dissipate by the time they get
7 to his level.
8 MR. GROSSMAN: Okay. So you're saying they'll go
9 up and then they'll come back down?
10 THE WITNESS: They'll go up, they're going up like
11 a balloon and they dissipate and as the, the range as they
12 say in the prior code is the 5-foot fall around the top of
13 it is the concern. After that, there's no more risk.
14 MR. GROSSMAN: Is it safe to have these tanks
15 being filled at the same time as people are queuing in line
16 with their engines running somewhere?
17 THE WITNESS: Yes, it's perfectly safe.
18 MR. GROSSMAN: And there's no chance of an engine
19 sparking, igniting the vapors that might escape from the
20 filling of the tank?
21 THE WITNESS: So these are tight fuel connections,
22 so there shouldn't be any vapors escaping from that tank
23 area when they're filling it.
24 MR. GROSSMAN: Well, what were you just talking
25 about the valve that allows excessive pressure to escape?

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1 THE WITNESS: Those are out with the vents.
2 MR. GROSSMAN: And where are the vents located?
3 THE WITNESS: They're usually somewhere away from
4 the tanks. I don't know where they are.
5 MR. GROSSMAN: Do you know how far they would be
6 away?
7 THE WITNESS: No, they can be set anywhere as long
8 as they don't increase the depth variant. So they can be
9 within, they could be within 10 feet of the tank or they
10 could be on the fuel bay. So they're just located wherever
11 it's and the slope doesn't create an issue for our burial.
12 MR. GROSSMAN: You designed a number of these gas
13 stations with refill. Have you designed ones where they
14 will handle 10, 12 million gallons a year?
15 THE WITNESS: Yes.
16 MR. GROSSMAN: And is it common to have the tank
17 truck this close to the queuing area?
18 THE WITNESS: Yes.
19 MR. GROSSMAN: Okay. All right. Ms. Harris.
20 THE WITNESS: Sometimes those, I mean smaller
21 sites, those tanks are virtually right there where people
22 are exiting the gas station, so I actually like this design
23 better.
24 MR. GROSSMAN: Okay.
25 BY MS. HARRIS:

1 Q In your opinion, is the design that we're shown in
2 the special exception plan in terms of where the queuing is,
3 where the tanks are located, is that prototypical for, or
4 maybe prototypical is too strong a word, are there Costco
5 gas stations that are designed very similarly to this?

6 A Yes, this is their prototype design.

7 Q And how many gas stations do they have throughout
8 the country and Canada, do you know?

9 A I don't know the number.

10 Q What is the capacity of the underground storage
11 tanks?

12 A Each tank is 30,000 gallons.

13 Q And is that typical of most gas stations or do
14 some gas stations have smaller tanks?

15 A Gas station tank sizes vary somewhere between 20
16 and 30,000 gallons. I mean really between 10 and 30,000
17 gallons, it just depends on what the variety of products are
18 that they're offering, you know, what has a tendency to work
19 best for them. One of the things -- what's nice about a
20 larger tank is that it gives you a lot more flexibility and
21 operationally to have deliveries, you know, occur, you know,
22 whenever you might need them. The other part is it's an
23 economic decision, it's an operational decision. If the
24 rack price is low, then we want to fill up our tanks with
25 that low price gasoline. The rack price is high, we want to

1 keep our volume just as necessary in the tank to keep it
2 going. So that gives them the ability to somewhat play with
3 their margin with respect to the cost of gasoline, but it
4 also gives them the ability to manage their delivery
5 schedules much better.

6 Q Do you see any reason that a, the difference
7 between a 20,000 gallon tank versus a 30,000 gallon tank
8 presents any type of environmental or safety issue with a
9 differential there?

10 A You know, not really. I don't think there is.
11 The reason is is that the level in a tank is always
12 fluctuating. It's, you know, we might be 50 percent full at
13 a Costco, we might be 75 percent full at a gas station that
14 has a 20,000 gallon tank. So because the levels are always
15 fluctuating, you know, the size of the tank usually has no
16 levels assigned to it, it's environmental sensitivity, in my
17 opinion because like I said, those gas levels are constantly
18 changing.

19 Q And to the best of your knowledge, will the gas
20 station be able to be constructed and operated to comply
21 with all current regulations?

22 A Yes, I believe this station can be designed and
23 operated in effect.

24 Q Thank you.

25 MS. HARRIS: No other questions for Mr. Goalwin.

1 MR. GROSSMAN: All right. Who wants to lead the
2 way for the opposition? Well, while they're thinking about
3 that, I'm going to raise a question with gas vapors. What
4 exactly is the advantage to Costco and Westfield of
5 eliminating the pedestrian path on the south part of the
6 ring road, Ms. Harris?

7 MS. HARRIS: The issue came up that, as, the
8 initial discussion showed a 3-foot wide path --

9 MR. GROSSMAN: Yes.

10 MS. HARRIS: -- and then it was brought to --

11 MR. GROSSMAN: Well, I heard that and then it was
12 wider --

13 MS. HARRIS: Okay.

14 MR. GROSSMAN: -- than it, well, what if it were
15 just 3-feet wide?

16 MS. HARRIS: Well, because I was getting to that.

17 MR. GROSSMAN: All right.

18 MS. HARRIS: It's an ADA issue and so three, it
19 would need to be five feet, not -- to be ADA compliant. And
20 if it's five feet, then it was the impression of Westfield
21 that that then starts to impinge too much on their, on the
22 aisle, in the width of the drive aisle, the lanes on the
23 ring road.

24 MR. GROSSMAN: I see. I'd ask you to talk to
25 Westfield about whether or not there's any way of doing this

1 that would reinsert that pedestrian path because that seems
2 to be a desire of the community and potentially given the
3 Planning Board's suggestion in terms of the desire for, to
4 increase pedestrian use and so on, that this might be
5 helpful. So just, you should talk about it. I don't think
6 it's something that should be discarded without being looked
7 at --

8 MS. HARRIS: Oh, absolutely.

9 MR. GROSSMAN: -- again.

10 MS. HARRIS: I understand.

11 MR. GROSSMAN: Okay. Cross-examination of this
12 witness.

13 CROSS-EXAMINATION

14 BY MR. SILVERMAN:

15 Q Yes. Larry Silverman, how are you?

16 A Good.

17 Q Good. Nice to see you. You said one of the
18 lines is pressurized?

19 A Yes.

20 Q Which line is that?

21 A That's the product delivery line.

22 Q And could you compare the pressure to the pressure
23 in a water main?

24 A It's probably higher than --

25 Q It's higher? So you know here in Montgomery

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1 County we specialize in water main explosions, why will your
2 pipes be better than our pipes?
3 MR. GROSSMAN: I had the same thought, Mr.
4 Silverman, and that's why I asked him about the sensing
5 thing. Apparently their sensing equipment for the double
6 tank is quite different from the electronic sensor that was
7 in the --
8 MR. SILVERMAN: Oh, I --
9 MR. GROSSMAN: -- or as I understand it, but maybe
10 I'm wrong about it.
11 MR. SILVERMAN: Our sensor in our water pipes are
12 very high-tech. It depends on acoustical analysis, pings
13 when, all sorts of -- I mean we could have had a witness on
14 the water sensors that's just as impressive as Mr. Goalwin
15 here.
16 MR. GROSSMAN: Well, I --
17 MR. SILVERMAN: They did work.
18 MR. GROSSMAN: -- as impressive, but the, his is
19 based on the brine. I don't know that that --
20 MR. SILVERMAN: No, that would --
21 MR. GROSSMAN: -- one in Montgomery County water
22 system was based on brine, but I'd be interested in hearing
23 what you -- so --
24 THE WITNESS: So to be clear, higher pressures in
25 water, there are lower pressures in water than what we're

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1 delivering here and the pipe was designed, and as are all
2 the joints and couplings and everything else, they're
3 designed to take that pressure without any issue.
4 So the issue you had a lot of times with the water
5 line is corrosion or other problems that cause that pressure
6 to breach it. It's certainly well-defined.
7 BY MR. SILVERMAN:
8 Q So do you have a pounds per square inch, is that
9 the relevant unit?
10 A Yes, pounds per square inch I would say was
11 between 50 and then 30 at the time.
12 MR. GROSSMAN: 15 and what?
13 THE WITNESS: 30.
14 BY MR. SILVERMAN:
15 Q Okay. Great. And did the fires ever happen at
16 gas stations?
17 A Fires happen in gas stations, yes.
18 Q Would it be correct to say, would you agree that
19 the, according to the National Fire Protection Association
20 they get 1,000 or 1,200 a year per?
21 A I've never seen that statistic, but it sounds
22 reasonable.
23 Q Very good. And do you know what the --
24 MR. GROSSMAN: Do you have evidence to that
25 effect?

