

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
:
- - - - -X

A hearing in the above-entitled matter was held on
May 1, 2013, commencing at 9:38 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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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Wes Guckert				
By Ms. Harris:	18			
By Mr. Adelman:		96		
By Mr. Charman:		157		
By Ms. Rosenfeld:		171		

E X H I B I T S

Exhibit No.		Marked/Received
108	Ground Rules for Site Visit	9
109	Affidavit of Posting	13
110	Total cars queued each minute	63
	Sterling, Virginia, Costco	
111	Exhibit 54(i) marked up	193

P R O C E E D I N G S

1 MR. GROSSMAN: Okay. This is the second day of
2 the public hearing in the matter of Costco Wholesale
3 Corporation, Board of Appeals No. S-2863, OZAH No. 13-12.
4 Petition for a special exception pursuant to Zoning
5 Ordinance Section 59G 2.06 to allow petitioner to construct
6 and operate an automobile filling station which would
7 include 16 pumps. The subject site is located at 11160
8 Veirs Mill Road, Silver Spring, Maryland, Lot N631, Wheaton
9 Plaza, Parcel 10, also known as Westfield Wheaton Mall, and
10 is zoned C-2, which is general commercial. The hearing was
11 begun on April 26, 2013, and set to resume today.
12

13 The next scheduled hearing date is May 6, 2013, in
14 this room. That's the COB Auditorium. This hearing is
15 conducted on behalf of the Board of Appeals. My name is
16 Martin Grossman. I'm the Hearing Examiner, which means I
17 will take evidence and write a report and recommendation to
18 the Board of Appeals which will make the decision in the
19 case. Will the parties identify themselves for the record
20 please?

21 MS. HARRIS: Pat Harris with Lerch, Early and
22 Brewer.

23 MR. GOECKE: Michael Goecke with Lerch, Early and
24 Brewer on behalf of the applicant, Costco.

25 MR. GROSSMAN: Mr. Goecke.

1 MR. ADELMAN: Mark Adelman for the Coalition.
2 MR. GROSSMAN: Mr. Adelman, Dr. Adelman, I should
3 say.

4 MS. ADELMAN: Abigail Adelman for the Coalition.

5 MS. ROSENFELD: Ms. Rosenfeld, legal counsel for
6 Kensington Heights Civic Association.

7 MS. CORDRY: Karen Cordry, treasurer, Kensington
8 Heights Civic Association.

9 MS. SAVAGE: And Donna Savage, land use chair,
10 Kensington Heights Civic Association.

11 MR. GROSSMAN: Okay. Do we have nobody here from
12 the Kensington View Civic Association today?

13 MS. HARRIS: Not yet.

14 MS. SAVAGE: Not yet.

15 MR. GROSSMAN: Well, it is 9:36, at least on that
16 clock. Actually it's 9:39.

17 MR. SILVERMAN: I apologize for being late, sir.

18 MR. GROSSMAN: Oh, I'm sorry, Mr. Silverman.

19 MR. SILVERMAN: Larry Silverman.

20 MR. GROSSMAN: But you're also not here on behalf
21 of the Kensington View Civic Association, correct?

22 MR. SILVERMAN: No, sir.

23 MR. GROSSMAN: So we don't have anybody here from
24 them. Yes, sir?

25 MR. CHARMAN: Clifford Charman on behalf of

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1 myself.

2 MR. GROSSMAN: Yes, Mr. Charman. And I don't see,

3 well, how do you suggest we proceed, opposition? Should we

4 wait a few more minutes for somebody from Kensington View?

5 Does anybody know if someone from Kensington View Civic

6 Association is going to be here?

7 MS. ROSENFELD: Mr. Grossman, I don't know if

8 they're going to be here or not. I do have a couple of

9 preliminary matters that I don't think involve Kensington

10 View, if we could start with those perhaps and see if

11 anyone --

12 MR. GROSSMAN: All right.

13 MS. ROSENFELD: -- appears?

14 MR. GROSSMAN: Well, I mean everything that

15 happens here involves them, so why don't we wait until, for

16 another five minutes until a quarter, until 9:45 before we

17 actually begin in earnest to see if somebody shows up. Does

18 anybody have Ms. Duckett's telephone number?

19 MS. ROSENFELD: I'm looking. We're looking now.

20 MR. GROSSMAN: Okay. And I guess -- is there

21 anybody else here from Kensington View?

22 MS. SHEARD: Virginia Sheard.

23 MS. ROSENFELD: Virginia Sheard is here.

24 MR. GROSSMAN: Oh, yes, Virginia Sheard is here.

25 MS. SHEARD: And Silvia Divionne (phonetic sp.).

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1 MR. GROSSMAN: Well, until we get started in

2 earnest, I was speculating as to why the ends of this last

3 room do not appear to be painted and then it occurred to me

4 that perhaps they put these two ends on backwards. They're

5 probably the left end over here and the right end over

6 there. But when I tried to check last night, the doors were

7 locked, so I couldn't check. So it wouldn't shock me if

8 that's the case.

9 MS. ROSENFELD: It is painted on this end.

10 MS. SHEARD: It is painted on this end.

11 MR. GROSSMAN: Yes, that's probably the case.

12 Somebody just probably put it together, in fact. The other

13 thing, I thought maybe it might be helpful if we had a

14 little bit more room on this end if we moved this table

15 around a little bit to give the witness the opportunity to

16 better address the boards if they have to look at the

17 boards, but anybody else have any suggestions in that

18 regard?

19 MS. DUCKETT: More parking.

20 MS. HARRIS: Were you thinking about --

21 MS. DUCKETT: The parking garage, garage is full.

22 MR. GROSSMAN: Nothing exciting is happening?

23 You're welcome to take a seat at counsel table too. There's

24 another chair there next to you, fill them in.

25 MS. DUCKETT: Thank you.

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1 MR. GROSSMAN: Okay. Nothing, nothing transpired

2 except my calling the case, so we were waiting for you.

3 Okay. So let the record reflect that Eleanor Duckett has

4 now arrived on behalf of Kensington View Civic Association.

5 All right. Let me address a couple of preliminary matters.

6 Ms. Harris --

7 MS. HARRIS: Yes?

8 MR. GROSSMAN: -- have you provided the opposition

9 with copies of the new plans and exhibits --

10 MS. HARRIS: Yes, we did.

11 MR. GROSSMAN: -- that you've produced?

12 MS. HARRIS: We provided the hard copies and

13 electronic copies.

14 MR. GROSSMAN: Good. Okay. Did receive the

15 electronic copies that you provided to my office? All

16 right. The question of the Hearing Examiner's, of the

17 Hearing Examiner having a site visit was raised by both

18 parties at hearing day one and so I have prepared a handout

19 for the parties on the subject which I'll read now and will

20 make an exhibit.

21 The next exhibit will be Exhibit 108. Some

22 additional exhibits have been added since the last hearing,

23 other things arrived here. We had an email exchange. It

24 was Exhibit 106, and another one, 107. So this will be

25 Exhibit 108 will be Hearing Examiner ground rules if there

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1 is a site visit.

2 (Exhibit No. 108 was marked for

3 identification.)

4 MR. GROSSMAN: You don't have to take serious note

5 here. As I said, I will hand out a copy as soon as I'm

6 finished. It's not as lengthy as my last set of handouts,

7 so no fear. All right. First is the Board of Appeals rule

8 on the subject, which is Board of Appeals Rule 7.2.4(I), I

9 believe it is.

10 "Upon request of any party or upon its own

11 motion, the Board may in its discretion visit the

12 site, which is the subject of the proceeding, on

13 reasonable notice to the parties. The parties may

14 submit or the Board may require a listing of those

15 specific areas on the site for the Board to view

16 it. Parties and their representatives may be

17 present to observe, by no testimony may be taken.

18 The parties or their representatives are

19 prohibited from engaging in any discussion with

20 Board members at the site visit. The Board must

21 issue written findings of fact relating to the

22 site visit and any proceeding where a site visit

23 has been conducted. A member who has not

24 participated in the site visit prior to the Board

25 vote may participate in the decision, however, the

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1 Board may schedule an additional site visit for
2 the purpose of permitting an absent or a new
3 member to visit the site."
4 Well, the last two sentences don't really apply
5 here and the Hearing Examiner stands in the footing of the
6 Board in this kind of situation. So this is the Board rule,
7 number one, and we have to follow it if there's any site
8 visit.
9 Number two, both sides have requested that I visit
10 the site. Please consult with each other prior to the next
11 scheduled hearing date, that's May 6, 2013, and try to agree
12 on a route you wish me to follow and what specific areas you
13 wish me to observe. Please submit the agreed plan to me on
14 May 6. If that's not convenient for the parties, let me
15 know and we can make it a future date. If you cannot agree
16 on everything, then submit the portion you can agree on and
17 note where you diverge. Since the condition of my knees and
18 hips limits how far I can comfortably walk, please plan for
19 a route that I can access by car and specify, and that
20 specifies where I should get out to look around.
21 Number three, after reviewing this submission, I
22 will decide whether a site visit is warranted given the
23 extensive documentation in this regarding the site and
24 surrounding area and the limitations on the conduct of site
25 visits contained in the above rule. Although I have some

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1 familiarity with the Wheaton Plaza area, I will base my
2 findings in this case solely on the evidence of record.
3 Number four, bear in mind that the above rule
4 prohibits me from, quote, engaging in any discussion,
5 unquote, with the parties or their representatives during
6 the site visit. I interpret this prohibition to include
7 non-verbal communication. Thus, neither the applicant nor
8 members of the public, including the opposition, will be
9 able to point things out to me while I am there. If I
10 decide to conduct the site visit, I will announce the date,
11 time and itinerary of the visit during a public hearing and
12 that it will be open to the public as required by the
13 applicable case law.
14 Number six, if a site visit is conducted, my
15 report and recommendation to the Board will contain a
16 written statement of findings relating to the site visit as
17 required by the rule. However, the recent case of WSG
18 Holdings v. Larry Bowie, 429 Md. 598, 57 A.3d 463, a 2012
19 decision, raises a question in my mind as to whether a site
20 visit would require that I publish my findings regarding the
21 visit prior to my closing the record to allow commentary and
22 possibly contrary evidence from the parties. Although the
23 WSG Holdings decision involved a site visit at which
24 unrecorded discussions and interactions took place, unlike
25 the observation only visit planned here.

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1 I want to make sure that we don't inadvertently
2 create a due process issue. I asked the parties to brief
3 this issue for submission with their planned itinerary on
4 May 6, 2013. I'd just add, ordinarily when I issue
5 findings, they're just part of my report and the record had
6 already been closed prior to that. This case raises other
7 questions and other case law about whether that process can
8 be followed when you have a site visit, although, as I said,
9 the case involved a different kind of site visit and
10 different kinds of things happened there. Let me ask that
11 somebody from the, Ms. Harris, if you wouldn't mind handing
12 out of copies of Exhibit 108 to the parties? Thank you.
13 Okay. Also as part of my introduction last time,
14 I asked both parties to consider whether there were
15 objectionable materials in submitted written exhibits and to
16 exchange that information. Have the parties done that? Ms.
17 Harris?
18 MS. HARRIS: No.
19 MR. GROSSMAN: Okay. I'd ask that you do that,
20 hopefully prior to our next meeting because we do want to
21 know if there are objectionable materials that have been
22 submitted, or portions of them more likely such as hearsay
23 conversations in which are offered to prove the truth of
24 what was stated by the declarant who is not available for
25 cross-examination. So we do want to at least address your

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1 attention to that in this case.
2 It may be that everything can be admitted here,
3 but I do want to make sure that you have the opportunity to
4 look at that, all right? Now, Ms. Harris, have you
5 submitted a copy of the affidavit of posting?
6 MS. HARRIS: I have it right here. That was one
7 of the --
8 MR. GROSSMAN: All right.
9 MS. HARRIS: -- preliminary matters I wanted to
10 address.
11 MR. GROSSMAN: Bring that forward. The affidavit
12 of the posting is an affidavit which is signed by the
13 applicant indicating that the property, the site, has been
14 posted with the appropriate notice for the appropriate
15 period of time. This will be Exhibit 109, the affidavit of
16 posting.
17 (Exhibit No. 109 was marked for
18 identification.)
19 MR. GROSSMAN: I note that because this is a case
20 in which there is opposition, the Board rules require that
21 it remain posted until 30 days after the Board's, effective
22 date of the Board's resolution. Okay. Any other
23 preliminary or procedural matters? Ms. Harris?
24 MS. HARRIS: I had one preliminary matter. Thank
25 you. In your 20 questions, you raised a number of legal

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1 questions and also issues that we are prepared to address
2 through our witnesses.
3 MR. GROSSMAN: Yes.
4 MS. HARRIS: But with respect to the legal issues,
5 it seems that it would be most appropriately addressed by,
6 very briefly, counsel providing a brief foundation before
7 the witness speaks to the issue, but we'd also like to
8 preserve the opportunity to brief the issue prior to the
9 close the record --
10 MR. GROSSMAN: All right.
11 MS. HARRIS: -- because I think that may be
12 helpful.
13 MR. GROSSMAN: Okay.
14 MS. HARRIS: Thank you.
15 MR. GROSSMAN: The word brief is used by lawyers
16 to mean lengthy filings. All right. Is that agreeable to
17 the opposition?
18 MS. ROSENFELD: Actually that was one of the
19 preliminary issues I was going to raise specific to the
20 legal questions. I actually think it might be helpful if we
21 can set a briefly schedule. I would anticipate for myself
22 at least and on behalf of Kensington Heights responding in
23 writing to some of the legal issues.
24 MR. GROSSMAN: Right.
25 MS. ROSENFELD: And I thought it might be helpful

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1 just for the purposes of timing if we could set a date when
2 those briefs would be filed and perhaps a second date when
3 there might be a response --
4 MR. GROSSMAN: All right. I think that's a good
5 idea.
6 MS. ROSENFELD: -- with respect --
7 MR. GROSSMAN: Perhaps I could suggest that you
8 and Ms. Harris and other opposition personnel get together
9 and agree upon and set dates --
10 MS. ROSENFELD: Certainly.
11 MR. GROSSMAN: -- for that and I would likely
12 endorse what the parties agree to. All right. Ms. Harris.
13 MS. ROSENFELD: Certainly.
14 MS. HARRIS: That, those were, I mean that was the
15 only preliminary matter.
16 MR. GROSSMAN: Okay. Ms. Rosenfeld, do you have
17 additional preliminary, additional preliminary matters?
18 MS. ROSENFELD: Well, one other. When Mr. Duke
19 was on the witness stand, he indicated that he would provide
20 a new exhibit that would show turning radius for the loading
21 docks, the truck turning radius. And I just was wondering
22 if we might know when that would be available and when he
23 might be back. That I expect will be our last remaining
24 cross-examination for him and just for purposes of
25 scheduling, I do know that we're not going to have, we would

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1 set aside the 6th as an environmental and health free day.
2 That might be a good day for him to return. I just would
3 see if we could coordinate that.
4 MR. GROSSMAN: I actually don't recall that exact
5 statement off the top of my head, but I'm not saying it
6 didn't, it wasn't said. Ms. Harris?
7 MS. HARRIS: I don't recall that either. We
8 certainly can provide it.
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: We would need to check in with Mr.
11 Duke in terms of how long it would take to prepare that.
12 MR. GROSSMAN: All right. Do we know if -- I
13 think what he said was that the turning radius was examined
14 and was found to be adequate. I don't recall him saying
15 that he was going to provide an exhibit to that effect, but
16 I may be wrong, Ms. Harris.
17 MS. ROSENFELD: I would have to check the
18 transcript. As I recall --
19 MR. GROSSMAN: Yes.
20 MS. ROSENFELD: -- I specifically asked him if he
21 could provide an exhibit with that truck turning radius for
22 the loading dock --
23 MR. GROSSMAN: Okay.
24 MS. ROSENFELD: -- for the warehouse and he
25 indicated that he would.

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1 MR. GROSSMAN: Okay. I don't say you're wrong, I
2 just don't recall it off the top of my head. Ms. Harris,
3 can you -- think you can have that for the next session?
4 MS. HARRIS: What I would like to do is I have, is
5 check in with Mr. Duke at the break and just determine
6 whether, whether he can prepare that prior to May 6th. I
7 assume that he will be able to.
8 MR. GROSSMAN: All right. In many cases that I've
9 had there is actually already existing such a plan showing a
10 turning radius, so it could well exist already --
11 MS. HARRIS: Yes.
12 MR. GROSSMAN: -- in any event.
13 MS. HARRIS: In fact, and Mr. Brann just indicated
14 that if it doesn't exist, it's very, well, he obviously
15 looked at something to make that statement so --
16 MR. GROSSMAN: Right.
17 MS. HARRIS: -- we can provide that by May 2nd.
18 MR. GROSSMAN: The other thing is you raised the
19 idea of, in addition to the briefing idea, that you wanted
20 to have a little prologue to a witness's statement to
21 address some of the points I raised. I don't have a problem
22 with that. I also note that in special exception hearings
23 there is a specific provision in a zoning ordinance that
24 statements by counsel are binding on the party almost in the
25 same way that that witness statements are. And, in fact,

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1 there's usually a, perhaps always a condition in the, in any
2 special exception grant that provides that the applicant, if
3 granted the special exception, is bound by the testimony of
4 the witnesses, as well as the statements of counsel referred
5 to in the report. So, anyway, just -- so I don't have a
6 problem with it. Anybody, anybody other preliminary
7 matters? Seeing none, then -- and we've got opening
8 statements and other matters taken care of, so would you
9 call your next witness, Ms. Harris?

10 MS. HARRIS: Thank you. It's Mr. Wes Guckert, the
11 traffic engineer.

12 MR. GROSSMAN: Mr. Guckert. You may have a seat.
13 Raise your right hand please.
14 (Witness sworn.)

15 MR. GROSSMAN: All right. You may proceed.

16 MS. HARRIS: Thank you.

17 DIRECT EXAMINATION

18 BY MS. HARRIS:

19 Q Mr. Guckert, you're likely very familiar of many
20 in the room, but can you please introduce yourself and
21 provide some of your professional background please?

22 A Sure. For the record, my name is Wes Guckert, G-
23 U-C-K-E-R-T. I'm a traffic and transportation planner. I
24 am employed by the Traffic Group, which is a firm of traffic
25 engineers and transportation planners.

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1 MS. ROSENFELD: And, Mr. Grossman, we're happy to
2 stipulate that Mr. Guckert is an expert, is an expert
3 traffic and transportation planner.

4 MR. GROSSMAN: Okay. As I explained the last time
5 when we often have, when an expert is offered, if somebody
6 is offered, I presume you're offering Mr. Guckert as an
7 expert in traffic engineering --

8 MS. HARRIS: Correct.

9 MR. GROSSMAN: -- and transportation planning?

10 MS. HARRIS: Yes.

11 MR. GROSSMAN: Okay. We have the question and
12 answer period addressed to the expert's qualifications
13 before the Hearing Examiner certifies the person as an
14 expert. Is there anybody else in the opposition or wishes
15 to question the witness regarding his qualifications?

16 (No response.)

17 MR. GROSSMAN: Seeing no hands, Mr. Guckert has
18 testified many times before me and other hearing examiners
19 in this jurisdiction as an expert in traffic engineering and
20 transportation planning. I accept him as an expert as such.
21 His resume, I believe, is also in the record, is it not?

22 MS. HARRIS: Yes, it is. Thank you.

23 BY MS. HARRIS:

24 Q Mr. Guckert, have you prepared traffic reports and
25 provided expert testimony in Montgomery County regarding

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1 special exception cases?

2 A Yes, I have.

3 Q And have you prepared traffic reports and provided
4 expert testimony in connection with special exception cases
5 involving automobile filling stations in Maryland?

6 A Yes, I have, dozens of times and testified about a
7 thousand times.

8 Q With respect to special exception cases?

9 A Hundreds of times regarding special exception
10 cases.

11 Q And are you familiar with the Montgomery County
12 zoning ordinance?

13 A Yes.

14 Q Thank you. And what I want to do is go through
15 the requirements as they relate to a special exception for
16 an automobile filling station and have you indicated
17 whether, in fact, these are the requirements, 59G
18 1.21(a)(4), that the use will be in harmony with the general
19 character of the neighborhood considering traffic and
20 parking conditions?

21 A Yes.

22 Q And 59G 1.21(a)(9), that the station will be
23 served by adequate public services and facilities, including
24 public roads?

25 A Yes.

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1 Q And 59G 1.2(a)(9)(C) with regard to public roads,
2 the station will not reduce the safety of vehicular or
3 pedestrian traffic?

4 A Correct.

5 Q And then 59G 2.06(a)(2), the use of the proposed
6 location will not create a traffic hazard or traffic
7 nuisance because of its location in relation to similar
8 uses, necessity of turning movements in relation to its
9 access for public roads or intersections or its location in
10 relation to other buildings or proposed buildings on or near
11 the site and the traffic pattern from such buildings or by
12 reasons of its location near vehicular pedestrian entrance
13 or crossing to a public or private school, park, playground
14 or hospital or other public use or place of public assembly?

15 A Yes.

16 MS. HARRIS: And I believe that was one of the
17 criteria that was on the 20 questions which we'll get into
18 more detail.

19 MR. GROSSMAN: Yes, I asked that you have a
20 witness address the question of nuisance not just in the
21 sense of public facilities, but also in the sense of impact
22 and compatibility with the neighborhood.

23 MS. HARRIS: Yes, thank you. Okay.

24 BY MS. HARRIS:

25 Q In regard to Section 59G 1.21(a)(9), the section

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1 provides that the Board of Appeals must determine APF if the
2 site does not have a valid APF determination. Does this
3 site have a valid APF determination?
4 A This site, Mr. Grossman, already has valid,
5 adequate public facilities determination.
6 Q But you, nonetheless, have prepared what's
7 referred to as an LATR study, which is typically used to
8 determine APF?
9 A Correct.
10 Q And are you familiar with the Wheaton Westfield
11 Mall parcel?
12 A I am.
13 Q And can you give a little bit --
14 A Sure.
15 Q -- excuse me, a little bit of background in terms
16 of your experience with the mall site?
17 A I worked on the Wheaton parcel for at least 28
18 years, probably close to the 30 or 32 years that I've been
19 involved in development and redevelopment of that particular
20 property.
21 Q Thank you. In November of 2012, the Department of
22 Permitting Services confirmed that not including the
23 proposed gas station, there's currently 183,000 square feet
24 of development available on the Wheaton Mall parcel and I'm
25 referring to Exhibit 86(b). Can you please provide or can

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1 you please explain what that means?
2 A Yes. The, what that means, Mr. Grossman, is that
3 when this property went through APF approval, there was a
4 certain amount of development that was existing at the time
5 and we went through APF approval with the developer and the
6 County, actually all Government agencies involved, Planning
7 Commission, SHA, MCDOT, M-NCPPC, to determine what
8 additional development could occur and that was at a point
9 in time prior to when Hecht Company was there building away,
10 prior to Macys being built and Montgomery Wards and they
11 were probably going away and then Target came in. So we
12 went through and basically set up the development to allow
13 the additional development and redevelopment to occur. And
14 at that time, Mr. Grossman, we ended up going through the,
15 what was the local area transportation program. We
16 determined what the total traffic would be and then
17 Westfield went ahead and spent about \$2.5 million on road
18 improvements to meet the adequate public facilities at that
19 time.
20 So what we were left with was a certain amount of
21 development that could basically be ticked off and built on
22 because of the overall LATR had been satisfied. We had paid
23 for the density that has come about over time, including
24 Dick's, including Costco, including the special exception
25 and there's, and other development that can occur.

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1 Q And at the time in 2001, what was that initial
2 square footage which was allotted?
3 A It was 1,000,681.
4 Q Which was approved for the mall site?
5 A Correct.
6 Q And you noted that the remaining density is
7 183,000, is that correct?
8 A Well, when it -- Mr. Grossman, on page 5 of my
9 report --
10 Q And that's Exhibit 11, the LATR report?
11 A Yes.
12 MR. GROSSMAN: Page 5?
13 THE WITNESS: Yes, of Exhibit 11.
14 MR. GROSSMAN: All right. I have it at 11(a).
15 THE WITNESS: 11(a), all right.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: You'll see that we went through a
18 methodical process line by line of how much space is
19 available along the way with moving the Hecht Company store,
20 then what's available adding Costco, then adding the,
21 basically the Dick's, what's available after Costco and the
22 gas trips and down so that my report shows that after the
23 Costco and Dick's was built, there was about 212,000 square
24 feet based upon the traffic study.
25 BY MS. HARRIS:

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1 Q Thank you --
2 A And there still remains after the special
3 exception is approved another 175,000 square feet.
4 Q That could be developed?
5 A That could be developed, yes.
6 Q And so can you explain that in layman's terms? So
7 if there's an additional 175,000 that could be built after
8 the gas station, what would that, what does that mean to the
9 mall owner?
10 A Well, that means that he could put, add on to the
11 mall particular stores. He could build in the parking lot
12 and build additional square footage or additional retail
13 uses or other parcels that would be free-standing.
14 Q And then 175,000, what does that equate to in
15 terms of a.m. peak hour and p.m. peak hour trips?
16 A P.M. peak hour trips is the critical number.
17 That's about 650 evening peak hour trips would still be
18 accommodated under the local area review, approved local
19 area review study and that's shown, that's on line 13.
20 MR. GROSSMAN: Yes, I see it.
21 BY MS. HARRIS:
22 Q So, technically, it's not necessary for the Board
23 of Appeals to make an APF determination in this case because
24 one, in fact, has previously been made, is that correct?
25 A Plenty of capacity, plenty of trips available for

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1 local area review.
2 Q Thank you. With that basic understanding of the
3 APF issue, I want to move on to the specifics of the traffic
4 study if we could.
5 MR. GROSSMAN: All right.
6 BY MS. HARRIS:
7 Q You're familiar with the subject case, S-2863?
8 A Absolutely. I was trying to think of a really
9 good word to use but, yes, I am.
10 Q Okay. Can you please describe your
11 responsibilities in connection with the work that you did
12 with the special exception application?
13 A Mr. Grossman, in addition to the local area review
14 analysis, we had been involved in what you've read about
15 quite a bit and what you'll hear about both on direct, cross
16 and redirect having to do with the capacity of the lot of
17 the special exception, the capacity of the lot to handle
18 cars that are either pumping gas or waiting to pump gas
19 during peak periods. As a result of the LATR that we did
20 specifically for the gas station, we were asked to look at
21 the Columbia facility by M-NCPPC, the Columbia Costco and
22 their gas and use that facility as a model to determine the
23 amount of traffic that would be generated by the Costco
24 store, the amount of traffic that would be generated by the
25 Costco gas at the Columbia facility.

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1 Along the way, it became apparent that the Wheaton
2 gas could generate or we're actually, we're using as a
3 model, assuming that Wheaton gas could generate 12 million
4 gallons a year. The Columbia facility had six lanes versus
5 Wheaton that has eight lanes because the Columbia facility
6 was pumping about 9.5 million gallons a year versus the 12
7 million that we were talking about for Wheaton. We then set
8 out and said, you know what, maybe there's a better model
9 and as we spoke to staff about this we said, look, we've got
10 the Sterling, Virginia store which has eight lanes. Wheaton
11 has eight lanes. We've got Sterling, Virginia, I say
12 Sterling gas, we have the Sterling, Virginia site that's
13 generating, pumping about 13.9 million gallons a year versus
14 12 million. So we said to staff, how about if we look at
15 Sterling because it's got the same number of lanes and we
16 adjust the queuing, Mr. Grossman, based upon the gallons,
17 that is, 12 million gallons versus 13.9 that we were, we
18 then estimated that Wheaton would generate about 86 percent
19 of the gas, 86 percent of the cars, 86 percent of the
20 queuing. And M-NCPPC staff said, you know what, that's far
21 better than going through and doing a queuing theory, a
22 queuing model based upon theory because now, Mr. Grossman,
23 what we had and what we have is empirical data that we can
24 compare, empirical data with a very similar type situation,
25 identical in the number of lanes which is critical. I think

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1 you've seen the exhibits, but that's critical, the number of
2 lanes is critical and we're going to pump fewer gallons of
3 gas. And by doing it that way, we end up with a much
4 better, more reliable than any type of queuing theory, okay?
5 The other thing that became important was that
6 even though the LATR and the analysis we did originally for
7 Columbia was based upon weekday, we, it became apparent that
8 Saturday for gasoline was the bigger sales day so that we
9 focused in on Saturday conditions for Sterling. We had
10 already had Saturday for Columbia, but we wanted to collect
11 it again for Sterling, so we focused in on Saturday at
12 Sterling and then focused down to be able to drill down on
13 where the peaks were. And what we did was that we looked at
14 total number of cars in the box in one minute intervals.
15 MR. GROSSMAN: In the box meaning those are the
16 queued?
17 THE WITNESS: Within the queued area.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: Okay? This is within the queued
20 area within the special exception area, going into the box.
21 And that we were able to focus on one minute intervals and
22 we determined the total number of cars queued waiting to
23 pump gas. It never -- it's based upon the cars that are
24 pumping gas, that are, it's the cars that are waiting and
25 the, and look at the 1-minute intervals for the total number

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1 that were queued waiting at the pump. So that became an
2 empirical set of data that, quite frankly, Costco never had
3 before. So that the way we did this study was very
4 revealing not only for us and for the staff because, as you
5 know, the staff ended up agreeing with us, that we were able
6 to show that 50 percent of the time the gas station is open,
7 there's only two cars. And that when we get down to it --
8 MR. GROSSMAN: When you say only two cars, you
9 mean a queue of two cars at all lanes?
10 THE WITNESS: Total. Total in the box.
11 MR. GROSSMAN: All right. I just want to make
12 sure I understand, a total of two cars total in the box?
13 THE WITNESS: Yes.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: And 50 percent of the time it's all
16 you've got.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: But, and so that because you're open
19 for 15 hours, so when you begin at 6:30 in the morning, you
20 end at 9:00 or 9:30 at night, those shoulder hours, there's
21 very little traffic and that it starts to compress into
22 11:00, 12:00, 1:00, 2:00 in the afternoon on Saturday where
23 you've got the heavier peaking and the heavier queuing.
24 BY MS. HARRIS:
25 Q Mr. Guckert, I just want to confirm one question

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1 and I think Mr. Grossman started to ask this question, can
2 you clarify, is it two cars in each -- when you say in the
3 box, you have queue lanes.
4 A No.
5 Q Is it --
6 A Total in the box versus, if you recall in the
7 staff, they said that they were looking at a maximum of 40
8 in, that are queued, a maximum total of 42. I'm talking
9 about two total half the time.
10 Q Okay.
11 A Okay?
12 Q Okay. Thank you.
13 A And that's what the empirical data shows when we
14 did our analysis minute by minute.
15 Q Okay. We're going to circle back in a, later in
16 your testimony regarding the queuing, but I wanted to get a
17 little bit more background first. Did you also observe, do
18 any observations with respect to the parking fields as part
19 of your overall work for the special exception?
20 A We did, yes.
21 Q Okay. And did you also conduct intersection
22 traffic counts and, if so, can you explain those and go into
23 detail as to which intersections you reviewed?
24 A Well, that was all part of the LATR.
25 Q Okay.

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1 A And if you look, Mr. Grossman, if you'll go a
2 little further forward onto page 12 of that same document,
3 it details the intersections that we were asked to study by
4 the staff as part of the LATR.
5 Q In connection with your analysis, did you evaluate
6 the future traffic associated with the approved, but
7 unbuilt, development in the vicinity?
8 A Again, it's part of the LATR. We did the normal
9 background traffic and assigned that to the road system.
10 Q And for those that don't have the benefit of
11 living and breathing LATR's, can you just describe a little
12 bit further what's involved in terms of approved,
13 background, projected?
14 A Certainly. Mr. Grossman, if you'll go to page 15?
15 There's a map that's labeled Exhibit 4, location map for
16 approved developments. You'll go to the next page on page
17 16.
18 MR. GROSSMAN: By the way, that, for the record,
19 that's your Exhibit No. 4, not the, not one of our OZAH
20 exhibits?
21 THE WITNESS: Correct. This line of questioning
22 will all be dealing with Exhibit 11 of the --
23 MS. HARRIS: Record.
24 THE WITNESS: Hearing. Right. Right. On page 16
25 and page 17, there are a detailed listing of the background

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1 developments. Background development is a development
2 that's approved but not yet built and it details the amount
3 of traffic that would come from those developments. Then
4 succeeding pages on 18 shows the assignment of the
5 background traffic. Page 19 shows the total existing
6 traffic, plus background traffic assigned to the road
7 system.
8 BY MS. HARRIS:
9 Q And then can you please, and now we're going to
10 focus again on the LATR analysis for a few minutes. Can you
11 walk through your methodology on how the LATR was conducted?
12 I think you just got into that?
13 A Yeah. We looked at existing traffic, background
14 traffic and then total site traffic for the special
15 exception and those are added together and you go through
16 your mathematical analysis that is prescribed in the
17 guidelines and approved by the County Council.
18 MR. GROSSMAN: All right. So just so everybody
19 understands what you're doing here, when you say existing
20 traffic, how do you get a figure for existing traffic?
21 THE WITNESS: Well, we, let me go back to what I
22 was saying. We conducted traffic counts to determine
23 existing traffic conditions at the location shown on page
24 12.
25 MR. GROSSMAN: Okay. So the existing traffic leg

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1 is composed of your traffic counts?
2 THE WITNESS: Correct.
3 MR. GROSSMAN: And then your background traffic,
4 how do you obtain the background traffic counts?
5 THE WITNESS: The background traffic, when you go
6 to, beginning on page 14 through 18 of the, my report, you
7 analyze background traffic by determining the amount of
8 traffic that would be projected using standard methodology
9 and the LATR guidelines, ITE rates or Planning Commission
10 rates.
11 MR. GROSSMAN: Projected from proposed
12 developments that have been approved, is that correct?
13 THE WITNESS: That's correct. And then that
14 traffic is assigned either from, with guidance from the
15 Planning Commission or engineering judgment assigned to the
16 20 intersections that were a part of this analysis.
17 MR. GROSSMAN: Okay. So by assigned, you mean
18 that you have, using your formula or by staff, you assigned
19 to a particular intersection the amount of that background
20 and existing traffic that will be imposed on any of these
21 intersections?
22 THE WITNESS: On any of the intersections in an
23 incremental basis, yes.
24 MR. GROSSMAN: All right. And how do you project
25 the traffic that is anticipated from the proposed new use?

