

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
MONTGOMERY COUNTY, MARYLAND

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:  
PETITION OF COSTCO WHOLESALE : Case No. S-2863  
CORPORATION : OZAH No. 13-12  
:  
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A hearing in the above-entitled matter was held on  
May 23, 2013, commencing at 9:37 a.m. in the Stella B.  
Werner Council Office Building, 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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P R O C E E D I N G S

1 MR. GROSSMAN: And I will call the case. This is  
2 the fourth day of a public hearing in the matter of Costco  
3 Wholesale Corporation, Board of Appeals No. S-2863, OZAH No.  
4 13-12, petition for 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. That's Lot N-631,  
9 Wheaton Plaza, Parcel 10, also known as the Westfield  
10 Wheaton Mall and is zoned C-2, general commercial.  
11 The hearing was begun on April 26, 2013; resumed  
12 on May 1, 2013 and May 6, 2013. It was noticed to resume  
13 again last week, but had to be postponed to today because of  
14 my illness. This hearing is conducted on behalf of the  
15 Board of Appeals. My name is Martin Grossman, the Hearing  
16 Examiner, which means I will make findings and a  
17 recommendation to the Board of Appeals which will -- I will  
18 take evidence obviously to make the findings -- and the  
19 Board of Appeals will make the final decision in the case.  
20 Will the parties identify themselves please for the record?  
21 MS. HARRIS: Pat Harris with Lerch, Early and  
22 Brewer on behalf of Costco, the applicant.  
23 MR. GOECKE: Michael Goecke on behalf of the  
24 applicant.  
25

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
<b>Tim Hurlocker</b>				
By Ms. Harris	63			233
By Ms. Rosenfeld		127		241
By Mr. Silverman		198		242
<b>Wes Guckert</b>				
By Ms. Harris	254			

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E X H I B I T S

Exhibit No.		Marked/Received
142	Fires at U.S. Service Fire Stations, NFPA Page VII	207

1 MS. ROSENFELD: Michele Rosenfeld here for  
2 Kensington Heights Civic Association.  
3 MR. GROSSMAN: Thank you.  
4 MR. SILVERMAN: Larry Silverman for Stop Costco  
5 Gas Coalition.  
6 MR. ADELMAN: Dr. Mark Adelman for the Stop Costco  
7 Gas Coalition.  
8 MR. GROSSMAN: Okay. Is this venue better for  
9 you, Dr. Adelman?  
10 MR. ADELMAN: I don't know. Is the microphone  
11 working?  
12 MR. GROSSMAN: I don't think it -- it will record  
13 for you for the record. I'm not sure that it -- I don't  
14 think we have a microphoning system here.  
15 MR. ADELMAN: No, it's fine.  
16 MR. GROSSMAN: I can hear you. Thank you.  
17 MR. ADELMAN: Will the witness be sitting over  
18 there?  
19 MR. GROSSMAN: The witness will be sitting to my  
20 left, okay? I think that's probably the most convenient  
21 thing given our space issues. We don't have our own  
22 equipment such as that, but any party is invited to bring a  
23 projector and project it across in that direction. They  
24 have to -- they can check with my staff about setting things  
25 up. Okay.

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1 Okay. Let me begin with a few preliminary  
2 matters.  
3 MS. ADELMAN: Mr. Grossman?  
4 MR. GROSSMAN: Yes, ma'am?  
5 MS. ADELMAN: When I was speaking with --  
6 MR. GROSSMAN: You should identify yourself for  
7 the record.  
8 MS. ADELMAN: Abigail Adelman, chair of the Stop  
9 Costco Gas Coalition. When I was speaking with Sarah at the  
10 end of the last hearing, she said she had reserved a  
11 microphone for the extension of the hearings. Is there a  
12 way to bring it in here?  
13 MR. GROSSMAN: I would think they should be  
14 monitoring right now, so hopefully they're checking on that.  
15 MS. ADELMAN: Okay.  
16 MR. GROSSMAN: This room, by the way, is miked so  
17 that what goes on in this room can be heard elsewhere and  
18 certainly in my office. I'm not sure where else it extends.  
19 So that's a caution to everybody who has conversations that  
20 they want to have off the record, they sometimes can be  
21 overheard. All right.  
22 So, first, my first preliminary matter is I want  
23 to apologize for all the hearing delays as a result of my  
24 heart event, in quotes. You know an event is what the, when  
25 the Chinese first set off their nuclear bomb, it was called

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1 a device. That's -- so it's a similar kind of thing.  
2 Nobody hopes more than I do, and my wife I suppose, that  
3 this cause of delay will not be repeated.  
4 Secondly, I want to take up the motion to suspend.  
5 The next scheduled hearing date here is June 4, 2013.  
6 Various additional dates have been suggested by the parties,  
7 but there's a pending motion by Kensington Heights Civic  
8 Association to suspend the hearing, that's Exhibit 131,  
9 which was supplemented in Exhibit 139. The applicant  
10 opposed that motion in Exhibit 132, and so let's take up  
11 that motion first as a kind of point of order.  
12 And if I understand the arguments, KHCA arguments,  
13 that the hearing should be suspended because the applicant  
14 did not file a motion to amend when it filed change plans,  
15 which removed the pedestrian path from the south ring road  
16 and extending the wall by, the proposed wall by 46 feet and  
17 because the Planning Board has not been given the  
18 opportunity to review these changes. In the supplement,  
19 KHCA also added that Costco's lease and authority to extend  
20 the review, extend the wall was not filed in the record when  
21 the application was filed.  
22 The applicant responds that these changes were not  
23 material, that the parties received copies of the changes  
24 well in advance of the hearing and were, thus, not  
25 prejudiced and that in any event they're willing to proceed

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1 with the previous plan, mooted the issue. In fact, I had  
2 suggested to the applicant that, on the record in the  
3 earlier proceeding, if I recall, that they consider whether  
4 or not to go back to the, having the original pedestrian  
5 path which they said they were going to consider.  
6 So I'd like to know, having read all the filings  
7 on this, does either party feel they need to make additional  
8 oral argument on this motion?  
9 MR. GOECKE: Well, I guess one point, Mr.  
10 Grossman --  
11 MR. GROSSMAN: Well, let's answer that question  
12 first and it's your motion --  
13 MS. ROSENFELD: Yes, thank you.  
14 MR. GROSSMAN: -- Ms. Rosenfeld.  
15 MS. ROSENFELD: Michele Rosenfeld with Kensington  
16 Heights. With respect to the Planning Board involvement in  
17 the proceedings, I'm not sure that the rules require that  
18 the hearings be suspended in order to allow the amendments  
19 to be sent back to the Planning Board. We note that that  
20 has not occurred and we think it should, but that is not one  
21 of the grounds for our request for suspension.  
22 MR. GROSSMAN: Well, I think your papers really  
23 suggest that because you suggest that, almost a  
24 jurisdictional thing, that it would go to the Planning Board  
25 and then we'd have jurisdiction back when it was -- and I

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1 agree with your statement in the hearing room today that  
2 it's a not a necessary --  
3 MS. ROSENFELD: No, I don't think the Board's  
4 involvement requires suspension. I do think --  
5 MR. GROSSMAN: Okay.  
6 MS. ROSENFELD: -- though that the rules do  
7 clearly require that the applicant submit a motion and, in  
8 fact, that has happened before. They certainly know how to  
9 do it both in this case, as well as the preceding case. And  
10 in those instances the Hearing Examiner's office sent notice  
11 to parties of record who were entitled to the original  
12 notification of the proceedings and they were allowed 10  
13 days to oppose the motion or otherwise respond. And in this  
14 instance, the amendment was referenced as a parenthetical to  
15 a subparagraph in a letter transmittal and I, candidly,  
16 don't think that that satisfies the statutory requirements.  
17 And so we do continue to believe that the proceedings need  
18 to be suspended until that procedural defect is cured.  
19 MR. GROSSMAN: Okay.  
20 MR. GOECKE: Michael Goecke on behalf of the  
21 applicant. So, again, I respond to that as, you know, this  
22 was not a material change and so we don't think it's  
23 anything that we're required to go back to the Planning  
24 Board for comment. And as you pointed out, to the extent  
25 that if you would determine that it is a substantial change,

1 we're willing to live with our original application and,  
2 therefore, moot the issue. And in terms of the timeliness  
3 of it and any prejudice that may have been caused to the  
4 opposition, you know, they did receive this more than 30  
5 days before the hearing began, they did have it in their  
6 possession. We did highlight it in our cover letter and so  
7 this wasn't something that we were trying to slip past them.

8 To the contrary, you know, what we're trying to do  
9 on at least some level is accommodate their request and  
10 you're correct, at the last hearing we suggested, you know,  
11 Costco, why can't you just consider this pathway? And then  
12 we went back and talked to people to try and make that  
13 happen. And as we said in our letter, originally had been  
14 posed as a 3-foot wide pathway and that had been taken off  
15 because it's our understanding that it was not compliant  
16 with the Americans with Disabilities Act. And so now we're  
17 trying to take steps to implement that, again --

18 MR. GROSSMAN: To implement, to implement --

19 MR. GOECKE: -- to amend a 5-foot, an ADA  
20 compliant pathway per your suggestion, per the opposition's  
21 clear preference as stated at the last hearing. So we are -  
22 - we're trying to accommodate that. Procedurally in terms  
23 of they feel prejudiced or they feel that it's inappropriate  
24 for this to proceed with the Board, you know, again we're  
25 willing to the original 3-foot proposal although, you know,

1 we think that there are issues with that. And, you know, at  
2 the same time we notice that, or we note that you have the  
3 authority to put any conditions on this request for a  
4 special exception. So if your opinion was --

5 MR. GROSSMAN: Well, you've already recommended  
6 any conditions. The Board of Appeals has the authority --

7 MR. GOECKE: That's right.

8 MR. GROSSMAN: -- to place conditions.

9 MR. GOECKE: That's right. And just, finally,  
10 there is in the rules of procedure for applications for  
11 local map amendments and petitions for special exceptions  
12 which have been adopted, Rule 10.2 says a petition may be  
13 amended at any time before the close of the record and then  
14 it may not increase the area to be covered by the petition  
15 or increase the intensity of use. Here neither of those  
16 exceptions would apply and so under Rule 10.2 we think it is  
17 appropriate to file this amendment anyway.

18 MS. ROSENFELD: And, Mr. Grossman, if I might  
19 respond just briefly a couple of points? First of all, to  
20 the extent that they would like to return to the original  
21 plan, the quote, "3-foot path," we would like to see and  
22 have testimony demonstrating that, in fact, there was a 3-  
23 foot path. It's our understanding that it was wider. So I  
24 would like to see which specific plan they purport to revert  
25 to. And to the extent that --

1 MR. GROSSMAN: Well, if they, in fact, are able to  
2 put in a 5-foot path, what difference would it make? Why  
3 would you want to know what they originally did in terms of  
4 accomplishing what you want to accomplish at this hearing?