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1 MR. SILVERMAN: Yes, I can submit it. I mean it's
2 not as recent as one would like, but it's 2009 over a 4-year
3 period.
4 MR. GROSSMAN: Well, I just, I didn't -- what I'm
5 getting at is I don't want to have anybody suggesting --
6 MR. SILVERMAN: No, I'm not making --
7 MR. GROSSMAN: -- a set of facts that aren't based
8 on facts, that's all.
9 MR. SILVERMAN: I will send everybody the link --
10 MR. GROSSMAN: Okay.
11 MR. SILVERMAN: -- so they can read it themselves.
12 Do you know the most common cause of fires in gas stations?
13 THE WITNESS: I've heard that it's static
14 electricity from customers who are and improper filling of
15 gasoline containers.
16 BY MR. SILVERMAN:
17 Q Would it surprise you that the most common cause,
18 this is according to the NFPA, is that cars catch on fire?
19 A That cars just catch on fire?
20 Q Yes.
21 A I would be surprised by that.
22 Q So, in other words, it may be the cause has really
23 nothing to do with anything the gas station is doing? So
24 when --
25 MR. GROSSMAN: But on the other hand, Mr.

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1 Silverman, I'm not permitted by law to say gas stations
2 aren't permitted. I mean if it's an inherent characteristic
3 of gas stations, which is what you're implying --
4 MR. SILVERMAN: Right.
5 MR. GROSSMAN: -- then I'm not making policy here,
6 I'm following the policy determined by the Council and
7 they --
8 MR. SILVERMAN: Well --
9 MR. GROSSMAN: -- have said that we are allowing
10 gas stations in general as long, in terms of their inherent
11 characteristic. So --
12 MR. SILVERMAN: Well, what's not inherent is the
13 location, so I mean bad things, accidents happen.
14 MR. GROSSMAN: Okay.
15 MR. SILVERMAN: But when an accident happens, is
16 it better to be close to a lot of people or far away from a
17 lot of people?
18 THE WITNESS: Is that a fair question?
19 BY MR. SILVERMAN:
20 Q I think it's a very fair -- it's an obvious
21 question, but it's fair.
22 A Yes, the fewer people that happen in a bad
23 situation, the better, yes.
24 Q So do you advise your clients to locate their gas
25 stations as near as possible to their buildings and to where

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1 people are walking and shopping?
2 A Do I advise them?
3 Q Yes.
4 A No, but if they ask me if it was safe, I would say
5 yes.
6 Q The question is not safe, but safer, so we have
7 two sites here, the original site and the new site. From a
8 safety point-of-view, which is safer?
9 A I'd say their equivalent.
10 Q They're equivalent? So it doesn't matter how
11 close you are to people?
12 A I don't believe so, no.
13 Q So you would recant your earlier answer?
14 A If you asked the question in a different way, you
15 might get a different answer.
16 Q I believe that. Do you have any sorts of
17 observation wells or monitoring wells as part of your safety
18 protocol?
19 A So the Costco standards do have the backfill
20 monitoring observation wells as part of their standard
21 design. They aren't required any more by anybody but the
22 state of Texas as far as I know. There may be others out
23 there, but so far I believe that Texas is the only one
24 that's actually required. They're not as useful as they
25 used to be. They used to be common. They used to have

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1 them, you know, in virtually in every -- everywhere we put
2 them. But since the advent of double-wall and the
3 monitoring systems, those have become unnecessary.
4 Q And so you're not going to use them here?
5 A If we're required to use them, we'll use them
6 here.
7 Q Required by the state?
8 A Yes.
9 Q Okay. You talked about, you used two expressions
10 and one was double-walled and the other was containment
11 system. So are they the same thing or different?
12 A They are the same.
13 Q Okay. So those are just two ways of saying the
14 same thing? And will the truck, the delivery trucks be
15 parked within those dotted lines up there or outside the
16 dotted lines?
17 A I have to take a closer look. Well, it will be,
18 it may be parked on top of that line. It will be very close
19 to this curb is already parked.
20 Q Okay. And do you know -- we had some discussion
21 today about just where the truck will be in terms of the
22 north-south direction. Where would, do you know the answer
23 to that, where it would probably be?
24 A In the center of that truck would be the line-up
25 buffer and the center tank.

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1 Q And the center tank is where?
2 A It's here.
3 Q So could you say, describe in words where you're
4 pointing to?
5 A I'm pointing to the elliptical-shaped tank in the
6 center of the tank field that is located, what is this,
7 west, on the west side of the site.
8 Q I see. And how long are these tanker trucks?
9 A Let's see, they vary. It might be 63-feet long,
10 63 and 65-feet long.
11 Q Where is the driver -- excuse me, I take that
12 back. There's been testimony here it takes about 45 minutes
13 to unload a tank, a tanker truck, do you agree with that?
14 A It can take that long.
15 Q Okay.
16 A It should be faster.
17 Q Okay.
18 A It could be as little as 30 minutes.
19 Q And if the driver, as Costco recommends that they
20 use a vapor recovery, it's going to be slower?
21 A If they don't use a recovery, it will be slower.
22 Q If they don't use it?
23 A It's kind of like the hole at the end of a straw
24 and the product will come out.
25 Q Right. I see. Okay. Did you, are you aware of

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1 tank failures in the state of Maryland?
2 A No, I haven't researched tank failures in the
3 state of Maryland.
4 Q You didn't investigate that at all?
5 A No.
6 Q How old is the oldest underground storage tank put
7 in by Costco?
8 A Good question. I don't know if I know the answer
9 to that, but I know it was prior to 1996.
10 Q Prior to 1996? What is the useful life of one of
11 these tanks?
12 A Well, the warranty is 30 years and it can be
13 extended upon inspection, so the serviceable life would be
14 able to reach that in my span of my career, how is that?
15 Q Well, good. And are you aware of any Costco tanks
16 that have been longer than 30 years?
17 A I don't know.
18 Q So it's possible it's never been put to the test.
19 Do you -- have you ever had any, are you aware of any case
20 of a breach of one of the inner-wall of a double-wall
21 system, has that ever happened, any of these detectors ever
22 gone off?
23 A At a Costco gas station?
24 Q Yes, I'm sorry.
25 A The detectors have gone off. Whether or not it

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1 was confirmed as a leak or not is questionable.
2 Q Do you have any data on that?
3 MR. GROSSMAN: You have to answer.
4 THE WITNESS: I do not. I mean, I'm sorry.
5 BY MR. SILVERMAN:
6 Q When the monitors go off, what happens?
7 A There's, when a detection is noticed, then there's
8 an audible and visual alarm to the station, the operator at
9 the station, the warehouse, a third-party monitoring agency
10 offsite.
11 Q And then what do they do?
12 A Well, it shuts down. In a lot of cases when
13 monitors go off, the whole system shuts down and then it's
14 into diagnostic phase.
15 Q So if I'm a car, I'm being filled up, so it just
16 stops?
17 A Yes, it should just stop.
18 Q What does the shutdown mean? I mean is
19 everything, is it like when your electricity goes out and
20 everything just stops that way or what does a shutdown mean?
21 A Yes, so that the systems are shut down. So the
22 turbine system is shut down, the dispenser power is shut
23 down, everything is shut down so that there's no risk.
24 Q Okay. So suppose everything is shut down and
25 there is a breach somewhere in the system, one of those

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1 pressurized lines have a problem with our corrosive soils or
2 whatever, what happens then? What's the protocol
3 afterwards?
4 A The monitoring system is still monitoring during
5 the shutdown.
6 Q Well, so it's being monitored. Then how do you,
7 what do you, how do you prevent it? What do you do then?
8 A How do you prevent what?
9 Q How do you stop it?
10 A Stop the monitoring?
11 Q No, stop the leaking.
12 A Well, it depends on what the leak is. I mean
13 obviously if there's a leak in the line and we detected it,
14 how do you stop it? You have to excavate it and fix it. So
15 if the tank leaks, you've got to excavate and fix it more
16 and you've got to start punching wells and start pulling
17 apart wells. I'm not an expert on how to remediate the leak
18 once it's out of the barn, so --
19 Q Well, you talked about the sensitivity of the
20 monitors and that's great. I appreciate that. But if there
21 is a significant leak such as we've had in Maryland, how
22 long would it take to stop it?
23 MR. GROSSMAN: When you say such as we've had in
24 Maryland --
25 MR. SILVERMAN: Yes.