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1 THE WITNESS: You, beginning on page 20 of the
 2 report is a section entitled projected traffic for the
 3 special exception vicinity and there are a series of
 4 processes that are used. On page 22, there is a description
 5 of the amount of traffic projected to be generated by the
 6 16-pump facility based upon the estimated gallons that will
 7 be sold. That traffic then is adjusted for internal trips,
 8 that is the cars that would be coming from inside this auto
 9 centric facility mall that from other customers, from either
 10 Costco customers or are at the store or Costco customers
 11 that are shopping at the mall, there's adjustments that are
 12 made for that. Then there are also adjustments made for
 13 cars that are passing by the site. They're driving by Veirs
 14 Mill. They are Costco customers that pull in and get their
 15 gas. They may not be shopping at Costco that day or they're
 16 coming off of Georgia Avenue or going off of University
 17 Boulevard.

18 MR. GROSSMAN: So what you're trying to get at is
 19 the trips that will be newly generated by the Costco gas
 20 station, is that --

21 THE WITNESS: Yes.

22 MR. GROSSMAN: -- the idea?

23 THE WITNESS: Yes, sir.

24 MR. GROSSMAN: All right. Then what?

25 THE WITNESS: Then we make a projection of the,

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1 where the cars would be coming from and that is, was done
 2 and is shown on page 23 where we made the assumption that 20
 3 percent of the cars would be from the west along University,
 4 20 percent from the north along Veirs Mill, the same thing
 5 for the north and south along Georgia Avenue and from the
 6 east on University. We made that assumption. As you may
 7 know, Mr. Grossman, I do not know where customer A at 6:02
 8 in the morning is going to be coming from, but the process
 9 that we use is to look at traffic conditions and make the
 10 best judgment, engineering judgment on wherever cars will be
 11 coming from.

12 MR. GROSSMAN: All right.

13 THE WITNESS: Then the traffic that was shown on
 14 page 23 is then added to the background traffic and that
 15 result in total is shown on page 26. We then conduct
 16 intersection capacity analyses using the prescribed
 17 methodology that is basically in the law by the County
 18 Council which is the critical lane guide.

19 MR. GROSSMAN: Right. I take it you said it was
 20 added to the background. It's also added to the existing,
 21 is that correct?

22 THE WITNESS: Yes, well, the background includes
 23 existing, that's correct.

24 MR. GROSSMAN: Okay.

25 THE WITNESS: And so you, we then undertook the

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1 capacity analysis using the critical lane methodology which
 2 is the methodology prescribed in the guidelines which is
 3 approved by the County Council and we conduct the level of
 4 service or the capacity analysis for the intersections
 5 involved.

6 BY MS. HARRIS:

7 Q And how many intersections were involved that you
 8 had to study?

9 A 20.

10 Q And can you -- do you have anything or can you
 11 explain what the impact having done that analysis that you
 12 just described, can you explain the impact to each of those
 13 intersections?

14 A By saying each of the intersections, you mean, to
 15 give you the summary result, I have to go by each
 16 intersection. On page 30 and 31, Mr. Grossman, there is the
 17 summary, the results of the intersection capacity analysis
 18 for existing background and total conditions and during the
 19 morning peak hour, none of, all of the intersections fall
 20 well within the congestion standard which is either 1,800 or
 21 1,600 and the same thing holds true on page 31 during the
 22 evening peak hour, well within the COB congestion standard.

23 MR. GROSSMAN: And why do you say the congestion
 24 standard is either 1,800 or 1,600?

25 THE WITNESS: Well, because the staff or I should

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1 say the Planning Board and the County Council has a slightly
 2 different congestion standard at a couple of the
 3 intersections. And that is four of the intersections, the
 4 COB standard is 1,800 because they're located within or on
 5 the border of the Wheaton CBD policy area and the others are
 6 1,600. And, Mr. Grossman, for your notes, if you were to
 7 turn to Appendix A, and that would be on page 2, the upper
 8 part of the page, this is the scoping agreement from the
 9 staff that indicates where, where it says the second
 10 paragraph, all but four intersections above the COB standard
 11 is because.

12 MR. GROSSMAN: Okay.

13 THE WITNESS: That is the information as to one.
 14 So as a result, all of the intersections with the
 15 background, existing traffic, background traffic, total
 16 traffic all fall well within the acceptable standards
 17 promulgated by the County Council.

18 BY MS. HARRIS:

19 Q And is it correct that the majority of them, that
 20 the percentage increase is actually less than 1 percent?

21 A It --

22 Q Do you agree with that statement?

23 A Very, very small increase and less than 1 percent,
 24 that's correct, as result of this special exception.

25 Q You noted that for purposes of your analysis you

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1 had estimated that the internal capture rate, meaning those
2 people that were on the mall site already, was 30 percent.
3 In your opinion is that a conservative estimate?
4 A Absolutely. You will see, Mr. Grossman, that
5 there are other studies that have I have included in my
6 report that indicate that it could be as high as 50 percent.
7 So instead of taking a 50 percent reduction, we only took a
8 30 percent reduction.
9 MR. GROSSMAN: Just so the record understands what
10 you mean by conservative, in other words you have assumed
11 that fewer of the potential trips than some of the evidence
12 would indicate will be generated by the, already on the
13 mall?
14 THE WITNESS: That's correct. We assume more
15 traffic would be generated as new cars than might actually
16 be generated.
17 MR. GROSSMAN: Okay.
18 BY MS. HARRIS:
19 Q And is that, in part, due to the mix of uses
20 that's on that mall parcel?
21 A No. We used a conservative approach. The history
22 of Costco and gas facilities indicates that many more
23 patrons buy their gas and go shop or shop and go buy gas
24 than what we assume. So we assume more new traffic coming
25 into the site than we think could be in reality.

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1 Q And then once you completed the analysis, taking
2 into account the existing, the background, the new trips,
3 numerically what was the number of new cars that would, in
4 fact, be generated by the proposed use?
5 A If we go back to page 22, you'll see, Mr.
6 Grossman, that about 69, 70 new cars would be generated
7 during each of the peak hours off of the road system, off of
8 the public road system into the site.
9 Q Thank you. Dan Duke had testified to the fact
10 that there are five intersections leading into the mall, but
11 I believe you studied four intersections, is that correct?
12 A It's -- his testimony is was five. Access to one
13 was concluded, the pharmacy, but that's not a signalized
14 intersection. It's not promulgated by the County Council.
15 It's not part of the law. We looked at the four signalized
16 intersections into the mall.
17 Q Okay. Thank you. Very briefly, and can you
18 explain the, whether you evaluated what's known as TPAR, the
19 new policy area reviewed for the County and what were your
20 conclusions?
21 A We looked at TPAR and Mr. Grossman is familiar
22 with that and in this particular case because the site is
23 located within the designated Metro station policy area, it
24 is found to be exempt from TPAR pavement from the County
25 Council.

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1 MR. GROSSMAN: Would you explain please for the,
2 for those gathered here what does TPAR mean and what it
3 replaced and when?
4 THE WITNESS: Okay. TPAR means Transportation
5 Policy Area Review. I like to refer to it as door number
6 one with LATR as door number two. You have to get through
7 door number one to get to door number two. Transportation
8 Policy Area Review replaced something called PAMR, Policy
9 Area Mobility Review and it replaced PAMR in, I think around
10 January of 2013.
11 MR. GROSSMAN: January 1, 2013.
12 THE WITNESS: Okay. And --
13 MR. GROSSMAN: Well, I should say, let me modify
14 that by saying that it replaced it on January 1, at least
15 insofar as new subdivisions are concerned. It's not exactly
16 clear of what the impact is, of timing is when you're
17 talking about special exceptions and rezonings. There is an
18 argument to be made that the review process that applies is
19 the one that was in effect when the application was filed,
20 but this is the new process and I would ask you to explain
21 whether or not PAMR would be involved in this process if it
22 is applicable?
23 THE WITNESS: I think, Mr. Grossman, that the
24 LATR, because PAMR falls, as far as I know, falls hand in
25 glove with LATR and at the time, the LATR for this project

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1 was approved, my recollection is PAMR was not back in 2001,
2 PAMR was not in effect. So at the time LATR, at the time
3 APF was approved for this project for 2001, PAMR was not in
4 effect.
5 MR. GROSSMAN: Well, they had Policy Area
6 Transportation Review of another project.
7 THE WITNESS: But it was, but it did not play into
8 this particular project at that time.
9 MR. GROSSMAN: Okay. I guess what I'm asking you
10 is you mentioned TPAR and so you, and you testified that
11 TPAR doesn't apply, this project would be exempt under TPAR,
12 is that correct?
13 THE WITNESS: Correct.
14 MR. GROSSMAN: What about PAMR? Would --
15 THE WITNESS: Well, I don't think PAMR applies
16 because it's tied to APF.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: At the time APF was approved, PAMR
19 did not exist.
20 MR. GROSSMAN: Okay. Then would PATR, Policy Area
21 Transportation Review, the other leg of the test, would that
22 apply?
23 THE WITNESS: I do not think so.
24 MR. GROSSMAN: Okay. All right.
25 MS. HARRIS: Thank you.

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1 BY MS. HARRIS:
2 Q The Planning Board identified this station's
3 location off of the private ring road as a non-inherent
4 effect. In other words, not typically associated with most
5 gas stations and I should note that now we're sort of moving
6 from the more general Wheaton and the whole LATR issue and
7 focusing more now on the site-specific issues. In other
8 words, it's not typically associated with most gas stations.
9 While the station's location may, in fact, be unique and,
10 thus, non-inherent, does this non-inherent component have
11 any adverse effects?
12 A No, it's quite the opposite. In fact, because of
13 this non-inherent effect, it's quite frankly something, Mr.
14 Grossman, that I think almost any jurisdiction would be
15 envious of and that is that you would have a gas station
16 that is located off of the public road system and the entry
17 and exits not interfering with the public road system the
18 way almost all gas stations would have an effect. So in
19 this case, this non-inherent impact or non-inherent effect
20 is a really, really good thing for the County.
21 MR. GROSSMAN: You're saying it's not an adverse
22 non-inherent?
23 THE WITNESS: There you go. Very good, yes, sir.
24 BY MS. HARRIS:
25 Q And following up on that, the ring road is a

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1 private road, not a public road. Did that make any
2 difference in terms of your evaluation of the special
3 exception requirements?
4 A Well, it makes a difference because of the special
5 exception requirements, in my opinion, speak to impact on
6 the public road system and, quite frankly, we have no impact
7 for the entry/exit, the queuing, none of that occurs along a
8 public road system. So, yes, it does have an impact, but
9 it's a positive one. It's a, as Mr. Grossman pointed out,
10 momentarily, a few moments ago.
11 MR. GROSSMAN: I didn't point it out. I was just
12 trying to --
13 THE WITNESS: Excuse me.
14 MR. GROSSMAN: -- just trying to interpret what
15 you were saying.
16 THE WITNESS: Poor choice of words.
17 MR. GROSSMAN: Let me ask you, the reference you
18 just made saying that you believe that the language of the
19 special exception is addressed to impact on the public
20 roads, not on the private roads. Is there a particular
21 provision you're referring to?
22 THE WITNESS: Where in the findings it talks about
23 public roads. I can go --
24 MR. GROSSMAN: Are you talking about in the
25 general condition on the 59G 1.21(a)(9)?

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1 THE WITNESS: Yes, I --
2 MR. GROSSMAN: That's a provision in terms of the
3 adequate public facility or -- I just want to know what
4 you're referring to when I you say the special exception.
5 THE WITNESS: I'm looking for -- I did not have
6 that document in front of me.
7 MS. HARRIS: May I -- can I provide guidance on
8 that, Mr. Grossman?
9 MR. GROSSMAN: Sure.
10 MS. HARRIS: Well, I would note that at 59G
11 2.06(a)(2), while it talks about other things, it also talks
12 about public nuisance and the relationship of the movements
13 and access to public roads. And then in 59G --
14 MR. GROSSMAN: Well, let me just stop you because
15 59G 2.06(a)(1), which is separate from (a)(2), says -- that
16 the Board has defined that the use will not constitute a
17 nuisance because of noise, fumes, odors or physical activity
18 in the location proposed, but that's independent of whether
19 or not it's a public road.
20 MS. HARRIS: Correct.
21 MR. GROSSMAN: Okay. Now (2) does refer to the
22 necessity of turning movements in relation to access public
23 roads or intersections, but I don't know that that, it says
24 that the traffic hazard or traffic nuisance must be in
25 relation to the public roads. The use at the proposed

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1 location will not create a traffic hazard or traffic
2 nuisance because of its location in relation to similar
3 uses, necessity of turning movements in relation to and that
4 acts, and talks in terms of the public roads. I don't think
5 I'd restrict my analysis to the relation to public roads. I
6 don't think that they, while there are certain provisions in
7 the special exception that, and in the general conditions
8 that refer to public facilities, that's certainly not the
9 only aim of the special exception language. So don't want
10 you to mislead yourself into thinking that I'm not going to
11 address the other questions, that is, its relationship to
12 non-public roads and the other areas.
13 MS. HARRIS: No and, in fact, I would say, I
14 think, if you can visualize this, we're starting in the
15 outer circle and we're moving in.
16 MR. GROSSMAN: Well --
17 MS. HARRIS: -- and I think that we're getting --
18 he will be testifying with respect to the situation on the
19 mall site, which is a private road, and the mall property
20 which is private property, but a parking --
21 MR. GROSSMAN: Though, I was just responding to
22 the witness's comment that the special exception seemed to
23 address itself to impact on public roads. I think it
24 addresses itself to more. So --
25 MS. HARRIS: Certainly. Okay.

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1 MR. GROSSMAN: -- I didn't want you to --
2 MS. HARRIS: Okay.
3 MR. GROSSMAN: -- restrict your evidence for the
4 impact --
5 MS. HARRIS: No, thank you.
6 MR. GROSSMAN: -- on public roads --
7 MS. HARRIS: We appreciate that.
8 MR. GROSSMAN: -- because it goes beyond that.
9 MS. HARRIS: Absolutely.
10 BY MS. HARRIS:
11 Q You noted, you started to get into the distinction
12 of the location versus the more typical location, if you
13 will, along two public roads. Can you address this in terms
14 of pedestrian, what it means in terms of pedestrian,
15 pedestrians?
16 A The, Mr. Grossman, we look at pedestrian activity
17 in the vicinity of the special exception as part of the LATR
18 analysis that we did and what we found is that, quite
19 frankly, there is very little pedestrian movement, very
20 little pedestrian movement either across the ring road or
21 along the ring road. But, nevertheless, we were --
22 Q Well, if I could interrupt you for a moment and,
23 because we are going to get, very, very site specific in a
24 couple minutes, but I want to note, sort of focus more
25 generally conceptually on the difference of a standard gas

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1 station at a public corner versus the subject and what that
2 may mean --
3 A Okay.
4 Q -- in terms of pedestrian relationships. And do
5 you have any examples of the proposed site versus other
6 sites?
7 A Many gas stations, as you are aware, Mr. Grossman,
8 and most gas stations want to exist on a corner at a
9 signalized intersection so that --
10 MR. GROSSMAN: Well, I'm not going to be, I'm not
11 aware of anything that doesn't exist in the record, so I
12 wouldn't make any assumptions.
13 THE WITNESS: Okay. Most gas stations want to be
14 located at a corner at a signal and they do that so that
15 they can have access to both arterials or both collector
16 roads so that you can enter in from one road, exit back out
17 on that road, enter in on road A, exit out back on road B.
18 And when that occurs, you almost always have sidewalks when
19 you enter the urban area or a suburban area and pedestrians
20 who walk along those sidewalks.
21 And pedestrians deal with cars as they're entering
22 and leaving the gas station facility and they do it a little
23 bit differently than it, than now this special exception
24 site is situated within the mall. So there's a completely
25 different pedestrian activity situation at a corner gas

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1 station on a public road versus this special exception use
2 which is located in an auto centric mall inside a mall
3 parking lot where you're driving through the parking lot,
4 you're expecting to see pedestrians. You're driving, if
5 you're a pedestrian, you expect to see cars in a mall
6 parking lot. So there's a difference between a gas station
7 located on a public road system versus a gas station located
8 within a mall parking lot.
9 BY MS. HARRIS:
10 Q Mr. Duke testified, in effect, that access to the
11 subject station will be from the south along the roadway and
12 cars entering the special exception area proceeding north,
13 obtaining the gas and then proceeding north out in the one-
14 way direction. Can you prepare a directional flow of
15 subject station to --
16 A Sure.
17 Q -- again, your standard corner lot?
18 A Sure. A standard corner gas station where cars
19 can and do come in from different directions, sometimes
20 those cars, a car can come in and be head to head with one
21 car to one car and the front of another car and another pump
22 so that they're head to heads. Sometimes they're front or
23 back. And when they leave, they're leaving -- one may turn
24 left out of the pump area and the other one may turn right
25 out of the pump area. One may back up because somebody is

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1 in front of him in order to get around.
2 So those, those situations exist at almost all gas
3 stations anywhere. The difference, the positive difference
4 here is that the Costco facility being requested for the
5 special exception is very regimented and very detailed.
6 That is you enter from one way, you enter from one way and
7 then you're turning right or left and you're doing that at a
8 90-degree angle. So it's very regimented, very detailed and
9 very structured how cars get into the Costco facility and
10 how cars exist the Costco facility. There really is not a
11 free for all as can exist in other gas stations in a very
12 controlled environment.
13 Q I believe you prepared an example of a site to
14 demonstrate the point that you just made. Can you share
15 that please?
16 A Certainly. I have an example of the facility and
17 gas station located in Germantown.
18 MR. GROSSMAN: Is that part of the record already?
19 MS. HARRIS: It is not part of the record. We
20 have one and, unfortunately, we only have one copy, but we
21 can provide more copies such, for the other side --
22 MR. SILVERMAN: I think we have --
23 MS. HARRIS: -- to --
24 MS. ROSENFELD: Please, we'd like to see it.
25 MR. GROSSMAN: Yes, let's give the opposition --

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1 MS. HARRIS: Okay.
2 MR. GROSSMAN: -- an opportunity to look at this.
3 MR. ADELMAN: Actually, I object to having the
4 witness testimony on this before we can actually look at it
5 in an attempt, to attempt to look at this in one minute or
6 two minutes is --
7 MR. GROSSMAN: I'm going to sustain that objection
8 because I think it's something that could have been supplied
9 in advance. So let's do without the comparison in terms of
10 testimony.
11 MS. HARRIS: The visual comparison?
12 MR. GROSSMAN: This is -- this is a, something
13 obviously the witness had and could have been supplied
14 earlier. So I can see prejudice in that.
15 MS. HARRIS: Okay.
16 MR. GROSSMAN: And the inquiring, the opponents to
17 cross-examine based on this.
18 MS. HARRIS: Okay. I mean I would note that it
19 wasn't prepared within the 10 days that we were supposed to
20 circulate exhibits, but I understand.
21 MR. GROSSMAN: Well, it should have been prepared
22 at least 20 days in advance, so --
23 BY MS. HARRIS:
24 Q Is there anything, based on your comparison, is
25 there anything else that you would like to -- well, let me

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1 ask this. Is it common for most other standard stations to
2 simply serve gas and nothing else?
3 A In today, in today's environment, many other gas
4 stations -- I'll go so far as to say most other facilities
5 can serve snack foods most often and many, not all, will
6 have car washes as well. So there will be other uses within
7 a building lot for a gas station located in line or on a
8 corner versus, versus the calculus special exception use
9 which is only gas, no convenience items, no car wash in a
10 very regimented way to enter and exit.
11 Q Thank you.
12 MR. GROSSMAN: How does this all affect pedestrian
13 traffic?
14 THE WITNESS: In a very positive way because a gas
15 station on a corner, cars enter and exit almost never on a
16 right angle, almost always on an acute angle because they're
17 not making a 90-degree turn off the road. So when they
18 enter back onto the road from the gas station after pumping,
19 they'll almost always go on an acute angle. And so they're
20 looking to their left, as an example, as they're making the
21 right turn, looking to their left for cars, they see
22 pedestrians and then they pull out. But often you have the
23 problem where pedestrians coming from the right and you are
24 on an acute angle, so it's more complicated for pedestrians
25 on a sidewalk dealing with cars that are exiting a gas

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1 station.
2 In this case, in the special exception case, the
3 cars, as they exit the pump, are coming up at a 90-degree.
4 They can easily see both directions before they make their
5 turn into the parking aisle. And that's the other thing,
6 that they're turning into a travel aisle of a parking lot,
7 not turning onto a public road or a collector road or
8 material road.
9 MR. GROSSMAN: Are you saying that the proposed
10 Costco gas station is safer for pedestrians than an ordinary
11 gas station on the street?
12 THE WITNESS: Absolutely, in my opinion.
13 MR. GROSSMAN: Okay.
14 BY MS. HARRIS:
15 Q I want to get in to a little bit more detail on
16 that, but I think it might be helpful to have one of the
17 exhibits that we previously showed last week.
18
19 THE WITNESS: Mr. Grossman, do you want the map to
20 be facing you?
21 MR. GROSSMAN: Well, sir, you can have it facing
22 neutrally and then I can see it and the audience can see it
23 as well.
24 MS. HARRIS: Actually, this one may be better or
25 one of these just because it's a little more on a large
scale. That's 54(i), I believe.

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1 MR. GROSSMAN: Okay.
2 MS. HARRIS: 54(i), I believe.
3 MR. GROSSMAN: This one?
4 MS. HARRIS: Yes.
5 BY MS. HARRIS:
6 Q Can you explain once the customer completes his
7 gas transaction and pulls away from the pump, can you
8 explain what happens and --
9 MR. GROSSMAN: By the way, 54(i) is labeled as
10 truck turn exhibit.
11 MS. HARRIS: Doesn't that say 54(i) on there?
12 THE WITNESS: It does. It says 54(i) and it's
13 labeled truck turn exhibit, that's correct.
14 MR. GROSSMAN: I just, I raised that because --
15 MS. HARRIS: Okay.
16 MR. GROSSMAN: -- the question came up about
17 whether there was an exhibit showing truck turn radius and I
18 don't know if that does.
19 MS. HARRIS: No.
20 THE WITNESS: It does show the truck turning into
21 the facility.
22 MS. HARRIS: But I think opposing counsel's
23 question had to do with the loading into the warehouse.
24 MR. GROSSMAN: Okay.
25 BY MS. HARRIS:

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1 Q So can you take -- walk Mr. Grossman --
2 MR. SILVERMAN: Could you shift that, excuse me,
3 could you shift that around just a little bit?
4 MS. HARRIS: There's a precarious balance, so I
5 mean like --
6 MR. SILVERMAN: I see it.
7 MS. HARRIS: -- everyone can see it.
8 MR. GUCKERT: Is that good?
9 MR. SILVERMAN: Yes, thank you.
10 MS. HARRIS: Can Mr. Grossman see it?
11 MR. GROSSMAN: Yes, I can.
12 BY MS. HARRIS:
13 Q Okay. So can you please walk Mr. Grossman and the
14 others through what occurs when a customer leaves the
15 station and what, in terms of controls in place, speeds and
16 anything else that may be helpful in explaining the safety
17 measures in place?
18 A Referring to Exhibit 54(i), the special exception
19 area is highlighted in the heavy black dashed line. At the
20 bottom or south end of that area, there is an arrow that
21 says one way, 24-foot drive aisle from the ring road into
22 the special exception area. The queuing area takes up, I
23 would estimate, about 60 to 65 percent of the total special
24 exception area. Just to the north of the queuing area are
25 where the eight aisles for pumping gas exist and then there

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1 is a bypass aisle or bypass lane available that if you were
2 in the queue and you're able to change your mind, you're
3 able to get through and leave.
4 At the north end of where the fueling exists,
5 there is the, basically the exit, Mr. Grossman, on to a
6 drive aisle that runs in an east-west direction through the
7 special exception area such that cars that can, would come
8 up, they'd be leaving the pumping aisle, they'd come up at a
9 90-degree to that east-west drive aisle and then either make
10 a right turn to go to the next part of the parking lot or
11 make a left turn to go to a north-south drive aisle within
12 the mall parking lot itself.
13 Q And --
14 MR. GROSSMAN: What are the oblong drawings on
15 there to the north of the --
16 THE WITNESS: Here?
17 MR. GROSSMAN: Yes.
18 THE WITNESS: Those are islands, landscaped
19 islands.
20 BY MS. HARRIS:
21 Q And are there spaces in between those islands?
22 A For the drive aisles, is that what you're -- yes.
23 I mean that's, those drive, those landscape islands exist
24 within the parking lot and they're drive aisles and parking
25 spaces that --

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1 Q So you indicated that a customer could decide to
2 go east or west after pumping gas. Could they also go north
3 on --
4 A They could. They could continue further north
5 into the parking lot and then pick other east, the other
6 major east-west drive aisle as well that takes you out to
7 the ring road.
8 Q And is there a pedestrian path delineated before
9 they get to that main drive aisle?
10 A There's a pedestrian path from the mall
11 property/Costco that for customers to use if they so desire
12 in order to reach the western parking area. They could even
13 use it to reach the northern or the parking area between the
14 drive aisle and the special exception area as well.
15 Q And do you, do you have an opinion in terms of
16 visual clues for the driver, what pedestrian pass -- what
17 purpose do they provide for the driver spec?
18 A Well, the reality is that the pedestrians, some
19 pedestrians are going to take the pedestrian path. Other
20 pedestrians are not. I mean that's what happens in parking
21 lots. There are cars, there are pedestrians in an auto
22 centric parking lot. The good thing, the different thing,
23 the better thing with this special exception use as I
24 started talking about, Mr. Grossman, is that there's one way
25 in at the south end, there's one way out at the north end,

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1 and when the cars leave the pumps, they're at a 90-degree
2 versus being more at an acute angle that would, that
3 normally exists when you're leaving a corner gas station
4 that's on the public road system.
5 MR. GROSSMAN: And you're saying they have the
6 option of, as soon as they emerge from the pumps and before
7 they get those islands just north of the pumps, they have
8 the option of turning left or right at that point?
9 THE WITNESS: Correct.
10 MR. GROSSMAN: And then --
11 THE WITNESS: Or going straight.
12 MR. GROSSMAN: Or going straight? And if they
13 turn left or right, they can get to a north-south drive
14 aisle?
15 THE WITNESS: That's correct.
16 MR. GROSSMAN: Okay.
17 BY MS. HARRIS:
18 Q And what's the average, or what's the actual
19 posted speed on say Veirs Mill Road?
20 A Veirs Mill Road is posted, I have to look it up,
21 but I will say it's posted for 35 miles an hour.
22 Q So behaviorally someone coming out of a station
23 that's located right on Veirs Mill road trying to merge into
24 traffic that's going 35 miles per hour, can you go into a
25 little bit more --

1 A Well, they're dealing, they're dealing with
2 traffic at a different, a speed differential that is
3 entirely different than what you have within the mall
4 parking lot. Cars in the mall parking lot are driving at
5 five or 10 miles an hour, pedestrians are walking, you're
6 expecting cars in the parking lot, you're expecting cars in,
7 pedestrians in the parking lot and you have what we term a
8 low relative speed, a speed differential is very low and
9 compatible.

10 Q You noted that the average mile per hour in the
11 parking lot area is five to 10 miles per hour?

12 A Yes.

13 Q What would you say it is along the ring road or is
14 there a posted speed along the ring road?

15 A The ring road is posted for 15 miles an hour.

16 Q Okay.

17 A Sometimes the cars go faster, sometimes they're
18 going at the speed.

19 Q And can you identify, and I don't know if they're
20 indicated on that site, on that exhibit, where the stop
21 signs are in relation to the special exception site and the
22 ring road?

23 A Mr. Grossman, again, referring to 54(i), the lower
24 right corner of the special exception area, there is an
25 intersection within the mall parking area, parking lot of

1 the ring road and a north-south drive aisle. That
2 intersection has now recently been posted a 3-way stop or an
3 always stop. So as cars are approaching on the ring road,
4 there are stop signs as cars are coming southbound on the
5 north-south drive aisle if there's a stop sign.

6 Q Thank you. I want to get into the queuing a
7 little bit more.

8 A Okay.

9 Q You indicated that the queuing in this, for this
10 site was determined based on your actual observation of the
11 Sterling site and empirical data that was derived from that,
12 correct?

13 A Correct.

14 Q And can you go into a little bit more detail in
15 terms of your conclusions with respect to this site and now
16 that we have an exhibit up and there may be a better exhibit
17 in the record, to discuss the queuing impacts?

18 MR. GROSSMAN: There should be an exhibit in the
19 record. I have seen such an exhibit. In fact, I have seen
20 two of them --

21 MS. HARRIS: It is.

22 MR. GROSSMAN: -- one with fewer cars than the
23 other.

24 THE WITNESS: Yes.

25 BY MS. HARRIS:

1 Q It is 56(f), the colored graphic. Would that be
2 helpful? Or you may be able to speak to it just based on
3 the Exhibit 54(i), which is in front of you.

4 A One moment please. I'm looking for the exhibit by
5 which you're referring to. How do you want to do this, talk
6 about it, put it up, hold it up?

7 Q It's -- I think maybe it's better just to talk
8 about it based on 54(i) perhaps.

9 A Okay. So let me have 54(i), Mr. Grossman. There
10 are eight rows of queuing and what we determined, what staff
11 determined is that there was room for 40 cars to be queued,
12 but that left quite a bit of space still existing. It's our
13 opinion that you can fit, depending on the cars -- many cars
14 today, Mr. Grossman, are about 13 feet in length. And what
15 we did was to look at an average of about a 15-foot car with
16 two to three feet between the cars, overall about 18 feet of
17 car, plus space between the front and rear bumper of the
18 cars. And we believe we can fit 48 to 50 cars within the
19 queuing area of the box as I noted once before.

20 Q And you indicated earlier in your testimony, you
21 said within the box, and now it may be helpful now that we
22 have an exhibit up to explain what you meant by in the box
23 and what the queuing, anticipated queuing would be 50
24 percent of the time?

25 A The, what I was referring to is, as the box was

1 the area that's basically highlighted as the special
2 exception area, but south of the fuel pumps. So it's the
3 area that I'm outlining in red, but for the record because
4 they cannot see that, it's the highlighted area where cars
5 would be queued waiting to pump.

6 MR. GROSSMAN: So the entire special exception
7 area is south of the pumps?

8 THE WITNESS: South of the pumps, yes, sir.

9 BY MS. HARRIS:

10 Q And you testified that 50 percent of the time how
11 many actual cars would be in --

12 A 50 percent of the time there would be no more than
13 two cars that would be combined in that queuing area.

14 Q Okay. And while 50 percent of the time is nice, I
15 think most people in the room are concerned about what
16 happens during the busiest period of time, which you
17 indicated was Saturday afternoons, I believe?

18 A Saturday afternoons can be somewhere between 11:00
19 and 2:00, 11:00 and 3:00.

20 Q And your observations are based on, or your
21 conclusions are based on your observations of the Sterling
22 situation, correct?