5 MS. ROSENFELD: Certainly. A 5-foot path would be  
6 preferable, but according to the correspondence of Ms.  
7 Harris, Westfield does not at this time have the authority  
8 to allow that to happen and needs consent from tenants. And  
9 so to the extent that the application requirements provide  
10 that they must, the special exception applicant has to  
11 document that they have the legal authority of the, to be  
12 able to move forward, we think there's not jurisdiction to  
13 consider that plan until they do have that authority.

14 MR. GROSSMAN: Not jurisdiction or is it -- let me  
15 ask you this. I mean if, in fact, they're able to get a 5-  
16 foot path and if the Board of Appeals were ultimately to  
17 approve the special exception, as I understand it, it's the,  
18 it's the preference of the community that that path exist.  
19 Why is it prejudicial to you if that's, in the course of  
20 this hearing if that is ultimately provided? I mean it's  
21 routine in special exception hearings that there are  
22 amendments to the plans in the course of the hearing in  
23 order to improve the situation or is a condition of it. I  
24 don't understand your point here.

25 MS. ROSENFELD: If there were unlimited space in

1 this area, that might be an appropriate way to proceed. But  
2 as the documents show, there is very tight, there are very  
3 tight dimensions where the path and the parking and the ring  
4 road coincide with the entrance to the gas station itself,  
5 to the loading dock, to the warehouse and to the full ring  
6 area. And, in fact, one of the exhibits, 54(i), that was  
7 testified to, the turning radius show that, in fact, it  
8 would enter either the parking area or the pathway. And so  
9 it's unclear if even the difference of two feet or, could  
10 make a difference in whether or not there's pedestrian  
11 safety, vehicular safety, truck turning radius safety at  
12 this particular location. And to have to try and present  
13 testimony, cross-examine on multiple iterations makes it  
14 very difficult.

15 MR. GROSSMAN: You clearly have a right to know in  
16 time for you to do your cross-examination and to present  
17 your witnesses what the plan is going to be. I'm not  
18 suggesting not. I'm just saying in terms of the substantive  
19 aspect of it, it's my understanding from what you've said  
20 before and earlier in this proceeding that it is the  
21 preference of the community to have that path, that  
22 pedestrian path restored to the plans for the south ring  
23 road. So I'm not sure in terms of the substance of it,  
24 isn't that what you're asking?

25 MS. ROSENFELD: It would be the preference to have

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1 that in, but whether or not it compromises other elements of  
2 pedestrian or vehicular safety is an open question. I would  
3 suggest that the proceedings have already been compromised.  
4 Mr. Duke is a peer. He's testified. He's testified with  
5 respect to the absence of the path and truck turning  
6 circulation and radius if a 5-foot path is reinserted only  
7 to be called back.

8 MR. GROSSMAN: Well, I don't doubt that. That  
9 would be part of what I would plan, that is, if any witness  
10 has to be recalled for additional cross-examination or  
11 additional direct and cross-examination on this particular  
12 point, then I would certainly allow that. But I want to be  
13 fair to both sides here. I don't want to have delays just  
14 for the sake of delay. We're talking here about a  
15 proceeding -- it's not the ordinary special exception  
16 proceeding which might last less than a day. We're talking  
17 about a proceeding that's going to go over 10 days, I don't  
18 know over, but it's going to go many days, stretching over  
19 months, and I don't see how suspension of the hearing,  
20 especially since there were other issues that are not  
21 related to this that can be covered until this aspect of it  
22 is worked out. So I don't see how that is, how that is  
23 helpful.

24 Okay. Let me go over some of these other points.  
25 MR. SILVERMAN: Mr. Grossman?

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1 MR. GROSSMAN: Yes.  
2 MR. SILVERMAN: I also want to reference the law.  
3 I think -- I don't want to get ahead of the testimony here,  
4 but the placement of the wall has some effect on the  
5 movement of the air and air pollution and I have been  
6 involved with this case for more than three years and I've  
7 heard many comments about the wall and I bet this is the  
8 first, I mean it's only through these hearings I actually  
9 learned what wall we're talking about. And our expert has  
10 spent, Dr. Cole has spent a good deal of time investigating  
11 the impacts of the wall and there was a suggestion at one  
12 point, and again I don't want to, I just want to suggest as  
13 I'm not testifying to it, that the wall could become a  
14 pipeline for pollution to certain places. And so it's a  
15 sort of important thing and I'm not sure -- I mean I feel  
16 somewhat prejudiced here and I'm not sure how to correct it,  
17 but I do feel like we're having a hard time shooting at this  
18 moving target.

19 MR. GROSSMAN: Yes, if this were the last day of  
20 the hearing, I would tend to agree with you more, but this  
21 is clearly not. There are going to be many additional days  
22 of hearing, plenty of opportunity for cross-examination of  
23 any witness that has testified on this point if need be.  
24 And so I don't really see the prejudice here, especially  
25 since, as I understand it from the cc on Exhibit, I think it

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1 was 86, filed with these original changes, they were sent to  
2 all of you. You all had more than -- you had 30 days or  
3 more before the hearing to contemplate these changes. So I  
4 don't see what the prejudice is to the parties that are  
5 here. And as to the wall, I mean, first of all I will say  
6 that I disagree with the applicant in their allegation that  
7 these changes are not material. I would find that the  
8 changes were suggested here for a variety of reasons that  
9 have been suggested in the papers are material for a variety  
10 of reasons. However, as I said, I don't think that that  
11 means that you suspend this kind of hearing when we have the  
12 ability to have witnesses recalled for cross-examination, we  
13 have, we have many days and we have other items that can be  
14 covered that are not directly related to this issue.

15 Okay. Let me hear some other things about this.  
16 On the notice of the motion to amend, it's clear that Zoning  
17 Ordinance Section 59A 4.24 requires notice of a motion to  
18 amend. The letter, Exhibit 86, was not formally titled a  
19 motion to amend. This is not uncommon in the practice here.  
20 Usually routinely when changes come into our office,  
21 proposed changes to a petition, we treat them as a motion  
22 and we send out a notice. Here, however, that's because  
23 ordinarily they're not sent to any of the parties in  
24 ordinary cases. Here we had so many who had already  
25 designated themselves as parties of interest and copies were

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1 automatically sent out to everybody. And as I understand  
2 it, there's no dispute about that, that they were sent out  
3 30 days in advance, so, you know, at the very least in CD  
4 form. And so I -- and it was in the public record in our  
5 files, so I don't see how there's a failure of notice.

6 In case there is some lack of notifying the rest  
7 of the neighborhood and I, given all the methodologies here  
8 of getting the word out, including the Stop Costco Gas  
9 Coalition website, I doubt that anybody doesn't know, but  
10 just in case tomorrow I would have the applicant send out a  
11 notice to the community to all, let's say to all the people  
12 who are required to receive notice initially in the statute  
13 of the proposed changes. However, I'm going to modify it to  
14 some extent and that is that if they have decided that they  
15 are not going to do those changes as part of the proposal,  
16 you don't want to confuse the issue more. So you're going  
17 to have to make a decision very quickly as to what it is  
18 that you are going to proceed with in terms of a plan.

19 I would -- that will give more than 10 days before  
20 the next hearing, the date of June 4, for anybody to make  
21 response. I will certainly always keep the record open for  
22 at least 10 days after any changes are made as I'm required  
23 to do and any changes, of course, must be submitted to  
24 technical staff for submission to the Planning Board should  
25 they wish to review it and I will certainly give them at

1 least 10 days to make any response that they wish to make,  
2 so -- and then give the parties an opportunity to respond  
3 after that. The Planning Board, even though they get  
4 changes in some cases doesn't always -- and the technical  
5 staff -- and they do not always feel it necessary to re-  
6 review things and that's their decision. They don't have to  
7 re-review it under the statute.

8 MS. HARRIS: Mr. Grossman, may I ask one  
9 clarification? You said to send it to the parties that were  
10 initially required. Subsequent to the initial filing, there  
11 were a number of people that requested to be parties of  
12 record.

13 MR. GROSSMAN: Right. I think you've already sent  
14 that directly to them according to the cc in Exhibit 86, so  
15 that's not my concern. My only concern is that there might  
16 be some hole in our usual procedure and so just to make sure  
17 that everybody who is designated in the zoning ordinance,  
18 which is those who are entitled to original notice, gets the  
19 notice that's statutorily required and that we leave the  
20 record open for the required period of time.

21 I might mention that the zoning ordinance also  
22 allows hearings to be postponed to new dates if you do it on  
23 the public record as we are now rather than sending out  
24 written notice. That's somewhat analogous to the situation  
25 of sending out notice of a change. So the concept is that

1 if you're doing it on the open, public record, that no  
2 additional written notice may be required. Here we're being  
3 extra careful and requiring the additional written notice.  
4 It also, the zoning ordinance also allows the Board of  
5 Appeals, and derivatively the Hearing Examiner, to request a  
6 change in the plans at any time in the hearing process while  
7 the record is open. And that, it seems to me, also covers  
8 this kind of situation. In fact, I did request that the  
9 applicant look at that issue, potentially change it back to  
10 the original. So I don't see -- I don't see any prejudice  
11 here to the parties who are here.

12 MS. ROSENFELD: Mr. Grossman?

13 MR. GROSSMAN: Yes, ma'am?

14 MS. ROSENFELD: If I might add, I, under the  
15 provisions of the zoning code, I do agree that the Hearing  
16 Examiner or the Board of Appeals can request changes, but I  
17 believe under the case, Constellation Potomac, if those  
18 changes are proffered by the applicant, even during the  
19 course of a hearing, they still need to comply with the  
20 notification requirements of the zoning code.

21 MR. GROSSMAN: Well, I'm having them comply with  
22 those notice requirements. What Constellation Potomac says,  
23 in that case the Board did not give the 10 days called  
24 for --

25 MS. ROSENFELD: Right.

1 MR. GROSSMAN: -- and actually under the Board  
2 rules there are, there's a 15-day provision under the Board  
3 rules and I would comply, that we're going to more than  
4 comply -- the record is not going to close here in the next  
5 month, obviously, given our schedule. So that's going to be  
6 more than complied with. So I'm not fearful of that  
7 situation. We're going to follow Constellation Potomac.

8 Okay. Let me see if I left out anything here. As  
9 I said, the applicant must make available for additional  
10 cross-examination solely regarding the changed wall and  
11 pedestrian path any relevant witness if requested by the  
12 opposition. That will be a requirement. If, in fact,  
13 you're going with the changed thing and I know this is a  
14 relatively short period of time to give you to make that  
15 final analysis, but I think that it, you know, it needs to  
16 be done in fairness to everybody to get this moving along.