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1 MR. GROSSMAN: -- are you talking about a
2 gasoline --
3 MR. SILVERMAN: Yes.
4 MR. GROSSMAN: -- in Maryland? Okay. You're
5 going to have to produce that in evidence.
6 MR. SILVERMAN: We will produce an Exxon case up
7 in Jacksonville, Maryland.
8 MR. GROSSMAN: Okay.
9 BY MR. SILVERMAN:
10 Q You're not aware of that case, are you?
11 A Actually I am.
12 Q Oh, you are?
13 A I've heard of it.
14 Q Okay. Good. But that's just Exxon. They don't
15 have the extra like Costco.
16 A So it shuts down instantaneously.
17 Q Right. It -- but not the leak, the system shuts
18 down?
19 A The system shuts down, so we're not pushing a
20 product into the ground further by shutting it.
21 Q Right. But -- so does that mean the pressurized
22 pipes are no longer pressurized?
23 A That's correct, the pressure is taken out of the
24 system.
25 Q All right. But you don't know one way or the

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1 other if you have a leak and how long it takes to respond or
2 what they do in response?
3 A It responds immediately.
4 Q No, no, the --
5 A Oh.
6 Q I --
7 A Oh, how long it takes --
8 Q I know you're very proud of your monitoring
9 system, but I wish to ask you about the underlying problem,
10 not the monitoring of it.
11 A How long does it take for somebody to respond?
12 Q Yes, come and see those wells or --
13 A I have no answer to that.
14 Q Okay. All right. Oh, one other thing, would you
15 ever locate a gasoline station in the middle of three walls?
16 A In the middle of three walls?
17 Q Yes, would you build walls around the gasoline
18 station to protect all your neighbors, would you do that?
19 MR. GROSSMAN: I don't understand the question.
20 THE WITNESS: I don't understand the question.
21 BY MR. SILVERMAN:
22 Q Well, in this case we have, there's, we have one
23 side of the gas station we have a Costco, which is
24 essentially a wall, and the other side we have a wall or
25 will have a wall.

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1 MR. GROSSMAN: You mean on the south end of the --
2 MR. SILVERMAN: The south end, yes.
3 MR. GROSSMAN: -- gas station?
4 BY MR. SILVERMAN:
5 Q Yes. So is it a good idea to enclose a gas
6 station, is that something you recommend as good practice?
7 MR. GROSSMAN: Where's the third wall you're
8 talking about?
9 MR. SILVERMAN: There's not a third wall. I was
10 going to go from the third wall to the second wall and see
11 how much, because I'm sure the third wall would cause
12 problems.
13 THE WITNESS: I still don't, I'm having trouble
14 with the question and --
15 MR. GROSSMAN: Is it a good idea?
16 THE WITNESS: You know, that part of the question
17 is -- so I can at least say something is that, you know, gas
18 tanks are installed within three feet of basement walls.
19 That's what the code allows us to do and if there's one, two
20 or three walls, it really doesn't matter.
21 BY MR. SILVERMAN:
22 Q But I'm thinking about the fumes and, from the
23 cars, do you have any knowledge about that?
24 A You mean -- I might have a comment about that. I
25 don't know, I don't know if I understand your question. So

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1 are you saying that we're creating a box that people are --
2 Q I'm saying you're creating half a box, that's what
3 I'm saying, exactly. Is that all right? Do you think
4 that's a good practice you would recommend?
5 A It's not uncommon, how is that?
6 Q That's good. Is it not uncommon with Costco's?
7 A It's not uncommon by any of my gas station
8 customers.
9 Q To have two walls?
10 A Three walls.
11 Q Three walls?
12 A There's gas stations literally in the middle of
13 downtown areas that have buildings all around them.
14 Q Okay.
15 A For sure.
16 Q Well, thank you very much. Oh, one moment. Do
17 you a lot of work on the east coast?
18 MR. GROSSMAN: I'm sorry, a lot of work with what?
19 MR. SILVERMAN: On the east coast.
20 MR. GROSSMAN: Oh, on the east coast?
21 THE WITNESS: I do a fair amount of work on the
22 east coast. I do most of my work in Boston.
23 MR. SILVERMAN: Okay. Thank you very much.
24 MR. GROSSMAN: All right. Ms. Rosenfeld.
25 MS. ROSENFELD: Yes, thank you.

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1 BY MS. ROSENFELD:
2 Q Approximately when was the double-wall system
3 invented?
4 A Invented?
5 Q You know, or first used as a common system?
6 A It was back in '76, I believe.
7 MR. GROSSMAN: You mean for gas tanks?
8 THE WITNESS: 1976.
9 MR. GROSSMAN: For buried gas tanks?
10 BY MS. ROSENFELD:
11 Q And do you have -- what is the longevity of steel
12 tank versus the longevity of a fiberglass tank?
13 A They both claim warranty of 30 years and then,
14 again, they can be recertified for longer depending on how
15 well they're holding up. So their serviceable life is kind
16 of unknown, but it's at least 30 years.
17 Q And do you have -- have you ever reviewed any
18 studies or do you have any statistics of steel tank versus
19 fiber tank failures --
20 A No.
21 Q -- the relatively safe, the relative safety of one
22 versus the other? And what is the cost of a steel tank
23 versus the cost of a fiberglass tank?
24 A They're slightly more extensive because the steel
25 tanks are also fiberglass coated for corrosion resistance,

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1 so they're slightly more expensive.
2 MR. GROSSMAN: Which is more expensive?
3 THE WITNESS: The steel tanks.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: They're also slightly more expensive
6 to install because they require larger equipment, they're
7 heavier, so you need a larger crane.
8 BY MS. ROSENFELD:
9 Q Does the fiberglass coating around a steel tank
10 provide any additional protection against or help keep that
11 system functional longer? You said it protects against
12 corrosion, so --
13 A From corrosion, from the corrosion perspective,
14 yes.
15 Q The fuel tankers, you testified they vary in your
16 experience between about 63 to 65 feet in length, is that
17 correct?
18 A Yes, and there are -- those are tankers. There
19 are smaller tankers out there, transport trucks. There are
20 bobtails and so on that are 40 feet long, maybe 35, but --
21 Q And in your experience is there a preference by
22 Costco for one or the other or --
23 A They prefer to have the large, a larger tanker
24 delivery full products to their tanks, so --
25 Q And how many gallons approximately does each, does

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1 a tanker that size, the larger tankers?
2 A Tankers that size range from 95 to 11 1/2 thousand
3 gallons, 9,500 to 11,500.
4 Q 9,500 to 11,500 --
5 A Yes.
6 Q -- gallons?
7 A Uh-huh.
8 Q And approximately how tall are those tankers?
9 What's the height?
10 A I haven't looked at that in awhile. I know
11 they're under 13' 6" because they have to fit under
12 structures, but I believe they're in the range of 12 feet.
13 Q Okay. Are -- what protection or is there with
14 respect to the tanks if there is a local earthquake?
15 A Well, the tanks are flexible, so -- and the tanks
16 are designed for some of the worst earthquake emissions in
17 the country, so -- and that's one advantage that actually
18 fiberglass has over the steel tanks because the steel tanks
19 are more rigid. The fiberglass tanks are far more flexible.
20 Q And what standards are out there or let me ask the
21 question a different way, are there standard out there
22 governing the minimum standards for safety regarding --
23 A Yes.
24 Q -- earthquakes, or earthquake detection?
25 A Well, right, yes. Well --