23 A That's correct.

24 Q Can you walk through what, what may look like?

25 A I'm -- certainly. I'm not sure what exhibits have

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1 been -- do you want to use an exhibit for that or just --
2 Q No, because we didn't, we have something that
3 illustrates it, but it wasn't provided previously. We can
4 certainly show it if you don't want to accept it. Why don't
5 we -- we can show it and if you don't think it's acceptable,
6 we won't.
7 MR. GROSSMAN: Well, we'll see if there's an
8 objection to it.
9 MR. SILVERMAN: What are we showing?
10 MR. ADELMAN: On what?
11 MR. GROSSMAN: Why don't you show me --
12 MS. HARRIS: Yes.
13 MR. GROSSMAN: -- show the exhibit and --
14 MS. HARRIS: Why don't you show the exhibit?
15 MR. GROSSMAN: -- see if there's an objection?
16 THE WITNESS: To whom?
17 MS. HARRIS: To Mr. --
18 THE WITNESS: Over here to Mr. Grossman?
19 MS. HARRIS: You can show it to Mr. Grossman --
20 MR. GROSSMAN: And a copy for the opposition
21 please.
22 MS. HARRIS: It was in preparation of this, Mr.
23 Guckert's testimony that we realized this may be helpful in
24 demonstrating what he's about to testify to.
25 THE WITNESS: This exhibit, Mr. Grossman, is

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1 basically --
2 MS. ROSENFELD: Excuse me, excuse me, I object.
3 MR. SILVERMAN: No, we object.
4 MS. ROSENFELD: I would like an opportunity to
5 look at this exhibit.
6 MR. SILVERMAN: Dr. Adelman has spent hours on
7 every exhibit that we've seen. We can't look at a
8 scientific chart like this.
9 MR. GROSSMAN: Well, all right. I'm waiting to
10 see if there's an objection. First of all, let's mark this
11 since it's been raised.
12 MS. ROSENFELD: Mr. Guckert, may I have a copy?
13 MR. GROSSMAN: We will mark it as an exhibit and
14 we'll see if there's an objection.
15 MS. HARRIS: But let's see.
16 MR. GROSSMAN: This is Exhibit 110. It's entitled
17 total cars queued each minute in the Sterling, Virginia,
18 Costco.
19 (Exhibit No. 110 was marked for
20 identification.)
21 MR. ADELMAN: Sir, Mr. Grossman, we do object to
22 having the witness testify based on this exhibit.
23 MS. HARRIS: And, Mr. Grossman, the exhibit was
24 intended simply as a demonstrative exhibit to facilitate
25 actually what, what's contained in the LATR and in the

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1 evidence that's already been submitted. It was in an
2 attempt to simplify the issue, frankly.
3 MR. GROSSMAN: I understand.
4 MS. ROSENFELD: And Mr. Grossman has, there's a
5 lot of information on this chart. It purports to compare
6 with another exhibit. We couldn't possibly be able to be
7 able to evaluate this in the next few days.
8 MR. GROSSMAN: I think that is a fair objection
9 and I'm going to sustain that and will not allow the
10 exhibit.
11 MS. ROSENFELD: Okay.
12 BY MS. HARRIS:
13 Q We'll have to rely on your verbal skills --
14 A Certainly.
15 Q -- to explain what that, what the queuing
16 situation is and what's intended.
17 MR. GROSSMAN: Is this document, I believe this
18 document which --
19 MS. HARRIS: The queuing analysis from the
20 Sterling?
21 MR. GROSSMAN: No, the queuing results --
22 MS. HARRIS: Yes, that is interrupted.
23 THE WITNESS: -- is incorrect? So, Mr. Grossman,
24 this document, I believe, is an exhibit which provides all
25 of the queuing information on a minute-by-minute basis was

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1 submitted as part of the exhibit.
2 MR. GROSSMAN: All right. So that's -- when you
3 say this document, Ms. Harris, what is he talking about?
4 MS. HARRIS: It is Exhibit 56(b) and (c) with the
5 vehicle queues from Sterling. And it was submitted on
6 January 22nd.
7 MR. GROSSMAN: 26th.
8 MS. HARRIS: 22nd. And it looks like, it's a
9 table with a number of columns and a number of numbers going
10 down the column.
11 MR. GROSSMAN: Vehicle queue summary, Sterling,
12 Virginia --
13 MS. HARRIS: Correct.
14 MR. GROSSMAN: -- for January 11 and January 12,
15 2013?
16 MS. HARRIS: Correct.
17 MR. GROSSMAN: Okay.
18 BY MS. HARRIS:
19 Q Okay. So, Mr. Guckert, can you please try to
20 describe what that exhibit shows using the exhibit board
21 that's before you if need be?
22 A Yes. There's not a relationship to that, but let
23 me do what you, what I think I was asked to do and that is
24 verbalize. Could you give me that exhibit number again so I
25 can refer to it?

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1 Q 54, I'm sorry --
2 MR. GROSSMAN: 56(a) --
3 MS. HARRIS: 56.
4 MR. GROSSMAN: (b) and (c).
5 THE WITNESS: 56(b) and (c)?
6 MR. GROSSMAN: Correct.
7 MS. HARRIS: Yes.
8 THE WITNESS: And what part is (b) and which part
9 is (c), do we know?
10 MS. HARRIS: (b) is the 11th. The queuing
11 observations that were made on the Saturday, January 11th,
12 and (b) and (c) is the 12th.
13 THE WITNESS: So it would be on Friday --
14 MS. HARRIS: Oh, I'm sorry, Friday and Saturday.
15 THE WITNESS: Friday, 1/11 and (c) would be
16 Saturday 1/12, correct?
17 MS. HARRIS: Yes.
18 THE WITNESS: Okay. So, Mr. Grossman, those two
19 exhibits are the results of the observations that were made
20 every hour of the day on Friday, January 11th and Saturday,
21 January 12th at the staged queuing zone in the Sterling,
22 Virginia.
23 MR. SILVERMAN: Could we have --
24 THE WITNESS: What --
25 MR. SILVERMAN: Could we just have a moment while

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1 we retrieve that document?
2 MR. GROSSMAN: Certainly.
3 MR. SILVERMAN: Sometimes paper is faster than
4 electronics. Thank you. Thank you, sir.
5 MR. GROSSMAN: Okay. By the way, there is water
6 on the back and cups should anybody need it.
7 THE WITNESS: So what we did is that we observed
8 traffic and the queuing per lane over the 15-hour period on
9 a Friday and a Saturday.
10 BY MS. HARRIS:
11 Q And let me back up one second. Why did you choose
12 a Friday and a Saturday?
13 A We chose a Friday and a Saturday because Saturday
14 we know was typically the highest day of the week when both
15 store and gasoline purchases occur.
16 Q Thank you.
17 A And we did Friday to make that comparison and to
18 confirm that Saturday was higher than a weekday. And so we
19 observed traffic every minute, every single minute over the
20 15-hour periods and the observation showed the amount of
21 cars that were queued in each lane of the eight lanes and
22 then cumulative inside the queuing area. And from that
23 information, as I testified earlier, we took and drafted
24 the, that data and we also analyzed the data to determine
25 how many total cars we actually occurred at Sterling and

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1 then did a simple arithmetic calculation as discussed with
2 staff to arrive at the projected queuing that would be
3 within the special exception area shown on Exhibit 54.
4 MR. GROSSMAN: In other words, you multiplied 87
5 percent times the figures you had from Sterling?
6 THE WITNESS: At 86 percent, correct.
7 MR. GROSSMAN: 86 percent. I'm sorry.
8 THE WITNESS: Correct.
9 BY MS. HARRIS:
10 Q And can you highlight, I mean you already --
11 A Yes.
12 Q -- you already focused on the 50 percent, but can
13 you just provide --
14 A Yes.
15 Q -- some illustration of what that looked like --
16 A Yes.
17 Q -- give people a flavor of what it looked like
18 throughout the day?
19 A What that looks like, what that looked like was
20 that when you take and you do the calculation, Mr.
21 Grossman --
22 MR. GROSSMAN: Yes.
23 THE WITNESS: -- of 86 percent, what you end up
24 with is a circumstance where you have a very few one to 2-
25 minute period throughout the Saturday during the day where

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1 we are projecting cars would be, a cumulative number of cars
2 would be more than 45 with the special exception area.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: And that, and those fit within the
5 special exception area. So that even when you exceed the 40
6 that was noted in the staff report, that, by looking at the
7 data that is contained in Exhibits 56(b) and (c), you never
8 extend out of the special exception area onto the private
9 road.
10 BY MS. HARRIS:
11 Q And so mathematically --
12 MR. GROSSMAN: You would never extend out if you
13 assume that it can hold more than 40, is that correct?
14 A If you -- well, we know it can hold more than 40.
15 Q Okay.
16 A That's clear. The -- we know that it can hold 45
17 plus.
18 Q All right. And what's -- so 45 plus, you said 45
19 to 48, I think you said?
20 A Yes.
21 MR. GROSSMAN: And is it the 49th, if it pulled
22 up, would have to be out on the ring road according to what
23 you're saying?
24 THE WITNESS: It is possible. It depends on what
25 size car is actually in the queue, but using the process we

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1 use, 49, 50 cars, depending on how much they scooch up, how
2 far they go bumper to bumper --
3 MR. GROSSMAN: Okay.
4 THE WITNESS: -- they may end up on the temporary,
5 but the important thing is, Mr. Grossman, is that what the
6 data shows is that if they did exceed the 48, 49, and happen
7 to be on the ring road, the data shows that, and the
8 observations show that it would be for a minute, maybe a 2-
9 minute interval and then, then that queue dissipates again.
10 MR. GROSSMAN: And does the data show that based
11 on your 86 percent multiplication that that queue would
12 exceed 49 or 50 vehicles at any point?
13 THE WITNESS: It would not exceed 50 vehicles at
14 any point and it would, it may exceed, it could exceed 49
15 for one minute of the 15 hours potentially.
16 MR. GROSSMAN: All right. And that's on a
17 Saturday?
18 THE WITNESS: Yes.
19 MR. GROSSMAN: What about on a Friday?
20 THE WITNESS: It doesn't even come close.
21 MR. GROSSMAN: Okay. All right. Thank you.
22 THE WITNESS: Or during the week, it doesn't even
23 come close.
24 MR. GROSSMAN: All right.
25 BY MS. HARRIS:

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1 Q And are you aware of Costco's operational
2 procedures in terms of having additional employees in the
3 special exception area when it, on a Saturday during the
4 peak hour?
5 A I am and that, there's a procedure that when the
6 queuing, if the queuing gets to the point where it appears
7 that the queue could extend onto the ring road, that
8 Costco's procedure would be to not allow the car to queue on
9 the ring road, but would, is instructed to move along the
10 ring road until the queue dissipates.
11 MR. GROSSMAN: Okay.
12 BY MS. HARRIS:
13 Q And was that a procedure that was suggested by
14 Park and Planning staff?
15 A Yes.
16 Q Thank you. You focused on the pedestrian
17 situation as it pertains to the area immediately adjacent to
18 the special exception area. I want to focus just for a
19 moment on the pedestrian connections as it relates to the
20 ring road. Can you please identify the existing pedestrian
21 connections between the mall and the residential
22 neighborhood and describe each of these connections?
23 A Can I use the aerial?
24 Q You may. And I think, I believe the exhibit
25 number is marked on there.

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1 MR. GROSSMAN: Everybody should be very careful
2 there on the stage that they don't trip and fall off. I
3 notice that there is somebody's case, notebook case on the
4 floor of the stage. Whose is that?
5 MR. GOECKE: It might be ours, Mr. Grossman.
6 MR. GROSSMAN: I don't want too many hazards here.
7 THE WITNESS: Let me see if this has been marked.
8 MR. BRANN: It should be, look in here.
9 THE WITNESS: Looking now, referring to Exhibit
10 102, it's an aerial photograph with an aerial date of
11 October 2012. It is a photograph showing the mall and the
12 surrounding area. Mr. Grossman, there are four marked --
13 actually there are more than that. There are -- let me go
14 through them. At the west end of the site coming off the,
15 one of the main entrances off of University Boulevard there
16 is a 3-way marked pedestrian crosswalk. That crosswalk is
17 used by different groups of people.
18 MR. SILVERMAN: Mr. Guckert, we're having trouble
19 seeing.
20 THE WITNESS: At the end of this cul-de-sac, there
21 is a way to get to, cross into the mall property.
22 MR. GROSSMAN: I see. Just identify -- you say
23 this cul-de-sac. What's the location the mall of the cul-
24 de-sac you're talking about?
25 THE WITNESS: The cul-de-sac is not on the mall,

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1 right.
2 MR. GROSSMAN: All right.
3 THE WITNESS: It's at the west end of, let me see
4 how to describe this here, the south or west University
5 Boulevard entrance where it meets the ring road, there's a
6 crosswalk marked on all three lanes.
7 MR. GROSSMAN: All right.
8 THE WITNESS: Moving around the ring road south
9 and then east, there is three crosswalks at the east end of
10 the mall property where the Stephen Knolls School exists.
11 There is a crosswalk on the west side of the intersection.
12 There's a crosswalk on the east side of the intersection.
13 Then there's a crosswalk that is ADA accessible down to the
14 school just a little further east by the theater retail
15 building, the office building, the south office building.
16 Those are the one, two, three crosswalks that exist in the
17 vicinity of Stephen Knolls School and then a series of
18 crosswalks at the West University Boulevard entrance and
19 access at the mall.
20 BY MS. HARRIS:
21 Q And did staff condition approval upon the addition
22 of an additional crosswalk if, in fact, Westfield grants the
23 necessary easement for the Mount McComas lot?
24 A No.
25 Q Can you explain that one?

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1 A If Westfield agrees to allow crossing into the
2 private property, there would be a crosswalk at what is
3 being called Mount McComas. I think I'm at the right
4 location which is at the west area of the Costco building
5 and on the ring road itself if that is granted, ultimately
6 granted.

7 Q And in your professional judgment, is the crossing
8 of the ring road occurring at these crosswalks?

9 A Absolutely.

10 Q Once someone utilizes one of these crosswalks, and
11 I want to focus primarily on the ones in closest vicinity to
12 the site, where does that leave them and where do they go
13 from there, once they've crossed the ring road using the
14 pedestrian crosswalk?

15 A Then they enter into the mall parking lot or the
16 pedestrian paths and sidewalks that exist within the mall
17 facility.

18 Q Okay. And, just a moment, in connection with the
19 special exception, will any of the crosswalks be improved?

20 A There's one crosswalk that we suggested be
21 improved and that would be what we're calling the east
22 crosswalk the one that services the Stephen Knolls School.
23 That east crosswalk follows a ramp, an ADA type ramp down to
24 the school. As you come up from the school on that grass,
25 you come up to a crosswalk on the ring road and currently it

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1 needs to be improved to make it a more ADA accessible ramp.
2 We recommended and Costco agreed and Westfield agreed to
3 allow that crosswalk to be improved to make it safer, more
4 pedestrian-friendly and more ADA accessible.

5 MR. GROSSMAN: All right.

6 BY MS. HARRIS:

7 Q You previously testified with respect to the
8 pedestrians in the southwest parking lot area. Is there
9 anything else you feel you need to add with respect to the
10 pedestrians in that area?

11 A I do not think so.

12 Q Okay. Then I want to move on to your most recent
13 observations. And as we said at the beginning of the
14 hearing, we all noted that the warehouse had just opened and
15 Mr. Guckert's most recent traffic observations prior had
16 occurred back in November of 2012 and, obviously, the
17 situation on the Wheaton Mall has changed dramatically. I
18 understand you were out there this past weekend, is that
19 correct?

20 A Yes.

21 Q And can you explain what you did and what you
22 observed and as we noted, what work product will be derived
23 from your work this weekend?

24 A Mr. Grossman, we conducted intersection turning
25 movement counts and observations at about 10 to 12 locations

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1 at the mall entrances and within the ring road itself. And
2 what will happen is that data will be transcribed and then
3 we will undertake intersection capacity analyses to
4 determine what the level of service is at those locations
5 both inside and outside the mall. That information, if it's
6 acceptable, will be submitted as part of the record.

7 MR. GROSSMAN: Well, when would that be submitted?

8 THE WITNESS: Within two weeks.

9 MS. HARRIS: And then we can certainly make Mr.
10 Guckert, obviously available to be available to answer any
11 questions with respect to that. I would note, though, he
12 has a business conflict on certain dates, so we'll just need
13 to coordinate that.

14 MR. GROSSMAN: Is that agreeable to the
15 opposition? I can't -- you have to speak up.

16 MR. ADELMAN: Oh, I'm sorry.

17 MS. ROSENFELD: That would be, that's fine.

18 MR. ADELMAN: That's acceptable, yes.

19 MS. ROSENFELD: That's acceptable.

20 MR. GROSSMAN: All right.

21 THE WITNESS: With the other thing, in addition to
22 the actual empirical data that we collected last Saturday, I
23 also was personally onsite for several hours observing
24 traffic conditions and traffic flow, vehicle flows through
25 the parking lots, observation of the parking lot

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1 utilization, observation of the garage utilization.

2 MR. ADELMAN: That is all hearsay, is it not, Mr.
3 Grossman?

4 MR. GROSSMAN: What's hearsay?

5 MR. ADLEMAN: The statement of Mr. Guckert is
6 hearsay since there is no actual data being presented.

7 MR. GROSSMAN: No, no, no. Hearsay is an
8 utterance or a statement by someone outside of the hearing
9 which is offered to prove the truth of the matter that's
10 being asserted.

11 MR. ADELMAN: I understand and my apology.

12 MR. GROSSMAN: That's it, so.

13 THE WITNESS: And what I observed was that the
14 second level of the garage was occupied 30, 40, 50, 60
15 percent of the time, which is the garage entrance that leads
16 directly into the mall and then to the Costco. The south,
17 for the west, southwest parking lot, surface lot which is
18 shown on Exhibit 102 was heavily utilized throughout the
19 time, not 100 percent utilized. It was always cars pulling
20 in, always cars pulling out and they never really
21 circulated, I mean never circulated back out onto the ring
22 road. I'm sure that happened from time to time, but the
23 ring road was lightly used as it has been, as we observed,
24 as we counted, as we have shown in our reports.

25 MR. GROSSMAN: This was on Saturday, April 27?

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1 THE WITNESS: No, the 29th.
2 MR. GROSSMAN: April 29th?
3 MS. HARRIS: No, April 29th is a Monday.
4 THE WITNESS: I'm sorry, 27th. I'm sorry.
5 MR. GROSSMAN: Okay. So it's --
6 THE WITNESS: You're correct, I'm incorrect.
7 MR. GROSSMAN: All right. So Saturday, April 27,
8 2013?
9 THE WITNESS: Yes.
10 MR. GROSSMAN: Okay.
11 BY MS. HARRIS:
12 Q And based on the observations and the fact that
13 the station was, excuse me, the warehouse was just two weeks
14 into its opening, do you have any expectations in terms of
15 those observations?
16 A Well, the -- what has occurred with Costco as a
17 corporation expense is that the first 30, 60 days is the
18 heaviest utilization when --
19 MR. SILVERMAN: That's hearsay.
20 THE WITNESS: -- new members --
21 MR. GROSSMAN: Hold on. Hold on. Okay.
22 MR. SILVERMAN: I think that is hearsay.
23 MR. GROSSMAN: All right. What was -- I'm sorry,
24 you'll have to --
25 MS. HARRIS: Should I rephrase the question?

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1 MR. GROSSMAN: Yes.
2 BY MS. HARRIS:
3 Q Do you recall that Mr. Brann a representative of
4 Costco, testified to the fact that Costco expects a, quote,
5 surge of customers to the station for the first 30 to 60
6 days of, after its opening?
7 A Surge you mean to the store?
8 Q Yes. And by surge, I mean an increase in their
9 normal, expected customer level.
10 A Yes, and that's typical of new retail facilities
11 of any type, including Costco.
12 Q All right. And so, therefore, would you conclude
13 that your observations on Saturday, if you were to go out
14 there in three months, what would you, based on that what
15 would you expect?
16 A It would certainly not be any worse and would be
17 expected to be better, to be less intense as it relates to
18 parking and traffic.
19 MR. GROSSMAN: You're saying that the future
20 observations would be less, expected to be less intense than
21 what you observed on Saturday, April 27th?
22 THE WITNESS: Yes, sir.
23 MR. GROSSMAN: All right.
24 BY MS. HARRIS:
25 Q And did you observe parking along the ring road

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1 during your time out at the site on Saturday?
2 A Only along -- there was, there were some cars
3 parked, Mr. Grossman, I'm referring now again to Exhibit
4 102. On the west side there were some cars parked in the
5 vicinity of the pool about four, five, six cars in the
6 vicinity of a pool along the west side of the ring road.
7 Q Do you have any reason to believe those were
8 customers of the warehouse or do you --
9 A I have no reason to believe that there was, one of
10 them appeared to be a gourmet lunch van, the other, two of
11 the others appeared to be worker vans of some sort, but
12 there were none parked along the south side of the ring road
13 in the vicinity of either the Costco building itself or in
14 the vicinity of the future special exception.
15 Q Okay. Thank you. I want to turn now to the
16 discussion of the parking waiver that the Westfield
17 Corporation obtained and I'm referring to Exhibit 90(c).
18 MR. GROSSMAN: How much longer do you expect this
19 witness's testimony to last?
20 MS. HARRIS: About 45 minutes perhaps.
21 MR. GROSSMAN: Let's take a 5-minute break and
22 return at 11:35.
23 (Recess)
24 MR. GROSSMAN: Ms. Harris, you may continue with
25 your questions.

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1 BY MS. HARRIS:
2 Q Mr. Guckert, I think we had left off at the
3 question of the parking waiver that Westfield Corporation
4 had received in February of 2012 and I refer to Exhibit
5 90(c), which is in the record. I would note that Mr.
6 Agliata (phonetic sp.), the Westfield representative, will
7 give a little bit of background with respect to the parking
8 waiver, but Mr. Guckert, you were involved in that case.
9 Please explain what was sought and what was obtained.
10 A What was sought was a waiver to rate, Mr.
11 Grossman, a 4.0 spaces for 1,000 square feet.
12 Q Let me stop you there for a moment. Is the
13 existing rate, 4.0?
14 A No.
15 Q Okay. The existing rate was higher. So the
16 request was to reduce the total number of spaces to 4.0.
17 A Correct. Thank you.
18 Q And that, that resulted in the need for 5,999
19 parking spaces, including the requested special exception
20 that we're discussing today.
21 MR. GROSSMAN: All right. You said reduce the
22 rate, the rate to 4.0. What are the units you are measuring
23 now, 4.0 parking spaces per what?
24 THE WITNESS: Per 1,000 square feet of gross
25 building area.

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1 MR. GROSSMAN: Okay.
2 BY MS. HARRIS:
3 Q And are you aware of how many parking spaces
4 exist, will exist on the site once the special exception in
5 the proposed location is constructed?
6 A Based upon the parking waiver, it would be 6,079.
7 Q So that there will be an excess of parking spaces
8 on the site, is that correct?
9 A Correct.
10 MR. GROSSMAN: Once the -- when you say excess,
11 you are saying that there will be spaces on the site in
12 excess of the amount that would be permitted under the
13 waived amount of 4.0?
14 THE WITNESS: Correct.
15 MS. HARRIS: Yes.
16 THE WITNESS: 6,079 would be existing or 5,999 as
17 the minimum number which equates to 4.0.
18 BY MS. HARRIS:
19 Q And based on your observations last weekend, two
20 weekends, two weeks after the opening of the store, what's
21 your opinion about the adequacy of this?
22 A Overall there's a substantial plethora of excess
23 spaces within the mall property.
24 Q And Mr. Brann has testified that the, that Costco
25 was allocated parking spaces in the southwest area of the

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1 mall site, as well as the parking deck. Do you have an
2 opinion in terms of the long-term, meaning in the future,
3 utilization of these spaces and the allocation of them with
4 respect to Costco's use?
5 A I'm not sure I understand.
6 Q Well, you testified, if I understood you
7 previously, you testified that your observations last
8 weekend were that the southwest parking lot received a fair
9 amount of -- that it was highly utilized --
10 A Yes.
11 Q -- and yet the same time there were, I forget what
12 percentages you noted, but empty spaces in the parking
13 structure?
14 A That's correct. The top level of the deck was
15 virtually empty, 99 percent empty. The middle level of the
16 deck, which is a direct access to the mall and Costco, would
17 range from 30 to 60 percent occupied and the area underneath
18 Costco was 70 percent, 70 to 80 percent vacant and the lot
19 to the east, the parking lot to the east of Costco and
20 Dick's was 70 to 80 percent vacant. So there's lots of
21 vacant spaces overall in the mall area.
22 Q And are those vacant spaces convenient to the
23 Costco warehouse?
24 A They're -- a lot of those spaces are very
25 convenient to the Costco warehouse, especially those in the

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1 back.
2 Q In your opinion are they more convenient than the
3 southwest parking lot?
4 A Oh, I think that they're, in many instances
5 they're as, if not more, convenient. The second level deck
6 is very convenient, very desirable because of being out of
7 the weather, the sun, wind, rain and snow.
8 Q Thank you. I want to turn now to the question
9 that Mr. Grossman posed and this has to do with Section
10 59(c), G, excuse me, 2.06(a)(2), which is that the, that the
11 proposed use will not create a traffic nuisance. Can you
12 please explain your opinion of this and I would ask you to
13 divide this into three categories if you would. One is the
14 effect on the neighborhood, the second is the effect on the
15 mall parcel itself and then, thirdly, the effect on the
16 public roads. And I believe his, the way this question was
17 stated, it is, he noted, you know, it goes really to the
18 question of compatibility. Why don't --
19 A The -- in my opinion, the issue of nuisance and
20 compatibility in my opinion from a traffic point-of-view
21 seem to go hand in hand. If it's a nuisance, it may not be
22 compatible. If it's compatible, it may not be a nuisance in
23 my opinion. As it relates to the neighborhood and this
24 special exception use from a traffic point-of-view, since
25 there is no connection to the neighborhood in that all

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1 access to the special exception was from the private road
2 system in the mall and there's no direct connection to the
3 mall and the mall ring road to the neighborhood, I simply do
4 not see where from a traffic point-of-view this special
5 exception could be a nuisance.
6 Q Could you in making that statement, could you
7 refer again to the aerial please? And when you said no
8 connection to the neighborhood, I think it may be helpful,
9 and I don't know if it's shown on that aerial, if you could
10 explain how one would access if they were in a vehicle the
11 residential neighborhood located to the south of the subject
12 property?
13 MR. GROSSMAN: What's the exhibit number again?
14 THE WITNESS: 102.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: If you were trying to get to the
17 special exception area from the neighborhood to the south,
18 there is a parallel road that runs parallel east and west,
19 parallel to the ring road runs east and west out to Georgia
20 Avenue and you would make a left turn on Georgia Avenue,
21 come up, make a left turn onto Veirs Mill Road and make a
22 left turn at the signal into the mall and then travel around
23 the ring road to reach the site. From the, on the west
24 side --
25 MR. GROSSMAN: The parallel road you're talking

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1 about is not visible on this particular aerial photo?
2 THE WITNESS: It's just off of that, off the
3 aerial photo. There's a lot of --
4 BY MS. HARRIS:
5 Q Is it McComas Avenue?
6 A I believe it is and it's just at the, at the next
7 light at the end of the aerial.
8 Q Okay.
9 A So you would, you'd go to the east at Georgia
10 Avenue, make a left on Veirs Mill and then a left into the
11 site. In the opposite direction, you would come out through
12 the neighborhood out to 193, make a right turn from one of
13 the neighborhood streets onto 193 and then make a right turn
14 into the west mall entrance, come up to the ring road, make
15 a right turn and travel the ring around to the special
16 exception area.
17 Q So to be clear, there's no vehicular connection
18 directly from the mall parcel to the residential
19 neighborhood to the south, is that correct?
20 A Correct.
21 Q Okay. So, therefore, in your opinion, could this,
22 could the proposed special exception cause a nuisance to
23 that neighborhood in terms of traffic?
24 A Absolutely not.
25 MR. GROSSMAN: What about to the west, the

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1 southwest of the site where there are residences also?
2 THE WITNESS: That's, I just testified to that,
3 that there is no connection from those residences to the
4 southwest. They need to work their way out onto University
5 Boulevard and make a right turn into the right turn lane.
6 MR. GROSSMAN: Right. But counsel's question
7 asked you about residences to the south.
8 MS. HARRIS: I'm sorry. Okay. And southwest.
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: Thank you.
11 BY MS. HARRIS:
12 Q How about in terms of could you foresee that being
13 a cut through, I mean could there be a cut through situation
14 that could potentially cause traffic to either the southwest
15 or southern neighborhoods?
16 A A cut through in order to reach --
17 Q The mall site.
18 A I don't see why anyone would want to do that.
19 Q Because?
20 A Because it takes you nowhere. It's circuitous,
21 it's long, it's through a residential community instead
22 of -- I'm not sure why one just would not use University,
23 Veirs Mill Road or Georgia Avenue to reach the parking lot.
24 It just doesn't, it, to me it doesn't make sense that anyone
25 would cut through from Georgia Avenue, go through McComas,

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1 go through the residential streets to get to University to
2 come back.
3 Q Because if they were at the point where you just
4 started that example, where would you go to enter the mall?
5 A Veirs Mill Road.
6 Q Thank you. And how about going the other way?
7 A And from the other, from the other direction if
8 they were to get off University Boulevard, work their way
9 through the street system to Georgia Avenue and come back
10 up, it's just illogical because they can just take
11 University and make a right turn.
12 Q And it would be faster, more convenient, less
13 turns?
14 A It's just, it would be silly to do it otherwise.
15 Q Okay. Let's -- let's focus just for a moment
16 because I think the crux of Mr. Grossman's question, if I
17 understood it correctly, may have been the compatibility
18 within the mall site. So let's, before we get to that, what
19 would creating a nuisance on the public roads? Would the
20 proposed use create a nuisance on the public roads?
21 A There is absolutely no reason why there would be a
22 nuisance on the public roads since the site is located deep
23 inside the Wheaton Plaza property. We know that it does not
24 create a capacity problem on the public roads because we've
25 been through at LATR, so it doesn't create a capacity

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1 problem. I do not see from a traffic point-of-view if it's
2 not a capacity problem how it would be a nuisance.
3 Q Okay. And the now let's focus on the mall site
4 itself. And it would be helpful to set the stage in terms
5 of what the existing situation is at the mall and then
6 assuming that the special exception is approved, what the
7 addition of the gas station use on the mall parcel, what
8 that would do in terms of the overall compatibility from a
9 traffic standpoint. And maybe we should start with, and I
10 know you testified to this, but just in terms of numbers,
11 the additional increased traffic to the site by virtue of
12 the proposed use.
13 A Well, what we talked about earlier and testified
14 earlier is about 60, 70 new cars to be generated in the
15 morning peak hour and the evening peak hour. The ring road,
16 Mr. Grossman, and I'm pointing now again to Exhibit 102, the
17 southside ring road where the special exception area is
18 composed has average daily traffic of about 3,000. The
19 average daily traffic along University and Veirs Mill is in
20 the 20 to 25,000 car a day range. The average daily traffic
21 along Georgia Avenue is in the 50,000 car a day range. And
22 that's where --
23 MR. GROSSMAN: What segment though? Are you
24 talking about all along Georgia Avenue or all along --
25 THE WITNESS: I'm talking about in the vicinity of

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1 the mall.
2 MR. GROSSMAN: All right.
3 THE WITNESS: It's about 50,000 cars a day and the
4 vicinity of the mall at Veirs Mill Road is about 20 to
5 25,000 cars a day. The vicinity of University, or
6 University Boulevard in the vicinity of the mall is 20 to
7 25,000 cars a day.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: The ring road in the vicinity of the
10 special exception area is about 3,000 cars a day.
11 MR. GROSSMAN: Right.
12 THE WITNESS: Veirs Mill Road and University,
13 Georgia Avenue, that's where other gas stations exist and
14 cars enter and exit along those higher volume, public
15 arterials versus the cars that we're talking about along the
16 low volume ring road. So that there's a huge difference,
17 and we talked about it earlier, there's a non-inherent
18 difference, but it's a big, positive difference because the
19 patrons to the gasoline facility will be going on to a
20 parking lot where it's expected to find low speed, low
21 volume cars and pedestrians.
22 The issue of how, and I went through in great
23 detail of how the queuing and loading area for gasoline is
24 very regimented as compared to other gas stations where one
25 may describe it as a free for all, but they certainly go in

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1 opposite directions and so because of the regimentation of
2 the proposed special exception, in my opinion, it is far
3 from being a nuisance and more importantly it's compatible
4 with the uses of the mall. The mall is an auto centric
5 mall. That's where cars are. That's where people are,
6 walking and getting packages. So it's very compatible with
7 the uses that occur there.
8 BY MS. HARRIS:
9 Q And can you describe for a moment the expectation
10 of a customer coming, or a visitor to the mall, someone who
11 chooses deliberately to go to the, to a mall --
12 A Well --
13 Q -- whether it be this mall or any other mall?
14 A Yes. I mean this is a voluntary visit. You're
15 not forced to go to the mall to buy gas. You're not forced
16 to go to the mall to do anything. So it's voluntary that
17 you join a Costco and buy their products or buy their gas.
18 It's expected. You know, the expectation of the pedestrian,
19 the expectation of the driver is to see other cars in a
20 parking lot, to see other pedestrians with shopping carts
21 coming from stores like Costco and Target in a parking lot.
22 Same thing occurs at the northern end of the mall where
23 Giant Food is located. The Giant Food store, you expect to
24 see cars parking in and out and pedestrians with shopping
25 carts. I mean that's what happens in malls. So it's a

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1 compatible situation as it relates to a mall.
2 Q And is a busy mall parking lot a sign of a
3 successful mall?
4 A Absolutely.
5 Q And did you have any discussions, and I'll ask Jim
6 Agliata this question as well, when you were working with
7 Westfield, was there any discussion about making sure, if
8 you will, that, for many of the uses, whether it was Costco
9 or anyone else that Westfield wasn't a victim of its own
10 success, so to speak, in terms of the traffic to the -- the
11 visitors to the mall and mall circulation and such?
12 A I've worked on a hundred or more, maybe a thousand
13 or more retail facilities. That's the dream of free
14 enterprise to have a crowded lot.
15 Q But a crowded parking lot that works well?
16 A Certainly.
17 MR. SILVERMAN: I would object to that, the question
18 and the answer because you're leading. I thought his first
19 statement was correct.
20 MR. GROSSMAN: Well, she, her question was, is
21 that a, does it work well? I don't think that that's a
22 leading question.
23 MR. SILVERMAN: All right.
24 MR. GROSSMAN: You could, I guess, make it more,
25 more meaningful, does it work poorly or well or how does it

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1 work, but I think that's a pretty general kind of question.
2 MR. SILVERMAN: Well, he's testifying about the
3 American dream. I mean he made a statement that she added
4 to it.
5 MR. GROSSMAN: I think it's certainly within the
6 realm, so I'll overrule that objection.
7 MR. SILVERMAN: Thank you.
8 MS. HARRIS: Mr. Grossman, you said we were going
9 to break at 12:15 and I just have a few recap questions, so
10 we may --
11 MR. GROSSMAN: All right.
12 MS. HARRIS: -- be right on target, but if we're
13 two minutes late, later --
14 MR. GROSSMAN: That's --
15 MS. HARRIS: Okay. Thank you.
16 BY MS. HARRIS:
17 Q So summarizing your lengthy testimony, I want to
18 just go through some of the standards. With regard to
19 public roads, will the special exception be served by
20 adequate public facilities?
21 A Absolutely.
22 Q And the relevant section there, I would note, is
23 59G 1.219. Does the special exception include protections to
24 ensure the traffic hazards or traffic nuisances will not be
25 created because of its location relation to similar uses,

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1 necessity of turning movements, in relation to its access to
2 public roads or intersections or its location in relation to
3 other buildings or proposed buildings on or near the site
4 and the traffic pattern from such buildings?
5 A Would you repeat that? Just kidding. Just
6 kidding. Mr. Grossman, I think my testimony, I hope my
7 testimony was clear that the design of this special
8 exception facility located where it is within a parking lot,
9 part of a regional mall in a low-volume arterial roadway,
10 low travel speeds, low relative speeds, with driver
11 expectations, pedestrian expectations, pedestrian crossing.
12 Q And I would note what I just read was only a
13 portion of that section 2.06(a)(2) and I can complete the
14 rest of that section.
15 MR. GROSSMAN: You also cited to the public
16 facilities provision in the general conditions, but you
17 slightly mis-cited it. If I recall, it's 59G 1.21(a).
18 MS. HARRIS: Oh, you're right, excuse me. You are
19 correct. I stand corrected.
20 BY MS. HARRIS:
21 Q Based on -- is it your opinion that the station
22 will be in harmony with the general character of the
23 neighborhood with respect to traffic and parking?
24 A Yes, and it's for the reasons that I've been
25 testifying to for the last several hours.