17 Also, the changes must be submitted to the  
18 Planning Board and its staff for its review. There's no  
19 requirement, as was noted earlier by Ms. Rosenfeld that the,  
20 that I suspend the proceedings. OZAH has jurisdiction from  
21 the time the Board of Appeals sends us the file to the time  
22 OZAH issues its report and returns the file to the Board of  
23 Appeals. The code requires only that we keep the record  
24 open for 10 days for the Planning Board's response to any  
25 change if they wish to make one. It's Section 59A 4.48(c).

1 MS. ROSENFELD: And, Mr. Grossman, if you could  
2 clarify for the record, who is responsible for sending that  
3 notification of the amendment to the Planning Board?

4 MR. GROSSMAN: Oh, the -- well, the applicant is  
5 responsible, but what typically has happened in our hearings  
6 is I request that and that a copy be sent, when it goes out,  
7 that the other parties be notified and that my office be  
8 notified by something indicating that it's been done so that  
9 it can go in the file.

10 Finally, the supplemental issue about the missing  
11 lease and authority to extend the wall, I feel that can be -  
12 - the fact that it was not included in the original filing  
13 to me is not dispositive of anything. It can be rectified,  
14 given the length and additional time of this hearing, can be  
15 rectified by having the applicant file those items now, you  
16 know, shortly and giving all parties at least 10 days to  
17 respond. So I'm not --

18 MS. ROSENFELD: I'm sorry, I'm not clear what  
19 issue you're going to at this point.

20 MR. GROSSMAN: Oh, you indicated in your  
21 supplemental papers, you indicated that there was a problem  
22 with the filing of the original application because it did  
23 not include a copy of the lease agreement and that the, and  
24 nor did it show authority from Wheaton Plaza to the  
25 applicant to extend the wall. And I'm saying if there's a

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1 lack in the record of that, it certainly can be supplemented  
2 without prejudice. There is in the record, of course, an  
3 authorization from Wheaton Plaza to proceed with this  
4 special exception application that might even be deemed  
5 sufficient without the lease agreement. But if the absence  
6 of the lease agreement is a deficiency, it can certainly be  
7 rectified. It's not a basis for dismissing this action in  
8 my opinion.  
9 MS. ROSENFELD: And we weren't requesting  
10 dismissal, we were requesting that that documentation be  
11 provided. But in addition to that, the response filed by  
12 Ms. Harris with respect to a pedestrian path indicated that  
13 Westfield had to renegotiate leases in order to locate the  
14 path if I understood her letter correctly.  
15 MS. HARRIS: No, that's not exactly right. They  
16 just need to have, obtain authorization from those anchors.  
17 It's not as formal as any lease amendments.  
18 MR. GROSSMAN: Okay.  
19 MS. HARRIS: And we're in the process of doing  
20 that. We may, in fact, have an answer as early as today on  
21 that.  
22 MR. GROSSMAN: Okay. All right. Well, that would  
23 be certainly helpful. We want to have everybody knowing  
24 where we're proceeding. We're all preparing in advance of  
25 these hearings so that we can make the most out of them.

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1 Okay.  
2 MR. GOECKE: Mr. Grossman, one point on that.  
3 MR. GROSSMAN: Mr. Goecke.  
4 MR. GOECKE: So the, I mean the, really the point  
5 of that code section is to show that --  
6 MR. GROSSMAN: Which code section?  
7 MR. GOECKE: The code section requiring the  
8 submission 59A 4.22(a)(6) --  
9 MR. GROSSMAN: Okay.  
10 MR. GOECKE: -- requires a submission of the  
11 contract or the lease. The way we interpret that is that  
12 it's really trying to establish that the applicant has the  
13 legal authority to request what it is requesting and, you  
14 know, it's our understanding that in this jurisdiction the  
15 letter of authority is the customary way to establish that.  
16 In addition --  
17 MR. GROSSMAN: I don't know if that's the  
18 customary way. I've frequently, I've seen lease agreements  
19 submitted sometimes with some proprietary information,  
20 redacted, but just sufficient to show that the authority is  
21 there. That's why I say that.  
22 MR. GROSSMAN: Unless, Ms. Rosenfeld, do you feel  
23 it's necessary given the letter of authority that's, I  
24 think, Exhibit 3, let's see, yes, it's 3(b). It's in this  
25 record. It is the letter of authority. Do you feel it's

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1 necessary that there be -- be careful, everybody, we don't  
2 want any more --  
3 MS. ROSENFELD: I'm tripping on my --  
4 MR. ADELMAN: Is that 3(d)?  
5 MR. GROSSMAN: No, B as in boy.  
6 MR. ADELMAN: Oh, B? Thank you.  
7 MS. ROSENFELD: Mr. Grossman, in light of the  
8 testimony from Mr. Agliata that at least until after the  
9 Planning Board hearing he was unaware of the, in particular  
10 the issue with the path, I would like to see the lease  
11 agreement. I think that's -- particularly because it's  
12 filed in other cases and as well the letters of  
13 authorization for the tenants, from the tenants for wherever  
14 the pathway might be located.  
15 MR. GROSSMAN: All right. Ms. Harris.  
16 MS. HARRIS: Well, let me just give a little  
17 background and then I'll let Mr. Goecke also make some  
18 additional comments. The whole, as we had testified  
19 previously, the whole issue of the mall came out and it came  
20 about in connection with Westfield's agreement with the  
21 community that was really separate and apart. It's not  
22 reflected in any manner in the lease agreement.  
23 MR. GROSSMAN: Well, they're not saying that the  
24 lease agreement has to contain all of the authorization.  
25 They're saying they'd like to see the lease agreement and

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1 some authority and that seems to me it doesn't have to be in  
2 the lease. If you have authority independent from Wheaton  
3 Plaza, it's a, I don't know what you call it, a novation or  
4 whatever, but I mean it is an authority that you'd be given.  
5 So I don't see how that -- that's the real key to --  
6 MS. HARRIS: The lease that's in question is an  
7 180-page lease and it primarily covered the warehouse.  
8 MR. GROSSMAN: Right.  
9 MS. HARRIS: And just imagine, which has nothing  
10 at all to do with the gas station site. And so for  
11 proprietary reasons, one, it's not relevant and we're very  
12 hesitant to need to submit the entire lease because all but  
13 one paragraph of it is not relevant.  
14 MR. GROSSMAN: All right.  
15 MS. HARRIS: And we certainly could obtain a  
16 letter from Westfield that further provides the authority to  
17 put in the wall and the path if that would satisfy  
18 opponent's counsel.  
19 MR. GROSSMAN: I don't see any real problem with  
20 that, do you, Ms. Rosenfeld, some redacted version of it  
21 that takes out their proprietary --  
22 MS. ROSENFELD: We would consent to a redacted  
23 version.  
24 MR. GROSSMAN: Okay. All right. So that would  
25 solve that problem for you, I think.

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1 MS. ROSENFELD: And with respect, and with respect  
2 to the path and the wall area, letter of authorization from  
3 the tenants would suffice.  
4 MR. GROSSMAN: Okay.  
5 MS. HARRIS: I don't want to belabor this, but  
6 it's a 180-page lease. So does --  
7 MR. GROSSMAN: I'm not telling you you should, you  
8 have to black it out, redact it. I think you can indicate X  
9 pages have been removed as being irrelevant and counsel, Ms.  
10 Rosenfeld is shaking her head in assent to that. So --  
11 MS. ROSENFELD: I would consent to --  
12 MR. GROSSMAN: Yes.  
13 MS. ROSENFELD: -- you indicating which pages have  
14 been intentionally omitted.  
15 MS. HARRIS: So, I mean in my mind it would be the  
16 first page, the page that has the provision, and the  
17 signature page and then we can obtain an additional letter  
18 from Westfield if necessary providing the authorization for  
19 the wall?  
20 MR. GROSSMAN: I think so, as long as you're  
21 including the relevant --  
22 MS. ROSENFELD: Well, I do have one question.  
23 Does that document indicate the square footage or the area  
24 or the boundaries of the special exception boundaries?  
25 MS. HARRIS: We're checking.

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1 MR. GROSSMAN: Okay. I mean --  
2 MS. CORDRY: It seems unlikely that it would be  
3 one page dealing with an entire gas station.  
4 MR. GROSSMAN: Please identify yourself.  
5 MS. CORDRY: I'm sorry, Karen Cordry, with KHC.  
6 MR. GROSSMAN: Because, Ms. Cordry, you didn't --  
7 MS. CORDRY: I'm sorry, I should have --  
8 MR. GROSSMAN: -- answer the call originally when  
9 I asked anybody --  
10 MS. CORDRY: I should have said it, but --  
11 MR. GROSSMAN: -- from counsel table, so I did  
12 want to make sure.  
13 MR. ADELMAN: Mr. Grossman, just a question. If  
14 3(b) is replaced, does it get removed from the exhibit list?  
15 MR. GROSSMAN: Absolutely not. 3(b) will be in  
16 the record and anything that's filed subsequently will be  
17 added on to the record to supplement it, vary it, whatever  
18 the case may be.  
19 MR. ADELMAN: Does the record ever, does the list  
20 ever get corrected if there are duplications or does  
21 everything just stay --  
22 MR. GROSSMAN: No, it just stays in there because  
23 exhibits may have been referred to in the course of the  
24 hearing and then if you take exhibits out or renumber  
25 anything, it creates a lot of confusion later. So as much

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1 as -- I mean we may correct typographical errors in our  
2 exhibit list and if it's not, if it doesn't materially  
3 affect anything, we may, you know, redo some internal  
4 renumbering or lettering in something if it hasn't been  
5 referenced in the hearing, but we want to make sure that the  
6 exhibit list that exists when it goes past here reflects  
7 whatever has been referenced at the hearing.  
8 So, yes, we have some duplicates here already in  
9 that we weren't aware at the first hearing that there had  
10 been as part of the submission with Exhibit 86, there had  
11 been a special exception site plan revised because we  
12 inadvertently in my office didn't re-label, didn't label it  
13 in the exhibit as the site plan, we labeled it as the  
14 landscape plan and there was a site plan included with it.  
15 So, yes, and so we re-numbered, we had a numbering later,  
16 not re-numbered, but we, when it was, the site plan was  
17 later introduced, the revised site plan, I forget what  
18 number we gave to it. Let me see. I don't know. Let me  
19 see it. No, that was an after proposed -- let's see. Yes,  
20 the special -- 119. So the special exception site plan  
21 received at the hearing was the version dated March 25,  
22 2012. I think that was version 6. And so we have 119(a),  
23 (b) and (c) which includes the same, some of the same papers  
24 that were filed with Exhibit 86. So we did have that  
25 subsequent numbering. We don't, we didn't change the --