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1 Q I know I'm not articulating well.
2 A I understand. So, ANSI, you know, American
3 National Standards Institute, and ASTM, you know, set, you
4 know, those standards for, you know, the construction and
5 existence of those tanks to various conditions.
6 Q And I do --
7 A And those standard are relied on by the MMPA and
8 IFC.
9 Q And do these tanks, in your experience, meet those
10 standards?
11 A Yes.
12 Q Do you have citations to those standards?
13 A I don't.
14 Q And do you know what particular earthquake level
15 they're safe in?
16 A So --
17 Q Are they designed for a certain --
18 A I don't know what the upper limit is.
19 MS. ROSENFELD: Mr. Grossman, one of the earlier
20 hearings we marked a new exhibit, Exhibit No. 111, 1-1-1.
21 MR. GROSSMAN: Okay.
22 MS. ROSENFELD: This is actually Exhibit 54(i)
23 marked up.
24 MR. GROSSMAN: Yes.
25 MS. ROSENFELD: Just a minute. I'm going to see

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1 if I can find it.
2 BY MS. ROSENFELD:
3 Q Let me show an exhibit that's marked as Exhibit
4 111. And if you don't mind coming around, I might ask you a
5 question about this. You testified earlier that tankers
6 generally park adjacent to the three underground tanks, is
7 that correct?
8 A That's correct.
9 Q I have a little sticky here, a yellow sticky,
10 that's a generally representative of the size of the tanker.
11 Could you show on that exhibit where that is?
12 A And that's approximate.
13 Q I understand. But I believe you testified earlier
14 that the middle of the tanker would sit approximately at the
15 same location?
16 A Just a little over this.
17 Q Okay. And not over? There's a larger needle,
18 like buttons on the left-hand, on the left-side side of the
19 fueling tanks, what are these called?
20 A So the smaller brown one is where the reservoir is
21 for monitoring the tank, the ground monitor system. And the
22 next lid is where the filling vapors are located and this is
23 where a tanker truck will be attaching to a tank.
24 Q So the more easterly lid, is that where the hose
25 actually goes --

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1 A Yes.
2 Q -- into the ground?
3 A The ground --
4 Q On the ground?
5 A -- tank.
6 Q It's a tank. Got it. Okay. All right. Thank
7 you.
8 MR. GROSSMAN: So since I couldn't see when you
9 were doing that, is that blue mark the location of the
10 tanker truck?
11 MS. ROSENFELD: The --
12 MR. GROSSMAN: The yellow mark?
13 MS. ROSENFELD: -- the yellow, the yellow strip is
14 approximately the size of the tanker itself based on the --
15 MR. GROSSMAN: Okay.
16 MS. ROSENFELD: -- tanker that's drawn to scale in
17 the lower southwest corner along the ring road.
18 MR. GROSSMAN: Okay.
19 MS. ROSENFELD: The blue marker is just there to
20 hold it onto the paper.
21 MR. GROSSMAN: I see. Modern technology.
22 MS. ROSENFELD: Here's a --
23 MR. GROSSMAN: All right.
24 MS. ROSENFELD: I have no further questions.
25 MR. GROSSMAN: All right. Is there any redirect?

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1 MS. HARRIS: No.
2 MR. GROSSMAN: All right. All right. Thank you
3 very much, sir.
4 MS. HARRIS: Mr. Grossman, can we have five
5 minutes please?
6 MR. GROSSMAN: Sure. And I assume we can release
7 this witness?
8 MS. HARRIS: Yes.
9 MR. GROSSMAN: He'd be the only one that we can
10 release, right?
11 MS. HARRIS: Yes.
12 MR. GROSSMAN: Thank you, sir. Appreciate you
13 coming down.
14 (Recess)
15 MS. HARRIS: Which is now 119.
16 MR. GROSSMAN: 119(c). You need the rest of it.
17 119(a) and (b).
18 MS. HARRIS: My file copy of our March 26th
19 exhibit submission shows that that was, in fact, included.
20 I don't know if it got itemized on the list. I can
21 certainly provide it again, but my file copy shows what is
22 now 119(c), (a), (b) and (c) --
23 MR. GROSSMAN: Okay.
24 MS. HARRIS: -- were submitted.
25 MR. GROSSMAN: In full plan form?

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1 MS. HARRIS: Yes.
2 MR. GROSSMAN: Oh. Well, let's look. So I
3 accused you unjustly? There's no extra charge. That's
4 four, six, 12, 18, 18. There's the big 54 package. Those
5 are all 54 exhibits.
6 MS. HARRIS: Is it 86?
7 MR. GROSSMAN: Yes. 85. All right, 86, all
8 right. That's the planting plan and storm water management.
9 86(c) is the aerial. I think I know what happened. I do
10 see special exception plan. You're not as guilty as you
11 look. Maybe 86(i) may have gotten labeled twice. Yes, I
12 think that's what happened. Okay. So 86(i) is actually
13 more in the file here. It is the planting plan, but the
14 there's also something that was labeled 86(i) which
15 apparently should have been -- oh, everything is labeled
16 86(i). I see. Okay. Master plan. There's a lot labeled
17 86(i) here.
18 MS. HARRIS: I've already said 1 through 9?
19 MR. GROSSMAN: I see. Okay. All right. So
20 that's the explanation of that. We do have it in here.
21 Remember when we did the motion, we did the notice of
22 amendment. The question I have is whether or not, how it
23 was labeled. One second.
24 I think it was after that. Then there is an
25 amendment. All right. Well, why don't we do this. We may

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1 clarify that labeling, but let's leave -- you have a couple
2 of extra copies of what would be 119(a) and (b) that is the
3 first two pages of that and since we've already been
4 referring, we can now refer to it as two different things.
5 So let's keep that 119 labeling for the current active
6 special exception plan and just let's add the expanded
7 copies of 119(a) and (b), the first two pages.
8 MS. HARRIS: I would note that the parties of
9 record and Ms. Rosenfeld were copied on that March 26th
10 submission, so I am now am assuming we don't need to re-
11 provide them again that same exact thing.
12 MR. GROSSMAN: I presume so if you, in fact, were
13 copied on that. Ms. Sheard is raising, is shaking her head,
14 so, Ms. Rosenfeld.
15 MS. ROSENFELD: I, Michele Rosenfeld. I did
16 receive a copy of that submission.
17 MR. GROSSMAN: Okay. All right. I'll hear from
18 you, Mr. Silverman, too. I mean did Stop Costco, what we've
19 been discussing here is, in fact, it turns out that the
20 applicant did, in fact, file the updated March 25 version 6
21 of the special exception plan. Just, when we labeled it in
22 my office, we made a mistake and we labeled everything as
23 part of the landscape plan when actually there was a
24 landscape plan, there was also the special exception plan.
25 So presumably you received a copy of that at the time?

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1 MR. SILVERMAN: I think so.
2 MR. GROSSMAN: Okay. So we don't, you don't have
3 to be re-served with that and, however, applicant is kindly
4 going to provide us with the first two pages of it for our
5 Exhibit 119, so we'll use that as the continued label for
6 the current, active, special exception plan, version 6,
7 dated March 25, 2013. All right. Ready to resume with our
8 next victim here.
9 MS. HARRIS: Thank you.
10 MR. GROSSMAN: Who will that be?
11 MS. HARRIS: Our next victim is, excuse me, our
12 next witness is Gina Vopicelli.
13 MR. GROSSMAN: All right. So what's the correct
14 way of pronouncing it? Vopicelli? Okay.
15 MS. HARRIS: My apologies.
16 MR. GROSSMAN: Ms. Vopicelli, would you raise your
17 right hand please?
18 MR. GROSSMAN: All right. You may proceed, Ms.
19 Harris.
20 DIRECT EXAMINATION
21 BY MS. HARRIS:
22 Q Ms. Vopicelli, can you please introduce yourself
23 to Mr. Grossman and tell him over, about what you do?
24 A My name is Gina Vopicelli. I'm a real estate
25 development project manager for MulvannyG2 Architecture.

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1 MR. GROSSMAN: For who?
2 THE WITNESS: MulvannyG2 Architecture.
3 BY MS. HARRIS:
4 Q And can you tell a little bit about your
5 professional background and also your school work?
6 A I have a bachelor's of architecture from Cornell
7 University. I've been employed by Mulvanny for about a
8 year. I'm responsible for the front-end work on projects,
9 feasibility studies, the due diligence, the coordination of
10 consulting during the site planning, schematic site
11 development cases and projects.
12 Q And are you a licensed architect?
13 A No, I am not.
14 Q Are there people within Mulvanny that are licensed
15 architects in the state of Maryland?
16 A Yes, there are.
17 MR. GROSSMAN: And, Mr. Grossman, I note that Ms.
18 Vopicelli is not going to be testifying on anything that
19 requires licensing in the state of Maryland.
20 MR. GROSSMAN: Okay.
21 MS. HARRIS: Thank you.
22 BY MS. HARRIS:
23 Q You're familiar with the subject special exception
24 case?
25 A Yes.