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1 Q Okay. Does the filling station maintain the
2 safety of vehicular and pedestrian traffic?
3 A Absolutely, for the reasons that we talked about,
4 especially as it relates to being regimented in its design
5 and the entrance and exits.
6 Q Has anyone else reviewed the proposed special
7 exception plans in terms of traffic and effect?
8 A Yes, the staff hasn't found complete agreement
9 with, by traffic and transportation analysis.
10 Q And so that was from a determination that was APF,
11 but did they also evaluate in terms of the special exception
12 criteria?
13 A Correct.
14 Q And they found that it satisfied --
15 A They found it to be satisfactory as well.
16 Q Thank you. Actually that took a lot less than 15
17 minutes.
18 MS. HARRIS: That concludes my questions of Mr.
19 Guckert.
20 MR. GROSSMAN: All right. Let's start the cross-
21 examination then. All right. I'm not sure -- I wasn't here
22 when the microphone was set up. It's this microphone?
23 UNIDENTIFIED SPEAKER: That microphone.
24 MR. GROSSMAN: All right. Well, perhaps it could
25 be placed there. Yes, if you could.

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1 THE WITNESS: Is that a recording microphone
2 versus an amplifying?
3 MR. GROSSMAN: I think it's to amplify. That's
4 what we were trying to set up. So the cross-examination
5 will with Dr. Adelman. Thank you, Mr. Guckert.
6 THE WITNESS: You're welcome. Amazing when you
7 push the on button.
8 MR. GROSSMAN: Yes, those sometimes work.
9 CROSS-EXAMINATION
10 BY MR. ADELMAN:
11 Q Thank you very much and thank you also for your
12 testimony. It answered a number of my questions. In fact,
13 I have a few additional ones. You obviously have a great
14 deal of experience with your firm doing the in-depth
15 analysis in a case like this ordering gas stations to be
16 placed in the parking lot of a mall and, in fact, in very
17 close proximity to the stores?
18 A I'm sure we have, considering the fact that we do
19 these types of studies around the country, in some instance
20 on an international basis. So, yes, I say we have. I would
21 have to have some time in order to go through the six to
22 10,000 studies that we've done.
23 Q Given that, is there a gas station in Montgomery
24 County and code elements are those of Montgomery County, and
25 then my final question, have you ever performed a traffic

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1 study with regard to a proposed gas station in a mall in a
2 parking lot in Montgomery County?
3 A I don't believe I have.
4 Q These are not, my questions now are not quite in
5 logical order since I'm simply moving down as you testified
6 and I'll get to my actual carefully formatted questions. I
7 hope that they're more logical.
8 MR. GROSSMAN: You don't have to be logical.
9 MR. ADELMAN: I won't --
10 MR. GROSSMAN: I deal with lots of attorneys and
11 they're never logical, so --
12 BY MR. ADELMAN:
13 Q You testified and I see you testified to the fact
14 that most of the intersections that you did studies on, the
15 amount of traffic you expected was to be less than one
16 percent. But, in fact, are there not a number of
17 intersections where the traffic is considerably greater than
18 one percent?
19 MR. GROSSMAN: You mean from this particular,
20 anticipated from this east --
21 MR. ADELMAN: The provisions from the special
22 exception application?
23 THE WITNESS: I don't think so, could be, but I
24 don't believe so.
25 BY MR. ADELMAN:

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1 Q Would you look at the intersection number 16?
2 MR. GROSSMAN: You're referring to Exhibit 11(a)?
3 MR. ADELMAN: Yes, actually that basically is my
4 next question that refers to you. I don't know how to refer
5 this. Costco filed appeal one and appeal two in exhibits.
6 All I've got elements in their exhibits are exhibits 3, 4,
7 5, 6, 7 which are renumbered your exhibit 11A so I'm not
8 sure how many numbers I should give you don't know which
9 numbers I should give you.
10 MR. GROSSMAN: Yes, it does get a little
11 confusing, but certainly the traffic impact analysis we're
12 referring to is Exhibit 11(a) and within, within this
13 exhibit, let's refer to page numbers --
14 MR. ADELMAN: Okay.
15 MR. GROSSMAN: -- if we can?
16 MR. ADELMAN: I can actually refer to page
17 numbers, just a moment.
18 MR. GROSSMAN: Because, fortunately, I think all
19 those internal exhibits are labeled with Bates numbers.
20 MR. ADELMAN: Well, I'm referring to page No. 30
21 and 31. And let's focus on the evening peak hours. And
22 with respect to page 31, which is your original exhibit
23 under B, and you look at number 16 and then you go and the
24 rest about access, that's a new section, the expected
25 increment is 9D, I'll refer to 682. So that's ballpark 15

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1 percent, is that not correct?
2 THE WITNESS: No, it's, it's 88, but the question
3 for clarification, Mr. Grossman, when I was referring to
4 about one percent, it was for the intersection from the
5 public road, not the internal intersection.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: There's no question that because the
8 traffic is minimal on the blue road that the net increase is
9 a higher percentage. When I was talking about, about one
10 percent, I mean it varies from intersection to intersection,
11 but the point is it was minimal on the off site.
12 MR. GROSSMAN: And what about within the, on the
13 loop road, what would be the maximum percentage increase
14 from the use of approved on a loop road intersection?
15 THE WITNESS: It looks like anywhere from three to
16 17 percent in the evening peak hour because your denominator
17 is a lot smaller, therefore, the percentage goes up.
18 MR. GROSSMAN: Okay. Mr. Adelman.
19 BY MR. ADELMAN:
20 Q Yes. So, let's see, to clarify without
21 testifying, just let me know, Mr. Grossman, is it not true
22 that the ring road access intersections the traffic flow and
23 the pedestrian movement is constrained by different
24 parameters? By that I mean the regular access points are
25 not signalized, there are multiple pedestrian crossings

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1 which do not have signals to guide pedestrians across the
2 access point? For example, are the intersection 16, the T,
3 isn't it not true that the pedestrians crossing the
4 pedestrian walk paths, in fact, frequently cause cars coming
5 through that intersection and turning left or right have to
6 pause significantly?
7 A I hope so.
8 Q So do I.
9 A I hope, I hope the cars pause for the pedestrians.
10 MR. GROSSMAN: There are two questions I see that
11 were posed. The first one was, I think, whether they, those
12 internal roads are controlled, the intersections, and the
13 second was whether or not they have to pause or something to
14 that effect?
15 MR. ADELMAN: Correct.
16 MR. GROSSMAN: Let's try to keep it to one
17 question at a time. It's a little easier for the record,
18 but go ahead.
19 MR. ADELMAN: I'm sorry.
20 THE WITNESS: I'm sorry, I answered the second
21 question first. The answer to the first question is the
22 loop road intersections are not signalized. They're all
23 operating at level service A and they're not signalized,
24 they're controlled as may need be by other traffic control
25 devices such as stop signs. Secondly, yes, cars stop for

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1 pedestrians, thank goodness.
2 MR. GROSSMAN: Okay. And, first of all, you used
3 the term loop road. Ring road has been used. They're
4 identical, I take it, loop road and ring road?
5 THE WITNESS: Yes.
6 MR. GROSSMAN: And you said operating at level, at
7 service level A. I don't know if that's been explained here
8 in the record. What does that mean?
9 THE WITNESS: I think the opposition had a whole
10 glossary of terms, but what that means is that there is
11 minimal to no delay at the internal signalized, unsignalized
12 intersections.
13 MR. GROSSMAN: All right. Dr. Adelman.
14 BY MR. ADELMAN:
15 Q You referred to four signalized intersections into
16 the mall. I want to clarify, that is distinct from the five
17 intersections that actually allow access to the ring road by
18 a turn from those four signalized intersections? I'm
19 referring specifically to 16, 17, 18, 19 and 20. Those are
20 not signalized intersections?
21 A Correct. Correct. They are, and for
22 clarification so we don't have to repeat, there are no
23 signalized intersections within the mall.
24 Q Actually I asked you to look at the information
25 you have available to you as to intersection when they're

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1 linking?
2 A I'm sorry, you're right, 19 is signalized.
3 Q Thank you.
4 MR. GROSSMAN: That's the loop road in Reddie
5 Drive mall access?
6 THE WITNESS: Yes, it comes out from underneath
7 the garage there.
8 BY MR. ADELMAN:
9 Q You testified that customers who shop at the
10 proposed gas station will enter one way from the ring road,
11 is that not correct?
12 A Correct. There's a one-way entrance into the
13 special exception area.
14 Q Oh. Is it not true that when a customer chooses
15 to shop at either the Costco store or one of the other
16 stores that use that tightly constrained is the parking lot,
17 that the customer would then use it to purchase gas plus
18 exit the parking lot, crossing the road, then turn back into
19 the gas station?
20 A You talked about something -- I'm not going to
21 answer the question the way it was asked because you talk
22 about typing constraints, so excluding that phrase, if
23 someone is in the parking lot in order to purchase case,
24 they need to go to the ring road and to go back into the gas
25 facility.

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1 Q All right. Thank you.
2 MR. GROSSMAN: I don't think you said -- if
3 they're in the mall, it's not to purchase gas, then if they
4 wanted to purchase gas, they'd have to go back out onto the
5 ring road?
6 THE WITNESS: They'd go on the ring road, which is
7 what it's there for. It's a circulation for certain
8 circumstances.
9 MR. GROSSMAN: And what's your objection to
10 tightly constrained? I take it that by that you mean that
11 once you enter into the area for entry into the gas station,
12 you must be in that line?
13 THE WITNESS: No, I don't know what he means by --
14 MR. ADELMAN: Actually, I can clarify.
15 MR. GROSSMAN: Okay.
16 BY MR. ADELMAN:
17 Q The parking lot is delineated by stores to the
18 east, to the north and by plantings and concrete elements --
19 MR. GROSSMAN: Right.
20 MR. ADELMAN: -- to the west with several points
21 of ingress and egress. Cars that park in the parking lot
22 have a limited number of paths to get into the parking lots
23 and if they choose after shopping when they wish to do go to
24 the gas station, they have a limited number of paths they
25 can follow to get to the ring road and back into the gas

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1 station.
2 MR. GROSSMAN: So what's what you mean by typing
3 constraint?
4 MR. ADELMAN: Yes, I couldn't find the proper
5 phrase.
6 MR. GROSSMAN: Was that a fair description of what
7 the path is that people must follow to get into the gas
8 station?
9 THE WITNESS: I can't agree with tightly
10 constrained.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: It's a parking lot.
13 MR. GROSSMAN: Oh.
14 THE WITNESS: And it has landscaping and it has
15 stores and it has a ring road and it has drive aisles.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: It's a parking lot.
18 MR. GROSSMAN: That's fine.
19 BY MR. ADELMAN:
20 Q In your last series of testimony or comments or
21 statements, you stated that there would be no impact on the
22 neighborhood because there is no direct connection with the
23 mall in which, I believe, you talk about access being rather
24 circuitous, while essentially going out to Georgia Avenue or
25 by going out to the drum, is that correct?

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1 A Well, the content, the context was would there be
2 cut through traffic.
3 Q Actually there were two, excuse me.
4 MR. GROSSMAN: Let him finish. Go ahead.
5 THE WITNESS: The context of the question was, by
6 Pat Harris was would there be a reason to have cut through
7 traffic and I went through a lengthy explanation as to why I
8 did not think that would occur and, therefore, I did not see
9 that there would be a traffic nuisance caused by the gas
10 station, especially when, in fact, that we're dealing with
11 satisfactory conditions and wanted the local area reviewed
12 as well.
13 BY MR. ADELMAN:
14 Q Right. I understand. And there was actually, I
15 believe the record will show another element of the question
16 of nuisance, but perhaps not, and that is the question of
17 whether traffic entering the mall, for example, at
18 University Boulevard entrance, that's the intersection on
19 four, whether traffic entering that mall will have any
20 effect on let's say downstream intersections, for example,
21 the intersection with Drum Avenue which was not part of your
22 traffic impact analysis. Which intersections --
23 MR. GROSSMAN: Well, that's a question I think.
24 If that -- yes.
25 BY MR. ADELMAN:

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1 Q Then why are you saying that there is no possible
2 effect on the nuisance to neighbors attempting to exit the
3 neighborhood because of congestion affects property down
4 University Boulevard?
5 A Because the mall has a right to build several
6 hundred thousand square feet of additional space regardless
7 of whether there's a gas station or retail facilities
8 because the intersection of Bounty View and University,
9 which is the west entrance to the mall on University,
10 because it's operating at a satisfactory level of surface, I
11 do not see how there's an impact on downstream situations or
12 why there would be a nuisance from additional traffic from
13 the, to the gas station.
14 MR. GROSSMAN: All right.
15 BY MR. ADELMAN:
16 Q I'll leave that for my testimony. You mentioned
17 from your observations on the 27th that there were some
18 3,000 cars you were expecting from the ring road in the
19 vicinity of the parking lot?
20 A No, sir, that was not my testimony. If I'm
21 permitted, I'll clarify, all right?
22 Q Thank you.
23 A But what I said was the average daily traffic on
24 the ring road is about 3,000 cars a day.
25 Q And where does that, where does that number come

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1 from?
2 A From the traffic study.
3 Q From the traffic study? Could you show me
4 specifically where that where that original requirement,
5 specifically where that lane would come?
6 MR. GROSSMAN: And after the witness answers that
7 question, shall we make that the last one before our break
8 for lunch? I indicated earlier we were going to break for
9 lunch at 12:15.
10 MR. ADELMAN: I'm sorry, you want to stop at --
11 MR. GROSSMAN: Right. As soon as he answers that
12 question.
13 MR. ADELMAN: Fine.
14 MR. GROSSMAN: Is that okay?
15 MR. ADELMAN: Yes.
16 BY MR. ADELMAN:
17 Q And then could you also give us the date that
18 those counts were made?
19 A It you go to page 26, you'll see the traffic
20 pilings along the ring road in the morning peak hour and
21 it's about 300 cars to where along the ring road and they
22 estimate about 10 percent to occur in the peak hour and,
23 therefore, about 3,000 cars a day on the ring road.
24 MR. ADELMAN: We can break now, Mr. Grossman.
25 I'll have a look at those numbers when we go on a break.

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1 MR. GROSSMAN: And what was the date of that
2 collection --
3 MR. ADELMAN: And what was the date?
4 MR. GROSSMAN: -- that was the question, or the
5 question.
6 THE WITNESS: The counts were collected in
7 September 2012. Appendix A contains the actual date of the
8 traffic counts. It was early September of 2012.
9 MR. ADELMAN: Okay. Thank you.
10 MR. GROSSMAN: All right. We'll recess then until
11 let's say 1:15. It's now 12:23.
12 (Recess)
13 MR. GROSSMAN: On the record.
14 MS. HARRIS: Yes.
15 MR. GROSSMAN: All right. We are back on the
16 record during the hearing and, Mr. Guckert. And we left off
17 with Dr. Adelman cross-examining you, so Dr. Adelman.
18 BY MR. ADELMAN:
19 Q I've tried to structure all my questions now so
20 that you can just answer yes or no. First, am I correct in
21 stating that the scoping agreement did not -- am I correct
22 in stating that your TIA did not study the intersection of
23 Drum and University Boulevard because this intersection was
24 not included in the scope of the agreement?
25 A It was not studied and it was because it was not

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1 included in the scoping agreement because it did not follow
2 the County law to be included. The County law does not
3 require it.
4 Q Okay. And that is because it's a non-signalized
5 intersection and the traffic was expected to be light, is
6 that correct?
7 A Because it's a non-signalized intersection,
8 period.
9 Q Thank you. Do you know if in the preparation of
10 the scoping agreement there was any discussion of the
11 possibility given that intersection in the study?
12 A Yes, I do.
13 Q And what was the decision?
14 A It was not, it was not discussed.
15 MR. GROSSMAN: What was the decision and what was
16 the discussion? Was your question what was the decision or
17 what was the discussion?
18 MR. ADELMAN: What was the decision?
19 MR. GROSSMAN: Okay.
20 BY MR. ADELMAN:
21 Q Thank you. So am I correct in stating that the
22 scoping agreement did not specify at least by the parking
23 lot or the proposed gas station to be in place?
24 A The parking lot was not part of the LATR. It's,
25 that's not part of the County law.

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1 Q Thank you. Next, referring to your Exhibit 3,
 2 which is, excuse me, the existing peak hour traffic volumes,
 3 that's page number 13 --
 4 MR. GROSSMAN: Page 13 in Exhibit 11(a)?
 5 MR. ADELMAN: Correct.
 6 MR. GROSSMAN: Okay.
 7 THE WITNESS: Yes.
 8 BY MR. ADELMAN:
 9 Q So your exhibit shows an intersection labeled
 10 Costco gas at the point where the parking lot contacts the
 11 ring road, does it not?
 12 A Yes.
 13 Q Specifically, what volume along the ring road is
 14 that intersection?
 15 A I think those volumes were right in the vicinity
 16 of the special exception. I think we had a machine out at
 17 that time to count the traffic volumes but, you know, a road
 18 machine to count the volumes right in the vicinity of where
 19 the Costco store is.
 20 Q Okay. And actually maybe you missed my
 21 statements, I wanted to ask if there was time. Can you
 22 clarify for us exactly how your counts were done? I mean,
 23 does someone stand with a clipboard you know, score things
 24 or is it all electronic?
 25 A It's multiple ways. It depends on the location.

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1 Sometimes we use road tube machines, in this case on the
 2 ring road. Sometimes we use video recordings as we did last
 3 Saturday. Sometimes, and I have to look and see whether
 4 when we did the LATR counts, whether we had people at the
 5 intersections using electronic count boards or whether that
 6 was done with video recording or not.
 7 Q So if I can, the measurement that I see looks
 8 like -- do you have any, I'm getting to the question of
 9 accuracy. Do you have any estimate of precision,
 10 reproducibility and reliability as to, from day to day?
 11 A Well, we do about 120,000 counts a year for
 12 Governments around the country.
 13 Q I'm sorry, I'm asking specifically about this --
 14 A I'm going, I'm going to have to answer you the way
 15 it's best for the case, okay? We do about 120,000 counts a
 16 year around the country for governments. These governments
 17 check and recheck the accuracy of our data. I cannot tell
 18 you whether it is 94.6 percent, 99.9 percent accurate, but I
 19 can tell you that our data is checked by other government
 20 agencies and it's done in multiple ways and we believe that
 21 our data is accurate. I cannot tell you for certain whether
 22 it's 99.9 or 100 percent or 96 percent. I do not know that.
 23 Q Fine. Thank you. Okay. Continuing on the, on
 24 this sequence of questions, with respect to that Costco gas
 25 intersection, why did you collect data at that intersection?

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1 A Along the ring road?
 2 Q Along the ring road.
 3 A So I knew how the traffic was there.
 4 Q But was that intersection specified in the scoping
 5 plans?
 6 A No, sir. When we, we did it, we knew there was
 7 opposition at the time.
 8 Q Uh-huh.
 9 A We thought it was, made sense to count the ring
 10 road traffic so we knew what was out there.
 11 Q I understand.
 12 A We had a special exception that we had to meet
 13 certain standards and it was important that we did that. It
 14 wasn't an issue for LATR, though, that's correct.
 15 Q Okay. So you had some latitude in your ability to
 16 make measurements and use sanctions that are not stated in
 17 this scoping plan?
 18 A Of course.
 19 Q So you could have done counts of it if you had
 20 chosen to?
 21 A Of course.
 22 Q All right. I'm having trouble understanding the
 23 actual numbers. If you look at the little circle on Exhibit
 24 3 --
 25 MR. GROSSMAN: You mean page 13 --

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1 MR. ADELMAN: -- for that intersection --
 2 MR. GROSSMAN: -- Exhibit 11?
 3 MR. ADELMAN: Page 13, excuse me. Page 13,
 4 Exhibit 11(a).
 5 MR. GROSSMAN: Okay.
 6 BY MR. ADELMAN:
 7 Q The existing peak hour traffic problems, what
 8 numbers did you obtain for the existing traffic counts at
 9 hours of --
 10 A Well, there's, it's not an intersection. It's the
 11 vicinity of the gas station, okay?
 12 Q Oh, but that shows the, the little insert shows --
 13 A I understand. See the little dash meaning that
 14 it's just an area in the vicinity of the gas station, is
 15 that fair enough?
 16 Q Understood. Understood.
 17 A Sure. So the volumes are showing 73 cars in the
 18 morning peak hour eastbound on the ring road, 32 westbound.
 19 MR. GROSSMAN: Can you point to -- hold up your
 20 exhibit for a second and point to the specific part that
 21 you're reading from?
 22 THE WITNESS: The circle.
 23 MR. GROSSMAN: Okay, in the circle.
 24 THE WITNESS: Yes, sir. Okay. And then 94
 25 westbound and 130 eastbound.

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1 BY MR. ADELMAN:
2 Q All right. I note that there is no numbers for
3 cars turning into the lot or at the mall?
4 A It wasn't at an intersection. It was just along
5 the ring road to get a baseline for the ring road.
6 Q And so am I correct in presuming that the reason
7 there is no, the issue for that is that there is not an
8 intersection?
9 A That's correct.
10 Q Thank you. There are other intersections, are
11 there not, there are other points, are there not along the
12 ring road in the vicinity of the parking lot that all the
13 traffic passing by the parking lot and the ring road leading
14 to the parking lot?
15 A Yes, sir.
16 Q Is there a reason why you chose that specific
17 location and not the others?
18 A Because it was near the special exception use.
19 Q Okay. And you've spoken clearly about, you've
20 spoken, have you not, about the probability that traffic
21 into and out of the parking lot would not be negatively
22 impacted by the proposed gas station?
23 A I did, I made that statement as an opinion, that's
24 correct.
25 Q Okay. In your opinion, would it be appropriate to

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1 look at the intersection with the parking lot to do, and any
2 traffic from the lead road into the parking lot or outside
3 the parking lot to the ring road?
4 A Well, we, the answer is you could. The second
5 part of the answer is we did this past weekend with Costco
6 opening.
7 Q So that's the number we're going to see down the
8 road, am I correct?
9 A In a couple weeks, yes, down the road. I was
10 trying to think of a joke there, but that's correct, down
11 the ring road, yes, sir.
12 Q Down the ring road? Can you give us a figure, did
13 you make measurements at the other points along the ring
14 road?
15 A We did. We made measurements at a number of
16 places along the ring road from the west side all the way
17 around to the east side at multiple locations.
18 Q Okay. All right. Okay. I'm going to ask a
19 couple questions related to the third generation for
20 background development.
21 A Yes, sir.
22 Q So I'm looking initially at page 16 of Exhibit
23 11(a).
24 A Yes, sir.
25 Q All right. And, in particular, I just wanted to

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1 list it for everybody, and it's, excuse me, line 36, page 18
2 on the Exhibit 11(a).
3 A Yes, sir.
4 Q So page 16 is something, a missing background, is
5 that correct?
6 A Yes, sir.
7 Q And the exhibit page 18, includes numbers for all
8 the various intersections where trip assignment numbers were
9 estimated, or actually, should I say projected, is that
10 correct?
11 A Yes, sir.
12 Q All right. So on page 18, which is your Exhibit
13 16, it shows numbers from intersection 1600, does it not?
14 A Yes.
15 Q Okay. It does not show any numbers for the Costco
16 gas vicinity, that small circle, is that correct?
17 A Correct.
18 Q And the reason for that again is?
19 A We didn't show any, any background traffic on that
20 particular exhibit.
21 Q That vicinity, whether it's an intersection or
22 not, well, that background traffic was, or I should say does
23 have background traffic at the Costco store as now, but at
24 the time they did the study, there was a projection of
25 traffic and looping occurring when the Costco store opened.

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1 So should there not be numbers there?
2 A Depending on, depending on which direction the
3 cars are coming from the Costco store. If they're, there
4 could be some, certainly some traffic in front of the gas
5 station, yes.
6 Q No.
7 A But if they are, if they're coming out of the
8 garage, they'd never get in that area. If they're coming
9 out of the west parking lot, they never get into that area
10 as well. So I think that's why the assignment did not show
11 traffic right in front of the gas station.
12 Q I guess I don't understand. If the cars only use
13 the gas station while in the ring road no matter where they
14 come from because the entrance is that perimeter, shouldn't
15 there be some numbers?
16 A Let me explain to you again. I'll refer to
17 Exhibit 102. If the cars are going to the Costco station on
18 the west side, I think the assumption was made that they
19 would come out to the ring road and never get in front. If
20 the cars are coming from the garage, they get out on the
21 ring road and never go across there. Could there be some
22 cars on the ring road from Costco that is, that they would
23 come out and make a left? If they came out and made a left,
24 they'd never get in front of the gas station. They'd have
25 to basically come down, make a right to get in front of the

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1 gas station and come back around. I think it was the
2 opinion that most of the cars would take the shortest route
3 out to the ring road to the west and really Costco cars with
4 very few, if any, would cross in front of the gas station.
5 That's why they're not showing.
6 Q Okay. Understood. I may have confused the issue.
7 This is background development?
8 A Well, Costco is background.
9 Q Right. But we're not talking about a gas
10 station --
11 A I understand.
12 Q -- background.
13 A I understand. We're talking about the Costco
14 store.
15 Q The various patrons of the Costco store will
16 choose to use that parking lot or enter at one or more
17 intersections and would have not for the significant numbers
18 for those.
19 A They are included, okay? But what I'm saying, if
20 I can go back through and explain again --
21 MR. GROSSMAN: Let me see. Let me understand
22 something. On page 17, you have a listing of the
23 background --
24 THE WITNESS: Yes.
25 MR. GROSSMAN: -- items on page 16 and 17 of

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1 Exhibit 11(a).
2 THE WITNESS: Correct.
3 MR. GROSSMAN: And you have an Item No. 8 is the
4 Costco store?
5 THE WITNESS: Correct.
6 MR. GROSSMAN: And those numbers, I presume,
7 indicate that that you are including the Costco store
8 background. But if I understand your testimony, the reason
9 why the circle is not, has no entry on page 18 is you didn't
10 allocate any of the traffic that you estimated would be,
11 would be caused by the Costco store. You didn't allocate
12 any of that to that particular area of the ring road?
13 THE WITNESS: Exactly, that particular point
14 because they are, because if they're coming out of the
15 parking lot and they make a left, they never get to that
16 area. If they come out of the parking lot and they're
17 trying to go University, they'll likely come out at one of
18 the other aisles and make a right.
19 MR. GROSSMAN: But the Costco warehouse itself is
20 counted in traffic?
21 THE WITNESS: Yes, it is.
22 MR. GROSSMAN: It is counted in traffic?
23 THE WITNESS: Yes. And that's on, that is
24 Appendix C, page 8 of Appendix C. It showed the assignment
25 of Costco.

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1 MR. GROSSMAN: Okay.
2 BY MR. ADELMAN:
3 Q I may want to come back. So I do, do I understand
4 you to say that traffic coming into and going out from the
5 Costco store is not assigned any particular point along the
6 intersection of that ring, of the ring road to the parking
7 lot, but rather to the example intersection 16 and
8 intersection 20?
9 A Let me also say that you become very adept at
10 asking questions a very good way and that's appreciated from
11 a, from my standpoint. What you'll see in Appendix C,
12 Doctor, page 8, is the assignment of the Costco trips. It's
13 just that we did not assign any right in front of the gas
14 station because of the other ways that they, that the Costco
15 customers would get out.
16 Q Okay. Just a moment. And as you anticipated in
17 the question --
18 A That's because you're asking them so well, you've
19 gotten --
20 Q I'm looking at page 8 of, I've forgotten what the
21 appendix number is, but I believe it's Appendix C.
22 A Yes, that's the one I was just talking about,
23 right?
24 Q Okay. And you're saying that, do I understand you
25 correctly to be saying that the numbers that are listed

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1 below this dotted line, that was an indication of no area
2 where the proposed gas station was to be put, it was called
3 site on page 8. And below that you have a development
4 number 80 trips, 80 percent and some numbers for AMP and
5 EMP. Am I understanding you correctly to say that those
6 numbers have not been assigned to any specific point along
7 the ring road where the ring road passes the parking lot,
8 they may not have been assigned to the other intersections
9 the traffic must reach?
10 A Correct.
11 Q I may come back to that.
12 MR. GROSSMAN: All right.
13 MR. ADELMAN: There's --
14 MR. GROSSMAN: Dr. Adelman's question raises a
15 question in my mind. I understand your point that you
16 didn't feel that any of that Costco warehouse traffic was
17 going to pass by that southern point along the ring road,
18 but do you also, are you also stating that you don't feel
19 that any of the Costco warehouse generated traffic will pass
20 along the ring road at any intersection point?
21 THE WITNESS: That, it does and if you look at it,
22 you'll see the traffic going out to 19, going out to 12,
23 excuse me, 19 going out to 13, 21 going out to 12, et
24 cetera.
25 MR. GROSSMAN: Yes, but I don't see the, I don't

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1 see an additional -- well, maybe I'm just reading the chart.
2 Is there a set of numbers that applies to let's say
3 intersection labeled 16?
4 THE WITNESS: Look above the inset, upper left.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: That exhibit.
7 MR. GROSSMAN: So those numbers, 9(62) are applied
8 to, oh, I'm sorry. So now -- okay. So this has been --
9 there's an enlarged portion of inset A on that page 8 of
10 Appendix C and it's the upper left-hand corner and that
11 shows the numbers that are being assigned to those ring road
12 intersections which is attributed to the anticipated Costco
13 warehouse traffic?
14 THE WITNESS: Yes, sir.
15 MR. GROSSMAN: Okay.
16 BY MR. ADELMAN:
17 Q Okay. Which leads me to my next questions. I'm
18 looking now at the, let's see here, this is Appendix C and
19 I'm looking at pages 1 through 9. These are the original
20 traffic assignments for background development, is that
21 correct?
22 A That's correct.
23 Q If you'll explain it to me, I'll note that, for
24 example, with respect to page 1, there are no numbers at any
25 of the internal, at this entrance. Then the numbers for

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1 p.m. peak and a.m. peak total are small, but they should
2 show up at some of these intersections, shouldn't they?
3 A It's not internal. This is sited internal
4 background development. Remember, okay.
5 Q So any development that is outside the mall, am I
6 correct in, am I correct in understanding that if the
7 development is not reviewed, while proper, it is presumed
8 that no traffic caused by that development, it comes through
9 the mall, therefore, use the ring road?
10 A Correct. That is, for example, you talked about
11 the first one, page 1.
12 Q Yes.
13 A These row of townhouses, we don't see that those
14 townhouses would be traveling through the mall to get to
15 work, right?
16 Q And is that the case for all of the
17 non-internal --
18 A Sure.
19 Q -- background access?
20 A Yes, sir, absolutely.
21 Q So that would mean that -- I'm trying to
22 understand the ones that would pass by because when we get
23 to that actual projection for proposed development itself,
24 then the question about the relationship between the
25 internal factor and the pass by and I guess what I'm asking

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1 is does the -- am I correct in understanding that the
2 definition of pass by is different for an external
3 development versus an internal development?
4 A Yes, it is different. And when you're reading, if
5 you talk about that --
6 Q Okay.
7 A -- I'm sure you'll have a question for that. But
8 allow me, if you would --
9 Q Okay.
10 A -- the background developments, other than Costco
11 and Dick's, are generally located along either University or
12 Georgia Avenue and we assign traffic to the background
13 development along Veirs Mill and University because we've
14 studied those intersections. But there's no reason for a
15 townhouse person going to work or school or shopping during
16 the commuting peak hour travels through the mall. It's not
17 a part of their trip of origin or destination. So if
18 they're shopper, it's counted in the shopping trips. But if
19 the townhouse development person is going to work, there's
20 no reason, they wouldn't go through the mall to get to work
21 unless they were working in the mall, okay?
22 Q Well, actually, actually, am I correct in
23 understanding -- I wish, it would be nice to have a
24 conversation.
25 A Right.