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1 MR. ADELMAN: This may be irrelevant, but as you  
2 know I'm trying to get our website up to date.  
3 MR. GROSSMAN: You know, we do have a microphone  
4 for you now. I don't know if you -- was it handed to you?  
5 Under your table.  
6 MR. ADELMAN: She didn't turn it on because I  
7 didn't want to make any noise, so this is very, this is very  
8 simple, you know, when you put that on my -- I'm trying to  
9 update our website so that people who want to follow this  
10 can see the items in the OZAH list --  
11 MR. GROSSMAN: Right.  
12 MR. ADELMAN: -- that are and as I understand from  
13 Ms. Forbes, items 1(c) and (d) --  
14 MR. GROSSMAN: I'm going to get to that, okay?  
15 Okay. So are we clear about the lease issue? We got a  
16 little distracted here. So what you're going to submit can  
17 be redacted. It should have the relevant portions, a front  
18 and a signature page and anything that pertains to the  
19 approval of the proceeding to a special exception and to the  
20 extent necessary, a separate authority letter regarding any  
21 things that go outside the immediate boundary of the special  
22 exception area.  
23 MS. HARRIS: I'm still not comfortable with that  
24 and I would suggest as an alternative can we submit an  
25 affidavit that was from Westfield, signed that shows the

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1 special exception area and then addresses the issue of the  
2 wall all in one document so that we submit that and that  
3 provides for the clear authorization of Costco to proceed?  
4 MR. GROSSMAN: What about that, Ms. Rosenfeld?  
5 MS. ROSENFELD: I'm, frankly, uneasy with an  
6 affidavit. I don't understand why it's so difficult to  
7 provide the excerpted lease provisions relating to the  
8 special exception area itself that identifies the location.  
9 I am comfortable with a letter of authorization for the wall  
10 and a letter of authorization from Westfield for the path  
11 should it be reinserted, along with letters of authorization  
12 from the tenants concurring with that.  
13 MR. GROSSMAN: If, well, I don't know if the  
14 letters from the other tenants concurring is a requirement  
15 if the owner, you know, unless the owner is absolutely  
16 required to do that.  
17 MS. HARRIS: I mean the issue is the original  
18 lease, as I understand it, and Costco's counsel is here  
19 which is why I keep conferring, the original lease had the,  
20 showed the prior special exception area. The lease -- but  
21 it also showed for the alternative area. We're not sure if  
22 it clear, how clearly it delineated, though Westfield  
23 certainly has seen this and they're, and they know that -- I  
24 mean they've provided authority for Costco to pursue that.  
25 So I'm not understanding what opponent's issue is. Are they

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1 questioning whether Costco has the legal authority to  
2 proceed with the special exception based on the area that's  
3 outlined on Exhibit 119(c)?  
4 MR. GROSSMAN: Well, let me say this. I think it  
5 would be wise for you to submit a portion of the lease that  
6 clearly shows the authority. Why have an issue that's not  
7 an issue? To the extent it doesn't fully authorize it, a  
8 separate document from the owner giving the authority for  
9 whatever is necessary and then it's a non-issue. It seems  
10 to me the -- for us to waste too much time on this, what  
11 should be a non-issue in this case, makes sense, okay? And  
12 now since I don't think the lease itself, the legal  
13 questions regarding the lease or authority is an issue that  
14 calls for cross-examination by June 4th or anything, I think  
15 that if you get this to file in my office and to the parties  
16 by the June 4 hearing date, that would be sufficient, don't  
17 you think, Ms. Rosenfeld?  
18 MS. ROSENFELD: That would be satisfactory.  
19 MR. GROSSMAN: Okay. All right. So shall we move  
20 along here? Let's go to the dates issue. Additional  
21 hearing dates have been proposed by the applicant. Our  
22 regular hearing room may be available. This room that we're  
23 in now may be available on those dates and I think I'd  
24 rather be here. I think it's better, better for everybody.  
25 If anybody disagrees with that, if this room is available,

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1 we put any further hearing dates in this room, the second  
2 floor hearing room. I have a thumbs up here, Dr. Adelman.  
3 All right. Is that agreeable with everybody?  
4 MS. ROSENFELD: It's acceptable. It's agreeable.  
5 MR. GROSSMAN: Okay. Now to -- so ultimately my  
6 bottom line is I'm denying the motion to suspend the  
7 proceeding for all the reasons I've set forth. And now  
8 let's turn to additional dates. Many dates have been  
9 suggested by the applicant in their Exhibit 138, May 29,  
10 June 6, June 13, 14, 17, 18, 19, 20 and 21, July 1, 2, 3, 5,  
11 8, 9, 10, 11, 12. Okay. And I, from looking at the  
12 numerous e-mail exchanges during the interim, I noticed that  
13 the opposition was uncomfortable, except for two days, at  
14 least in June, June 17 and 19 I think were agreeable dates  
15 for sure. So number one, should we agree that June 17 and  
16 19 are hearing dates?  
17 MS. ROSENFELD: Yes.  
18 MR. ADELMAN: Yes.  
19 MR. GROSSMAN: Okay. And as per usual, our  
20 hearings will begin at 9:30 in the morning. They'll be  
21 located, unless this room is unavailable, they'll be located  
22 in this room, Council Office Building, Second Floor Hearing  
23 Room. If this room is unavailable, they'll be held  
24 elsewhere, probably in the COB Auditorium. And, you know,  
25 at the very least we have June 17 and June 19.

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1 Now what about the May 29 date that's been  
2 suggested as a possibility? Ms. Rosenfeld?  
3 MS. ROSENFELD: Mr. Grossman, I have conflicts  
4 through June 4th.  
5 MR. GROSSMAN: Does that include May?  
6 MS. ROSENFELD: Other --  
7 MR. GROSSMAN: Do you have a conflict in May?  
8 MS. ROSENFELD: Yes. Yes, that's correct.  
9 MR. GROSSMAN: Okay.  
10 MS. ROSENFELD: Either other hearing dates or  
11 family commitments.  
12 MR. GROSSMAN: Okay. So that's the rest of June,  
13 other than June 17 and 19?  
14 MS. ROSENFELD: Yes. Yes, Mr. Grossman, those  
15 were the remaining dates that we had available in June.  
16 MR. GROSSMAN: All right.  
17 MS. ROSENFELD: The 17th and 19th.  
18 MR. GROSSMAN: What about those many --  
19 MS. ROSENFELD: We could propose a number of dates  
20 in July.  
21 MR. GROSSMAN: Okay.  
22 MS. CORDRY: And that is true with the Coalition.  
23 MR. GROSSMAN: Okay. Let me ask the court  
24 reporter, are you getting the word from the audience here?  
25 I know that she's not next to a microphone, but you can --

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1 you're getting that in? Okay. Thank you. So do you have  
2 July dates that you want to suggest? You have the choices  
3 that have been suggested by the applicant.  
4 MS. ROSENFELD: The dates that I have from the  
5 applicant are through June 21st.  
6 MR. GROSSMAN: Oh, I saw an e-mail, Exhibit 138 I  
7 think it was, that had July 1, 2, 3, 5, 8, 9, 10, 11 and 12,  
8 unless I'm mistaken. I had so many e-mails when I came back  
9 to the office that it's hard to keep track of them all, but  
10 I try.  
11 MS. ROSENFELD: We are available July 1 and 8 and  
12 11.  
13 MR. SILVERMAN: I have a problem with July 1.  
14 MR. GROSSMAN: Okay, Mr. Silverman. All right.  
15 So we have July 8, July 11. Let me see what days they are.  
16 MS. HARRIS: Mr. Grossman --  
17 MR. GROSSMAN: Yes.  
18 MS. HARRIS: -- given the number of people that  
19 are representing various groups, if at least one or two  
20 representatives of a given group can make it, and given that  
21 we're having a hard time finding dates, I'm hoping that we  
22 can -- if one individual can't make it, that wouldn't  
23 necessarily preclude that date.  
24 MR. GROSSMAN: Well, let's see what we can do  
25 where everybody is available first and then we'll see if we

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1 have to proceed in some way. We'll look at that. But what  
2 day is July 4th celebrated on as a --  
3 MR. GOECKE: Thursday.  
4 MR. GROSSMAN: Thursday? No, well, I see Thursday  
5 is July 4, but is the Government -- I can't recall if the  
6 Government is closing on July 4th rather than on a Friday or  
7 a Monday.  
8 MS. CORDRY: Yes, I think a few days they do.  
9 MR. GROSSMAN: So July 8 would be an available day  
10 and July 11. All right. What about the 12th?  
11 MS. ROSENFELD: We can, I think the 12th isn't  
12 going to work. We had also proffered July 16, 17 and 18th,  
13 although frankly I would prefer not to have three days in a  
14 row or more than certainly three days in a week.  
15 MS. ADELMAN: Mr. Grossman, Abigail Adelman, for  
16 the Coalition. We cannot do the 17th and 18th. The e-mail  
17 that we sent from the Coalition's point of view, we had July  
18 1st, the 8th, the 11th.  
19 MR. GROSSMAN: July -- what about that July 16  
20 date?  
21 MS. ADELMAN: The 16th, several people aren't able  
22 to make that date.  
23 MR. GROSSMAN: When you say several people, are  
24 you talking about members of the community? Are you talking  
25 about people who are --

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1 MS. ADELMAN: No, Ms. Cordry for one.  
2 MR. GROSSMAN: All right. Well, I mean I'm going  
3 to try to accommodate everybody, but it is very difficult in  
4 this kind of situation where you have so many calendars to  
5 juggle. So frequently courts set up hearing dates and, you  
6 know, they try to accommodate people, but that's kind of the  
7 way it goes. I'm not sure, you know, how many hearing dates  
8 we're going to need ultimately here. We certainly have to  
9 make up for three of them. By getting June 17, 19, June and  
10 July 8th and 11, we get four dates, which makes up for three  
11 and adds one. What other date in -- I'm sorry, you said  
12 July 16 was a problem?  
13 MS. ADELMAN: Yes. The 16th and the 18th are  
14 problematic.  
15 MR. GROSSMAN: But the Coalition does have Mr.  
16 Silverman here and Dr. Adelman. So is there really a  
17 problem in --  
18 MS. ADELMAN: Isn't available on the 16th and  
19 18th.  
20 MR. GROSSMAN: Pardon me?  
21 MS. ADELMAN: Dr. Adelman is not available on the  
22 16th and 18th.  
23 MR. GROSSMAN: I see.  
24 MR. ADELMAN: Only through authority.  
25 MR. GROSSMAN: Sorry, you're gone. I know from my