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1 Q And can you please describe your responsibilities
2 with regard to the application?
3 MR. GROSSMAN: Are you using Ms. Vopicelli as an
4 expert?
5 MS. HARRIS: No, just a fact witness --
6 MR. GROSSMAN: Okay.
7 MS. HARRIS: -- with respect to certain, some very
8 specific issues.
9 MR. GROSSMAN: All right.
10 THE WITNESS: The preparation of architectural
11 elevations, the signage and the green wall.
12 BY MS. HARRIS:
13 Q And are you familiar with the Montgomery County
14 zoning ordinance?
15 A Yes, I am.
16 Q Can you please describe the basic principles or
17 concepts that were applied in your approach to the Costco
18 gas station?
19 A We work with Costco operations and civil engineer
20 on determining the layout of the gas station. In this case,
21 we're using a prototype, so it's an appropriate design that
22 we've used things, location, also the prototype design for
23 the kiosk and what we do is we alter the color of the metal
24 material on the field so the, to match similar design tech
25 for the works.

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1 Q A number of other witnesses testified to the
2 various zoning, the zoning C-2 special requirements, but I
3 just want to ask you a couple of those pertaining more to
4 architecture. What is the size of the kiosk in terms of
5 square footage?
6 A It's 128 square feet.
7 Q And so the total FAR of the project, it would be
8 below the permissible 1.5 recommended in the zone?
9 A Yes, it would be .47 for the mall.
10 Q Based on the entire mall property?
11 MR. GROSSMAN: For the record, what is FAR?
12 THE WITNESS: The floor area ratio.
13 MR. GROSSMAN: Okay.
14 BY MS. HARRIS:
15 Q And what is the height of the kiosk?
16 A It's 17 feet, 6 inches.
17 Q And what is the height of the proposed canopy?
18 A It's, I'm sorry, the height of the 17 feet, 6
19 inches is for the canopy and the height of the kiosk is 8
20 feet, 1 inch.
21 Q Okay. And do you know the maximum height
22 permitted in the C-2 zone?
23 A It's three stories or 42 feet.
24 Q Right. Thank you. And will the proposed signage
25 for Costco or can you please explain the proposed signage

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1 that's going to be proposed, whether it complies with the
2 zoning ordinance?
3 A There will be four signs on, one per side of the
4 gas canopy. Each sign will be 28.5 square feet, so about a
5 total of 114 square feet total and we will work with the
6 Department of Permitting Services for acquiring the proper
7 permits for that signage.
8 Q Thank you. Turning to lighting, was Mulvanny
9 involved in the preparation of the photometric study that
10 was provided, and I'm referring now to Exhibit 6?
11 A Yes, we were. We worked with our electrical
12 engineer for Costco on that and for the lighting, routinely
13 down lights underneath canopy and then signage lighting
14 directly above the signage.
15 Q And in connection with the photometric that was
16 done, can you please explain what the resulting foot candles
17 will be both at the property line that is shared with the
18 residential properties to the south and west and then also
19 along the ring road?
20 A It will be zero, the count will be zero at the
21 property line and it varies along the ring road from .1 to
22 1.2. Depending on where you're exactly at the edges of the
23 ring road, it does go higher along the entrances of the
24 drive aisles that are going up into the parking field.
25 Q And can you explain for those who may not be aware

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1 what a foot candle actually is?
2 A It's a measurement of light taken at a specific
3 point from where that light source is.
4 Q Thank you. And are you familiar with whether
5 after the station closes, whether the station will continue
6 to be lit?
7 A I believe after the station is closed, there will
8 be, during the week, Monday through Friday, lights will be
9 turned off and the same thing on Saturday and Sundays, and
10 then at 10:30 p.m. the remaining lights that are on in the
11 area will be turned off as well in the southwest corner of
12 the mall.
13 MR. GROSSMAN: Can you go over those times again?
14 So during the week, what are the times when the lights will
15 be on?
16 THE WITNESS: Prior to 9:30 p.m., so those lights
17 will be turned off at 9:30 p.m --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- at the fuel facility itself and
20 then the southwest quadrant at 10:15 p.m.
21 MR. GROSSMAN: All right. At the fuel facility it
22 will be 9:30?
23 THE WITNESS: Uh-huh.
24 MR. GROSSMAN: When you say at the fuel facility,
25 you mean at the pumps or do you mean the whole station?

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1 What do you mean by at the fuel facility?
2 THE WITNESS: At the canopy, which is --
3 MR. GROSSMAN: Okay.
4 THE WITNESS: -- where the down lights --
5 MR. GROSSMAN: Okay. So the canopy lights will be
6 turned off at 9:30 during the week? What about on the
7 weekend, when will the canopy lights be turned off?
8 THE WITNESS: They would be turned off at 7:00
9 p.m.
10 MR. GROSSMAN: On the weekend, the canopy lights
11 are off at 7:00 p.m.? Okay. Now what are the other lights
12 you're talking about?
13 THE WITNESS: The rest of the site lighting on --
14 MR. GROSSMAN: Okay.
15 THE WITNESS: -- the pole lights.
16 MR. GROSSMAN: And when will those, those lights
17 be turned off?
18 THE WITNESS: Around 10:30 p.m.
19 MR. GROSSMAN: During the week or on the weekend?
20 THE WITNESS: At all times.
21 MR. GROSSMAN: Okay.
22 BY MS. HARRIS:
23 Q And are those pole lights --
24 MS. HARRIS: I'm sorry, Mr. Grossman, were you --
25 MR. GROSSMAN: Yes.

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1 MS. HARRIS: -- finished with your questions?
2 BY MS. HARRIS:
3 Q Are those pole lights outside the special
4 exception area?
5 A No, they're not. They're --
6 Q Do you know, maybe do you know whether those pole
7 lights are outside the special exception area?
8 A Some of them are outside the special exception
9 area.
10 Q Okay. And then are you aware that there are --
11 are there, is there any security lighting that will remain
12 on even exceeding the hours that you just identified?
13 A It will be lit to be a secure area, but nothing
14 beyond where it would serve the neighborhood and not the
15 south end of the location.
16 MR. GROSSMAN: What does that mean, it will remain
17 on? What -- how much lighting are you talking about?
18 THE WITNESS: Very minimal. Just mainly to make
19 sure that, you know, people remain safe within the parking
20 and fuel facility area if there happens to be someone in
21 that location.
22 MR. GROSSMAN: And they will remain on at all
23 times or at all times at night or --
24 THE WITNESS: It would be the same, in fact, as
25 the mall security lighting that happens on the mall.

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1 MR. GROSSMAN: Okay. Is any of the lighting,
2 canopy lighting or other lighting, create any glare into the
3 residential neighborhoods?
4 THE WITNESS: No, it is not throughout the course
5 of the residential neighborhood and the light, the metric as
6 the exhibit shows as it reaches that property line.
7 MR. GROSSMAN: So are you saying that there is
8 zero for candle footing if I understood you correctly at the
9 property line for any of the residential neighborhoods?
10 THE WITNESS: That is correct.
11 MS. HARRIS: Thank you.
12 BY MS. HARRIS:
13 Q One last question having to do with the screen
14 wall. Can you please explain the construction of the
15 proposed screen wall?
16 A Yes.
17 Q Mr. -- let me just, Mr. Duke identified the
18 location of it, but if you would explain the construction of
19 it, that would be helpful.
20 A Yes. There will be posts that would be supported
21 on two footings, so there will not be a continuous footing
22 along the ring road, so that would limit disturbance and
23 excavation needed for the screen wall. And then there would
24 be opaque panels of recast concrete that fit between those
25 posts and on both the north and south side we will be using

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1 a material called green screen to provide -- it's pretty
2 much a three-dimensional screen that adheres onto that
3 opaque panel and that will provide for the greenery to grow
4 on that panel.
5 MR. GROSSMAN: A three-dimensional screen, what do
6 you mean by that?
7 THE WITNESS: It has a thickness to it. It's
8 about 2 1/2 inches thick.
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: I have no other questions for Ms.
11 Vopicelli.
12 MR. GROSSMAN: How tall is it?
13 THE WITNESS: Eight feet.
14 MR. GROSSMAN: Okay. Cross-examination.
15 CROSS-EXAMINATION
16 BY MS. ROSENFELD:
17 Q Do you have an exhibit that shows the green wall?
18 A Pardon me?
19 Q Do you have an exhibit that shows the wall?
20 A The wall?
21 MS. HARRIS: Our next witness.
22 MR. GROSSMAN: You mean depicts the proposed wall?
23 MS. HARRIS: Well, our next witness is going to be
24 Mr. Mark Willard, the landscape architect, and he has
25 exhibits that show the wall.