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1 MR. GROSSMAN: You're doing a very lawyer-like
2 job.
3 MR. ADELMAN: Well, I'm doing my best and you guys
4 deserve all my --
5 MR. GROSSMAN: Better than any attorneys I have
6 had cross-examine.
7 BY MR. ADELMAN:
8 Q Am I correct in understanding that you're saying
9 that it's unlikely that someone coming from let's say
10 University Boulevard and going to work at the same location,
11 let's say on the Georgia Avenue side --
12 A Yes, sir.
13 Q -- would not as a pass by trip start at the mall?
14 For example, the planning staff was explaining to me that
15 pass by, that you were coming and going from work and you
16 stopped at the grocery store for a carton of milk and then
17 you continue on your way. Are you saying that there would
18 be no such pass by traffic, that all --
19 A No, and you described that quite well. What I'm
20 saying is that in the, that situation, somebody passing by,
21 let's suppose they're coming from University and Georgia
22 going westbound to go towards the Kensington area, and they
23 pull into the west end of the mall, they go in the Giant,
24 they come back out and they continue on their way. That's
25 the way you describe pass by and that's correct.

1 What I'm saying is if someone is living, and I'm
 2 again referring to Exhibit 102, if someone is living east of
 3 Georgia Avenue and they're going to work in Silver Spring
 4 down south, I do not see them coming into the mall, going
 5 around the ring road and coming back out and going down.
 6 And that's the same case for the southern residential
 7 elements of BB&T Bank. That is -- and I know you understand
 8 this because you're a scientist, that's really so micro that
 9 I have to know it's in the person's mind to know that, yes,
 10 I'm on my way to work in Silver Spring, I'm going to swing
 11 through here, stop at Target, get whatever and then go back
 12 out. I did not -- it's too micro for what we did.
 13 Q Thank you. And I understand you testified, would
 14 you agree that some patrons, potential patrons, for example,
 15 of a store live, as you describe it, upper-right, but work,
 16 for example, at let's say NIH, over there to the lower-left,
 17 all right?
 18 A Well, all right.
 19 Q When in fact --
 20 A Yes.
 21 Q -- you have to go through the mall?
 22 A Sure. They, you know, there was, and stop and buy
 23 something on their way?
 24 Q Sure. Exactly. Exactly.
 25 A I won't dispute that that could happen.

1 Q Okay. And we have no numbers from the projections
 2 about that?
 3 A Correct, because I do not know which of those
 4 persons would have to do that.
 5 Q But in general when we make this kind of
 6 projection, we must make some assumptions, yes?
 7 A I made what I felt were reasonable assumptions for
 8 the level of analysis that we're doing and had staff at the
 9 Planning Commission validate those assumptions. Your
 10 assumption could be different and, yes, someone, some people
 11 from the east side of Georgia Avenue, they certainly are
 12 left to stop in and go to Costco. I would, the Costco
 13 numbers already include that. Somebody is coming off the
 14 road going to Costco and going to buy gas, whatever.
 15 Q I'm just saying --
 16 A I did not add additional store-related trips
 17 because of the background development.
 18 Q Understood. Now I'd like to move on to the
 19 projected traveling due to the proposed gas station.
 20 A Yes, sir.
 21 Q And then -- I think I saw a page, excuse me. I'm
 22 not crazy enough to do this again. I want to find a better
 23 way of organizing pieces of paper. Going to your page 22,
 24 trip generation for proposed Wheaton Costco gas station.
 25 A Yes, sir.

1 Q First of all, you show that table in the footnotes
 2 that you've assumed a 30 percent rate for trips in the p.m.
 3 peak hours based on empirical data but that the -- you found
 4 the range more likely to be 52 percent based on our
 5 observations and we're using that conservative number, is
 6 that correct?
 7 A Yes, sir.
 8 Q Can you tell me more precisely where the 30
 9 percent number came from and where the 52 percent number
 10 came from?
 11 A Sure. The 30 percent number was a number that I
 12 decided upon as being one that I would use for this study.
 13 The other data is included, I'm looking for it in the
 14 report. There were -- there it is. In Appendix A,
 15 beginning as an example on page 6, there's a response from
 16 the Pennsylvania DOT. They did a very detailed analysis and
 17 they looked at pass by rates.
 18 Q Okay.
 19 A Then --
 20 Q I'm now looking at your footnote to your table, is
 21 that correct?
 22 A Yes.
 23 Q Excuse me, the existing footnote 2?
 24 A Basic foot note 2, there's a Penn DOT letter that
 25 talks about the net for pass by.

1 Q Okay.
 2 A The information on the 30 percent where I'm saying
 3 it's, it was Costco's, and I'll find that, Costco had a
 4 study done by another consultant indicating that 51 percent
 5 of the gas trips come from store customers at the same time
 6 and so --
 7 Q Uh-huh.
 8 A -- that's what the 51 percent is based upon.
 9 Q Uh-huh.
 10 A The study that was done by Costco.
 11 Q Okay. Those -- am I correct or incorrect in
 12 assuming that the methods of projected pass by will differ
 13 from jurisdiction to jurisdiction or is this something
 14 that's nationwide?
 15 A Go to, go to Appendix A, page 44.
 16 Q Okay.
 17 A And you'll see the average of the gasoline trips,
 18 the internal capture, studies that were done in Florida,
 19 Beltsville, Glen Burnie, Manassas, Leesburg and Connecticut,
 20 so studies along the east coast showing the average that the
 21 internal capture was 52 percent.
 22 Q Okay.
 23 MR. GROSSMAN: But I think he asked you what is
 24 the definition of pass-by was?
 25 THE WITNESS: No, we were talking about internal

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1 capture I thought, right?

2 MR. GROSSMAN: No, I think --

3 MR. ADELMAN: No, actually --

4 THE WITNESS: I thought you --

5 MR. GROSSMAN: I thought your question.

6 THE WITNESS: I thought you were talking about

7 internal trips and 30 percent?

8 MR. GROSSMAN: No, what I thought the question

9 actually asked --

10 MR. ADELMAN: Yes, actually I was, I'm sorry.

11 MR. GROSSMAN: -- he was.

12 THE WITNESS: He was.

13 MR. ADELMAN: I'm sorry.

14 THE WITNESS: Thank you.

15 MR. ADELMAN: I was.

16 THE WITNESS: He was talking about internal

17 trips --

18 MR. GROSSMAN: Okay.

19 THE WITNESS: -- were 30 percent.

20 MR. GROSSMAN: Okay.

21 THE WITNESS: And he wanted to know where that

22 came from and where it came from was the fact that on page

23 44 of Appendix A, there was a series of studies, seven

24 different studies that did detailed analyses of internal

25 capture averaging 52 percent. And I said that that's a high

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1 number, I'm not going to take that much credit, I'm going to

2 use 30 percent.

3 MR. GROSSMAN: Right. And I understood that

4 answer which, essentially what you've given in your direct

5 testimony, but I thought he also asked whether or not the

6 definition of pass by was something that was universally

7 used throughout the country or was different from region to

8 region.

9 MR. ADELMAN: I do want to let Mr. Grossman know

10 that I have muddied the two questions. I wanted to keep

11 them separate and I failed to do that.

12 MR. GROSSMAN: Okay.

13 MR. ADELMAN: So I will come back to the pass by

14 in a second.

15 MR. GROSSMAN: Okay.

16 MR. ADELMAN: But you're correct, I misphrased the

17 question.

18 MR. GROSSMAN: Oh. Thank you.

19 BY MR. ADELMAN:

20 Q So the 30 percent internal capture, is your

21 decision to be conservative?

22 A Yes, sir, to low ball.

23 Q It's a low ball?

24 A Yes, sir.

25 Q Thank you. Now --

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1 A Now we go to pass by.

2 Q Now we go to the pass by. And now the question

3 that I misphrased before, my question. Can you explain the

4 extent to which the pass by where you were using was

5 appropriate for this particular gas station?

6 A There is not a jurisdictional -- there's a,

7 there's one definition for pass by that we use, but there's

8 not, I'm unaware that there's a jurisdictional difference.

9 Q But a pass by is projected, is it not?

10 A It is.

11 Q And the projection being on some sort of algorithm

12 within a, some sort of rule or modeling?

13 A Engineering judgment.

14 Q Engineering judgment? So that 37 percent that

15 you're using will be in another study perhaps, 25 percent of

16 the gross and 50 percent?

17 A It could be. It could be.

18 Q And --

19 A And it's really, again, judgment based upon the

20 offsite traffic. That is to say we have 100,000 cars on

21 three roads --

22 Q Uh-huh.

23 A -- surrounding the site, Georgia Avenue, Veirs

24 Mill Road, University Boulevard between, again, to those

25 roads on Exhibit 102. We have 100,000 cars a day combined

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1 on those three roads. If those three roads had 10,000 cars

2 a day, I would probably have a lower pass by because the

3 likelihood of grabbing a larger percentage goes way down.

4 So when, on page 6 of Appendix A is the Pennsylvania DOT

5 comment on the pass by rate where they did the weighted

6 averages out of ITE and came up with 37 percent. So --

7 MR. GROSSMAN: For the record, explain what ITE

8 is.

9 THE WITNESS: Institute of Transportation

10 Engineers.

11 MR. GROSSMAN: Okay.

12 THE WITNESS: And --

13 MR. GROSSMAN: And they publish a trip generation

14 manual?

15 THE WITNESS: Yes, sir. And Pennsylvania DOT did

16 an analysis of that for discount clubs with gasoline sales

17 and came up with 37 percent. So that's what we used in this

18 particular case.

19 BY MR. ADELMAN:

20 Q I believe I understand. Thank you.

21 MR. GROSSMAN: By the way, they refer in this

22 Pennsylvania Department of Transportation exhibit, page 6 in

23 the appendix page, to the IT, trip generation -- they say

24 this will be what we use until the next edition, if

25 published. Have they published the next edition since the,

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1 this letter came out, January 21, 2011?
2 THE WITNESS: If they have, it's very recent, but
3 I know that discount club data has not changed.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: And again, Mr. Grossman, this is not
6 completely black and white, one plus one equals two.
7 MR. GROSSMAN: I understand that.
8 BY MR. ADELMAN:
9 Q Actually that comes to my question. Am I not
10 correct in suggesting that the, in this particular situation
11 there is some overlap between the overlap capture and pass
12 by with respect to traffic expected to be coming to the gas
13 station?
14 A I don't think there's overlap, no, sir. If I'm
15 understanding the question and the premise, they really are
16 two different things. And if you want, I can try to
17 explain, but that's -- but you are the questioner.
18 Q Can you please explain how, can you please explain
19 why, can you please explain the distinction in the case of
20 this gas station proposal the internal capture is different
21 from the pass by?
22 A Sir, and there is a difference in the distinction.
23 The internal is a circumstance, again for the record I'm
24 referring to Exhibit 102, internal for purposes of this
25 discussion is within the ring road where the retail space is

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1 located outside the ring road for the WMATA garage and the
2 north office building and the retail space between the ring
3 road on the north and University Boulevard. So internal is
4 all that space, including the spot for the gym, so that as a
5 Costco club member, you are patronizing or working in one of
6 those stores or office buildings. And before you leave the
7 mall property, you go buy gas. So that is an internal trip.
8 Also you go to shop at Costco or you get gas and then shop
9 at Costco, or the other way around. So with Costco it's
10 found is that 50 percent of their customers will typically
11 shop and buy gas at the same time.
12 Q And you're using 30 percent?
13 A Correct. But that is internal, internal to the
14 mall site. Pass by trips are external trips, cars that are
15 driving along what I will say are the three major arterials,
16 Georgia, Veirs Mill and University, and on their way to or
17 from another trip purpose where they're going to work,
18 they're going to school, they're going to church, whatever
19 it is and they make the decision on my way to that other
20 trip purpose that is on my way from my origin which would be
21 wherever, to my destination, which could be wherever, I pull
22 off the road because I'm passing the gas station anyway, so
23 I pull off the road and purchase gas and then leave.
24 Now the definition is I did not stop at Costco
25 because that would be an internal recapture. So I pulled

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1 off, do gas, maybe I go to Target or maybe I just get gas
2 and go. So that's the external capture would be a pass by
3 trip, you are passing by, you capture that customer and then
4 they leave versus the internal where I'm already at my
5 destination, the mall or Costco, and I purchase gas.
6 MR. GROSSMAN: I think the, what Dr. Adelman is
7 angling at is aren't you perhaps double counting a pass by
8 and internals in a way that reduces the projection of the
9 actual trip generation from the Costco gasoline station, is
10 that the sense that I'm getting from you?
11 MR. ADELMAN: That's essentially and I didn't want
12 to testify.
13 THE WITNESS: Well, I guess I can't ask a
14 question. But actually I thought I just explained that --
15 MR. GROSSMAN: But you said, no, that they are two
16 different --
17 THE WITNESS: They're two different things.
18 MR. GROSSMAN: But now I have a different
19 question. When you talk about pass by traffic and those
20 that you're not counting as two trips, aren't you really
21 saying that those pass-bys would be part of the general
22 traffic on the road system, that they are actually still new
23 trips if they are entering the neighborhood, they're new
24 trips for the neighborhood?
25 THE WITNESS: No, they're not new trips for a

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1 neighborhood, no. I --
2 MR. GROSSMAN: Well, if they wouldn't be on the
3 neighborhood roads --
4 THE WITNESS: Are you talking about neighborhood
5 roads, you mean Veirs Mill, Georgia?
6 MR. GROSSMAN: I'm talking about, well, in this
7 case ones that would come into what we are going to have to
8 define as the general neighborhoods and you're saying into
9 the mall?
10 THE WITNESS: Into the mall --
11 MR. GROSSMAN: Right.
12 THE WITNESS: -- is the neighborhood? Okay.
13 MR. GROSSMAN: You're calling them pass bys
14 because they'd be on the road system and --
15 THE WITNESS: Well, it's part of another trip
16 purpose.
17 MR. GROSSMAN: Right. But once they actually
18 enter into the mall, aren't they now a, in effect, a new
19 trip for the mall? They're not adding to the -- they're a
20 pass by in the sense that they're not adding to the overall
21 burden on the road --
22 THE WITNESS: Correct.
23 MR. GROSSMAN: -- but they are a new trip in the
24 sense that they are adding onto the burden to the mall?
25 THE WITNESS: And they were counted that way.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: They were counted as you just
3 described. They did not disappear just because they were a
4 pass by trip and came into the mall. They were counted
5 going into the gas station.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: Okay?
8 MR. GROSSMAN: All right.
9 THE WITNESS: Same thing with the internal. I did
10 not make them go away, I brought them internally to the gas
11 station.
12 MR. GROSSMAN: Right.
13 THE WITNESS: So they didn't disappear.
14 MR. GROSSMAN: All right. But you catch my
15 drift --
16 THE WITNESS: I think --
17 MR. GROSSMAN: -- do you understand?
18 THE WITNESS: But I want to make it clear that it
19 didn't disappear, I got them going into the gas station.
20 MR. GROSSMAN: Okay. Okay.
21 THE WITNESS: That 5-hour energy is starting to
22 work now.
23 BY MR. ADELMAN:
24 Q Finally, we get to, I guess, the crux. I am
25 looking now at what's -- I'm now referring to exhibits, I'm

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1 referring now to pages, page 23, excuse me, page 23 of
2 Exhibit No. 10, which is the new trip assignment for gas
3 pump. I just want to be sure am I correct that there is any
4 measure of the gas pumps, the numbers are not for one
5 nozzle?
6 A Correct.
7 Q Thank you. And then focusing on the Costco gas, I
8 guess at this point it's an intersection because obviously
9 the gas station is, if it's constructed, that's an
10 intersection, so I'm going to call it the Costco gasoline
11 station unless you object.
12 A I'm fine, Costco gas station.
13 Q Fine. Okay. That intersection which is going
14 under the little circle on page 23, you have numbers and
15 appear to be values for peak hour traffic in and out of the
16 road at the intersection at the gas station, is that
17 correct?
18 A The new trips, yes.
19 Q Yes. Okay. Am I correct that needing those
20 numbers, that they exceed the p.m. peak hour 20 cars
21 projected that are in the gas station coming from the west
22 and going on or coming from east and that that's a total of
23 60 --
24 A Nine.
25 Q 69?

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1 A That was the projection that we made east-west.
2 Q Okay. So the first question is, well, when you're
3 doing it, you get, am I correct in the understanding that
4 this is a projection specific to peak hour or was the
5 projection for some sort of an average throughout the day?
6 A It was for the peak hours.
7 Q For the peak hour? And that projection was based
8 on information from the referenced station, which is the,
9 the, is that correct?
10 A Which projection?
11 Q The projection on 69 cars total at the p.m. peak
12 hour?
13 A No, it's 69. There are, there are three different
14 components. What you're looking at on page 23 is one of the
15 components, right?
16 Q Uh-huh.
17 A So the 69 comes from page 22.
18 Q Thank you. I see what you're talking about.
19 Okay. And those are from the gateway overlook volumes?
20 A Those, not, it was the, the gateway overlook, it
21 was based upon the metric for the gateway overlook because
22 they, they have fewer pumps. The gateway overlook has fewer
23 pumps, so we factored up gateway overlook volumes to come to
24 the Wheaton, okay, because they have fewer pumps.
25 Q Okay. The split on, now I'm looking at 40, am I

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1 correct in presuming that your allocation, this aggregation
2 of the data means a 21 exiting from the gas station and
3 going to, west, and 40 going to the east is a projection
4 based on some assumption of how patrons will decide for me
5 going in?
6 A That's exactly right. It was my judgment as to
7 how many folks would be going out to Veirs Mill Road versus
8 going out to University.
9 Q All right. In your opinion, is not more
10 reasonable to assume a 50/50 split?
11 A If you look at the, my opinion is no, but it
12 doesn't matter. And on page 23, if you look at the dark
13 circles, that may be under both of our eyes before we're
14 finished, but if you look at the dark circles, Doctor, where
15 it says 20 percent, 20 percent --
16 Q Uh-huh.
17 A -- we made an assumption of the distribution. We,
18 my opinion is there will be more folks coming in and out at
19 Veirs Mill to get to Georgia Avenue to go east and south and
20 north than there are to go west. So we may be, we made an
21 assumption that it was going to be based upon that trip
22 distribution.
23 Q Okay. That is, is it not an assumption or
24 projection?
25 A Yes, sir, it's -- my assumption, my projection.

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1 Q Thank you. Okay. Now, similarly, I'm attempting
2 to follow the traffic from the gas station now. And I'm
3 particularly interested in -- how did you get number for
4 intersection 16, specifically, how you assigned where
5 they'll go when they get to that intersection and that is, I
6 believe it's on the diagram?
7 A The inset?
8 Q Yes, the inset. So you, again, we're at page 23.
9 Am I correct in understanding that you assume the cars
10 leaving the gas station and going to intersection 16, 50
11 percent are in 14 cars at the peak hour will exit the mall
12 at that intersection and 50 percent will proceed through the
13 intersection going to another part of the ring road here?
14 A No. 17 in any car.
15 Q Thank you, sir. Okay. To intersection 17?
16 A Yes, I'm sorry, yes.
17 Q Okay.
18 A Go to intersection 17 and then they go to
19 intersection 5 and get onto University.
20 Q Okay.
21 A That was my assumption.
22 Q Fine. And that is your presumption, that is your
23 expert opinion?
24 A That's what I use for this analysis, yes.
25 Q Fine. I'm assuming you're using similar

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1 assumptions and I'll, with respect to the numbers and the
2 subsequent pages, for Exhibits 9(b) and 9(c), I don't have
3 those.
4 A Sure. We made projections of the trip assignments
5 and distribution. They were verified or confirmed or agreed
6 upon by staff.
7 Q Almost done. Now, again, you remember Section 16,
8 which actually is important to me by the way. That's
9 testifying. Excuse me. Why was intersection 16 included in
10 the scoping agreement? Why, for that matter, were any of
11 the internal ring road intersections, including the scoping
12 agreement, in your understanding? I'm particularly
13 interested in 16, so I phrase the question in terms of 16.
14 A Yes. I'm really -- I'm trying to remember whether
15 or not I made that suggestion early on or whether staff made
16 that suggestion. I, quite frankly, I just do not remember.
17 So I want to make sure that Mr. Grossman and you, Doctor,
18 both understand when we do a scoping agreement, we made a
19 suggestion as to what should be studied. There are very --
20 there are guidelines in the law that say what you should
21 look at. Then there is judgment on the part of the staff as
22 to what they may want to add or change. I do not remember
23 because it's been multiple years since we started this. I
24 do not remember whether it was -- it might have been the
25 staff suggesting that it was internally studied.

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1 Q I --
2 MR. GROSSMAN: You said in the law. Are you
3 talking about in the LATR guidelines?
4 THE WITNESS: Yes, which are part of the
5 subdivision staging policy, which is a law.
6 MR. GROSSMAN: Okay.
7 BY MR. ADELMAN:
8 Q Am I correct in -- I just have to take a moment --
9 MR. GROSSMAN: I'm not going to make any
10 assumptions. You have to ask the question.
11 BY MR. ADELMAN:
12 Q Is it a reasonable presumption in your opinion
13 that the staff suggested the counts at these intersections
14 because they were interested in determining the extent which
15 traffic on that ring road would be impacted and the extent
16 to which the estimate also for pedestrian paths at these
17 intersections would be impacted?
18 MR. GROSSMAN: Well, let's rephrase that to some
19 extent saying, take out staff out of the middle and just say
20 is it reasonable to include these for that reason? Forget
21 about assuming.
22 BY MR. ADELMAN:
23 Q So amended.
24 MR. GROSSMAN: Because I don't think we want to
25 project through this witness what staff intended.

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1 MR. ADELMAN: If I asserted anything about that,
2 that would be testimony.
3 MR. GROSSMAN: Well, no, I mean it's -- let's just
4 ask the question.
5 THE WITNESS: I can only imagine that the staff
6 wanted to know about traffic at the major internal
7 intersections and they even state in Appendix A, page 2, in
8 the scoping letter that they want to know about pedestrian
9 routes and pedestrian peak hour trips.
10 BY MR. ADELMAN:
11 Q Thank you. The last question about intersection
12 16 and I'm almost done. Thank you for your patience. There
13 are several pedestrian crossings at that intersection, are
14 there not?
15 A At 16?
16 Q At 16.
17 A Yes, it has pedestrian crossing on -- there's a
18 three-legged intersection that is pedestrian crossing.
19 Q And there's, I'm not guessing, but there's an
20 adjacent pedestrian crossing between Giant and the Target
21 block?
22 A Yes, sir.
23 Q Which --
24 A That shows up on Exhibit 102.
25 Q Which has, in effect, does it not, the ability of

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1 cars coming to that intersection to turn to the left, that
2 is to say to turn from intersection 16 to the, heading
3 toward Giant or the Target lot or intersection 17?
4 A Sure, there's a stop sign, again, Mr. Grossman,
5 referring to 102, as you come off of University Boulevard or
6 the mall access road, there's a stop sign at the ring road
7 and there's a crosswalk there too. You make a left and
8 there's another crosswalk before you were to enter the Giant
9 Food and that crosswalk does cross from the Giant Food area
10 over to the Target area.
11 Q And so, in essence, am I, I am -- am I correct in
12 stating that you measure by a regular method the number of
13 cars coming into the various zones that come through that
14 intersection, in this case are six lanes and you found
15 those, I believe, to see all the rather critical lane
16 volume?
17 A Correct.
18 Q And then calculation is basically arithmetic or
19 the copy of rules about how you do calculations?
20 A That's correct.
21 Q Is there any place in the CLV algorithm, for want
22 of a better word, that allows for the fact that factors in
23 the fact that pedestrians crossing the various crosswalks
24 slowing traffic going through the intersection?
25 A No, I didn't see -- not the critical lane volume

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1 calculations.
2 Q So you, to the extent that the CLV methodology you
3 used would, may not provide -- am I correct in stating that
4 to the extent the CLV methodology was used and did not
5 provide an active measure of the extent to which an
6 intersection such as 16 is impacted by the small implements
7 in traffic?
8 A You are correct in that it is more of a macro when
9 it comes to capacity analysis versus a micro which would
10 factor in large pedestrian movements, correct.
11 MR. GROSSMAN: Are there large pedestrian
12 movements at that intersection?
13 THE WITNESS: No, sir.
14 MR. GROSSMAN: You may continue.
15 MR. ADELMAN: Thank you.
16 BY MR. ADELMAN:
17 Q Yes. On pages, let's see, 57 and 97 of Appendix
18 C, there are certain issues about various intersections.
19 And they indicated that the data was entered by AG, and I
20 assume that's a person, excuse me, am I correct in assuming
21 that's a person?
22 MR. GROSSMAN: First of all, you said Appendix C.
23 I think you mean Appendix A.
24 THE WITNESS: I'm a little confused here, so --
25 MR. GROSSMAN: My Appendix C doesn't have that

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1 many pages.
2 THE WITNESS: I think he's talking about Appendix
3 A.
4 MR. ADELMAN: Oh, I must be, yes.
5 THE WITNESS: Okay.
6 MR. GROSSMAN: So what page are you on in Appendix
7 A?
8 MR. ADELMAN: Pages 57 and 97.
9 THE WITNESS: 57?
10 MR. ADELMAN: Either one of them will do because
11 they're --
12 MR. GROSSMAN: Okay.
13 MR. ADELMAN: -- counsel and I are on the same
14 page.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: So on page 57, it says entered by
17 AG.
18 BY MR. ADELMAN:
19 Q And let's flip to page 97, because that's actually
20 the intersection 16.
21 A 97.
22 MR. GROSSMAN: Okay.
23 BY MR. ADELMAN:
24 Q I believe that that is intersection 16.
25 A I believe it is too.

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1 Q All right. And the actual counts whereby you see,
2 is that a group of people? Is that an instrument?
3 A That's video counting unit.
4 Q Am I correct that you recorded the traffic and
5 then you used some sort of computer screen that it's
6 actually, you count essentially the --
7 A There is a proprietary computer program where we
8 sent the videos away. There's a proprietary program that
9 uses an algorithm that counts the cars and counts the
10 people.
11 Q Thank you. Two last questions. The first, a
12 number of intersections, well, for example at intersection 4
13 at University. There are U-turns that are made and it's not
14 fair to make that -- can you explain how the CLV had the
15 knowledge to evaluate where the noise, the impact of
16 multiple U-turns as opposed to left turns?
17 A The U-turns are counted in the left turn
18 calculation because they're, they take up the same amount of
19 time as it relates to the opposing vehicles.
20 Q So the assertion, am I correct that you are
21 asserting that a U-turn does not slow down traffic any more
22 than a left turn?
23 A That wasn't my assertion.
24 Q Are you stating that a U-turn --
25 A Let me try to answer for you so you can save your

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1 throat just a little bit. What I'm stating is the critical
2 lane volume methodology makes the assumption that if there's
3 enough gaps in the opposing traffic stream to make a left
4 turn, there are enough gaps in the opposing traffic stream
5 to make a U-turn. So from an analysis point-of-view, we
6 count less and use in one count.
7 Q I understand. And I am correct, am I not, that
8 there are other methodologies. Do any of the other
9 available methodologies account for the, count as different
10 from left turns?
11 A They may if the U-turns are really heavy. We
12 would probably use our judgment and look at that purely
13 differently. And that depends, Doctor, on the geometry that
14 you're dealing with. If you're making a U-turn into a two
15 lane road and it's tight, it may affect it differently
16 versus making a U-turn into a three-lane road where you know
17 that you can make that complete sweep versus making a U-turn
18 on a one lane roadway may have to back up and do a three
19 point turn. So it depends on the geometry and it depends on
20 the level of analysis, but you're correct, there may be
21 other ways if it's not used in this analysis.
22 Q Fine. And one last question and that goes to
23 the -- how do your analysis of projected that you've
24 actually have done in terms of the Costco store based on the
25 data from overall and the gas station and the last question

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1 I have forgotten now, the last question is in reference to
2 both.
3 A That's correct.
4 Q To what extent did you adjust for your estimate
5 based on the possibility that now that the store is open,
6 Costco, members at shopping at Costco, they choose to go to
7 Beltsville because there is a gas station, but when they
8 get, if the gas station is ordered, will come to the Wheaton
9 site because the gas station is open? Should I break that
10 into chunks?
11 A No, sir. No, sir. I want to figure out -- I
12 understand what you said. I want to make sure I give an
13 appropriate answer. First, for Columbia Gateway, we
14 projected up based upon square footage for the Costco store.
15 We projected up based upon number of fueling lanes and
16 positions. We could not make an assumption that now that
17 Wheaton is open, that Wheaton would have, would suck
18 customers away from Beltsville and be even more than what we
19 projected. We did not make any assumption of that.
20 Q In your opinion, is it reasonable to --
21 MR. GROSSMAN: Now you're really turning into a
22 lawyer, asking questions after your last question, your
23 final question.
24 MR. ADELMAN: I'm going to now, this is almost
25 over so this is my last dance.

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1 BY MR. ADELMAN:
2 Q In your opinion, is it reasonable to project that
3 once the gas station is open, if it's opened, that customers
4 now going to Beltsville, some percentage of customers now
5 going to Beltsville will, in fact, come to Wheaton and
6 precisely because you now said that you are presently doing
7 the traffic counts, additional traffic counts, to what
8 extent would those traffic counts be appropriate to that?
9 A I think we took that into account, Doctor, by
10 using a 12 million gallon a year projection. By making a 12
11 million gallon a year projection for this gas station versus
12 what we thought may have been a 10 million gallon per year
13 facility, I did not make the -- we made the assumption 12
14 million gallons, right --
15 Q Uh-huh.
16 A -- and I did not make the assumption that it's
17 going to go to 14 and suck away 2 million from Beltsville.
18 One, I have no way of knowing that.
19 Q And I'm talking about the capacity, I'm not asking
20 about the capacity of the two stations. I'm asking whether,
21 will the fact that patrons who presently go to Beltsville,
22 is it a possibility that patrons who now go to Beltsville
23 and will continue to go to Beltsville, but will come back to
24 the Wheaton location once the gas station is open, how does
25 that impact the counts that you project for the Wheaton

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1 Costco store and the Wheaton, the proposed gas station?
2 A I don't think it does impact it. I think
3 Costco -- and I don't think it would impact it. I wouldn't
4 know how to make the assumption that how many customers may
5 switch from Beltsville to Wheaton and I think that the, you
6 have to look at Costco and Wheaton as a standalone situation
7 and we think that we know how much sales Costco is going to
8 do and we think we know how much sales the gas station is
9 going to do. I don't know where that's coming from. I
10 don't know whether they're new customers, I do not know if
11 they're being sucked away from other Costco stores. But
12 you've got to take and look at that facility, the Costco
13 store which, the same thing with tires, I don't know how
14 many tire customers may switch, but we think we know what
15 the sales are going to be historically and both for the
16 store and for gasoline. So, no, I did not, I did not do
17 that and I would not really have any way, I don't think
18 anyone has a way of knowing.
19 MR. GROSSMAN: So your projection is based on
20 projection of total sales and from that you make your
21 projection of traffic, that's why -- from whatever.
22 THE WITNESS: That's correct and it could be, it
23 could be a solution of other stores, it could be new
24 customers.
25 MR. GROSSMAN: Okay.

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1 BY MR. ADELMAN:
2 Q It is true, is it not, that Costco customers are
3 members?
4 A Correct.
5 Q It is true, is it not, that members of Costco who
6 wish to purchase gas in this vicinity have essentially
7 wanting the listed option, usually go to Beltsville?
8 A Today, yes. Yes, sir.
9 Q It is true, is it not that when, if the gas
10 station is open, that Costco customers or new ones will now
11 have two options for purchasing gas, so we're not talking
12 about every gas station in the County, so traffic in the
13 state?
14 MR. GROSSMAN: I understand, but he's already
15 answered that question and his answer that from whatever
16 source the customers come, they are projected a total amount
17 of sales and it's from that sales figure that they project
18 the trips. And it's not -- whether they come from, other
19 customers, or Costco customers somewhere else, whether
20 they're new customs just joining Costco, it's based on a
21 sales figure, that's what he said. There may be some from
22 other Costco stores, but it wouldn't change. He has
23 testified there's some --
24 MR. ADELMAN: Just one procedural thing. I
25 believe I asked all my questions.