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1 wife's close supervision of me these days that that's what  
2 goes. All right. What about later in July?  
3 MS. ADELMAN: We have the 29th and the 31st.  
4 MS. ROSENFELD: The 29th and the 31st work for us.  
5 MR. GROSSMAN: All right. July -- well, I have  
6 another hearing on the 29th. The 31st I have open. Oh,  
7 well --  
8 MS. ROSENFELD: What about --  
9 MR. GROSSMAN: -- if we do it on the 31st, that's  
10 a Wednesday.  
11 MS. ROSENFELD: What about the 2nd of August?  
12 MS. ADELMAN: That's clear for the Coalition.  
13 MR. GROSSMAN: Okay.  
14 MS. HARRIS: Did we skip the 30th and the 31st?  
15 MR. GROSSMAN: No, she said the 31st --  
16 MS. CORDRY: The 31st was good.  
17 MR. GROSSMAN: The 31st --  
18 MS. ROSENFELD: The 31st --  
19 MR. GROSSMAN: But I mean we'd have to hold it in  
20 another room if we do it because, unless the Board of  
21 Appeals is not meeting that day because the Board of Appeals  
22 uses this room on Wednesdays.  
23 MS. CORDRY: That's the least of our problems.  
24 MR. GROSSMAN: Is the 30th open for somebody?  
25 MR. GROSSMAN: So, okay. So July 31 and, I'm

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1 sorry --  
2 MS. ROSENFELD: Mr. Grossman, was the 30th not  
3 available for somebody?  
4 MR. GROSSMAN: The 30th is good for us? Okay.  
5 So --  
6 MS. ROSENFELD: Abigail, the 30th?  
7 MR. ADELMAN: But that -- that means back to  
8 back --  
9 MS. ADELMAN: Well, if we do the 31st and 2nd,  
10 that's our --  
11 MS. ROSENFELD: The 31st and the 2nd.  
12 MS. CORDRY: I don't have my calendar. What day  
13 is the 30th?  
14 MR. GROSSMAN: The 30th is a Tuesday.  
15 MS. ROSENFELD: A Tuesday.  
16 MS. CORDRY: That would be fine.  
17 MR. GROSSMAN: Okay.  
18 MR. ADELMAN: Are you talking in June?  
19 MR. GROSSMAN: July 30th.  
20 MS. ROSENFELD: July 30th and August 2nd?  
21 MR. GROSSMAN: And August 2. Okay. So far as I  
22 think it's breaking down, we have June 17 and 19, July 8 and  
23 11 and then July 30 and 31.  
24 MS. HARRIS: Didn't we agree on July 17 as well?  
25 MR. GROSSMAN: No, there was a problem for Mr.

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1 Adelman.  
2 MS. CORDY: And for myself.  
3 MR. GROSSMAN: And for Ms. Cordry.  
4 MS. HARRIS: So the 16th, 17th and 18th, none of  
5 those work?  
6 MR. GROSSMAN: But I think, I mean that may give  
7 us enough days. If we have June 17, 19, July 8, 11, 30 and  
8 31 --  
9 MS. ROSENFELD: That's six additional days.  
10 MR. GROSSMAN: Plus August 2, I mean, that's quite  
11 a few additional days.  
12 MS. CORDRY: If would be preferable not to have  
13 back-to-back hearings if that was possible so we could  
14 consider --  
15 MR. GROSSMAN: I just can't -- we've --  
16 MS. CORDRY: Could we consider doing the 30th and  
17 the 2nd?  
18 MS. ROSENFELD: Oh, I thought we had picked the  
19 30th and the 2nd.  
20 MR. GROSSMAN: We had the 30th, the 31st and the  
21 2nd.  
22 MR. SILVERMAN: Mr. Grossman, just a point of  
23 information. Is it customary after the hearings conclude  
24 for the parties to submit written briefs?  
25 MR. GROSSMAN: I wouldn't say it's customary.

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1 This is an unusual hearing and if the parties wanted to have  
2 that time, I would certainly give them that opportunity.  
3 There's been a lot of paper filed already, though, Mr.  
4 Silverman, so --  
5 MR. SILVERMAN: I'd say there has.  
6 MR. GROSSMAN: I think I have a pretty fair gauge  
7 of the issues.  
8 MR. SILVERMAN: But I want to --  
9 MR. GROSSMAN: I was very disappointed by the way  
10 that, not to hear the testimony that was anticipated on the,  
11 on the air quality when I had to postpone those hearings,  
12 having seen the submissions about hamburgers versus trucks.  
13 I was really curious about that. So --  
14 MS. ROSENFELD: I'm sure you'll have the  
15 opportunity.  
16 MR. SILVERMAN: There's a, I have a lot of  
17 business and vacation in August and I'm not saying I want to  
18 submit or we want to submit something in writing, but we may  
19 and I wondered if we could extend the time between the end  
20 of the hearing and the date for final submission?  
21 MR. GROSSMAN: Well, we don't have an end to the  
22 hearing yet, so let's take that --  
23 MR. SILVERMAN: All right.  
24 MR. GROSSMAN: -- let's worry about that issue  
25 down the road. I always give people time if they need it

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1 within reason. So let's not worry about that one just now.  
2 MS. ROSENFELD: Mr. Grossman, just for the record,  
3 could you go through those dates one more time just so I can  
4 make sure I have them all.  
5 MR. GROSSMAN: Okay. And I want it noted that my  
6 wife hasn't approved these dates yet either, so all right.  
7 June 17 and 19, and of course we have a hearing on June 4,  
8 and then it would be June 17 and June 19. And then July 8  
9 and 11. And then July 30 and 31 and August 2. And, as I  
10 say, some of those -- there may be some issue about a room,  
11 but we'll probably get a room available in July. I suspect  
12 that that shouldn't be a problem. But where we have a  
13 conflict with this room being used, you know, preset by  
14 other parties, that we may have to move. Okay. I want to  
15 make that list, June 17, 19, July 8, 11, 30, 31, August 2.  
16 Does that sound like we can all work with that?  
17 MS. HARRIS: Yes, thank you.  
18 MR. GROSSMAN: Okay. And that gives us one, two,  
19 three, four, five, six, seven additional days that we'll  
20 have -- hopefully we can finish in two additional days,  
21 although I don't think so. All right.  
22 I did get an e-mail late yesterday from a member  
23 of the public asking about reserving a period of time for  
24 individuals who wish to testify for, against or just comment  
25 in this period of time and I responded, you know, I'm happy

1 to have him, more than happy to have members of the public  
2 come in. It would be after the, in this case since there  
3 are so many days, it would be after the applicant's case is  
4 finished, but you might talk among yourselves and decide if  
5 there's a day that, so that the public will know and we  
6 could -- and my staff will know how to respond to it and we  
7 can announce it here publicly that individual members can  
8 come and know that the only thing that they'd have to wait  
9 for is the other members of the public who are, who wish to  
10 testify and if one of these dates that we talked about here  
11 would be a sensible day for that and then let me know at the  
12 June 4 proceeding what you think.

13 And the only thing I'm going to announce formally  
14 here is that we will have the hearing on June 4 that was  
15 scheduled already in this room, and then I'm going to make  
16 sure we'll check all these dates and make sure they're all  
17 clear and we have rooms and then either at the June 4  
18 hearing or in a writing we'll announce additional, we'll  
19 notice additional dates. Okay.

20 I want to mention I received a variety of  
21 additional exhibits since our last session, Exhibits 124  
22 through 141. And let me, although you should have copies of  
23 the exhibit list, let me just tell you what they were. 124  
24 was an e-mail exchange, May 7 and May 8, between myself and  
25 Mr. Silverman with copies to the parties, at least the

1 organization parties, stating that e-mail discussions, my  
2 commentary which I'll also repeat that, I'd ask that e-mail  
3 discussions be limited to procedural matters and to  
4 forwarding any new electronic copied, forwarding any new  
5 documentation that's being filed in electronic form rather  
6 than a substantive argument on things. I'd rather this --  
7 myself somewhat in, because I didn't want the parties to go  
8 off on a fruitless hunt for legislative history, so I try to  
9 give you some idea of what I thought was legislative  
10 history, which I think led to this. So it's really my  
11 fault, but I do -- because everybody has to be able to  
12 comment on things at the public hearing. So I don't want to  
13 litigate out anything substantive in an e-mail exchange.  
14 And so we'll get to that issue about the substantive part of  
15 it in a bit, but I just wanted to let you know my concern  
16 about that.

17 Okay. Exhibit 125 was a letter from Ms. Harris  
18 submitting exhibits and I think you all have a copy of the  
19 exhibit list here, so I'm not going to go over the  
20 particulars. Exhibit 126 was a letter of support form James  
21 Hospital dated May 8, 2013, Exhibit 127; e-mails from Ms.  
22 Rosenfeld. Let's see, 128, memorandum from Ms. Harris  
23 transmitting supplemental traffic analysis and traffic data  
24 plan. 129, e-mail from Mr. Sheveiko in response to a  
25 question he had regarding Item 1 on the exhibit list and we

1 will get to that. 130 was e-mails from David Glass dated  
2 May 8, '13, to OZAH and to Ms. Carrier opposing the special  
3 exception; 131, a letter from Ms. Rosenfeld regarding the  
4 motion to suspend proceedings; 132, letter from Ms. Harris  
5 opposing the motion to suspend the proceedings; 133, e-mail  
6 from Ms. Harris with a resume of Tim Hurlocker; 134, e-mail  
7 exchange from Ms. Rosenfeld to the parties regarding the  
8 corrected site visit submission; 135, e-mail from Ms.  
9 Rosenfeld regarding date for memoranda responding to the  
10 Hearing Examiner's 20 questions memo and I'm fine, by the  
11 way, with that, with the dates that have been suggested by  
12 the parties instead of what had been suggested previously,  
13 the new date of June 4, 2013, for the response of the  
14 parties and for response to my 20 questions that I opposed  
15 initially and reply memoranda exchange and filed on June 19,  
16 2013.

17 And Exhibit 136, e-mail from Mr. Silverman to me  
18 regarding the Internet sources being part of the official  
19 record of the case and 137, e-mail back to me, back to Mr.  
20 Silverman from me and the other parties, of course, cc'd  
21 regarding raising objections rather than over e-mail,  
22 raising objections at the hearing rather than over e-mail.  
23 And 138(a) through (d), a series of e-mails between the  
24 parties regarding new dates, new hearing dates; 139, a  
25 letter from Ms. Rosenfeld which supplemented the suspension

1 motion; 140, e-mail from me to Ms. Rosenfeld and other  
2 parties stating the motion to suspend we discussed at the  
3 hearing; and, 141, e-mail exchange between me and the  
4 citizen, Charles Rich, who e-mailed in regarding future  
5 hearing dates and schedule of testimony. Okay.

6 All right. Now the issue I, that has been alluded  
7 to here in our file, I think it was Mr. Sheveiko, came in  
8 and noticed that he didn't, he couldn't find Exhibits 1(c)  
9 and (d) in our file. They're listed as exhibits in our  
10 file. And, in fact, we looked and we don't have any Exhibit  
11 1(c) and (d) in the file. I'm going to presume, and  
12 somebody can correct me if I'm wrong, that that was just a  
13 mistake, there wasn't an Exhibit 1(c) and 1(d) and probably  
14 the previous filing of this Costco application had a (c) and  
15 (d) and it was carried over because we do have one of those  
16 two items listed as Exhibit 3(b). I mean, we -- our files  
17 are public files. People often, you know, we let them be  
18 checked out to a library. People sit in the library and  
19 conceivably an exhibit can go missing there. We haven't  
20 really had a problem with that in the past. I just think  
21 that's the case, that we inadvertently mis-labeled or carry  
22 over a 1(c) and (d) that doesn't really exist. That's my  
23 conclusion here. Now does anybody have any comment on that?  
24 We'll start out with Dr. Adelman.