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1 MR. GROSSMAN: The proposed wall?
2 MS. HARRIS: Yes.
3 MR. GROSSMAN: Okay.
4 BY MS. ROSENFELD:
5 Q What role did you have in the design of the wall?
6 A Materials and the construction of the wall.
7 Q And were you involved in the length of the wall?
8 A That was determined by the engineers and Costco
9 operations.
10 Q And the most recent plan, which is now Exhibit, is
11 it 111(c)?
12 MR. GROSSMAN: No, 119, you mean?
13 BY MS. ROSENFELD:
14 Q 119, 119(c), what is the length of the wall end to
15 end on the exhibit? What is the length of the wall
16 currently? It, the wall is represented on the exhibit but
17 it's not marked.
18 A Okay.
19 Q Do you know the length of the wall under the
20 current plan?
21 A I did not produce that drawing, so I do not know.
22 Q Do you know if the wall will rest flush against
23 the ground?
24 A It will work with the, we will work with the
25 grades that are there.

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1 MR. GROSSMAN: I don't think that exactly answered
2 the question. Will it be flush on the ground or will it be
3 up on feet?
4 THE WITNESS: It will be as flush as we possibly
5 can get it on the ground.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: There would be no gap if that's what
8 you're referring to.
9 MR. GROSSMAN: Okay. And when you say as flush as
10 you can make it, you're talking about virtually a quarter of
11 an inch or something like that or --
12 THE WITNESS: Yes, different grade variations --
13 MR. GROSSMAN: Okay.
14 THE WITNESS: -- made cause a slight --
15 MR. GROSSMAN: Okay.
16 BY MS. ROSENFELD:
17 Q And how far apart are the posts that --
18 A Seven feet, five inches approximately.
19 Q And how, let's, how, what's the diameter of each
20 post?
21 A They're currently approximately like four inches,
22 but when we get into further design with our structural
23 engineer on that part just to make sure we're using
24 appropriate posts.
25 Q And how do those posts get installed?

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1 A It will be drilled footing that is drilled into
2 the ground and then the posts will be placed in, cast in
3 concrete.
4 Q And what's the limited disturbance for drilling
5 each of those holes?
6 A Just minimum around the area where it's being
7 drilled. No excavation will be needed.
8 Q Six inches? Six feet?
9 A Two feet.
10 Q Two feet of disturbance for each post?
11 A Off of center, yes.
12 Q Two feet beyond the perimeter of each post?
13 A Approximately.
14 Q And you said the wall is eight feet tall?
15 A That's correct.
16 Q Prior times was the wall taller than eight feet?
17 A Yes.
18 Q And what was the tallest --
19 MR. GROSSMAN: You mean the proposed wall, it was
20 proposed --
21 MS. ROSENFELD: The proposed wall.
22 MR. GROSSMAN: -- to be tall?
23 MS. ROSENFELD: The proposed wall.
24 THE WITNESS: Actually I, from 14 feet to eight
25 feet.

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1 BY MS. ROSENFELD:
2 Q And why was the height reduced down to eight feet
3 in the final design, final proposed design?
4 A After further study, we didn't see it necessary to
5 to have it at 14 feet.
6 MR. GROSSMAN: Why not?
7 THE WITNESS: You're getting into structure
8 implications where you will need more footings and other
9 supports for that wall.
10 MR. GROSSMAN: Well, other than the need for more
11 support, is there a reason why it's better or not better to
12 have it shorter or longer?
13 THE WITNESS: Well --
14 MR. GROSSMAN: Or shorter or taller I should say?
15 THE WITNESS: Better --
16 MR. GROSSMAN: Well, that's what I'm asking. What
17 goes -- other than the question of structural support, what
18 goes into the decision to shorten the wall? What factors
19 are you considering?
20 THE WITNESS: Well, at this point it's just
21 providing the backdrop for the green screen that's being
22 applied, so the green screen will have vines growing up it
23 and plant material, but whether it's eight feet or 14 feet,
24 we were intending to do the entire wall with that at this
25 point.

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1 MR. GROSSMAN: Right. But there must be some
2 rationale, is there any rationale beyond the structure
3 support issue which causes you to shorten the wall from 14
4 feet to eight feet or would there be any rationale that
5 would justify or require you to have it taller than eight
6 feet?
7 THE WITNESS: No.
8 MR. GROSSMAN: Okay.
9 BY MS. ROSENFELD:
10 Q Let me ask it a different way. Why did you start
11 with a taller wall?
12 A We started with a taller wall, well, there's a
13 wooded area behind the south part of the site, but when we,
14 after further study, we determined that wooded area was
15 thick enough and the height of the wall will be tall enough
16 to screen any visual implications of the gas station from
17 the south side.
18 Q And what are the screening purposes? What
19 screening purposes does the wall serve?
20 A Mainly visual.
21 Q Is the wall solid in a sense that is it one
22 continuous line?
23 A At the current time, I believe so, yes.
24 Q Are there any breaks in the wall that would allow
25 for pedestrians to walk from one side of the wall to

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1 another?
2 A Currently, no.
3 MR. GROSSMAN: Does this type of wall have any
4 sound modification effects?
5 THE WITNESS: The concrete can, that's being used
6 does have a physical property to it.
7 MR. GROSSMAN: Okay. And has anybody studied what
8 the effects would be of how, how much sound would be reduced
9 by that wall?
10 THE WITNESS: We haven't gotten into the studies
11 of further sound reductions, but there shouldn't be a sound
12 issue that would be any extent greater than what's going on.
13 MR. GROSSMAN: Okay.
14 BY MS. ROSENFELD:
15 Q You described an opaque concrete. Can you
16 describe in more detail what that is and what it looks like?
17 A Well, it would be a concrete wall, so you wouldn't
18 be able to see through it. There wouldn't be any seams or
19 any pieces that are missing from the wall. It would be a
20 solid material.
21 Q And how thick is that concrete base?
22 A Currently I believe it's on Boehler's drawings,
23 the detail of the concrete, but you're looking at, like a
24 two inch panel, two, three inch panel.
25 Q And what exhibit do you have that gives the

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1 precise dimensions of that concrete?
2 A The one --
3 MR. GROSSMAN: Ms. Harris?
4 MS. HARRIS: I don't know. We have a spec sheet,
5 but I'm not so sure the thickness is on there. I need to
6 check.
7 MR. GROSSMAN: Okay. We'll wait.
8 MS. HARRIS: Mr. Grossman, the thickness is not on
9 the spec sheet that is here.
10 MR. GROSSMAN: So what's the witness reading from?
11 From your landscape plan. Well, it says on the landscape
12 plan, Exhibit 86(i), one of the pages of 86(i), page 6, it's
13 going to say eight foot high, acoustic and green wall, and
14 then it says see architectural. So I'm not sure which of
15 the architectural it's under.
16 MS. HARRIS: The inspection that was submitted in
17 connection with the landscape exhibit as, and my other specs
18 are on there, but it doesn't mention the specs.
19 MR. GROSSMAN: Okay. So right now we have
20 testimony of only two feet sections?
21 THE WITNESS: Two inches.
22 MR. GROSSMAN: I'm sorry, two inches. Thank you.
23 MS. ROSENFELD: And, Ms. Harris, are you looking
24 at an exhibit, prepared by Mark Willard and Associates
25 called green wall details?