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1 MR. GROSSMAN: All right.
2 MR. ADELMAN: If after counsel for KHCA asks her
3 questions, if I find a question I have not asked, you know,
4 my papers are scattered everywhere, am I allowed to do that
5 or just I now stop --
6 MR. GROSSMAN: Ordinarily, no, but we'll make some
7 allowance for one additional question --
8 MR. ADELMAN: Thank you.
9 MR. GROSSMAN: -- but ordinarily you get one shot
10 at it unless there's redirect and then you get a recross on
11 any new questions that are asked on redirect, asked and
12 answered on redirect.
13 MR. ADELMAN: Thank you. Thank you.
14 THE WITNESS: Can we take two minutes?
15 MR. GROSSMAN: I think so.
16 THE WITNESS: Okay. Thank you.
17 MR. GROSSMAN: All right. We'll take a break
18 here. It's 3:25. We'll take a break until 3:20.
19 (Recess)
20 MR. GROSSMAN: Are you ready to go back on the
21 record? Everybody ready? I understand that Mr. Charman has
22 a few cross-examination questions and he'd like to go before
23 counsel for KHCA.
24 MR. GOECKE: Actually, Mr. Grossman, we did have
25 one question about that commentary, Dr. Adelman's cross-

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1 examination, but our understanding was that the counsel was
2 going to go first with cross-examination and then parties, I
3 thought, were going to proceed.
4 MR. GROSSMAN: Yes. Generally that's the
5 procedure that's easier, but I think he has asked if he can
6 go and ask him independently and he has just a few
7 questions, so I thought it might be appropriate. It might
8 actually save everybody some time.
9 MR. GOECKE: That's fine. I don't think we have
10 any objection to that. But going forward, we're going to
11 resume the procedures you've outlined at the beginning of
12 the case?
13 MR. GROSSMAN: Generally speaking, I think that,
14 you know, I anticipated the possibility of a lot of people
15 in the audience and I thought that if that were the case and
16 a lot of people had additional questions, it's best to
17 funnel them through one or two people. If we have just one
18 or two people in the audience who may have a question, I
19 think I'll let them ask it themselves.
20 MR. GOECKE: Okay. Thanks.
21 MR. GROSSMAN: Okay. Mr. Charman, do you want to
22 come forward to counsel table? There's a seat there next to
23 Mr. Silverman. That way we can be sure the microphone picks
24 you up. Well, that's not exactly counsel table, but can
25 you -- you can get it? Okay. So the court reporter says

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1 she can hear you from there, so --
2 BY MR. CHARMAN:
3 Q Good afternoon, Mr. Guckert.
4 MR. GROSSMAN: Just identify yourself.
5 MR. CHARMAN: My name is --
6 MR. GROSSMAN: And spell your name again for the
7 record.
8 MR. CHARMAN: Clifford Charman, C-H-A-R-M-A-N.
9 I'm a resident of the town of Kensington and I had a few
10 questions as your study relates to the town of Kensington
11 and also as to the numbers in your study.
12 MR. GROSSMAN: And also, just to make sure, could
13 we send anybody who participates in the hearing, we make
14 sure we sent a copy of the notice of the report. So make
15 sure that your address, state your address for the record.
16 Have you signed in on the sign-in sheet?
17 MR. CHARMAN: I am, as is my wife, and my address
18 is 3707 Dupont Avenue.
19 MR. GROSSMAN: Okay.
20 BY MR. CHARMAN:
21 Q I think you testified that firm does approximately
22 120,000 traffic counts for governmental entities per year?
23 A That's correct.
24 Q Has your firm done any traffic studies of
25 University Boulevard or Connecticut Avenue?

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1 A Yes, sir.
2 Q Did you look at those studies at the time that you
3 prepared this report?
4 A We did the counts for the report.
5 Q Not for the governmental entities such as the
6 State Highway Administration or --
7 A We --
8 Q -- Montgomery County?
9 A I do not recall. We did not do it for Montgomery
10 County. We do have a contract with the state of Maryland.
11 But we did not use that data. We used, we did our separate
12 counts because of the type of data that we needed for the
13 LATR.
14 Q It is my understanding that the State Highway
15 Administration has done traffic studies for Connecticut
16 Avenue. Did your firm do any of those studies?
17 A I do not know.
18 Q But, in any event, you would not have used that
19 data for this purpose?
20 A Correct.
21 Q Did -- are you familiar with the grading at the
22 intersections in Montgomery County?
23 A Yes, sir.
24 Q And what is the traffic flow at a grade E
25 intersection?

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1 A What do you mean what is the traffic flow?
2 Q How many cars per hour at the peak hours go
3 through grade E intersections?
4 A You really can't tell, that's really not a
5 question that you can answer because it depends on the
6 number of lanes and the number of through movements and
7 right turns and left turns in order to come up with the
8 critical lane volume to give it a rating A, B, C, D, E or F.
9 Q Who does those ratings, is that the state or the
10 County?
11 A Well, the results in order to determine what the
12 rating is for local area review is conducted, the
13 mathematical analysis is really an arithmetic analysis, is
14 done by the consultant after he does the traffic counts.
15 It's then submitted to the County, the state and the
16 Planning Commission for them to review.
17 Q Did you ask the town of Kensington for any traffic
18 studies that they may have in their records of traffic in,
19 on Connecticut Avenue/south of the Connecticut/University
20 split?
21 A No, sir.
22 Q Were you aware that there was a Safeway traffic
23 study performed in 2004?
24 A Yes, sir.
25 Q Did you look at that?

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1 A I performed it.
2 Q Then you must have looked at it?
3 A I did not for the 2010 or 2012 study.
4
5 Q Do you don't know whether they're harmonious,
6 whether the numbers are similar?
7 A Well, it was eight, it was eight, it's eight, nine
8 years ago and, no, we did not look at that as part of the
9 traffic study for the local area review that's required by
10 law.
11 Q And in that Safeway study, there was a study of
12 the traffic count at the intersection of Plyers Mill and
13 Connecticut and also at --
14 MR. GROSSMAN: Where, let me stop you for a
15 second. It's a little problematic when you're citing to a
16 study that's not in the record and I'm not sure what the
17 relevance is to an eight or 9-year-old traffic study.
18 MR. CHARMAN: Okay. Let me rephrase that then,
19 Your Honor.
20 BY MR. CHARMAN:
21 Q You determined not to study the traffic impact at
22 Plyers Mill and Connecticut Avenue for purposes of this
23 traffic study, is that correct?
24 A No, sir, the determination was made by government
25 as to which intersections to study.
26 Q Okay. But you didn't study that intersection?

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1 A That's correct. I did not. It was not a
2 requirement under the law to study that.
3 Q Are you familiar with the grading of that
4 intersection?
5 A I do not remember, but I do not remember
6 precisely. I do remember that there was a lot of traffic
7 there.
8 Q Thank you. In your opinion, would there be more
9 traffic at that intersection as a result of the gas station
10 being proposed?
11 A It could be. It could be a little bit more.
12 Q And that would be particularly true of the rush
13 hour, the evening rush hour, correct?
14 A No, I think it would be more true on the weekends,
15 on a Saturday, more so than during the rush hour because I'm
16 not convinced that people are making special purpose trips
17 to a gas station during the commuting hour, that is, they're
18 sitting in their house and they say, oh, time to get gas,
19 it's rush hour. I don't see that occurring. I see those
20 rush hour trips being more pass by kind of trips.
21 Q Okay. Getting to that, I think your testimony was
22 that you project 69 cars per hour in the peak hours, is that
23 right?
24 A 69 new cars getting gas coming to the area that
25 would maybe not already be in the area.

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1 Q Okay. I misunderstood. How many cars would be
2 getting gas in the peak hour?
3 A We think it's going to be in the range of 200.
4 Q So roughly 12 to 13 per pump, is that correct?
5 A Well, there's 16 fueling positions, so in that
6 range, yes, sir.
7 Q I think you testified that there would be 3,000
8 cars per day on the ring road?
9 A I'm saying when all is said and done with existing
10 traffic, plus gas station traffic, plus -- and retail
11 traffic -- you're going to be in the 3,000 car a day range
12 on that southern portion of the ring road, yes, sir.
13 Q Oh, on the southern?
14 A Yes, sir.
15 Q Not the --
16 A No, sir.
17 Q I'm looking at page 31 of your report which is
18 analysis of peak hours and, unfortunately, I have a judge's
19 copy. So I don't know whether, where I can get a copy, Your
20 Honor?
21 MR. GROSSMAN: What's the question?
22 BY MR. CHARMAN:
23 Q The question is going to be you have intersections
24 1, 2 and 3 back in Kensington and the question that I have
25 is what happens to the 102 cars that somehow are not in your

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1 analysis between intersections 2 and 3, intersection 2 being
2 split off at University and Connecticut Avenue and
3 intersection 3 being roughly a 20th of a mile, if you will,
4 to the next light?
5 A What you're looking at, and it's unfortunate, what
6 you're looking at is the results of the critical lane volume
7 analysis which is not cars, it's, it's an arithmetic
8 calculation of cars and lanes and turns. So that, those are
9 what we call CLV or critical lane volumes. They're really
10 not cars and it's because there are different lanes and
11 different movements on and off. So you just, you cannot
12 simply compare those volumes, those results as traffic
13 volumes, unfortunately.
14 Q Let me try to understand. There's three lanes on
15 Connecticut Avenue as it approaches the University and
16 Connecticut split-off, correct?
17 A Okay.
18 Q And there's three lanes at the intersection of
19 University and Lexington, correct?
20 A All right.
21 Q And somehow we lose 102 cars per critical lane in
22 that 20th of a mile, correct?
23 A We're really mixing bananas and apples. It's,
24 unfortunately, and I wish I could give a critical lane
25 volume analysis worksheet, but it's really two different

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1 things and I apologize, but I can't do that right here.
2 MR. GROSSMAN: It's -- critical lane volume
3 analysis is more complicated than it looks on the surface.
4 Some lanes are not counted because they're not considered
5 the critical lane in that particular movement that they're
6 looking at. So if it's not the -- for example, cars may
7 turn right out of a lane. They're not counted as a critical
8 movement in that intersection at that point. So that's the
9 reason that what he said, you can't quite make the
10 comparison you're trying to make. Is that a fair --
11 THE WITNESS: Yes, sir, and I wish I could have
12 a -- I just, there is no way with his knowledge of what's
13 going on to be able to explain it very simply in layman's
14 terms, Mr. Grossman. I apologize, but I --
15 BY MR. CHARMAN:
16 Q I will be the first to admit this is rocket
17 science in relation to my knowledge. But I'm just looking
18 at an analysis and, well, maybe you can tell the Court how
19 many cars go through the intersection at University and the
20 split-off University and Connecticut in the evening peak
21 hours?
22 A The other thing, Mr. Grossman, is that the peak
23 hours are different from intersection to intersection. It
24 could be 15 minutes off. So the number of cars going
25 through eastbound on University at 185 is about 1,200 cars,

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1 which is what we have at Newport. So the volumes do indeed
2 flow, it's just that the turning movements are different and
3 that's why the critical lane volume shifted.
4 Q Is it your testimony that there are 1,200 cars
5 that go through the intersection at University and
6 Connecticut split, which is, I think you've denoted that as
7 intersection 2?
8 A No, I thought the question was how many go through
9 and for through means me, for me going straight. You've got
10 1,200 in the one peak hour going through and 1,700 making a
11 left.
12 Q So we have approximately 2,900 that are
13 approaching that intersection
14 A That's correct.
15 Q And your analysis is that we'll be adding another
16 70 cars per hour at the peak hours?
17 A No, that's 70, 70 new cars coming to the station.
18 As it relates to that particular intersection and that
19 particular movement, it's less. What we're saying is there
20 will be seven to 10 cars going through that intersection in
21 the peak, in the peak hour, seven to 10 new cars going
22 through that intersection of the 2,900.
23 MR. GROSSMAN: As a result of the, if the Costco
24 gas station is approved?
25 THE WITNESS: That's correct.

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1 MR. GROSSMAN: So he distributes the number of
2 car, new trips from the, if you go to the gas station, it's
3 been distributed in the analysis over a variety of
4 intersections, but they're not all impacting that one
5 intersection?
6 THE WITNESS: Correct.
7 BY MR. CHARMAN:
8 Q Well, I thought his testimony was that they were
9 all coming up that intersection, but maybe I'm wrong. I
10 just had two other, two or three other questions. Did you
11 testify that you did not ask the town of Kensington whether
12 they had any traffic studies performed in the last few
13 years?
14 A That's correct. It's not -- it's -- that is
15 government's job to decide if that's an issue. I did not.
16 MR. CHARMAN: If there was such study done in the
17 last two years, could it be entered into the record at this
18 late date?
19 MR. GROSSMAN: Do you have such a study?
20 MR. CHARMAN: I was told this morning that there
21 was such a study. I didn't know that today was the traffic
22 expert until last night.
23 MR. GROSSMAN: I think what would have to happen
24 is you would have to submit something for all the parties to
25 take a look at and give you time -- it so happens that this

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1 expert may be coming back because he's doing additional
2 counts and so there might be an additional opportunity for
3 the applicant to have their expert comment on it. In, to be
4 fair to both sides, you've got to give everybody an
5 opportunity to have their witnesses testify on something.
6 So it is a little late in the day to be adding additional
7 evidence such as that. But I won't say I wouldn't allow it.
8 I'd make it subject to any party making an objection if they
9 had one to make.
10 MS. HARRIS: And I would object.
11 MR. GROSSMAN: All right.
12 MS. HARRIS: I was going to do that before your
13 comment and I mean, Mr. Grossman, it's outside the scope of
14 the study that Park and Planning staff determined and not
15 only did they determine it in the subject case, they
16 determined it in the predecessor case in 2010. To bring it
17 in at this late date when, one, they've already delineated
18 the geographic area that will be impacted seems just
19 irrelevant.
20 MR. GROSSMAN: Yes, it may be. I'm not going to
21 say that he can't bring the document forth because he's
22 referenced it and so if he decides that he wants to have it
23 placed or proffered into the record, we can mark it as an
24 exhibit and you would make your objections. And if we deny
25 its admission because it's too late or it's irrelevant or

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1 it's prejudicial, as you've suggested, then we would exclude
2 it from the record, but it would be in the file to be
3 reviewed by any other authority as necessary for, in
4 reviewing any decision in this case.
5 It may be totally irrelevant and it may be an
6 unfair surprise to you, but I don't want to rule on that
7 before he produces the document if he decides to produce it.
8 You may be absolutely right, but it has nothing to do with
9 this case and it's outside the scoping arrangement and it
10 would be unfair to subject the applicant to analysis beyond
11 the scoping arrangement. I haven't seen it. I'm just
12 saying.
13 MR. CHARMAN: I appreciate that, Your Honor. And
14 I just want to know, is the town of Kensington outside the
15 scope of your review in terms of nuisance and additional
16 traffic, et cetera, because if it is, then I won't even
17 bother.
18 MR. GROSSMAN: I'm not deciding this, but we're
19 talking about the scoping arrangement? There's a scoping
20 letter that is agreed to by the technical staff of the
21 Maryland National Capital Park and Planning Commission.
22 When the case was first filed, it's sent down to that
23 technical staff for their analysis and the traffic study is
24 done. There is that scoping agreement that is done as to
25 what intersection should be analyzed and I don't play any

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1 part in that determination as to anybody, we want, any
2 member of the public wants to attend the hearing can attend
3 the hearing whether they're from Kensington or not but, you
4 know, so -- and to make their views known in testimony.
5 MR. CHARMAN: But just to clarify, sir, you're not
6 bound by the scoping agreement? I mean if you find that
7 there's a nuisance someplace else outside the scoping
8 agreement, then there's a nuisance, right?
9 MR. GROSSMAN: Well, it depends on what you mean
10 by found. There are two different aspects for this, maybe
11 even more than two, but there are at least two. One is the
12 nature of the study that's done, the traffic analysis that's
13 done as part of adequate public facilities. Here the
14 witness has testified, number one, the, even though they had
15 a scoping arrangement here and on the study, technically
16 there already is a determination that governs of adequate
17 public facilities that's already in place according to what
18 the witness has said.
19 However, there is this additional study of the
20 area. That addresses mostly the question of adequate public
21 facilities. Here by my questions we've expanded it to the
22 questions of impact and compatibility. So am I found by it?
23 Well, I think I cannot tell them that for adequate public
24 facility use analysis that they'd have to go beyond the
25 scoping arrangement because that's decided by the technical

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1 staff and the Planning Board in their analysis, or their
2 past analysis, of adequate public facilities.
3 In cases where the, there's not going to be
4 subdivision, but there is no adequate public facilities
5 determination that applies, then the Board of Appeals makes
6 a determination under the statute of adequate public
7 facilities. Technically, according to the witness's
8 testimony and I haven't heard the whole record yet
9 obviously, once, under the statute the way it's written, if
10 there is an applicable, adequate public facilities
11 determination, then it's no longer a matter for the Board of
12 Appeals to decide adequate public facilities, it's a matter
13 for, to apply that determination to the record. That's the
14 way the statute is written as we sit here. It wasn't always
15 such, but it was changed a couple years ago to add that.
16 As far as the impacts on the neighborhood that may
17 occur, that's something different. To me that's a
18 compatibility issue and it's not quite, not quite the same
19 question as whether or not the road system in the County can
20 handle it, the other traffic. So that's a different issue
21 and I certainly can come to my own conclusions and
22 recommendations on that issue. But it's not necessarily a
23 purely traffic impact on the roads issue. So those are
24 different issues.
25 MR. CHARMAN: Thank you very much, Your Honor.

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1 MR. GROSSMAN: You're welcome.
2 MR. CHARMAN: I probably used up far more than two
3 or three questions.
4 MR. GROSSMAN: No, I'm glad to have community
5 participation. I think it's very helpful in the process.
6 But you can return the exhibit to me.
7 MR. CHARMAN: I am going to.
8 MR. GROSSMAN: All right. Now -- so, Ms.
9 Rosenfeld, are you next up here for cross-examination of
10 this witness?
11 MS. ROSENFELD: Yes. I believe I am. Thank you.
12 BY MS. ROSENFELD:
13 Q Good afternoon, Mr. Guckert.
14 MR. GROSSMAN: Thank you, Mr. Charman.
15 BY MS. ROSENFELD:
16 Q Mr. Guckert, just to turn briefly to Exhibit
17 56(b), which is the queuing, exactly it's 56(c), the queuing
18 numbers for, I believe, the Sterling, is that the Sterling
19 gas station?
20 A Okay.
21 Q Do you know the hours of operation for that gas
22 station?
23 A My notes indicate, well, we study from 6:30, I
24 believe it's 6:30 a.m. to 9:30 p.m. And those were the
25 hours that we studied.

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1 Q And do you know the hours of operation -- was
2 January 12th a Saturday?
3 A January 12th was a Saturday.
4 Q And do you know the hours of operation of the
5 Sterling gas station on a Saturday?
6 A The same.
7 Q 6:30, you --
8 A 6:30 a.m.
9 Q Okay.
10 A To 9:30 p.m.
11 Q Can you show me on the aerial map which exhibit,
12 it might be the easiest one, the exhibit that's up there, do
13 you have an exhibit number?
14 A 102.
15 Q On Exhibit 102, could you show me where the ring
16 road is posted with 15 mile per hour signs?
17 A Certainly. The 15 mile an hour signs on the
18 southeast corner of the ring road.
19 Q And that's the only location where there are speed
20 limit signs posted?
21 A I didn't say that, but those are the areas where
22 if we relate it to the ring road in the vicinity of the
23 Costco.
24 Q And within the mall property generally, is 15
25 miles per hour the posted speed limit?

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1 A I do not recall.
2 Q I understand that you're going to be updating your
3 traffic analysis based on actual counts since the warehouse
4 has opened, is that correct?
5 A Well, not quite correct.
6 Q Okay. What will --
7 A Let me, I want to make sure that there's clarity
8 on what we did do.
9 Q Okay.
10 A What we did do was to conduct traffic counts at a
11 number of locations along the south and the east and the
12 west side of the ring road last Saturday after Costco was
13 opened. We are not, we are not going to update the traffic
14 analysis. What we're going to do is take the data that was
15 collected and analyze it for capacity for critical lane
16 volume and provide that information to Mr. Grossman.
17 Q Critical lane volume on the ring road?
18 A At those intersections of, in the ring road, yes.
19 Q Okay.
20 A In fact, although I'm not going to be able to show
21 you because it's an exhibit, I will indicate to you that
22 there are about nine different locations on the ring road,
23 plus the, an entrance on 193 and an entrance on Veirs Mill
24 Road.
25 MR. GROSSMAN: That you intend to study?

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1 THE WITNESS: That we have counted, that we
2 will --
3 MR. GROSSMAN: Okay.
4 THE WITNESS: -- provide the data for.
5 BY MS. ROSENFELD:
6 Q Okay. I, it might have been referenced several
7 times. In your resume you note that you've had a major role
8 in over 6,000 projects, including other Costco projects, is
9 that correct?
10 A Yes.
11 Q How many of those projects included a Costco
12 automobile filling station within the existing parking lot
13 of a regional mall?
14 A We probably work on, I'll say a half a dozen
15 Costco's and a couple were within, may have had a gas
16 station, because a gas station is not a big deal for a
17 Costco other than it's a customer service, it's like
18 providing tire service. So no one ever breaks out a Costco
19 gas station as being an issue, so we looked at, I can
20 provide you with a number of Costco's that we've done.
21 Q Well, my question is really more specific. How
22 many of them with a filling station were within the existing
23 parking lot of a regional mall?
24 A Well, as I -- I answered that question, I believe,
25 once before and the answer is I don't recall that we had any

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1 like that. So that was a question, I think, that the doctor
2 asked.
3 Q Mr. Brann testified on Friday that Costco only has
4 gas stations affiliated with a warehouse, that they never
5 have a stand-alone gas station. In one sense, isn't this
6 really a super-sized convenience store, the gas station
7 really is there serving --
8 A And the Costco is the convenience store?
9 Q No, the warehouse. The warehouse.
10 A The warehouse is a convenience store?
11 Q It's a convenience store.
12 A And the gas -- interesting. Interesting. No, I
13 don't think that's correct.
14 Q Thank you. What were the peak hours that you used
15 for APFO purposes and on what days?
16 A The peak hours are, fall between 7:00 and 9:00 and
17 4:00 to 6:00 on a weekday.
18 Q Okay. What time does the mall open on weekdays?
19 A I believe the mall, major mall stores probably
20 open at 10 o'clock, although there are stores that are open
21 earlier than that --
22 Q And what --
23 A -- for uses.
24 Q Okay. And what time does the Costco warehouse
25 open on weekdays?

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1 A I believe it should be 10:00 a.m.
2 Q And the hours of the proposed gas station?
3 A It will likely be 6:30 to 9:30, 6:30 a.m. to 9:30
4 p.m.
5 Q In your opinion the people who drive through the
6 mall, are they generally headed to a destination within the
7 mall or are they using the ring road as a commuter route to
8 get to other destinations?
9 A I would expect that they would have destinations
10 within the mall. I would doubt that there would be very
11 many, although there may be some that referring to Exhibit
12 102, Mr. Grossman, there are folks, many come in off of
13 University, circulate through the mall, come back out Veirs
14 Mill Road. I would think at a 15 mile an hour travel speed
15 and four speed bumps that it might be quicker for them just
16 to stay, make a right turn and go through. So while there
17 may be some, we did not do that type of an analysis.
18 Q You mentioned speed bumps. Can you identify where
19 within the mall speed bumps are located?
20 A On the south side, there's a speed bump just
21 before the curve, again, referring to Exhibit 102 which
22 would be about three inches from the pool on the scale.
23 Then there is a speed bump in the vicinity, as I recall, of
24 the new Costco store. There's another one prior to the
25 Stephen Knolls School on both sides of the intersection

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1 where the main north-south drive aisle intersects with the
2 ring road. I do not recall specifically there may be
3 another speed bump, but I do not recall whether there's on
4 the north-south. There may be, there may be a couple on the
5 north side of the ring road.
6 Q And I assume they're there to have the effect of
7 slowing traffic?
8 A That's the intended effect.
9 Q In your report, which is listed as Exhibit 11(a),
10 and Hearing Examiner Exhibit 11(a) at page 4, you state that
11 a new pedestrian path will be placed adjacent to parallel
12 parking spaces along the ring road by removing one lane of
13 the ring road. And a pedestrian path along the ring road
14 also is shown in your report at 11, at page 11. I
15 referenced as Exhibit 1(d), special exception site layout.
16 Are you aware that this pedestrian path has been removed --
17 A Yes.
18 Q -- from the special exception layout --
19 A Yes, I have.
20 Q -- since your report was completed?
21 A Yes.
22 Q Have any of your conclusions changed as a result
23 of the removal of the pedestrian path?
24 A No.
25 Q Were you consulted as part of the design process

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1 for the station, the gas station?
2 A Yes.
3 Q Were you consulted on the decision to remove the
4 pedestrian path?
5 A Yes.
6 Q In your opinion, does the removal of the
7 pedestrian path enhance pedestrian safety on the site?
8 A That's possible.
9 Q And could you please --
10 MR. GROSSMAN: Let me interrupt for one second.
11 She said removal of the --
12 THE WITNESS: Correct.
13 MR. GROSSMAN: -- pedestrian -- is there a
14 pedestrian path there now?
15 THE WITNESS: No, sir.
16 MR. GROSSMAN: So it's a removal from the plans to
17 put a pedestrian path there?
18 THE WITNESS: Correct.
19 MR. GROSSMAN: Not I -- I just want to make sure I
20 understood. There's no pedestrian path on the roadway now?
21 MS. ROSENFELD: Correct.
22 MR. GROSSMAN: Okay. I just wanted the record to
23 be clear on that.
24 THE WITNESS: Mr. Grossman, the path would have
25 been, would not have been a raised path, it would have been

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1 parallel to the ring road adjacent, so instead of having
2 pedestrians walk along the ring road, they're being directed
3 to the crosswalks where they should be crossing.
4 MR. GROSSMAN: Okay.
5 BY MS. ROSENFELD:
6 Q Turning again to your traffic analysis in Exhibit
7 11(a), on page 13 of that exhibit, there's a circular insert
8 in the lower right-hand side. There's a horizontal line and
9 a perpendicular line it says Costco gas.
10 A Yes.
11 Q And there are two numbers in the upper-right
12 quadrant, 32 and then in parentheses 94. Could you explain
13 those numbers to me please?
14 A 32 is the westbound morning peak hour movement.
15 94 is the westbound evening peak hour movement.
16 Q And the ones below?
17 A Eastbound in the morning and the evening.
18 Q Okay.
19 A Along the ring road in the vicinity of the
20 station.
21 Q And that vertical line, does that represent the
22 entry to the gas station itself?
23 A It's just trying to represent that that's where,
24 approximately where the station may be.
25 Q Okay. So it does not reflect -- if I were to look

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1 at Exhibit 56(f), Zoning Hearing Examiner 56(f) does not,
2 does it correlate with the red arrow that says one way
3 entering the queuing section of the special exception
4 itself?
5 A It would be in that approximate area. But the
6 line is not, meant to represent the entrance in that call
7 and this is not to scale situation, it's just diagrammatic.
8 Q Okay. Thank you. That's very helpful to know.
9 And on that same page 13, just above that circular insert,
10 it says site and under that there is a star inside a circle.
11 Does that star represent the general location --
12 A I believe that that's where the gas station,
13 somewhere in that area.
14 Q Not to scale, just the --
15 A Yes.
16 Q -- a general graphic vicinity?
17 A Correct.
18 Q Okay. Thank you. And going to Exhibit 11(a),
19 page 23, again, looking at the insert, could you please
20 explain those numbers to me? Why don't you start with the
21 numbers on the left-hand side on the upper-right quadrant,
22 28 and 28 parens?
23 A Yes, those were cars that would be coming, exiting
24 from the north end of the fuel pumps that may be making,
25 going to the west 41, 41 cars that may be exiting from the

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1 north side of the fuel pumps and would be going to the east.
2 They -- and I'm showing that is as cars that were
3 distributed to the ring road, again, not site-specific, or
4 not, not designed specific to the previous exhibit you just
5 showed me. If we had the, if we had the actual special
6 exception exhibit, those numbers are 28 and 41, we flip that
7 at the north end of the site, okay?
8 MR. GROSSMAN: In other words, the fact, in that
9 little circle, the fact that the arrows are down at the
10 bottom pointing, what appears to be pointing south, east and
11 southwest, is not intended to show that they're actually,
12 those vehicles are actually exiting to the south?
13 THE WITNESS: Correct. Be careful of the wires as
14 you cross.
15 BY MS. ROSENFELD:
16 Q Looking at Exhibit 54(i), could you show me, just
17 point to the circulation that you're talking about?
18 A The 28 and the 41 would be coming out of the north
19 end of the site going to the west or going to the east.
20 Q And are they going back out to the ring road
21 itself?
22 A They may. They may be going into the Costco
23 store. They may be going up to --
24 Q Oh.
25 A -- Target or other places in the mall.

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1 Q And the number 41 on the right, what does that
2 reflect?

3 A The same, what I -- when you say on the right, are
4 you talking about --

5 Q Oh, I'm sorry.

6 A -- underneath the word, Costco gas?

7 Q Underneath the word Costco gas.

8 A Yes. Those are --

9 Q Show me what direction those would be going?

10 A Those are cars that would be westbound on the ring
11 road, northbound turning into the fueling area.

12 Q Okay.

13 A That was the same, the same, the doctor and I went
14 through that exhibit extensively as well.

15 Q And then the eastbound 28, 28?

16 A Yes.

17 Q The same? Okay. This does reflect, as I read it,
18 the numbers without parentheses or morning peak hour and the
19 numbers with parentheses are evening peak hour?

20 A Correct.

21 MR. GROSSMAN: There's a key actually on each of
22 these maps on the left-hand corner, lower corner that shows
23 the key.

24 BY MS. ROSENFELD:

25 Q Is it your opinion that there are just as many

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1 trips generated in the morning peak hour as there are in the
2 evening peak hour?

3 A No, you're looking at only one of multiple
4 exhibits. It's a layering effect. If you go back one page
5 to page 22, do you have that?

6 Q I do.

7 A It just so happens that we did not take any
8 internal trips in the morning. We took the 37 percent as by
9 in the morning and it just so happens that arithmetically it
10 comes out to be the same, but quite frankly it's about 109,
11 110, we think, cars generated in the morning and about
12 double that, 210 generated in the evening. But you're
13 looking at an exhibit that talks about net new trips only,
14 new trips on the road system, not total trips into the gas
15 station.

16 Q And I'm sorry if I missed it earlier, could you
17 tell me which exhibit has the total, which?

18 A Exhibit, page 22.

19 Q Page 22. Okay. Okay. So your morning total new
20 trips are 138 and your evening new trips are 138?

21 A No.

22 Q You're going to have to really simplify it for me,
23 I'm sorry.

24 A I will. Look at, go up two lines.

25 Q Yes.

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1 A Okay. And where it says 16 pumps --

2 Q Got it.

3 A -- it's 109 cars coming in in the morning, 210
4 cars we're projecting coming in in the evening. These are
5 all peak one-hour, okay?

6 Q So over the course of three hours, it would be
7 between six and 700 new trips total?

8 A No, this is the peak one hour or three hours.

9 Q You, your peak hour -- you have three peak hours
10 in the morning for two --

11 A No.

12 Q -- 7:00 to 9:00?

13 A That's a peak period.

14 Q Okay.

15 A And the peak one-hour is what we are showing here.

16 Q Okay.

17 A The peak one-hour. It will be less the hour
18 before, maybe a little bit more the hour after. The peak
19 one-hour is what we're showing between 7:00 and 9:00, 6:00
20 to 9:00, 6:30 to 9:30 in the morning and 4:00 to 7:00 in the
21 evening.

22 Q From this, could you extrapolate approximately how
23 many new trips between that 6:30 to 9:30 period of time?

24 A Not immediately, no.

25 Q Do you have that information somewhere?

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1 A Somewhere, but I'm not going to try to pull it out
2 of the air because I know I'll make a mistake.

3 Q No, I'm not asking you to pull it out of the air.
4 Perhaps when you come back to testify again you can supply
5 us with that number.

6 A Perhaps.

7 Q That would be helpful.

8 A You want to know for the three hours in the
9 morning and three hours in the evening?

10 Q How many total new trips.

11 MR. GROSSMAN: Do you happen to have a situation,
12 since the, as I understand the way the studies are done,
13 first, one picks out the peak period. Then we take the peak
14 hour from the peak period?

15 THE WITNESS: Correct.

16 MR. GROSSMAN: Have you ever had a situation where
17 the peak hour of the day is actually not within the peak
18 period?

19 THE WITNESS: Within the 3-hour peak?

20 MR. GROSSMAN: Yes, within, not within the -- you
21 have a peak period that --

22 THE WITNESS: I would say that would be really,
23 really, really, really rare because even on Rockville
24 Pike --

25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- the mid-day, which is very heavy,
2 never quite exceeds the evening peak hour.
3 MR. GROSSMAN: That's why I always wondered why
4 it's done that way, that you have to identify a peak period
5 and then take a peak hour out of it. Why not just go
6 directly to the peak hour?
7 THE WITNESS: Because that means the government
8 would have to be spending a lot of money counting 24 hours a
9 day and that's, that's not what they want to do.
10 MR. GROSSMAN: I see. Okay.
11 THE WITNESS: Okay? In order to determine that,
12 you would have to have on all the hours.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: So I want to make sure I answer your
15 question. You want to know the number of cars that would be
16 pumping gas in the 3-hour period in the morning and 3-hour
17 period in the evening?
18 BY MS. ROSENFELD:
19 Q No, I would like to know the aggregate numbers of
20 cars that are going by on the ring road.
21 A On the ring road during --
22 Q During morning peak between 7:30, 6:30 and 9:30 --
23 A For the three hours in the, on the ring road, the
24 three hours?
25 Q That's correct.