25 MR. ADELMAN: Can I just eliminate those from

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1 my --  
2 MR. GROSSMAN: Let's hear if there's any --  
3 MR. ADELMAN: Oh.  
4 MR. GROSSMAN: -- comment on that supposition on  
5 my part. Anybody?  
6 MS. HARRIS: We tend to agree.  
7 MR. GROSSMAN: Okay. You don't have anything  
8 looking to file? You don't have anything that would  
9 indicate that there was a 1, Exhibits 1(c) and that's an e-  
10 mail from the Board of Appeals, to the Board of Appeals from  
11 OZAH dated December 1, 2010, regarding new hearing dates.  
12 MS. HARRIS: Now the date itself suggests that  
13 it's --  
14 MR. GROSSMAN: Suggests that it's a previous, a  
15 previous --  
16 MS. HARRIS: Exactly.  
17 MR. GROSSMAN: -- a previous case? And 1(d), the  
18 letter of authorization from Wheaton Plaza Regional Shopping  
19 Center, LLP, that actually we find in our case in Exhibit  
20 3(b). So if we're all agreed that 1(c) and 1(d) do not  
21 exist, we will either eliminate it from the numbering or  
22 indicate that these were, do not exist in some way in our  
23 exhibit list and were included in error.  
24 Okay. Another issue which was discussed in the e-  
25 mail exchanges of the parties regarded site visits. As

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1 indicated in the handout I gave out to the parties at a  
2 point at our second session, it's Exhibit 108, I'm still  
3 very concerned about the potential issues raised by site  
4 visits in light of the court opinion in the case of WSG  
5 Holdings v. Larry Bowie, 429 Md. 598, 57 A.3d 463, a 2012  
6 case. In my handout, I asked the parties to brief the issue  
7 of whether a site visit would require that I publish my  
8 findings regarding the visit prior to my closing the record  
9 to allow commentary and possible contrary evidence from the  
10 parties. Neither side has briefed that issue.  
11 Whether I as a Hearing Examiner can lawfully  
12 publish findings before its report is issued, for the  
13 record, is not clear to me. I suspect yes, but I am  
14 concerned about it in a case like this. The parties have  
15 been unable even to agree on the precise itinerary for the  
16 site visit, all of the logistics, even the days that it,  
17 kind of days, weekends or weekdays it should take place. In  
18 light of those facts, I'm inclined, in the disagreement of  
19 the parties over those details, I'm inclined not to conduct  
20 a site visit and just to require you to put on whatever  
21 evidence you want, pictorial or otherwise, for the record  
22 rather than having a less precise description from me if I  
23 am required to have pre-finding findings, or even am able  
24 to, in the record of all the things I might see on the tour  
25 that has been, the two different tours that have been

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1 suggested by the parties.  
2 MR. SILVERMAN: Mr. Grossman.  
3 MR. GROSSMAN: Sir.  
4 MR. SILVERMAN: I would like to raise the question  
5 of -- you mentioned pictorial evidence of conditions at the  
6 site would really be congestion and pedestrian safety. If  
7 we -- some of the best evidence and video, it's most  
8 credible, if we submitted videos on a disk or a flash drive  
9 or something, other device, would that be acceptable  
10 evidence?  
11 MR. GROSSMAN: I have in the past accepted video  
12 evidence. It's certainly not the -- as long as a hard copy  
13 in some way can be included in the file so that somebody can  
14 view it. It's not preferable for a lot of reasons because  
15 it is much more difficult to go through it. Usually videos  
16 extend over periods of time and it's extremely time-  
17 consuming for it, to go through it. I'm not going to  
18 absolutely rule it out until I have something submitted to  
19 me that's suggested. It's much better, it seems to me, for  
20 this kind of a record which is so extensive and will be so  
21 extensive to have, you know, hard copies of things that  
22 people can view rather than videos. I'm not sure it's an  
23 advantage to either side to have somebody walking around  
24 with a camera to show things in a video format rather than  
25 taking pictures and submitting them. So, but I'm not going

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1 to say absolutely not until I see what we're talking about.  
2 But I have in the past on rare occasions had that situation.  
3 And then it would have to be, the video would have to be  
4 played in the hearing room and those get to be time-  
5 consuming. And I'd like to know what the advantage is in an  
6 evidentiary way, what's the best evidence of what you're  
7 trying to show and so on before I make a ruling on it.  
8 MS. CORDRY: If I might just --  
9 MR. GROSSMAN: Ms. Cordry.  
10 MS. CORDRY: -- add shortly, having taken some  
11 videos, for instance, sound is one point. You obviously  
12 can't get the sound of idling trucks, car horns blowing,  
13 that sort of thing, from a picture. The breadth of an issue  
14 from the length of time that cars are from here to a point  
15 much farther away, you know, you can pan with a video  
16 camera. You can't do that with a picture. There's, you  
17 know, you can't get a picture that may take in the entire  
18 thing. I don't want to go into that much detail, but there  
19 are a number of ways in which video can be far more --  
20 depict a far more correct view of the situation than a  
21 picture or a series of pictures. And by the time you  
22 identify each picture and try to do a 20-picture panorama,  
23 believe me, you can get through the video faster than that.  
24 MR. GROSSMAN: Well, perhaps, but I mean it's  
25 fraught with the same kinds of problems. Where do you

1 measure the noise from? Are you measuring noise from off of  
2 the site when you take this video? How far away the details  
3 that are necessary to supplement the video to show that  
4 you're getting a picture of that which is relevant can be  
5 very difficult. So I'm not, I'm not, I'm going to say I'm  
6 not ruling on this issue. I'm not saying you can't, but I'm  
7 saying you have to consider that before I can rely on a  
8 video, I have to know a lot of details about where it was  
9 taken and what is being shown and whether or not it's really  
10 the best evidence of what the length of time is between cars  
11 when there are other -- whether that's even an issue that's  
12 before me. So --

13 MS. CORDRY: And, certainly, someone would have to  
14 testify and present the video as well, but they would have  
15 to do that with pictures in just the same way.

16 MR. GROSSMAN: I know. Once again, Ms. Cordry, I'm  
17 not saying no, I'm saying you have to, when you think about  
18 it, think about it in terms of all of the factors that I  
19 have to analyze in conjunction with a video to determine if  
20 it's fairly depicting the things that I have to consider,  
21 okay? And you may end up feeling that a video is not the  
22 best way. And I would also, we have to consider how much  
23 time it takes to display a video in the hearing room too.  
24 So --

25 MR. SILVERMAN: Mr. Grossman.

1 MR. GROSSMAN: Mr. Silverman.

2 MR. SILVERMAN: Pursing this topic a little bit,  
3 can I just say by way of introduction, about 15 years ago my  
4 graduate students started submitting references online,  
5 online items and --

6 MR. GROSSMAN: Well, this is not the online issue.  
7 This is the -- we'll get to the online issue in a second.

8 MR. SILVERMAN: Okay. But you did indicate, okay.

9 MR. GROSSMAN: I'm going to get to the online  
10 issue.

11 MR. SILVERMAN: Okay. All right.

12 MR. GROSSMAN: Okay?

13 MR. SILVERMAN: Yes.

14 MR. GROSSMAN: All right. So let's deal with --  
15 we dealt with the video issue. Do you have any comment on  
16 that, Ms. Harris, or Mr. Goecke?

17 MS. HARRIS: No, we'll wait until it's offered and  
18 then we'll make comments.

19 MR. GROSSMAN: Okay. And then we'll rule on it.  
20 If you decide to go in that way, we'll rule on any potential  
21 submissions at the time you offer them. All right. And,  
22 Mr. Silverman, I promised to give you an opportunity to make  
23 your objection to my suggestion in an e-mail what happened  
24 was that we had an e-mail exchange which we've discussed  
25 earlier and which I suggested that I will not accept links

1 to the Internet as an item of evidence. And Mr. Silverman  
2 objected to that and she's going to, I'm going to give him a  
3 chance to explicate on that further, but he objected to that  
4 and then I responded saying, you know, there are to be  
5 problems. Things can disappear from the Internet. It's not  
6 a source that will be necessarily available to a subsequent  
7 reviewer of this record. So I -- but I will hear now from  
8 Mr. Silverman on the point.

9 MR. SILVERMAN: Thank you, sir. Thank you very  
10 much. I started to say about 15 years ago my students  
11 starting giving me Internet cites and I, of course, I  
12 objected as the other professors did and, but they were  
13 ahead of us and I caught up and now I wouldn't think of  
14 accepting --

15 MR. GROSSMAN: Now I'm the old fogey.

16 MR. SILVERMAN: Exactly. Thank you for --

17 MR. GROSSMAN: It's not that I don't like them. I  
18 look at the Internet all the time, it's because there's an  
19 evidentiary matter, I have to be, the evidence has to be  
20 available for review.

21 MR. SILVERMAN: I appreciate that very much. So I  
22 have made and had bound a copy of the school citing  
23 guidelines which is referenced in the legislative history of  
24 the 12-07.

25 MR. GROSSMAN: What is 12-07?

1 MR. SILVERMAN: It's the 300-foot buffer  
2 between -- the ZTA, I'm sorry, the ZTA. ZTA 12-07.

3 MR. GROSSMAN: Okay.

4 MR. SILVERMAN: And which, the history of which is  
5 relevant, I think, to the case. This was referenced. So I  
6 had, I took it to a copy store and I had it copied. This is  
7 published by EPA. It's the only real discussion of place,  
8 the citing as a way of preventing health effective air  
9 pollution and it deals with gas stations specifically, among  
10 other things.

11 MR. GROSSMAN: Right. I'm not, I'm not -- when  
12 you have a hard copy of something, I'm not saying just  
13 because it arose initially from the Internet that it can't  
14 be proffered. What I'm saying is that I'm not going to take  
15 a link as a piece of evidence in my record --

16 MR. SILVERMAN: Well --

17 MR. GROSSMAN: -- and then when, if you decide to  
18 offer that in admission during the hearing, I would let the  
19 other side consider it and see whether they have any  
20 objections to it.