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1 MS. HARRIS: Yes.
2 MS. ROSENFELD: And it says green wall benefits on
3 the right?
4 MS. HARRIS: On the right-hand corner.
5 BY MS. ROSENFELD:
6 Q According to the specs on this exhibit, is
7 something described as a 16-inch diameter sonnitude
8 footings, would that be the same 2-inch, 2-inch -- one
9 moment. I believe you testified that there would be 2-
10 inch -- oh, that the posts would be four inches in diameter.
11 Are those the same posts as the 16-inch diameter assigned to
12 the zone?
13 A That's in ground.
14 Q What's in ground?
15 MR. GROSSMAN: All right. So the witness was just
16 handed a document. What is that document?
17 THE WITNESS: The green wall details.
18 MR. GROSSMAN: Do we know what exhibit number that
19 is?
20 MS. HARRIS: It was originally 5G(i).
21 MR. GROSSMAN: I have 5G exhibit, so was there
22 another green wall detail?
23 MS. HARRIS: No.
24 MR. GROSSMAN: Okay.
25 MS. HARRIS: There landscaping plans that had

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1 additional information, but what I --
2 MR. GROSSMAN: Right.
3 MS. HARRIS: -- what was just handed the
4 witness --
5 MR. GROSSMAN: Yes.
6 MS. HARRIS: -- was submitted with the original
7 file.
8 MR. GROSSMAN: Okay. So that's the 5G --
9 MS. HARRIS: Correct.
10 MR. GROSSMAN: -- documents? Okay.
11 BY MS. ROSENFELD:
12 Q I already asked this question, which plans are
13 associated with the current special exception?
14 MS. HARRIS: I'm sorry, repeat that.
15 MS. ROSENFELD: Are the green wall details that
16 were filed with Exhibit 86(i), I believe it was, are they
17 the current details for the green wall?
18 MS. HARRIS: Yes, though there's additional
19 information that was originally included which remains
20 relevant.
21 MS. ROSENFELD: Okay. Is that information, does
22 that original information have specifications relating to
23 the green wall?
24 MS. HARRIS: It's the exact thing that you were
25 just reading off of, I believe, the thing that says the

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1 green wall.
2 MR. GROSSMAN: And that's Exhibits 5(g), (h) and
3 (i) if that's what you're talking about. Actually this one
4 says green wall benefits.
5 MS. ROSENFELD: Okay. Thank you. So what was
6 filed with 86 is just a larger version of what I have that
7 was filed with Exhibit 5?
8 MS. HARRIS: I'm not sure where you -- what was
9 submitted with 86 was something called landscape master
10 plan, aerial photograph, landscape sections, landscape
11 section and elevation.
12 MS. ROSENFELD: Okay.
13 BY MS. ROSENFELD:
14 Q So to go back then to 86(i), the exhibit labeled
15 green wall details, on this exhibit it calls out a 16-inch
16 diameter Sonotube footing, depth varies. Is that the same
17 thing you were describing?
18 A The post, if you're looking at elevation, it shows
19 that those to be smaller than the footing.
20 Q Okay. So the 4-inch post fits within the 16-inch
21 Sonotube?
22 A Yes.
23 Q Okay. And does the Sonotube, is the Sonotube
24 drilled into the ground?
25 A There is drilling that goes on to, the footing

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1 into the ground, yes.
2 Q And can you describe what kind of disturbance is
3 associated with drilling the footing into the ground?
4 A Just pulling the dirt up in that, to that drill
5 tube section, I will figure out. So whatever material comes
6 out the ground is disturbed.
7 Q You said it's drilled through suction?
8 A No, I did not say that.
9 Q I'm sorry.
10 A I said it was drilled into the ground and that
11 dirt will be extracted from that pole and that is the extent
12 of the disturbance.
13 Q So is there any disturbance beyond the 16-inch
14 diameter of the two?
15 A Just the overspill of dirt from that pole.
16 Q And how deep into the ground is the Sonotube are
17 they drilled?
18 A It varies and it would be determined by the
19 engineering principles.
20 Q Are we talking about inches?
21 A I can't speak to that because I don't have that
22 engineering background.
23 Q Do you know who would have that information?
24 A An engineer, a structural engineer or a civil
25 engineer.

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1 MR. GROSSMAN: What difference does it make to you
2 how deep it is? I'm not sure I understand.
3 MS. ROSENFELD: I'm trying to get a sense for what
4 kind of disturbance, the scope of disturbance that might be
5 created as a result of the additional dirt that's being
6 pulled from the ground.
7 MR. GROSSMAN: Digging a series of 16-inch in
8 diameter holes?
9 MS. ROSENFELD: I don't know unless I ask the
10 questions.
11 MR. GROSSMAN: Okay.
12 BY MS. ROSENFELD:
13 Q On this --
14 MR. GROSSMAN: Because I mean generally speaking,
15 the special exceptions area, let's assume there's going to
16 be some disturbance from construction. It's not something
17 that's generally speaking controlled, except by permits that
18 limit it. I sometimes impose conditions or recommended
19 conditions be imposed to limit the effects during a
20 construction process, but it's generally speaking not the,
21 it's not the focus usually.
22 MS. ROSENFELD: Well, I understand that, but at
23 least a portion of this green wall, as I understand it, is
24 going to be constructed with the forest buffered is very
25 much at issue --

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1 MR. GROSSMAN: Okay.
2 MS. ROSENFELD: -- in this case and so that's
3 why --
4 MR. GROSSMAN: All right.
5 MS. ROSENFELD: -- these questions I think are
6 relevant.
7 MR. GROSSMAN: Okay. Ask away.
8 BY MS. ROSENFELD:
9 Q On the same green wall details, there's the
10 concrete panel and on either -- this shows a green screen on
11 both sides of the concrete panel?
12 A I said that there's a green screen on both sides.
13 Q And how wide is that green screen itself?
14 A It's about a 2-inch deep panel for, so two inches
15 on each side.
16 Q And what color is the concrete panel?
17 A It's natural concrete.
18 Q And what color is the green screen panel?
19 A It would be green. It's made of green material.
20 Q Okay. And beyond that, there's, it shows plants?
21 Are those plants growing on the green screen itself or are
22 they separate and additional part of installation?
23 A I think that's outside of my scope of knowledge
24 and that would be a recommendation by the landscape of what
25 plant material would be growing on --

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1 Q I'm not asking what plant material, I'm asking
2 where is it installed?
3 A It's a plant material. I'm not exactly --
4 Q Does it grow up through the green screen or does
5 it grow up in a separate panel where it says plants? Is
6 there a third panel? There's the concrete --
7 A No, there's not -- the plants grow on the green
8 screen.
9 MR. GROSSMAN: It looks like a wire mesh if I'm
10 looking at Exhibit 5(g), I think that's the same thing
11 you're looking at thus far, it looks like there's a wire
12 mesh that covers it and plants are somehow planted onto the
13 wire mesh and it grows up holding on the wire mesh, is that
14 the idea? So when it finishes, it looks somewhat akin to
15 the walls that are depicted on Exhibit 5(g) that I'm holding
16 up?
17 THE WITNESS: Correct.
18 MR. GROSSMAN: Okay.
19 BY MS. ROSENFELD:
20 Q On the special exception plan itself, Exhibit 119,
21 can you show me exactly where the wall begins and where it
22 ends?
23 A It begins approximately at the southwest corner of
24 the ring road and extends down past to the loading dock
25 area.

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1 Q And in the updated plan, I believe an additional
2 46 feet were added to the length of the wall? Where, what
3 area was that additional length added?
4 A I did not produce the Koehler Engineering plans,
5 so I -- it's not marked on my --
6 Q Does any exhibit show exactly where --
7 MR. GROSSMAN: Where what?
8 MS. ROSENFELD: Does any exhibit show --
9 MS. HARRIS: No, but I think the letter that we
10 submitted with the Exhibit 48 notes the fact that it was
11 extended 46 feet to the east.
12 MR. SILVERMAN: What's the date of that letter?
13 MS. HARRIS: March 26th.
14 MR. GROSSMAN: I mean it's depicted -- I don't
15 think that the witness is, does not actually have 119(c) in
16 front of her. That's 111 version of a different plan. But
17 I think I -- if you look at 119(c), it actually depicts the
18 wall going quite a bit past the end of the special exception
19 site, right?
20 BY MS. ROSENFELD:
21 Q What is the total thickness of the wall, of the
22 concrete and the plantings on both sides?
23 A There, the green screen is about two inches. It
24 would less than an inch probably between the green screen
25 and the concrete wall. That's two to three inches for the

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1 concrete, so not exactly, but approximately it would be
2 about nine inches of thickness.
3 Q And are the sonnitudes going to be installed one
4 foot back from the curb?
5 A I did not approve the plan of where the
6 installation of those footings would be placed.
7 MR. GROSSMAN: Ms. Rosenfeld, do you see on the
8 exhibit that's up there now, 119(c), you see the dark line
9 that extends much further out to the east? That's depicting
10 the wall.
11 MS. ROSENFELD: Right. It's just that when I look
12 at the wall -- I'm not sure this is the right witness to
13 answer the question --
14 MR. GROSSMAN: Okay.
15 MS. ROSENFELD: -- and maybe I can just talk to
16 Ms. Harris offline?
17 MR. GROSSMAN: Okay.
18 MS. ROSENFELD: I don't, I just have not in my
19 mind fully understood where the old wall ended and where the
20 new wall begins --
21 MR. GROSSMAN: Okay.
22 MS. ROSENFELD: -- and has been added.
23 MR. GROSSMAN: I understand.
24 MS. ROSENFELD: I understand generally the
25 location, but not exactly.