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1 A And you want to know that existing or future
2 total?
3 Q Both. How many are passing and how many are going
4 into the fueling station?
5 MR. GROSSMAN: I'm not asking the witness to do a
6 new study of that, just to look through his numbers that he
7 already has --
8 THE WITNESS: See what I have.
9 MS. ROSENFELD: No, I'm not asking for a new
10 study. I assume that he can extrapolate that information
11 from the data --
12 MR. GROSSMAN: Okay.
13 MS. ROSENFELD: -- he already has.
14 BY MS. ROSENFELD:
15 Q Where in your study do you identify how many
16 vehicles will drive down the drive aisle directly in front
17 of the Costco warehouse and the loading dock and the tire
18 service center, which also -- and farther down to the
19 entrance to the mall?
20 A I do not have that.
21 Q And where in your report do you identify how many
22 vehicles will drive down, northbound or southbound, on the
23 western drive aisle abutting the fueling station?
24 A That's too micro an analysis to figure out whether
25 or not I'm going to be in parking space 221 at 4 o'clock in

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1 the afternoon and when I'm going to leave, in which
2 direction I'm going. So I do not have the analysis of each
3 of the drive aisles or on each of the parking spaces.
4 Q On page 21 of your report, you project 8 million
5 gallons of gas annually would generate four to six trucks of
6 fuel delivery a day. Now I believe --
7 A I'm sorry, I didn't project that.
8 Q On page 21 under hearing, the fourth full
9 paragraph, the last sentence, it says, the Columbia store
10 receives four to six trucks a day for 8 million gallons per
11 year.
12 A That's not a projection.
13 Q Okay. What is that?
14 A It's a statement.
15 Q And where did you get that information?
16 A From Costco.
17 Q And you are anticipating how many millions of
18 gallons of gas at the Wheaton station?
19 A We are using as a basis 12 million.
20 Q Okay. And if you are using as a basis 12 million,
21 approximately how many fuel trucks a day would you project
22 given the Columbia numbers?
23 A It could be eight to 10 to 12, depending on the
24 day, depending on how many, the day of the week, conditions.
25 Q Is there any traffic -- strike that. What is the

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1 annual number of gallons of gas in volume at the Columbia
2 gas station?
3 A Gallons of gas at Columbia? I believe Columbia
4 now is in the 9 million gallon a year range as I recall.
5 Q And I believe you said that the Sterling station
6 last year was 13.9 million?
7 A Correct.
8 Q From a traffic point-of-view, in your opinion, is
9 there any limitation or any reason that would prohibit the
10 Wheaton station from pumping 13.9 million gallons a year?
11 A From a traffic point-of-view?
12 Q From a traffic point-of-view.
13 A I believe seven. It would not be a capacity issue
14 and that's the way I would address it from a traffic point-
15 of-view.
16 Q And if it were to pump that much, would all of the
17 queuing still be contained within what you described earlier
18 as the box?
19 A 99.9 percent of the time, yes. There would be an
20 occasion for a minute or two on a Saturday over the peak
21 period, a couple minutes maybe, a couple minutes throughout
22 a couple different hours where they might see the box.
23 Q Even though you've added an additional 1.9 million
24 gallons of gas per year --
25 A Yes.

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1 Q -- being pumped?
2 A Yes. And that's clear from the data that's
3 already in Exhibit 56.
4 Q Can you tell me the typical width and length of a
5 fuel tanker?
6 MR. GROSSMAN: You mean every fuel tanker or ones
7 that service Costco or --
8 BY MS. ROSENFELD:
9 Q The ones that would service Costco.
10 A I tell you what I think, but I'm not 100 percent
11 sure. Eight feet wide, 63 feet long.
12 Q There is an exhibit, Exhibit 54(i), on the board.
13 A Yes.
14 Q And it has an illustration of a tanker truck.
15 Does that --
16 A That's not --
17 Q Is that to scale?
18 A -- our exhibit.
19 Q That's not your exhibit?
20 A That's the engineer's exhibit.
21 Q Okay. Okay. And --
22 A Actually, what the exhibit says, and again I'm
23 referring to 54(i), it's WB-67, so a 67-foot wheel base, not
24 a 63.
25 Q And it's eight feet wide, or does that say?

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1 A It doesn't say, but they're about eight feet wide.
2 Q And do you --
3 MR. GROSSMAN: But you're engineer too because you
4 were able to turn on the loud speaker.
5 THE WITNESS: That's right, all by myself, that's
6 correct.
7 BY MS. ROSENFELD:
8 Q And do you know the approximate height of a fuel
9 tank?
10 A I do not.
11 Q Can you describe for me what the expected
12 circulation pattern for the fuel tankers would be as they
13 enter and exit the mall?
14 A Well, it was testified to earlier in the previous,
15 when Dan Duke testified, that the, or it might have been
16 Erich Brann, that testified that they expect that most of
17 the trucks would be coming in University, going back out
18 University. They come in the ring road. Those that came in
19 off of Veirs Mill and maybe, maybe he said Veirs Mill as
20 well, they would be coming in the ring road and either
21 making a left or right turn. This Exhibit 54(i) shows
22 making a left turn along the left side of the, of the fuel
23 pumps, fuel area, the special exception area. And then
24 they're coming back out, circulating back around to the
25 north and then the west and then back to the north again on

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1 the ring road to exit out. The closest area would be back
2 to University.
3 Q Well, I -- okay. If you're going to elaborate?
4 A No, I was, what I was going to do was say that if
5 they came in, they came in from the west side. They come
6 in, come into the fuel area, come back out to the nearest
7 public street on University. If they came in that way, if
8 they came in from Georgia Avenue from the south or Veirs
9 Mill from the north, I would expect that they would be
10 coming in down the south side ring road and back in and then
11 back out.
12 Q And to go back to that exhibit --
13 A I do not know where the fuel pump trucks will be
14 on the site.
15 Q To go back to the Exhibit 54(i), which you just
16 put down, I didn't see on that exhibit or anywhere else in
17 the record a turning radius for a tanker actually going from
18 east to west on the Ring Road and then north to the fueling
19 stations. Do you know if there's enough, if there's
20 adequate turning radius for that turn to actually occur?
21 A Yes, that, that's shown on this exhibit as well.
22 Q Driving from west to east --
23 A Eastbound.
24 Q I'm sorry, from east to west, driving from east to
25 west and then making a right to go north?

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1 A That's not, that's not shown in this exhibit.
2 Q And do you know if there's an adequate turning
3 radius for that turn to occur?
4 A I did not do any of that analysis.
5 MS. ROSENFELD: Mr. Hearing Examiner, this is a --
6 BY MS. ROSENFELD:
7 Q I'm looking at Exhibit 54. And I'm going to ask
8 the, Mr. Guckert to make some, mark it up. So I'm grabbing
9 a marker if you want to do that.
10 MR. GROSSMAN: Okay. Well, we'll give the new
11 exhibit a new number. We'll make it Exhibit 111.
12 THE WITNESS: This is a new exhibit in the case?
13 MS. ROSENFELD: It is the exact exhibit we are
14 looking at, Exhibit 54(i)
15 MR. GROSSMAN: But she's going to have you mark it
16 up, so --
17 MS. ROSENFELD: I'm going to ask you to mark it
18 up.
19 THE WITNESS: Got it.
20 MR. GROSSMAN: So we'll say Exhibit 54(i) marked
21 up.
22 (Exhibit No. 111 was marked for
23 identification.)
24 BY MS. ROSENFELD:
25 Q We were talking about the, about the turn radius

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1 of the tanker truck, fuel truck, and as you see on the
2 southern part of the ring road --
3 A Uh-huh.
4 Q -- is the rear end of the tanker truck actually
5 entering into the parking spaces that are marked on this
6 exhibit, what is the exhibit number?
7 MR. GROSSMAN: Exhibit 111.
8 THE WITNESS: Schematically, that's what it shows.
9 BY MS. ROSENFELD:
10 Q Would you know what this is? And since this
11 Exhibit 111 was prepared originally, has -- let me ask this
12 question. Is there a pedestrian path shown on Exhibit 111?
13 A Yes.
14 Q Okay. And where is that pedestrian path located?
15 A Adjacent to the marked parallel parking spaces.
16 Q And I bring your attention to Exhibit No. 54(f),
17 which is, I understand, a proposed special exception plan
18 dated March 25, 2013. Has a pedestrian pathway been removed
19 from this plan?
20 A Yes.
21 Q And have the parallel parking spaces been moved to
22 the south toward the third line?
23 A The back, back to the original location.
24 Q And north of the marked pedestrian spaces there is
25 a notation. It says dash white line?

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1 A Yes.
2 Q About four, 4 1/2 feet wide?
3 A Yes.
4 Q Can you tell me what that is?
5 A The ring road is set up as two lanes in each
6 direction. This indicates that there is a separation
7 between the eastbound through lane and the eastbound where
8 if cars needed to, they would park.
9 Q And so is the space between the edging of the
10 parking space and the drive aisle, is that where you would
11 expect pedestrians to access their vehicle?
12 A You mean to open their door?
13 Q Open their door.
14 A Yes.
15 Q Is that where they would likely bring their
16 shopping carts to load their products into their vehicles?
17 A You mean if they were to park there and walk up to
18 Target and come down and unload?
19 Q Or park there and walk up to the Costco warehouse,
20 the entrance to the mall?
21 A Yes, they would be going, they would be, if it
22 were me, I'd be loading my car from the back, not from the
23 side because most people have trunks and back doors. So,
24 yeah, they would be loading from the back. That's just dead
25 space.

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1 Q Or entry to their vehicles from the side?
2 A Or opening their door, true.
3 Q And emptying their carts?
4 A I don't know if they're going to push their
5 cart -- I certainly wouldn't be doing that.
6 Q Well, you might not be, but --
7 A But you asked me. So the answer is, no, I
8 wouldn't.
9 Q In your opinion, is it foreseeable they would
10 shop --
11 A I would hope --
12 Q You wouldn't? Not what you hope. Is it
13 foreseeable for the shopper would be pushing a cart along
14 this path?
15 A Not in their right mind.
16 Q Is it foreseeable that a shopper would be walking
17 along --
18 A Not in their right mind.
19 Q -- to get to their car?
20 A Of course not.
21 Q Then explain to me how somebody would get to their
22 parked car if they're parked along the ring road?
23 A They may cross and walk down the side of the ring
24 road if they're doing that, but they certainly, not in their
25 right mind would they be walking adjacent to the car, to the

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1 road if they didn't have to.
2 Q So it's your testimony that it's unforeseeable
3 that a pedestrian would walk along this space that's marked
4 off with a dashed white line between the drive aisles and
5 the parallel --
6 A I think it's unforeseeable, absolutely. You might
7 and someone else might, but I think it's unforeseeable, so I
8 wouldn't do that.
9 Q Would anyone -- I know there are thousands of
10 shoppers.
11 A I don't think it's foreseeable that someone would
12 do that, of course not.
13 Q Okay. The -- turning --
14 MR. GROSSMAN: Ms. Rosenfeld, I have a question
15 for you. If, in fact, the sidewalk does not exist there at
16 this point, what's the relevance of the inquiry as to
17 whether or not it would be dangerous not to have a sidewalk
18 there? I'm not quite sure I understand that.
19 MS. ROSENFELD: Well, I proffer to you that
20 testimony later will show that Westfield Mall had agreed, in
21 fact, to provide the pedestrian path at this location and it
22 has since been removed from the plan. So I proffer that it
23 has an effect on pedestrian safety.
24 MR. GROSSMAN: But it doesn't -- I'm saying it's a
25 condition now as it exists now does not have a sidewalk,

1 this plan neither, doesn't take away a sidewalk, it just
2 removed an area plan for one. I don't see how it's
3 relevant. Am I supposed to --

4 MS. ROSENFELD: Well, I think there's two things
5 that are relevant. Number one, you're introducing a new
6 use.

7 MR. GROSSMAN: Yes.

8 MS. ROSENFELD: It's bringing significantly more
9 traffic and we'll be making this part of the ring road far
10 more active with respect to both pedestrians and vehicular
11 use and I think that -- so the safety of pedestrians walking
12 along this area and/or trying to access their vehicles along
13 parallel parked area is highly relevant. In addition to
14 that --

15 MR. GROSSMAN: Well, let me, before you go through
16 the addition, if this -- we're talking about the gas station
17 special exception itself. I'm not talking about --

18 MS. ROSENFELD: Right.

19 MR. GROSSMAN: -- the warehouse. Why would a gas
20 station bring pedestrians to this parking lot? I don't
21 understand that.

22 MS. ROSENFELD: It's not a question of whether the
23 gas station brings pedestrians to the mall.

24 MR. GROSSMAN: You said you're introducing a new
25 use that would bring -- that's what I thought I heard you

1 say.

2 MS. ROSENFELD: It's a question of whether or not
3 the additional traffic associated with the new use has an
4 adverse impact on pedestrian safety who are at the mall.

5 MR. GROSSMAN: Pedestrians who didn't have a
6 sidewalk there before?

7 MS. ROSENFELD: Pedestrians who didn't have a
8 sidewalk there before, pedestrians who did not have to
9 maneuver through additional vehicular traffic entering the
10 gas station, tanker trucks entering the gas station.

11 You're --

12 MR. GROSSMAN: I understand your overall point
13 about whether or not the use would somehow impact on
14 pedestrians. I don't understand it in connection with this
15 southern sidewalk which doesn't exist now. But I'm not
16 preventing you from putting on your case on it, I just, I'm
17 just pointing out to you --

18 MS. ROSENFELD: Well --

19 MR. GROSSMAN: -- I don't understand it. It
20 doesn't exist now.

21 MS. ROSENFELD: Well --

22 MR. GROSSMAN: Why this use affects the sidewalk
23 that doesn't exist?

24 MS. ROSENFELD: Well, and I'm not talking about a
25 sidewalk that doesn't exist. I'm talking about what is on

1 the current plan shown as an area between where the parallel
2 parking exists and a dashed white line which would be a
3 drive aisle and an area that in my view would appear to be a
4 location where people could walk to access their cars --

5 MR. GROSSMAN: But that's outside the special
6 exception area. They're not proposing to do, to affect --
7 they're not proposing to put anything in that area.

8 MS. ROSENFELD: Well, one of the findings that you
9 have to make is for this special exception is not going to
10 introduce adverse impacts on visitors and residents and
11 workers in the vicinity and in the neighborhood.

12 MR. GROSSMAN: Right. The special exception, and
13 I certainly invite you to put on any evidence regarding the
14 special exception use, but you're talking about a sidewalk
15 that doesn't exist and they don't plan to add, so I'm just
16 saying I don't see the connection --

17 MS. ROSENFELD: I --

18 MR. GROSSMAN: -- but I'll let you --

19 MS. ROSENFELD: I'm not talking about the
20 sidewalk.

21 MR. GROSSMAN: Okay.

22 MS. ROSENFELD: I'm talking about this area here
23 that is painted off, marked as 4 1/2 feet.

24 MR. GROSSMAN: This area here meaning the
25 southern --

1 MS. ROSENFELD: This, the southern --

2 MR. GROSSMAN: -- side of the ring road opposite
3 where the special exception is.

4 MS. ROSENFELD: Mr. Duke testified that these
5 parking spaces were approximately six feet wide --

6 MR. GROSSMAN: Right.

7 MS. ROSENFELD: -- ranging up to seven feet, six
8 inches wide. There is another area north of that --

9 MR. GROSSMAN: Okay.

10 MS. ROSENFELD: -- that is not within the drive
11 aisle, that appears to be marked off as an aerial where
12 pedestrians can walk. I'm not saying it's a sidewalk --

13 MR. GROSSMAN: All right.

14 MS. ROSENFELD: -- I'm not even calling it a
15 pedestrian path. My question for Mr. Guckert was if
16 somebody is parked along the ring road, is it foreseeable
17 that they would push their cart or walk with their family to
18 get to their car within this area?

19 MR. GROSSMAN: All right. Well, he's already
20 answered that question.

21 MS. ROSENFELD: And he testified, no, it's not
22 foreseeable.

23 MR. GROSSMAN: Right. But my question goes to a
24 different issue but, okay, I've already made my point. I
25 just wanted you to understand I don't quite get that

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1 connection --
2 MS. ROSENFELD: Okay.
3 MR. GROSSMAN: -- because it's outside the special
4 exception area, but you present whatever you want to
5 present.
6 BY MS. ROSENFELD:
7 Q Now, Mr. Guckert, going back to Exhibit 111 where
8 we showed that the truck entering into the fueling area, the
9 turning lane is projecting into the fueling area, the
10 turning radius. The rear wheels were entering like they
11 formerly did and the rear portion of the truck and entering
12 formerly what is marked as a parking area itself. Is that
13 turning radius now located within that 4 1/2 area between
14 the new spaces?
15 MS. HARRIS: Objection.
16 MR. GROSSMAN: Well --
17 MS. HARRIS: The witness had already --
18 MR. GROSSMAN: Hold on a second.
19 MS. HARRIS: The witness has already noted he did
20 not prepare this turning radius. It was prepared by the
21 civil engineer who testified, so I don't this expert is
22 qualified to answer her questions.
23 MR. GROSSMAN: Well, I, he can answer it if he can
24 answer it. If he can't, then he'll say so.
25 THE WITNESS: What I stated when I marked up

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1 Exhibit 111 was that this, the real wheels were shown
2 diagrammatically. It doesn't mean that they have to be
3 there, okay? But the, if the, the other answer to the
4 question is because I don't know how this exhibit was
5 prepared. The drawing could have been prepared in error and
6 the rear wheels wouldn't have been on the parking space.
7 You go to the question you asked, if indeed, if indeed this
8 is exactly where the engineer wanted it, then, yes, indeed
9 it would be in a, the truck would be in a different area.
10 MS. ROSENFELD: Okay.
11 THE WITNESS: -- as on Exhibit 54(i).
12 BY MS. ROSENFELD:
13 Q Thank you. Going back to -- Mr. Guckert, going
14 back to Exhibit, the current special exception exhibit
15 that's on the floor, that's Exhibit No. --
16 A 54(f)?
17 Q 54(f)?
18 A Yes.
19 Q On that exhibit, are you aware of the fact that
20 there is a vertical wall that is planned to be installed one
21 foot outside of the curve line along the southern portion of
22 the ring road?
23 A That's what Exhibit 54 indicates, a heavy black
24 line that says for a green wall plan.
25 Q And in your opinion does that constrict the

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1 ability of pedestrians to walk south of their cars
2 towards -- when they're accessing their parked vehicles?
3 A Does the wall -- you said that if the wall were
4 removed --
5 Q No, no.
6 A -- is that --
7 Q With the wall there --
8 A I want to make sure I understand. So if we remove
9 the wall, they'd have more space, is that the question?
10 Q No. The question is, knowing that the wall will
11 be there --
12 A Uh-huh.
13
14 Q Is it realistic that people will walk between
15 their vehicles and a vertical wall one foot off the curb
16 line?
17 A They might. It's not going to be convenient, but
18 they might.
19 Q Do you think it would make it more likely that
20 people would walk on the north side of their cars?
21 A If they're walking along the ring road?
22 Q Yes.
23 A If they're walking on the ring road, yeah, they
24 may walk on the north side. I mean I think you find people
25 doing both. Some people will walk along the south side
there against the wall. Other people will walk along the

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1 ring road on the north side of the parking spaces if cars
2 are parked there.
3 Q Okay. Thank you. Mr. Brann had testified that
4 the attendants at the gas station must unlock the fuel tanks
5 to make sure that the tank can accept the full fuel delivery
6 and that the tanker will discharge the right grade of fuel.
7 Can you, do you know where those mechanisms are that must be
8 unlocked?
9 A No.
10 Q Do you know where the fuel would be discharged?
11 A I do not.
12 Q Do you know where the truck will be parked when
13 it's discharging fuel?
14 A Yes.
15 Q And can you show me where that is?
16 A Referring to your Exhibit 111, the trucks will
17 park along the west side of the special exception area where
18 the underground tanks are proposed to be installed.
19 Q And do you know how close to the fuel tanks they
20 are able to park?
21 A Yes, that was -- no, I do not know that. I would
22 suspect that since the tanks are buried, they can park
23 pretty darn close to them.
24 Q Okay. And if the driver is there to refuel the
25 northernmost tank, for example, where would that driver

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1 park?

2 A He's going to park in the vicinity, I would

3 expect, of the three underground fuel tanks.

4 Q And for the middle tank, where would he park?

5 A I would expect him to be parked in the vicinity of

6 the three fuel tanks.

7 Q And the same answer for the southernmost tank I

8 presume?

9 A Yes, I would expect that he will park his truck in

10 the vicinity of the three underground fuel tanks in order to

11 load all three of the tanks.

12 Q And how wide is the drive aisle at that location?

13 A That was previously testified to and it is shown

14 on Exhibit 54(f) as 24 feet wide.

15 Q And you've testified that the tanker is eight feet

16 wide?

17 A Yes.

18 Q So would that leave you with two full drive aisles

19 when the tanker is parked?

20 A It would leave you with 16 feet of drive aisle

21 space.

22 Q And what is the standard drive aisle width?

23 A It varies from -- standard for what, what standard

24 would we use?

25 Q Well, how about for regional parking for a

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1 regional mall?

2 A It could be as narrow as 20 feet. This is showing

3 that they need 24 feet. It depends on the depth of the

4 parking space.

5 Q So even if they had been reduced to a total of 20

6 feet northbound and southbound, that would leave a full

7 drive aisle of 10 feet in each direction, is that correct?

8 A Say that again.

9 MS. HARRIS: I'm going to object.

10 MS. ROSENFELD: I'll ask it a different way.

11 MR. GROSSMAN: Hold on one second. Are you going

12 to rephrase it? Go ahead.

13 MS. ROSENFELD: I'll rephrase it. Once you take a

14 24-foot wide drive aisle, you reduce it by eight feet for a

15 parked tanker. How much room do you have --

16 THE WITNESS: You have 16 feet.

17 BY MS. ROSENFELD:

18 Q Which leaves -- how wide is each drive aisle if

19 that's left?

20 A It's leaving you with eight feet.

21 Q Eight feet? Which is less than the 10-foot

22 standard that you just described, is that correct?

23 A Correct. Correct.

24 Q Okay.

25 A While the truck is unloading, that's correct.

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1 Same thing as if you had a UPS truck out front parking.

2 Q How long does a typical UPS truck stop last?

3 A Five minutes, 10 minutes, 15 minutes, 20 minutes,

4 depending on how many packages he's delivering inside the

5 mall. It's not as if he's delivering to a private home, so

6 it varies.

7 Q And did you hear Mr. Brann testify about the fact

8 that it would take between 40 and 45 minutes to unload each

9 tanker?

10 A I was not here for that, but I will accept that.

11 MR. GROSSMAN: I want to ask you a question from a

12 traffic safety standpoint. Is it a problem to have a drive

13 aisle that's supposed to be a minimum of 20 feet wide carry

14 traffic in two directions block a good portion of the day by

15 tanker trucks unloading?

16 THE WITNESS: Well, because --

17 MR. GROSSMAN: It is a safety problem?

18 THE WITNESS: In my opinion it's not. I mean

19 because you have redundancy in the parking lot where they

20 can, they can use other portions of the parking lot as

21 someone, when they go around. It's like having a narrow

22 street in your neighborhood and you wait until the other car

23 passes to get around. It's not a safety problem.

24 MR. GROSSMAN: Okay.

25 BY MS. ROSENFELD:

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1 Q And, Mr. Guckert, you did testify earlier that you

2 were using as a basis 12 million gallons a year and that

3 under that premise there could be as many as eight or 10 or

4 12 tanker trucks a day?

5 A Yes, if you, if you assume that, if you assume, in

6 my report I said four to six a day, or 8 million gallons,

7 which means it's six to 10 or so for the truck.

8 Q Each taking 40, 45 minutes to unload, assuming Mr.

9 Brann was correct?

10 MR. GROSSMAN: Well, he testified --

11 THE WITNESS: I wasn't --

12 MS. ROSENFELD: I'm sorry, that was Mr. Brann's

13 testimony.

14 BY MS. ROSENFELD:

15 Q For traffic traveling east to west on the ring

16 road, if, assuming there's no tanker parked, is there a

17 clear line of sight from, say for example the entrance of

18 the gas station across to the drive aisle and the parking

19 spaces immediately to the west of your fueling station?

20 A Is there a clear line of sight if you're coming

21 east to west, so you're going westbound?

22 Q That's correct.

23 A And you want to know if there's a line of sight

24 from the entrance to the parking spaces?

25 Q Correct. Are there vertical improvements there?

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1 Is it just a curb? Is there a kiosk? Does anything block a
2 driver's view across that quadrant of the gas station?
3 A To the best of my knowledge, no. There might be
4 some landscaping, but I'm unaware that the sight distance in
5 the westbound direction looking to the across the special
6 exception area would be blocked.
7 Q And when a tanker, which I think you testified
8 was -- what is the distance between the end of the kiosk to
9 the end of the special exception, southernmost boundary?
10 A What kiosk?
11 Q The kiosk where the attendants -- do you know
12 where that's located on the special exception plan?
13 A I see it. I can measure it if you want to give me
14 a scale.
15 Q I don't have one.
16 A Okay.
17 Q I'm sorry --
18 A So this drawing is to scale.
19 Q Excuse me. Excuse me. We've got one.
20 A And so from where to where? Yes, it says kiosk.
21 Q It would be right here. Down in, here, special
22 exception boundary.
23 THE WITNESS: It's an architect scale. I need an
24 engineer scale.
25 MS. ADELMAN: Oh, I've got one too.

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1 MS. ROSENFELD: Whatever works.
2 MS. ADELMAN: I guess I didn't have it. No, I do.
3 MS. ROSENFELD: No?
4 MS. ADELMAN: Sorry, I thought I did, but I don't.
5 MS. ROSENFELD: Anybody else? Sorry, but my
6 scale.
7 THE WITNESS: Okay.
8 MS. ADELMAN: No --
9 MS. ROSENFELD: Under dimensions --
10 THE WITNESS: Well, it's thumb to little finger.
11 It's a 20-scale -- this may be 120 to 140 feet.
12 BY MS. ROSENFELD:
13 Q And from the northernmost fuel station to the
14 southernmost boundary?
15 A From where?
16 Q Well, let's go back and on separate sheets.
17 A All right. So what's the distance from the kiosk
18 to where?
19 Q The southernmost boundary to the kiosk to the
20 southernmost boundary of the special exception.
21 A And this is -- here you go. This is in meters.
22 MS. ADELMAN: I give up.
23 THE WITNESS: So it's, the answer is you're at 120
24 to 140 foot range for the southern end of the kiosk to the
25 special exception area. And what was the next question?

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1 BY MS. ROSENFELD:
2
3 Q The northernmost fueling station?
4 A It's probably -- about the same because the
5 movement of those fueling stations are a few feet in width
6 of the north end of the kiosk.
7 Q And you testified that the length of the tanker
8 was 67 feet?
9 A Yes.
10 Q And from the southernmost fueling station,
11 approximately what's the difference, the distance from the
12 southernmost fueling station?
13 A Are you talking about where the cars are fueling?
14 Q No, no, where the tankers would be fueling.
15 A Oh. You're talking about the in ground tanks?
16 Q I'm talking about the in ground tanks.
17 A Is that what you were talking about the whole
18 time?
19 Q Yes, it is.
20 A Well, then I recant my testimony.
21 Q I will let you do that.
22 A You want to know the distance from the storage
23 tank, the underground storage tank, to the south end of the
24 special exception area?
25 Q That's correct.
26 A So and no one, no one has a scale? Let me go and

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1 see if I've got mine, otherwise we're guessing. I missed
2 all of Dan Duke's testimony. Did he give similar testimony?
3 Q No, he did not.
4 A Okay. All right. Now from the southern end of
5 the kiosk to the first tank?
6 Q To the southern boundary of the special exception
7 area.
8 A Okay. It is, I drew a line, 150 feet.
9 Q And from the northernmost fueling tank,
10 underground tank to the southern boundary of the special
11 exception station, special exception?
12 A 115 feet.
13 Q And from the southernmost fueling station to the
14 southernmost boundary of the special exception?
15 A 90 feet.
16 Q So if a fuel tanker were parked at the
17 southernmost fueling station, how much of that 90 feet would
18 be occupied by the tanker?
19 A Mr. Grossman, there's no reason for them to plot
20 that far south, but there would be another 25 feet. But
21 they, as I testified to, it's my opinion that there will be
22 parking in the vicinity of all three of the underground
23 tanks in order to unload.
24 Q And what is the -- what is the full north to south
25 from the northernmost boundary of the underground tanks to

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1 the southernmost boundary?

2 A The northernmost boundary of the underground tanks

3 to the southernmost boundary of the special exception area?

4 Q Of the underground tanks?

5 A So the distance between the tanks?

6 Q From the top boundary at the northernmost tank to

7 the southernmost?

8 A It's about 40 feet.

9 Q So even if a tanker were parked in that general

10 vicinity, the tanker would extend beyond the length of the

11 tank area to the north and/or to the south, is that correct?

12 A That's correct. The opening where, on that west

13 side of the special exception area is about 55 feet.

14 Q So, in fact, physically the tanker could not pull

15 in completely?

16 A No, and they're not expected to pull in. They're

17 expected to basically parallel park along that north side.

18 Q So if a vehicle is driving, if a person is driving

19 from east to west during the time that a tanker is parked to

20 unfuel, does that person still have a clear view of traffic

21 headed southbound on the drive aisle to the west of the

22 station?

23 A Yes.

24 Q They do?

25 A Yes, they're not going to be able to extend far

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1 enough south that they would block that side. The parked

2 truck would not be extended far enough south to block it.

3 Q They have a full view of the length of that drive

4 aisle? They can see for the --

5 A That was a different question.

6 Q Okay.

7 A So do they have a full view of the entire length

8 of the drive aisle? No, I don't think that they would have

9 a full view regardless because of things like cars in the

10 drive aisle, cars in the parking lot, cars circulating in

11 the parking lot, the kiosk, all kinds of things. The full

12 view of the length of the drive aisle, no, I don't see that.

13 Q Is a fuel tanker a comparable height to a car?

14 A No, but it still blocks the sight distance. A car

15 that is six feet high is still going to block the --

16 Q Correct.

17 A -- sight of a 3 1/2, someone sitting in a car with

18 a drive aisle of 3 1/2 feet.

19 Q And what is the typical length of a car?

20 A Thirteen to 15 feet.

21 Q And so are you, is it your testimony that a 13 to

22 15-foot car obstructs view just as a 67-foot tanker would?

23 A No, that wasn't my testimony.

24 Q Okay.

25 A All I'm saying is that there are other reasons not

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1 to be able to see the entire length of this drive aisle.

2 Q And I'm -- okay.

3 A Okay? I can conceded that you wouldn't be able to

4 see through the truck.

5 Q Correct.

6 A I conceded that.

7 Q And for a driver driving east, I'm sorry, driving

8 westbound on the ring road making a right-hand turn to go

9 north on that drive aisle --

10 A On the west side of the tanker truck? Uh-huh.

11 Q On the west side. Would that tanker obstruct the

12 view of oncoming traffic?

13 A It would obstruct the view. You, the tanker would

14 be in the drive aisle. We talked about that.

15 Q Correct?

16 A I'm not sure where it would obstruct the view, but

17 I mean the tanker, if the tanker is in the drive aisle and

18 the tanker is in the drive aisle and the driver has to be

19 cognizant of that as they were if a car were in the drive

20 aisle. If a car were waiting for a customer to get out,

21 they have to wait.

22 Q In your experience, does a customer generally have

23 to wait 45 minutes?

24 A No.

25 Q So that's an atypical situation, isn't it?

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1 A That's correct, but it is, nevertheless, obstructs

2 the view if you're waiting and you've got oncoming cars in a

3 two-way parking lot. This is a parking lot.

4 Q I understand that.

5 A So where you expect cars to be parked and trucks

6 to be and vehicles to be and pedestrians to be.

7 Q Once a driver headed westbound makes a right-hand

8 turn into the northbound drive aisle and there's --

9 A On the west side again?

10 Q On the west side and there's a tanker parked

11 there, what options does that driver have?

12 A He can immediately make a left into the parking

13 lot if he thinks there are spaces there. It just depends on

14 where he's going.

15 Q Immediately make a left into what parking lot?

16 A Into the parking area here. And I'm pointing at a

17 distance of about 60 feet, 40 feet north of the --

18 Q And that's assuming that the tanker doesn't extend

19 that far or you don't know, you can't --

20 A No.

21 Q -- confirm?

22 A What I said was I think the answer is that I

23 testified that I believe that the tanker will be parked in

24 the vicinity of the underground tanks and it will not extend

25 back that far because the tanker does not need to be over

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1 top of the tanks.
 2 Q Well, I think you testified --
 3 A It imposes also.
 4 Q I think you testified that you didn't know exactly
 5 where they had to be located or at what point from the
 6 tanker they would unload.
 7 A I don't remember that. What I -- what I remember
 8 is that the tanker would be parked in the vicinity of the
 9 three underground tanks. And I did not believe that the
 10 tanker, the front of the tanker would be at the southernmost
 11 underground tank and extending 65 feet back to the ring
 12 road.
 13 MR. GROSSMAN: Ms. Rosenfeld, haven't we kind of
 14 exhausted this area now? You made your point. I don't want
 15 to cut you off, I'm just saying do we really need to spend
 16 more time on this particular area?
 17 BY MS. ROSENFELD:
 18 Q Mr. Guckert, immediately across from the fuel
 19 tanker loading area there are parking spaces, is that
 20 correct?
 21 A Correct.
 22 Q And people who have parked in those spaces before
 23 the fuel tanker arrives, how do they exit?
 24 A They would back out as they would.
 25 Q And it's your view that there's adequate turning

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1 radius? What is the standard, what is the standard turning
 2 radius?
 3 A If you can back in, 12 feet. You've got 16 feet.
 4 Q So it's your testimony that a person parked head
 5 in into the parking space --
 6 A Yes, can back out.
 7 Q -- can back out?
 8 A Yes.
 9 Q In 12 feet?
 10 A And you need not be superhuman to do that.
 11 Q For pedestrians exiting the warehouse or the mall
 12 generally, and going to their cars, in particular parked in
 13 this area behind the fueling station --
 14 A When you say behind, could you, you mean to the --
 15 Q To the west.
 16 A -- west?
 17 Q To the west.
 18 A Okay.
 19 Q To the west. Where in your view would they stand
 20 in order to unload their carts into their car?
 21 A Some, most people will stand behind the car and
 22 unload into the rear, as I had testified, which would happen
 23 on the ring road.
 24 Q And during that period of time, how does traffic
 25 travel northbound or southbound?