21 MR. SILVERMAN: Well, I also have a receipt for  
22 the copying place for \$83.51. And I've been copying things  
23 myself, but it was a great expense. I wonder -- I  
24 appreciate what you said about preserving the record and I  
25 think that's -- I'm very enlightened by your comment. But I

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1 wonder if we can preserve the record by submitting, playing  
2 and then submitting disks or flash drives with Internet  
3 sources, whether that -- I don't see it would be unfair to  
4 the parties and it would be available to appellate --  
5 MR. GROSSMAN: Really it is, the best evidence is  
6 something that people can look at, when they look at this  
7 record, that they can go through the record. If the Board  
8 of Appeals or later a court wants to review this record,  
9 it's very hard with a series of flash drive submissions. So  
10 it is not the best and, you know, I'll wait to see what you  
11 submit, but a hard copy of something would be the best way  
12 to go and then we can decide. The other side can review it,  
13 decide if they have any objections and then we can go on  
14 from there.  
15 MS. CORDRY: So just to clarify myself as well,  
16 you're basically saying it's perfectly appropriate to print  
17 something out from the Internet and we should even include  
18 the cite where we get it and submit that as an exhibit,  
19 that's --  
20 MR. GROSSMAN: You can, right, that would solve my  
21 problem about whether or not it's reviewable by a subsequent  
22 reviewer.  
23 MS. CORDRY: Right. You're just saying don't say  
24 something like here's a list of Internet sites you can go  
25 look at?

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1 MR. GROSSMAN: Exactly.  
2 MS. CORDRY: Understood.  
3 MR. GROSSMAN: But on the other hand, I'm not  
4 saying that anything you submit from the Internet is going  
5 to be admissible. It's going to be subject to objection by  
6 the other side. It may be unreliable, it may be hearsay  
7 without the witness available for cross-examination. There  
8 are a whole host of reasons perhaps that it might not be  
9 admissible. But I'm saying that particular reason will be  
10 solved, that is reviewability will be solved by having a  
11 hard copy here.  
12 MS. CORDRY: Understood.  
13 MR. GROSSMAN: Dr. Adelman?  
14 MR. ADELMAN: Would you consider a DVD a hard  
15 copy? I can, I can record my entire, well, I can record the  
16 entire SEG website on one DVD, preserving it for as long as  
17 DVD's are used.  
18 MR. GROSSMAN: Yes, well, once again it has the  
19 same problem. I'm not saying you can't submit a DVD,  
20 although I would say about a year ago my, the computers in  
21 the office didn't read the DVD's, so but now we actually  
22 have one that will. But it's not the best thing for  
23 reviewability, so I would encourage everybody to have to the  
24 extent that we can have something that's reviewable and if  
25 you want to make sure that the, any reviewing parties

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1 consider your evidence, it would be a good idea to have it  
2 in a form that they can see. That's really, you know, that  
3 would be the best way to do it. Okay. Any comments from  
4 the applicant? Okay.  
5 All right. Moving along to the next issue. And I  
6 think this is, I'm getting close to the end, believe it or  
7 not. I think I've covered most of the things. I want to  
8 say a few words about applicant's list of objections,  
9 Exhibit 120, to the opposition's exhibits. I note that  
10 Kensington Heights Civic Association responded to those  
11 objections in Exhibit 127(a). It seems to me that most of  
12 what Costco's counsel has characterized in Exhibit 120 is,  
13 as hearsay and inadmissible lay opinion is actually a  
14 combination of factual assertions, analysis and opinions.  
15 They are, in effect, advance summaries of the anticipated  
16 live testimony of witnesses who are available for cross-  
17 examination here and will be available for cross-  
18 examination. So I'm asking, is the applicant asking me to  
19 exclude them as hearsay just because the opposition supplied  
20 them in advance so that the applicant would not be  
21 surprised?  
22 MR. GOECKE: No.  
23 MR. GROSSMAN: If not, then what are your actual  
24 objections to the specific portions of these documents? And  
25 I'm not speaking about statements within these submissions

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1 quoted from other people who are not available for cross-  
2 examination. As counsel knows, we routinely receive  
3 submissions in OZAH and land use cases and admit them for  
4 what they are and in considering them we weight them  
5 according to the nature of the statement source, lay or  
6 expert, the reliability of the submission, the probative  
7 value of the evidence.  
8 We also consider whether the declarant is  
9 available for cross-examination, whether their statement was  
10 available before the hearing to allow the opposing party  
11 time to review it, to check factual assertions and ready a  
12 reply and prepare cross-examination and whether portions of  
13 the document must be excluded as hearsay from an unavailable  
14 declarant. So what I'm suggesting to you, Mr. Goecke, is  
15 you consider that listing Exhibit 120 and if you truly have  
16 objections, you know, what they are, if it's just objections  
17 to the fact that they submitted advance statements of what  
18 these members of the community intend to testify to, I'm  
19 going to deny those objections. Okay.  
20 MR. GOECKE: May I comment on that, Mr. Grossman?  
21 MR. GROSSMAN: Absolutely.  
22 MR. GOECKE: So a couple of points, and I think  
23 there's a couple of categories of objections and I think you  
24 have correctly characterized the majority of the objections  
25 as has the opposition. I would like to point out, however,

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1 that they have not addressed some of the other more classic  
2 hearsay objections we have to documents created by third  
3 parties who are not going to testify. And so, you know, I  
4 would ask that those documents be excluded at the  
5 appropriate time.  
6 MR. GROSSMAN: What I asked you to do is to submit  
7 a revised list just listing what you truly object to based  
8 on your reconsideration and my analysis of what, of what is  
9 truly objectionable. It's up to you. You can object to  
10 whatever you want to. That's your privilege. But if you  
11 truly do not object to many of the things that you suggested  
12 there, then submit a reviewed list. If you tell me on June  
13 4 that, yes, you want to stick with all your objections, you  
14 have a right to object and I'll rule on them.  
15 MS. ROSENFELD: And, Mr. Grossman, from my point-  
16 of-view, what we received last time was a list of documents  
17 and evidence that had been objected to, but no legal  
18 authority in support of the basis for those objections and  
19 it would be very helpful to me to understand what legal  
20 authority they rely on --  
21 MR. GROSSMAN: Yes.  
22 MS. ROSENFELD: -- along with their list.  
23 MR. GROSSMAN: It would be nice, but I'm not going  
24 to tell him that he has to have legal authority. He can  
25 object. He has a right to object to anything.

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1 MS. ROSENFELD: Okay.  
2 MR. GROSSMAN: And so if he, you know, obviously  
3 it might strengthen his objection if he supplied some  
4 authority. That's up to him. It's not my privilege to tell  
5 him he can't object to something just because he doesn't say  
6 it, legal authority.  
7 MS. ROSENFELD: That's fair.  
8 MR. SILVERMAN: Mr. Grossman, am I understanding  
9 that your evidentiary rulings and admissibility rulings will  
10 be based on the credibility of the source and the fairness  
11 to the other side, that those are the key things that you're  
12 looking at?  
13 MR. GROSSMAN: I wouldn't say that. They're the  
14 things that I mentioned already and I don't want to review  
15 the list again. Those are certainly fairness and  
16 credibility, reliability, availability for cross-examination  
17 and so on are certainly among the, you know, most important  
18 items. But we don't necessarily throw out or refuse  
19 evidence that has questionable value or limited value.  
20 Sometimes since we don't have a jury here that we have to  
21 instruct, sometimes we give it, we admit it and give it the  
22 weight that it deserves in the analysis. It depends on the  
23 nature of it. Some items are so clearly prejudicial that we  
24 exclude them, but others we just address it as a matter of  
25 the weight to be given to it.

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1 Okay. Last preliminary item I have is I  
2 understand from Ms. Harris's e-mail that we are planning on  
3 Tim Hurlocker, Wayne Tucker, Wes Guckert, Mark Willard and  
4 Joe Cronin as planned witnesses today if we ever get to it.  
5 MS. HARRIS: There's been a slight revision in  
6 that --  
7 MR. GROSSMAN: Okay.  
8 MS. HARRIS: -- in that Mr. Tucker is not  
9 available today.  
10 MR. GROSSMAN: Okay.  
11 MS. HARRIS: And, obviously, that was dependent on  
12 how long the testimony of each --  
13 MR. GROSSMAN: Right.  
14 MS. HARRIS: -- individual witness takes. We will  
15 be starting with Mr. Hurlocker.  
16 MR. GROSSMAN: Okay. The lucky first witness?  
17 MS. HARRIS: Yes.  
18 MR. GROSSMAN: All right. Any other preliminary  
19 matters that you have, Ms. Harris?  
20 MS. HARRIS: I had a very minor one and that is I  
21 have the pleasure of a Planning Board hearing this evening  
22 that starts at 6:30.  
23 MR. GROSSMAN: Okay.  
24 MS. HARRIS: So I just wanted to make you aware of  
25 that. If the proceedings this evening can end by 5:30, that

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1 would be helpful.  
2 MR. GROSSMAN: Okay. Certainly. All right.  
3 MS. ROSENFELD: Mr. Grossman, could we have a 5-  
4 minute break before we start with the first witness?  
5 MR. GROSSMAN: Certainly.  
6 MS. ROSENFELD: Thank you.  
7 MR. GROSSMAN: Anything else? Any other  
8 preliminary matters?  
9 MS. ADELMAN: You, I think you covered everything  
10 that's on my list of preliminary matters.  
11 MR. GROSSMAN: Anybody else?  
12 MR. ADELMAN: Procedural, procedural questions, are  
13 those put forward now or just before the particular item is  
14 called and a witness is called?  
15 MR. GROSSMAN: Well, I would leave that within  
16 your discretion. If you feel that a procedural matter needs  
17 to be raised now, you can. If I think it's something that  
18 really ought to be handled later, I will deal with it later.  
19 What's your procedural item?  
20 MR. ADELMAN: Fine.  
21 MR. GROSSMAN: Do you have a procedural item you  
22 want to raise?  
23 MR. ADELMAN: I wanted to raise it at the  
24 appropriate point. I'm sorry. I don't need to raise it  
25 now.

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1 MR. GROSSMAN: Well, certainly raise it at  
2 whatever the appropriate point is. I'm not sure what that  
3 is because I don't know what you're thinking.  
4 MR. ADELMAN: And you will decide if it's  
5 appropriate or not.  
6 MR. GROSSMAN: Okay. All right then, sir, thank  
7 you. We'll recess now until five after 11:00.  
8 MS. ROSENFELD: Thank you.  
9 (Whereupon, at 11:00 a.m., a brief recess was  
10 taken.)  
11 MR. GROSSMAN: Back on the record again, and are  
12 you ready with your first witness?  
13 MS. HARRIS: Yes, we are.  
14 MR. GROSSMAN: All right.  
15 MS. HARRIS: We're calling Mr. Tim Hurlocker.  
16 And, Mr. Grossman, did you suggest that the witness sit at  
17 the dais or where would you --  
18 MR. GROSSMAN: Yes. Yes.  
19 MS. HARRIS: Okay.  
20 MR. GROSSMAN: I think that's best given our space  
21 limitations. Mr. Hurlocker, would you raise your right hand  
22 please?  
23 (Witness sworn.)  
24 MR. GROSSMAN: All right. You may proceed, Ms.  
25 Harris.