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1 MR. GROSSMAN: I think she plans to call the
2 landscape architect to answer all those questions in any
3 event, is that correct, Ms. Harris?
4 MS. HARRIS: Yes.
5 MR. GROSSMAN: Okay.
6 MS. ROSENFELD: And can the landscape architect
7 also explain where exactly the footings will be?
8 MS. HARRIS: Where the what will be?
9 MS. ROSENFELD: Where the footings will be located
10 with respect to the curb?
11 MS. HARRIS: I think Mr. Dan Duke already
12 testified to that.
13 MR. GROSSMAN: I believe he did.
14 MS. ROSENFELD: Well, he did testify that the wall
15 was going to be located one foot inside the curb line. My
16 question is are the footings going to be located with one
17 foot inside the curb line or will the interface of the wall
18 be located one foot inside the curb line?
19 MS. HARRIS: Well, the structural construction of
20 the wall itself was outside the scope of the landscape
21 architect's expertise.
22 MR. GROSSMAN: All right. So --
23 MS. ROSENFELD: The question is who to answer
24 that? Many of the questions I have I think --
25 MS. HARRIS: I mean I think --

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1 MS. ROSENFELD: -- wall, Mr. Duke told me with the
2 answer to --
3 MS. HARRIS: No, conceptually and generally we
4 know, we know what the, how the wall is going to be
5 constructed, but I note that it hasn't been designed
6 specific to the site yet.
7 MR. GROSSMAN: Okay.
8 MS. HARRIS: And so the center line of the wall
9 will be one foot off the curb and that's what we have at
10 this point.
11 MR. GROSSMAN: Okay.
12 MS. HARRIS: Okay.
13 MS. ROSENFELD: The center line of the wall will
14 be one foot?
15 MS. HARRIS: I mean a structural engineer --
16 MS. ROSENFELD: Okay.
17 MS. HARRIS: -- would know if we need to bring in
18 a structural engineer for this point.
19 MR. GROSSMAN: I don't know that you do, but let's
20 see what develops. Okay.
21 MS. ROSENFELD: Okay.
22 MR. GROSSMAN: So does that complete your
23 questioning of this witness, Ms. Rosenfeld?
24 BY MS. ROSENFELD:
25 Q During the installation of the wall, how will you

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1 protect the forest buffer?
2 A I'm sure the contractor would take all
3 precautionary measures to protect the forested area.
4 Q Are you aware of any forest protection measures
5 that are in place or in the record?
6 A I don't remember.
7 Q And who is responsible for maintenance and repair
8 of the fence?
9 A I think that needs to be determined between Costco
10 and Westfield at this point, but I'm not sure if that
11 determination has been made.
12 MR. GROSSMAN: It will be on Westfield property,
13 is that correct? You have to answer yes or no.
14 THE WITNESS: Yes.
15 MR. GROSSMAN: It will be on Westfield property?
16 THE WITNESS: Yes.
17 MR. GROSSMAN: Okay. So, presumptively, Westfield
18 will be responsible, they may work something out with
19 Costco, but that's presumptively their responsibility as the
20 owner of the land.
21 MS. ROSENFELD: I apologize. I just want to make
22 sure, I'm collecting --
23 MR. GROSSMAN: Sure.
24 MS. ROSENFELD: -- and final questions.
25 BY MS. ROSENFELD:

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1 Q How much -- what kind of maintenance does wall
2 like this require?
3 A It would depend on the plant material that was
4 chosen for the wall.
5 Q And that would be for the landscape architect to
6 address, right?
7 A Yes.
8 MS. ROSENFELD: Mr. Grossman, I don't have any
9 further questions. Thank you.
10 MR. GROSSMAN: Just out of curiosity, this, the
11 green plant material you say is going to be on both sides of
12 the wall, is that correct?
13 THE WITNESS: That's correct.
14 MR. GROSSMAN: So whoever owns the wall would
15 maintain it on both sides of the wall?
16 THE WITNESS: As far as I can see, yes.
17 MR. GROSSMAN: All right. Okay. Any redirect?
18 MR. SILVERMAN: Just one.
19 MR. GROSSMAN: Yes, sir, one question.
20 MR. SILVERMAN: Thank you.
21 BY MR. SILVERMAN:
22 Q Ms. Vopicelli, there's two, but one issue. How
23 long have you been working on this project?
24 A I've been working on this project for, since about
25 2010.

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1 Q And how many wall designs have you seen?
2 A For this project?
3 Q Yes.
4 A Two.
5 Q Just two?
6 A Yes.
7 Q And the other one was what?
8 A The varying height wall.
9 Q The varying height wall? Okay. I must have seen
10 more, but thank you very much.
11 MR. GROSSMAN: All right. Any redirect?
12 MS. HARRIS: No.
13 MR. GROSSMAN: All right. Thank you very much,
14 ma'am. All right. So shall we proceed with Mr. Willard or
15 do you want to call it a day, what do you want to do? It's
16 now three minutes to 5:00. I guess the -- how long -- Mr.
17 Willard, I suspect, will take more than --
18 MS. HARRIS: Yes.
19 MR. GROSSMAN: -- three minutes?
20 MS. HARRIS: Maybe we can agree on this point?
21 MR. SILVERMAN: Yes.
22 MS. ROSENFELD: We're ready to call it a day.
23 MR. SILVERMAN: Call it a day.
24 MR. GROSSMAN: I mean we, I have on numerous
25 occasions run quite late, but I don't see much point in

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1 doing that on a hearing that's going to last multiple days.
2 So if everybody is agreeable, we'll proceed with Mr. Willard
3 and Mr. Cronyn at the next --
4 MS. HARRIS: Well, actually my, as my e-mail
5 indicated and because we had designed certain days non-
6 environment, non-science --
7 MR. GROSSMAN: Yes.
8 MS. HARRIS: -- days, that we would prefer, and I
9 think the --
10 MR. GROSSMAN: Okay.
11 MS. HARRIS: -- they would agree that we should
12 get, focus on Mr. Sullivan and then put those other two
13 witnesses on at a later date and the other thing we'll be
14 doing is Michele and I will coordinate for additional
15 potential hearing dates.
16 MR. GROSSMAN: Okay. So the next hearing date is
17 May 14 on the calendar as I have it and you plan to have Mr.
18 Sullivan?
19 MS. HARRIS: Yes.
20 MR. GROSSMAN: Okay. Is that agreeable to
21 everybody? I hear a lot of heads nodding, so I'll assume
22 that's yes.
23 MS. HARRIS: Is that hearing going to be here or
24 upstairs?
25 MR. GROSSMAN: I haven't checked the calendar for

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1 that room on the 4th -- no, it will be down here because
2 there is another hearing on the 14th upstairs. We're
3 doubling up now, hearings in both rooms, so we have reserved
4 this room for all the pre-planned dates we had. Although, I
5 think that we can fit a crowd this size in our regular
6 hearing room, so we can on occasion move it up there. All
7 right. Is there anything else that we need to address
8 before we break for our next exciting period? Seeing no
9 volunteers here, we are adjourned until May 14th.
10 MS. HARRIS: Thank you.
11 (Whereupon, at 4:59 p.m., the hearing was
12 adjourned.)
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. Digitally signed by Tracy M. Hahn

ELECTRONIC CERTIFICATE

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 in the matter of:

Petition of Costco Wholesale Corporation
Local Map Amendment No. S-2863
Office of Zoning and Administration Hearings No. 13-12

By:

Tracy M. Hahn, Transcriber

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