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1 A The same way it travels through any other parking
 2 lot, slowly, cautiously and looking for cars and pets and
 3 children and strollers, very slowly, very cautiously.
 4 Q Mr. Brann testified that the shopping carts at
 5 Costco are 1 1/2 times larger than a typical shopping cart.
 6 Did you take the size of those carts into consideration when
 7 evaluating pedestrian safety?
 8 A The size of the carts and pedestrian safety? I
 9 don't understand how that could -- how does that one --
 10 Q I assume --
 11 A So I can't, I can't explain --
 12 Q Well, is it your expectation that people leaving
 13 the warehouse will have shopping carts with them?
 14 A Yes.
 15 Q And that they will take those shopping carts to
 16 their vehicles to unload --
 17 A Yes.
 18 Q -- the products that they purchased?
 19 A They'll walk behind the carts pushing them.
 20 Q That's correct. And those shopping carts are
 21 larger than average --
 22 A Larger than --
 23 Q -- according --
 24 A Larger than average for what?
 25 Q Well, Mr. Brann testified that the Costco shopping

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1 carts are 1 1/2 times larger than a typical shopping cart.
 2 A I don't know the, I, you know, we can duel here.
 3 They're going to push the carts to their car the way they do
 4 in every other parking lot in every other warehouse-type
 5 facility, whether it's a Home Depot, Wal-Mart, Sam's or
 6 Costco. That's what happens in parking lots.
 7 Q And so it's your testimony that there's absolutely
 8 no conflict in terms of pedestrian safety or vehicular
 9 safety when there are fuel tankers parked partially into the
 10 drive aisle?
 11 A Absolutely not. I mean that's -- you've got --
 12 don't you have trucks maneuvering and parking in parking
 13 lots all over the place, in all malls?
 14 Q On the aerial photograph, can you show me where
 15 the entrance to the mall is located?
 16 A Are we talking about on the west side again?
 17 Q On the west side please.
 18 A I'm referring to Exhibit 102 and I'm pointing to
 19 the entrance to the mall at the northern end of the new
 20 expansion to the mall where Costco and the new cut through
 21 expansion to the mall exists.
 22 Q And traveling southbound along the frontage of
 23 that building, could you describe the uses that are located?
 24 MR. GROSSMAN: That building, the Costco warehouse
 25 building?

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1 MS. ROSENFELD: Traveling south along the facade
2 of the Costco warehouse building.
3 MR. GROSSMAN: Okay. On the western side of it?
4 MS. ROSENFELD: On the western side of the
5 building.
6 MR. GROSSMAN: Okay.
7 BY MS. ROSENFELD:
8 Q What uses are located along that, the facade of
9 that building?
10 A What do you mean by uses? It's a Costco, it's a
11 Costco warehouse.
12 Q Are you --
13 A I don't understand what you mean by uses.
14 Q Well, are you familiar with the tire service
15 operation?
16 A I know there's a tire service there.
17 Q Okay. Are you familiar with how many garage bays
18 are located at that location?
19 A I'm not.
20 Q And south of the tire service station, do you know
21 what's located south of that?
22 A The loading for Costco.
23 Q And between the loading docks for the Costco
24 warehouse, is that what you're referencing?
25 A Yes.

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1 Q And do you know how many loading bays are located
2 there?
3 A You would have to ask someone else on that.
4 Q Okay. And north of the loading bays and south of
5 the tire service area, what's located along that area?
6 A Parking spaces.
7 Q Mr. Duke testified that there was a, first of all,
8 are you aware of the fact that there's curving along the
9 southeastern edge of the special exception and curving along
10 the northeastern edge of the special exception? I believe
11 Mr. Duke testified as to that yesterday.
12 A I don't know exactly where you're referring to.
13 The curving existing or future curving?
14 Q Future curving associated with the new special
15 exception application.
16 A Yes, there's an island it's shown on Exhibit
17 54(f). Mr. Grossman, it runs from where the cars would exit
18 down to the vicinity of the loading docks.
19 Q And do you see the cross-hatched area?
20 A Yes.
21 Q And Mr. Duke, I believe, testified that that would
22 be painted cross-hatching on the asphalt?
23 A That's -- I did not hear that, but that's what's
24 shown on Exhibit 54(f).
25 Q And there is a break in the curve at that point?

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1 A At which point?
2 Q Where the cross-hatching is shown on the exhibit.
3 A Okay. And I'm pointing to the area where it says
4 yellow striping.
5 Q Now Mr. Duke indicated in his testimony that there
6 was no curbing at that area to allow flexibility for the
7 delivery trucks --
8 A Correct.
9 Q -- to back into that area as they were leaving?
10 The loading docks.
11 A I was not here for that. Go ahead.
12 Q And I believe Mr. Brann testified that the beepers
13 that typically are associated with large trucks when they
14 drive in reverse have been, are not operational on the
15 Costco trucks delivering to this loading dock?
16 A I was not here for that.
17 Q Assuming those two things are true. You testified
18 earlier about the enhanced safety of this location over a
19 typical gas station --
20 A Yes.
21 Q -- where pedestrians are crossing drive aisles on
22 roadways. In your view, is this an enhanced safety feature
23 to have?
24 A I don't --
25 MR. GROSSMAN: Let her finish the question.

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1 THE WITNESS: I'm sorry.
2 BY MS. ROSENFELD:
3 Q An enhanced safety feature to have large semi-
4 trailers and other delivery trucks backing across a drive
5 aisle without safety features?
6 A The, my testimony was dealing with the safety of
7 exiting out the north end of the fueling positions at a 90-
8 degree angle for the special exception.
9 Q And do you have an opinion as to the safety
10 associated with the conflicts between delivery trucks that
11 are backing up into a drive aisle and possibly into queuing
12 lanes?
13 A It happens all the time in all parking lots where
14 you have loading facilities for stores. So, you know, we're
15 talking -- we're not talking about doing this on the
16 Beltway, we're talking about doing it in a parking lot where
17 that's how you do deliveries. So I do not see an issue with
18 that.
19 Q You indicated you had about 30 years of experience
20 with this particular site, is that correct?
21 A Yes.
22 Q You're very familiar with it, correct?
23 A Yes, ma'am.
24 Q Okay. Could you please show me where the loading
25 docks are for the Giant?

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1 A On what --
2 Q Excuse me?
3 A On what exhibit?
4 Q The aerial exhibit that you have right there I
5 believe is the best one.
6 A In the rear of the store.
7 MR. GROSSMAN: Pointing to the northwestern corner
8 of the store?
9 THE WITNESS: Yes.
10 BY MS. ROSENFELD:
11 Q And is there parking in the vicinity of those
12 loading docks?
13 A There is not for the Giant Food.
14 Q And is there a drive aisle for general, just a
15 general drive aisle in that vicinity are people who go, are
16 shoppers at the Giant --
17 A The other loading docks, as an example, up in the
18 other corner of the mall, there's drive aisles and parking
19 for the --
20 Q And what is the distance between those loading
21 docks and the nearest drive aisle?
22 A 40 feet.
23 Q And what is the distance --
24 A So that they back in.
25 Q And what is the distance between the loading dock

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1 and the nearest drive aisle for the -- the distance between
2 the loading docks at the Costco warehouse and the nearest
3 drive aisle on the east side of the gas station?
4 A That's 40 feet.
5 Q And what other loading docks are located at the
6 mall?
7 MR. GROSSMAN: What exactly does it mean to me if
8 there are other loading docks on the mall? I'm not quite
9 sure I understand where that's going. I mean I understand
10 your point, you think that this is too close to the loading
11 dock. I don't know if you're going to have a witness
12 testify, an expert, that that's a safety hazard, but I
13 understand your point. But what difference does it make if
14 there are others that are different or the same? I don't
15 quite understand how that --
16 MS. ROSENFELD: I felt they might be illustrative
17 as to standards elsewhere.
18 MR. GROSSMAN: Well, you can introduce evidence
19 for standards. I don't know that showing that there are a
20 couple places elsewhere on the mall that they are the same
21 or different establishes a standard. But if you have
22 evidence of standard, you can certainly introduce it.
23 THE WITNESS: Your pending question?
24 MR. GROSSMAN: I don't think so.
25 BY MS. ROSENFELD:

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1 Q Turning to Exhibit 56(f), which is the queuing
2 exhibit that you had prepared --
3 A Does it have a date on it, do you know? And it's
4 the queuing for what purpose?
5 Q It says Costco fuel peak --
6 MR. GROSSMAN: Is this, do we have --
7 MS. ROSENFELD: -- queue.
8 MR. GROSSMAN: -- did we use this before, the --
9 MS. ROSENFELD: It's a multi-colored.
10 MR. GROSSMAN: Oh, I see, the multi-colored one?
11 I have a couple of different multi-colored ones.
12 THE WITNESS: That's my understanding. That's
13 why --
14 MR. GROSSMAN: You can look in the file for it.
15 Was there a full-size version of that?
16 MS. ROSENFELD: I did not get one if there is.
17 No.
18 MR. GROSSMAN: So you're saying it's 54(f)?
19 THE WITNESS: My exhibits are not marked.
20 MS. ROSENFELD: Mine says 56(f).
21 THE WITNESS: Yes, I've got it.
22 MR. GROSSMAN: 56(f)?
23 THE WITNESS: May I, let me look at it, if I may?
24 MS. ROSENFELD: Sure. I believe it's dated
25 January 10, 2013.

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1 MR. GROSSMAN: All right. I have 56(f) here.
2 THE WITNESS: I do not have a copy of it.
3 MR. GROSSMAN: Here, well, you can use this one,
4 it's the actual exhibit in the file.
5 THE WITNESS: Okay.
6 MR. GROSSMAN: Okay?
7 BY MS. ROSENFELD:
8 Q Okay. Looking at Exhibit 54(f), how long is --
9 MR. GROSSMAN: 56(f)?
10 BY MR. ROSENFELD:
11 Q 56(f)? How long is each vehicle in your
12 representative sample?
13 A 15 feet.
14 Q Can commercial vehicles buy gasoline at Costco?
15 A I suspect they can.
16 Q So, for example, landscape trucks and trailers or
17 food trucks?
18 A I don't for certain about it, but I suspect they
19 can.
20 Q Budget rental trucks perhaps? How do you account
21 for those longer vehicles in your queuing analysis?
22 A I really, I don't, but I use an average. I don't
23 which person is going to show up at any particular time, so
24 you use an average. That's the reasonable thing to do. I
25 do not know the percent distribution of landscape trucks

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1 that buy gas on a Saturday.
2 Q And how many car lengths wide is the entrance to
3 the station, car widths is the entrance to the station?
4 A It's 24 feet wide.
5 Q So how many cars can enter at the same time?
6 A One. I would not suspect that most normal human
7 beings would try to enter at the same time, so one. It's
8 24-feet wide meant to serve one car entering at a time.
9 Q So even if the entrance if not blocked, you're
10 saying only one car at a time would enter?
11 A That would be logical. You wouldn't, I wouldn't
12 expect anyone in this room to be turning left the same time
13 another car is turning right and that's just not normal
14 behavior.
15 Q And going back to your traffic numbers, how many
16 cars would be entering let's say in a peak afternoon, how
17 many cars in a given hour would you expect to enter one at a
18 time into the station?
19 A I'm going to refer back to Exhibit 11(a), Mr.
20 Grossman.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: And there's an exhibit, page 22,
23 that indicates that through the evening peak hour 110 cars
24 in an hour.
25 BY MS. ROSENFELD:

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1 Q And what day of the week would that be? That's on
2 a Friday, correct?
3 A On any weekday.
4 Q Okay. And you expect more cars on a Saturday?
5 A Yes.
6 Q It's typically busier on a Saturday?
7 A Yes.
8 Q And in your analysis, how many cars -- how long in
9 terms of seconds or minutes does it take each individual car
10 to enter the gas station?
11 A Enter?
12 Q Yes, if they are --
13 A Two seconds to turn on the road in the gas
14 station.
15 Q And like this?
16 A You know, turning off of the ring road?
17 Q Correct.
18 A Two seconds.
19 Q And do you have an empirical studies that
20 demonstrate that?
21 A I thought you asked me my opinion. Yeah, it takes
22 two seconds for somebody to make, to make a turn, one
23 thousand one, one thousand two and they're off the ring road
24 into the fueling position.
25 Q And you said that was your opinion, correct?

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1 A Yes, that's correct.
2 Q And so at two seconds per car, how many cars could
3 enter in an hour?
4 A How many cars could enter?
5 Q Yes, how many cars could enter for one-way
6 northbound in an hour at two seconds per car?
7 A There's 60 minutes, 3,600, you get about 1,800
8 cars. If you've got 60 minute in an hour, 60 seconds,
9 there's 3,600 seconds.
10 MR. GROSSMAN: What does that -- what's the
11 question? And what's the point of that question?
12 MS. ROSENFELD: My question was whether or not a
13 one-lane entry could accommodate all of the traffic that he
14 expects to be entering the gas station at peak hour.
15 MR. GROSSMAN: And what if it can't? What if less
16 traffic can get in than you anticipate, you think it's going
17 to back up? Is that the idea?
18 MS. ROSENFELD: My question would be would traffic
19 then back up on the ring road?
20 MR. GROSSMAN: Okay.
21 MS. ROSENFELD: And if it does back up on the ring
22 road, does it then interfere with the drive aisles on the
23 east or west side of the gas station?
24 THE WITNESS: Is he asking -- I thought she was
25 responding to you.

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1 MR. GROSSMAN: No, well, I think that's the
2 question.
3 THE WITNESS: If you want to back up, I think
4 there's plenty of capacity and it would not back up in the
5 drive aisles in my opinion.
6 BY MS. ROSENFELD:
7 Q And on either side of the gas station there are
8 open cuts in the curbs, the one that we --
9 A Are you referring to Exhibit 56(f) again?
10 Q Yes, I am, or -- yes, 56(f).
11 A Uh-huh.
12 Q There are curb cuts?
13 A Where?
14 Q There's a curb cut that we discussed earlier where
15 the loading docks --
16 A Yes.
17 Q -- on the east side?
18 A Yes.
19 Q And there is open area, open section where the
20 fuel, underground fuel tanks are located?
21 A Yes.
22 Q Is it possible for vehicles to enter the gas
23 station from those areas?
24 A Possible, sure.
25 Q And so akin to your discussion earlier about

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1 typical gas stations, there are multiple locations where
2 vehicles could enter this station, is that correct?
3 A They could enter, sure, they could.
4 Q And how does that go to the theory of
5 regimentation, the regimentation of this station?
6 A I believe it will still be regimented. I mean
7 that's -- when you look at how the other Costco stations
8 operate, there are openings, but drivers are, become
9 accustomed to the service that's provided. If you've ever,
10 if, when one uses a Costco station, there's that kind of
11 respect that occurs and there's a regimentation that occurs.
12 I believe it will still be very regimented.
13 Q In your development of this queuing analysis, you
14 said you also looked at the facilities at Sterling and at
15 Columbia, is that correct?
16 A Yes, and this is not a queuing analysis. This is
17 a queuing diagram.
18 Q Queuing diagram?
19 A Okay?
20 Q This shows how orderly the drivers would be?
21 A It shows, the purpose of this requested by staff
22 was to show the number of cars that could be queued in the
23 area.
24 Q And when you looked at the gas station at
25 Columbia, is the layout of that station similar to the

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1 layout here, is it a one-car entry layout?
2 A It's similar, yes.
3 Q And the gas station at Sterling?
4 A It's similar, yes.
5 Q Do they both have one car only entries?
6 A It's a different -- it's, they've got, Sterling
7 has eight lanes, Columbia has six lanes. The difference
8 here is that there's a ring road involved where I cannot
9 recall -- I'd have to look at it, I guess I'll have to come
10 back and bring that back to you as to how that works, okay?
11 Q Okay. So you're saying you don't know if they
12 have a one-lane --
13 A I don't recall.
14 Q Okay.
15 A I don't recall.
16 Q And if drivers have direct access to the queues,
17 does it make it easier for the traffic to enter the gas
18 station as opposed to this one lane only entry?
19 A Does it make it easier to do what?
20 Q Enter the queuing lines?
21 A No, I think it's easier with the one area.
22 Q In doing your traffic analysis, did you do any
23 analysis as to how many average daily truck deliveries to
24 the Costco warehouse there would be?
25 A In addition to, no, because I was, I only looked

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1 at cars going in the morning and evening peak hour for the
2 LATR analysis. I made the assumption that one additional
3 truck normally in the peak hour was not relative as it
4 relates to quantity of cars for the LATR.
5 Q So you have no estimate as to how many trucks
6 actually arrive and leave the warehouse in any given day on
7 average?
8 A Actually, I'm sorry, I thought you were talking
9 about the gas station.
10 Q No, I'm talking about the Costco warehouse loading
11 station.
12 A Oh, I'm sorry. I've got that somewhere in my book
13 that there are several trucks a day and they arrive in the
14 early morning hours, not coincident with the peak hours.
15 Typically those trucks are gone, are in or out before 8:00
16 a.m. is my recollection.
17 Q And do you have that information in your study?
18 A I think it could be.
19 MR. GROSSMAN: If that's the case, if that turns
20 out to be the case, Ms. Rosenfeld, do you still see a
21 conflict between the warehouse loading docks and the
22 proposed gas station location?
23 MS. ROSENFELD: If which appears to be the case?
24 MR. GROSSMAN: If these, if the trucks servicing
25 the warehouse arrive in the very early morning?

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1 MS. ROSENFELD: Well, I believe that if the trucks
2 arrive when the gas station is open, that creates a
3 potential conflict.
4 MR. GROSSMAN: And if they don't arrive when it's
5 open or they arrive when the, there is an insignificant
6 queue of cars?
7 MS. ROSENFELD: Assuming the gas station is
8 closed, I don't see that as being a conflict. I think the
9 evidence will show otherwise.
10 MR. GROSSMAN: Okay.
11 MS. ROSENFELD: And as the case moves forward.
12 MR. GROSSMAN: If it's open, but at a time when
13 there's not a significant queue, then would there still be a
14 conflict?
15 MS. ROSENFELD: I don't see the conflict as just
16 being with the gas station itself. I see the conflict as
17 well being with the drive aisle on the eastern side of the
18 gas station.
19 MR. GROSSMAN: Well, I'm not sure I understand.
20 That drive aisle exists now, does it not?
21 MS. ROSENFELD: Yes, it does exist now, but once a
22 person is in that drive aisle, they would have the
23 opportunity to drive elsewhere.
24 MR. GROSSMAN: Yes.
25 MS. ROSENFELD: Whereas here, once they have

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1 committed to that drive aisle, they're in that, they have no
2 choice but to remain in the drive aisle once a truck starts
3 to back out of the loading dock --
4 MR. GROSSMAN: I see.
5 MS. ROSENFELD: -- because of the curb cuts --
6 MR. GROSSMAN: Okay.
7 MS. ROSENFELD: -- associated with the gas
8 station.
9 MR. GROSSMAN: Okay. Do you have a question
10 pending, ma'am?
11 MS. ROSENFELD: I was waiting for Mr. Guckert. I
12 thought he was looking --
13 THE WITNESS: No.
14 MR. GROSSMAN: I don't --
15 MS. ROSENFELD: -- for the --
16 MR. GROSSMAN: I don't think there's a question
17 pending.
18 THE WITNESS: There's a dialogue, but I didn't
19 hear a question.
20 BY MS. ROSENFELD:
21 Q No, I thought you were looking for the number of
22 trucks?
23 A Oh, I do not have, I do not have the number of
24 Costco store delivery trucks in my study.
25 Q Okay.

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1 A I think that was testified to earlier, but I do
2 not have it.
3 Q Mr. Guckert, you testified you're somewhat
4 generally familiar with the tire changing service along the
5 front?
6 A I'm aware that it exists, yes.
7 Q Okay. Are you aware as to whether some or all of
8 it is located opposite the gas station itself?
9 A I believe it's located along that drive aisle.
10 Q As between the original location for the gas
11 station and the current location, which site had better
12 traffic circulation?
13 A You mean if it was located further to the west?
14 Q That's correct.
15 A I have not, wait -- I never got to that point.
16 Q Going to the exhibit with the most recent special
17 exception exhibit, I believe it's the last four behind
18 you --
19 A I hold in my fingers Exhibit 54(f).
20 Q Could you describe to me the path that a
21 pedestrian would take from the mall entrance to a parking
22 space on the ring road?
23 A They can travel from the store across the left
24 side down to the drive aisles.
25 Q And are there any pedestrian markings, pedestrian

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1 pathways identified on that plan?
2 A Across the east-west, not north-south.
3 Q Okay. And that's the only location?
4 A That's what I said, I said across east-west, not
5 north-south. They walk in the drive aisles the way everyone
6 else does it, Target customers, Macys customers, Costco
7 customers, Burger customers when they're a customer, they
8 all do the same thing.
9 Q And there was testimony that if there actually was
10 queuing, but extended beyond the gas station onto the ring
11 road that attendants would redirect traffic. What is the
12 circulation plan for that redirected traffic?
13 A They don't have to have a circulation plan. They
14 would just be basically shown that they cannot enter the gas
15 station and the customer has to find his way to either, he
16 can decide to come back and find his way back to the station
17 or he won't buy gas.
18 Q And is that, does that further support your theory
19 of the regimented schematic of this --
20 A Oh, absolutely.
21 Q It does?
22 A Absolutely.
23 Q It does?
24 A Because it, because then you, because then the
25 driver is taken away from the regiment and then he uses the

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1 ring road to exit the mall.
2 MR. GROSSMAN: Ms. Rosenfeld, how much longer do
3 you think you have in cross-examination?
4 MS. ROSENFELD: I would say probably 15 minutes
5 perhaps.
6 MR. GROSSMAN: Okay. Let's take a 5-minute break.
7 (Recess)
8 MR. GROSSMAN: We're going to try to shoot to end
9 today at 5:15, 5:20. Is that doable here? Because I
10 figured considering the progress here, we started out on
11 Friday and we did two witnesses, but we added three. So
12 we're doing one today and he's coming back, so I think that
13 we're moving backward rather than forward here. But let's
14 try to speed things up. All right. Ms. Rosenfeld.
15 BY MS. ROSENFELD:
16 Q Mr. Guckert, the queuing analysis that you've done
17 for Exhibit 56(f) representation, is that analysis based on
18 the physical observation of queuing lines or estimates based
19 on extrapolation of numbers at these facilities at Sterling
20 and Columbia?
21 A It's based upon, again, 56(f) is prepared to show
22 how many cars can fit in there. The staff believes that 40
23 cars would be kind of the worst case. My analysis, as I
24 detailed earlier today in excruciating detail to Mr.
25 Grossman, analyzed that we examined the actual conditions on

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1 a Friday and Saturday in January in Sterling. We then
2 multiplied on, based on, I multiplied those queues by 86
3 percent to represent the difference between 12 million
4 gallons and 13.9 million gallons.
5 Q And in the course of those physical observations,
6 did the queuing actually extend outside of the box at
7 Sterling?
8 A There was no box at Sterling. What we did was we
9 observed the queues on a minute by minute basis for each of
10 the lanes, or each of the eight lanes and then combined so
11 that we have a total.
12 Q So you don't have any direct evidence that, in
13 fact, cars do physically line up in this manner, do you?
14 A Of course I do. You can see it on the, when you
15 look at the videos. Yes, they do line up.
16 MR. GROSSMAN: When you said in this manner,
17 you're talking about in the manner shown in Exhibit 56(f)?
18 THE WITNESS: But it's a, cars line up, that's
19 what they do in order to get gasoline, Mr. Grossman.
20 MR. GROSSMAN: All right.
21 BY MS. ROSENFELD:
22 Q Would we have an opportunity to review those
23 videos ourselves?
24 A I do not know that answer.
25 Q Do you have them?

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1 A We have them. I don't know that they are in a
2 format that you could view them. I just don't, I don't
3 know.
4 Q Well, if they are, we'd like an opportunity to
5 review them.
6 A Okay. I hear you.
7 MR. GOECKE: Mr. Grossman, these tapes aren't for
8 the record and I would object for that request.
9 MS. ROSENFELD: But they --
10 MR. GROSSMAN: Well --
11 MS. ROSENFELD: -- they provide the foundation for
12 his conclusions.
13 MR. GROSSMAN: All right. I guess the simple
14 answer is to request, I don't know if you can object to a
15 request, but -- let's put it this way. What are we going to
16 learn exactly from a viewing of a Costco film? What exactly
17 are you planning to see that will reveal anything that will
18 actually pertain to what I'm going to have to rule on?
19 MS. ROSENFELD: Well, I believe Mr. Guckert
20 testified that those videos show the manner in which cars
21 actually queue, just how orderly those queues are and we
22 think that's relevant to whether or not cars will actually
23 queue as nicely as reflected on this exhibit.
24 MR. GROSSMAN: But I have another problem, I mean
25 let's say that you saw the movie and you thought it was not

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1 as nice as this one, I don't know how well it's designed, I
2 mean that would be a little bit collateral to this, this may
3 have better drive aisle or curbing if you produce it. I
4 don't know. And I think that it's sufficiently collateral.
5 Also we have a similar problem with movies in our records
6 because it's hard for people to actually view the record of
7 a movie a opposed to a slideshow where we can have hard
8 copies in there. So I'm not so sure that -- it's not that I
9 have a problem with your seeing it, it's that I don't know
10 how we as a practical matter use it in the record and --
11 MS. ROSENFELD: And it may be we view it and we
12 decide we're not going to use it or we don't have any basis
13 to contradict his findings.
14 MR. GROSSMAN: Why don't you talk to opposing
15 counsel after the session and see if they'll agree to let
16 you view it and, if not, then I'll make a decision as to
17 whether or not you have a right to view it. I mean this --
18 our rules do not technically have a discovery clause.
19 Unlike many other proceedings, there isn't a technical
20 discovery process in these, in the Board of Appeals rules,
21 or in ours, as such. So it's, this case is a little bit
22 unusual and we'll make some unusual rulings if we have to.
23 MS. ROSENFELD: And just a couple of follow-up
24 questions on that point.
25 BY MS. ROSENFELD:

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1 Q Mr. Guckert, were the videos prepared or produced
2 by somebody who works for the Traffic Group or was it a
3 consultant?
4 A It's the, it's the equipment that we use to count
5 the cars and by the end it's ours to share.
6 Q Okay. In your report, Mr. Guckert, in Exhibit
7 11(a) on page 3, you state that the inherent impacts created
8 by a gasoline station from a traffic and transportation view
9 are limited to the amount of traffic that would be
10 generated.
11 A I'm sorry, what page?
12 Q Page 3.
13 A Of Exhibit 11(a)?
14 Q Yes.
15 A And what paragraph? Paragraph three?
16 Q Paragraph three.
17 A Okay.
18 Q So is it your view that impacts other than the
19 amount of traffic generated would be non-inherent impacts?
20 A Well, on the second, the next paragraph, I
21 indicate that inherent versus non-inherent differed from the
22 north.
23 Q And you did note that this site is unique because
24 it is located within the mall, is that correct?
25 A Unique in a possible way, yes, that's my opinion.

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1 Q But -- in your opinion? But in, but it is a non-
2 inherent characteristic in your opinion?
3 A I testified to that earlier today, that because
4 it's okay within the mall, that is non-inherent as compared
5 to other gas stations located on public roads.
6 Q And going back to the paragraph above, aside from
7 the amount of traffic that would be generated, other impacts
8 created by a gasoline station would be non-inherent?
9 A I'm not sure --
10 Q As I read this paragraph, the third full
11 paragraph, it says the inherent impacts created by a
12 gasoline station from a traffic and transportation point-of-
13 view is limited to the amount of traffic that would be
14 generated. In your opinion, the only inherent impact
15 created by a gasoline station is the amount of traffic that
16 would be generated?
17 A From a traffic --
18 Q From a traffic point-of-view?
19 A -- transportation point-of-view. It's traffic
20 that's generated from a traffic point-of-view.
21 Q You also, on page 21, state that there would be
22 little, if any, pedestrian activity in the immediate
23 vicinity of the gasoline facility, is that still your
24 conclusion?
25 A Yes, it says patrons will drive to their vehicles.

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1 They won't be walking into the special exception area to
2 fuel their vehicle.
3 Q Did you at all consider the pedestrian traffic
4 associated with people going to and from the mall --
5 A I guess --
6 Q -- through the parking lot?
7 A Maybe I'm not explaining myself. Inside the
8 special exception area there's almost nobody walking inside
9 the special exception area. That's what that relates to.
10 Q As I understand one of the findings that you're
11 here to testify about is finding that the proposed use will
12 be in harmony with the general character of the neighborhood
13 considering, among other things, intensity and character of
14 activity, traffic and parking conditions and a number of
15 similar uses. So is it your testimony that your report has
16 not concluded the impact of the special exception on
17 pedestrians outside of the boundary of the special exception
18 proposed?
19 A That's not what I said, no.
20 Q Okay.
21 A Or what I testified to earlier.
22 Q Okay. Could you elaborate?
23 A Elaborate about pedestrian activity?
24 Q Yes, you --
25 A Okay. So we'll go over this again. What I said

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1 was that there will not be pedestrian activity within the
2 special exception area. What I also said is that as cars
3 leave the special exception area, they will have a clear
4 view of pedestrians that may be pushing carts or baby
5 carriages in the drive aisle and will be able to see them
6 just as if they were driving away from the parking space.
7 So, yes, it was considered and it is inherently better than
8 a gas station that's located at the corner of Main and Main.
9 MS. ROSENFELD: I have no further questions.
10 MR. GROSSMAN: Okay. It is with some trepidation
11 that I ask this next question. Is there any additional
12 cross-examination from the opposition? Anybody?
13 (No response.)
14 MR. GROSSMAN: No? Okay. So is there going to be
15 any redirect testimony --
16 MS. HARRIS: Yes.
17 MR. GROSSMAN: -- which we will not take today
18 because I assume it will take more than three minutes?
19 MS. HARRIS: It will take more than three minutes.
20 It won't take more than 30 minutes, but --
21 MR. GROSSMAN: Okay. I think we'll have to take
22 it up the next session, which is May 6th, I believe.
23 MS. HARRIS: If I could note, I think Mr. Guckert
24 isn't available until 11 o'clock on the 6th.
25 MR. GROSSMAN: That's fine. We'll take another

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1 witness --
2 MS. HARRIS: That's fine.
3 MR. GROSSMAN: -- before him.
4 MR. SILVERMAN: Who are the witnesses on the 6th?
5 MR. GROSSMAN: Pardon me?
6 MR. SILVERMAN: Are the other witnesses on the 6th
7 that were continued?
8 MR. GROSSMAN: Let me see who is on the list.
9 MS. HARRIS: Well, and, Mr. Grossman, one of the
10 questions that came up during the first day of hearing was
11 whether we would have someone to testify more specifically
12 to the gas operations.
13 MR. GROSSMAN: Right.
14 MS. HARRIS: And we were able to contact that
15 person and they are available on the 6th as well.
16 MR. GROSSMAN: Okay. So we could have --
17 MS. HARRIS: It's Dan Goalwin.
18 MR. GROSSMAN: All right. Okay. All right. So
19 we have Dan, I have as Goodwin, but it may be Goalwin.
20 MS. HARRIS: Goalwin.
21 MR. GROSSMAN: Goalwin?
22 MR. SILVERMAN: I have G-O-A-L-W-I-N.
23 MR. GROSSMAN: Okay. All right. And you have
24 also talked about Tim Herlocker and Jeffrey Weibolt?
25 MS. HARRIS: Jeffrey Weibolt will be testifying.

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1 We determined we don't need Mr. Herlocker. And then you're
2 asking for other witnesses on the 6th?
3 MR. GROSSMAN: Yes.
4 MS. HARRIS: Okay.
5 MR. GROSSMAN: So we know we're going to have Mr.
6 Goalwin and we're going to have redirect from Mr. Guckert
7 and who else do you plan to call on the 6th?
8 MS. HARRIS: Jim Agliata.
9 MR. GROSSMAN: Okay. And who is next off the --
10 MS. HARRIS: Let me get my list. Joe Cronyn, who
11 is a property valuation expert.
12 MR. GROSSMAN: I don't know how long your
13 witnesses are going to take, so you have to plan that out
14 and then would you share that with the other side in
15 advance --
16 MS. HARRIS: Yes.
17 MR. GROSSMAN: -- so they can prepare for their
18 cross-examination?
19 MR. SILVERMAN: Mr. Wyble is going to testify on
20 Monday.
21 MR. GOECKE: He's the chief technical engineer.
22 MR. SILVERMAN: Thank you.
23 MS. HARRIS: What I will do, if not tonight this
24 evening, then tomorrow morning, is send out an email with
25 the anticipated --

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1 MR. GROSSMAN: Sort of -- and was May 6 a day of
2 no health --
3 MS. HARRIS: Yes.
4 MR. GROSSMAN: -- testimony, is that right? Are
5 there any other matters that we need to handle before we --
6 MR. GOECKE: Along those lines of the no health
7 and environment, Mr. Sullivan, our expert, who will be
8 testifying we hope on the 14th is in the process of
9 preparing a response to some of Dr. Cole's testimony, a
10 terrain study that he's done at the site. We're hoping to
11 distribute that to everyone this Friday, so at least 10 days
12 before the 14th hearing. Obviously, you're going to rule
13 how you're going to rule at that time on the 14th, but this
14 is another item we would like to have as an exhibit for this
15 hearing, full disclosure now.
16 MR. GROSSMAN: Thank you. All right, anything
17 further? Then we are adjourned until May 6th, 9:30 a.m. in
18 this room.
19 MR. GOECKE: Thank you.
20 MS. HARRIS: Thank you. Mr. Grossman, do we need
21 to take the exhibits back up again?
22 MR. GROSSMAN: Yes, unfortunately, because I'm not
23 sure, this room is probably going to be used by other people
24 in the interim.
25 (Whereupon, at 5:16 p.m., the hearing was

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1 adjourned.)
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. Digitally signed by Tracy M. Hahn

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Local Map Amendment No. S-2863
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