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1 MS. HARRIS: Thank you.  
2 DIRECT EXAMINATION  
3 BY MS. HARRIS:  
4 Q Mr. Hurlocker, this morning I'd like to talk to  
5 you about the operations and safety of the Costco gas  
6 station, but first I'd like you to introduce yourself to Mr.  
7 Grossman and tell him a little bit about your background  
8 please.  
9 A My name is Tim Hurlocker. I've worked for Costco  
10 for 23 years, 16 years in the gasoline division as director  
11 of operations. Graduated from the University of Washington  
12 with an undergraduate business degree.  
13 MR. GROSSMAN: All right.  
14 BY MS. HARRIS:  
15 Q And has your role --  
16 MR. GROSSMAN: That's the University of Washington  
17 in St. Louis or --  
18 THE WITNESS: The state of Washington.  
19 MR. GROSSMAN: The state of Washington?  
20 THE WITNESS: Yes.  
21 MR. GROSSMAN: Okay.  
22 BY MS. HARRIS:  
23 Q Has your role over the past two or three years  
24 changed at Costco?  
25 A It has.

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1 Q And can you describe what you previously did and  
2 what you're doing now?  
3 A I was the inaugural director of operations when  
4 the gasoline division was first ramping up in 1997. Over  
5 the past two and a half years, I've changed. My focus is a  
6 little bit narrower and deeper, fuel quality and compliance  
7 and particular with our detergent additive rollout program.  
8 Q And how many Costco gas stations have you been  
9 involved in establishing?  
10 A All but the first five.  
11 Q And so all being -- how many are there?  
12 A Forty in Canada and 368 in the United States.  
13 MR. GROSSMAN: I'm sorry, how many in Canada did  
14 you say?  
15 THE WITNESS: Forty.  
16 MR. GROSSMAN: And 360 in the United States?  
17 THE WITNESS: 368.  
18 MR. GROSSMAN: Okay.  
19 BY MS. HARRIS:  
20 Q And you've been involved in all but four of those?  
21 A There were five in existence when I was hired  
22 originally. We were coming out of our pilot program.  
23 Q And how many zoning hearings have you participated  
24 in with respect to establishing these gas stations?  
25 A This is the first one.

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1 Q Maybe not. Okay.  
2 MR. GROSSMAN: Don't make promises you can't keep.  
3 BY MS. HARRIS:  
4 Q So I take it you're familiar with Costco's gas  
5 station operations?  
6 A Yes.  
7 Q And what is the most important aspect that drives  
8 the zoning and operations of a Costco gas station?  
9 A First, safety, environmental safety and health and  
10 human safety. And member service in general in providing  
11 that value, the first step of which is to make sure our  
12 members are safe.  
13 Q I want to start with the physical components and  
14 perhaps the best way to start is by working underground and  
15 then above ground. So starting with underground, can you  
16 please describe the various equipment and discussing the  
17 terms of the safety objectives?  
18 A Certainly. The entire purpose underground is to  
19 preserve the safety of people above ground which is why  
20 petroleum handling systems are typically buried. Everything  
21 underground is double-walled and the space between the  
22 double walls continuously monitored so that we know the  
23 system, it has lost double containment or secondary  
24 containment, as it's called, prior to any product actually  
25 reaching the environment and the station actually shuts down

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1 if it senses that we've lost double containment. And so  
2 there's many reasons why, obvious reasons for everyone to  
3 understand as people, as well as a business, to make sure  
4 that there are no leaks underground. That's, the whole  
5 system is designed for that purpose. So should I go into  
6 the specific pieces of equipment?  
7 Q That would be helpful.  
8 A At a Costco, I'll speak specific to Costco, we  
9 have three underground storage tanks, typically 30,000  
10 gallons each. They're connected to dispensers, above  
11 ground, of course, through underground piping. All the  
12 piping is secondary contained, also meaning double-walled.  
13 And that piping goes up to the dispensers and that's what  
14 you typically see at the gas station.  
15 Also every tank is vented, meaning it's got a  
16 separate pipe going off to maintain vapor pressure within a  
17 tolerable range so you don't get the collapsing coke bottle  
18 dynamic of too much vacuum or, of course, too much pressure  
19 and creating leaks that way. So the pressure in the tank is  
20 regulated.  
21 In addition, in Maryland, not everywhere in the  
22 United States, but in Maryland everywhere we have stage two  
23 vapor recovery which entails an entirely separately set of  
24 pipes returning to the tanks to return vapor that's  
25 displaced from the car's tank as it's filled. That's routed

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1 back to the underground storage tank so it's not released to  
2 atmosphere. Is that brief enough?  
3 Q Are there, well, are there any monitoring devices  
4 underground?  
5 A Yes, we have a very extensive sensor system that's  
6 controlled with an above-ground control box. There's a  
7 liquid sensor in every underground containment area which is  
8 called a sump, S-U-M-P, sump, and that's the underground  
9 enclosure that contains equipment, fittings, piping,  
10 penetrations and whatnot so you can access it and test it or  
11 whatever. And every one of those areas has a liquid sensor  
12 that's electronically monitored continuously. In addition,  
13 we have a pressurized line leak detector which monitors the  
14 pressure of the liquid product in the line and that also  
15 would sound an alarm if there was a sudden loss of pressure  
16 unrelated to normal operations. That's called line leak  
17 detection, and a variety of other sensors, particularly  
18 monitoring the secondary containment of the tanks.  
19 Q And are there underground, are there any apparatus  
20 for, to address underground fires that are provided as well?  
21 A Yes. Voluntarily, Costco puts in what we call  
22 snuffers. They're chemical fire extinguishers with an  
23 automatic sprinkler head kind of fitting on them. And so if  
24 something were to explode underground in one of these  
25 containment areas, it would automatically trigger the

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1 chemical release and automatically put it out underground.  
2 Q And is that a required piece of equipment?  
3 A No, we do that voluntarily as an added layer of  
4 safety.  
5 Q And then are there any observation wells that are  
6 provided as well?  
7 A Yes, we typically put in two observation wells in  
8 our tank pad, not to monitor ground water for leaks or  
9 anything, but it allows us to easily test ground water  
10 levels. For example, if we were going to do a repair or  
11 something underground, we could see what the ground level  
12 was easily. We do that voluntarily.  
13 Q Now I'm going to ask you since you're the expert,  
14 is there anything else underground that you need to identify  
15 or can we move above ground?  
16 A Well, I could sling a lot of detail at you. The  
17 question is going to be how much.  
18 Q Well, one last question I have and that is how are  
19 the -- in what are the tanks actually installed?  
20 A Well, tanks are typically buried in a large hole  
21 that's shrouded with pea gravel. And pea gravel is self-  
22 leveling, self-compacting and it provides a flexible setting  
23 for the tanks in the case of minor earth movement.  
24 Q Thank you. Now moving above grade, can you please  
25 identify what above-grade safety measures Costco employs?

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1 A Well, by far the best safety measure we have is  
2 the eyes, ears and good judgment of our trained gas station  
3 attendants. Above ground is subject to human variables and  
4 so having somebody attentive and knowledgeable above ground  
5 manning a station 100 percent of the time is by far our  
6 foremost safety feature because that covers the  
7 contingencies that can't be foreseen.  
8 There are a great many other features, most of  
9 them typical to other gas stations as well as Costco such as  
10 impact valves that if the dispenser was torn physically  
11 right off the island, it would close the product lines  
12 automatically. We have fire extinguishers, of course,  
13 emergency shut-off buttons, most of the things that are  
14 required at all gas stations and, of course, we do that  
15 also.  
16 I could go quite on and on. The sensors and  
17 everything that, they protect the people above ground, of  
18 course, because they're also underneath each dispenser, the  
19 fire extinguishers, I mean, underneath the dispensers. So  
20 if gas was to suddenly pour into there and somehow be  
21 ignited, it would automatically be extinguished.  
22 Q Are there emergency shutoff buttons in this area?  
23 A Yes. There's -- and, again, those are part of the  
24 code, so we supply them. It's just a big, red button called  
25 an emergency shutoff. And when that is pushed, it

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1 automatically cuts power to the turbines underground, it  
2 would push the gasoline to the dispensers and to the  
3 dispensers themselves, but not to the monitoring system.  
4 That would remain operational throughout.  
5 Q And how many such buttons are there on the site?  
6 A Typically two, very often three. Usually that's  
7 subject to fire, the fire inspector when they review the  
8 plans. They tell us what they're comfortable with.  
9 Q And so if -- can you explain what happens if one  
10 of those buttons is pushed for whatever reason, what exactly  
11 happens?  
12 A It shuts off the underground turbines. Pump is a  
13 misnomer. They're actually dispensers. The gas is pushed  
14 up to the dispensers by underground turbines and those  
15 turbines is, that's the main power supply of the gas station  
16 pushing that. So those are immediately shut off, all of  
17 them, and then the dispensers are also shut off because they  
18 could be considered possible sources of ignition in a  
19 catastrophic failure situation. So the button automatically  
20 ends that, but not the ability to monitor what's going on  
21 underground. That stays powered up.  
22 Q And who is the, who is doing the monitoring?  
23 A Well, the monitoring is done by a system called a  
24 Veeder-Root system, very common in the industry. It's  
25 electronic monitoring. So that's how it's physically done.

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1 The alarms are audible light alarms and sound alarms that  
2 are above ground, but also we have that monitored by an  
3 outside service, 24-7, and our attendants are all trained in  
4 how to respond to the various alarms.  
5 Q And if the alarm is pushed, how does it get  
6 restarted? How does the station get restarted?  
7 A There's a procedure where the button is pulled  
8 back out. If the problem has been resolved, the station  
9 will come back up. But if the problem remains, then we  
10 don't restart the station, of course.  
11 Q And who has the authority to decide whether the  
12 problem has been resolved and the station can start back up?  
13 A It depends on the type of shutdown. Are you  
14 talking specifically about the emergency shutoff button or  
15 the Veeder-Root system itself is programmed to shut station  
16 down automatically if there's an underground. So you --  
17 Q Can you explain those systems? I think that would  
18 be helpful.  
19 A Yes. Underground, the Veeder-Root system  
20 automatically, if it detects liquid accumulating, liquid  
21 meaning gas or water, it will shut the product or the whole,  
22 entire station down depending on where the sensor is. Also,  
23 if we lose double containment of the underground storage  
24 tanks, the product is immediately shut down and that's  
25 automatic programmed in the system. Before that system can

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1 be restarted, they have to have a technician come out, solve  
2 the problem, identify and solve the problem and then if  
3 there's any judgment case, they actually call in and  
4 somebody from our corporate office gets involved and helps  
5 evaluate the situation and those situations, of course, are  
6 quite rare, but that's what the purpose of the system is and  
7 most often that's water intrusion and so basically a non-  
8 hazardous situation, but something that we have to address.  
9 Q Once the monitor -- how long does it take from the  
10 time there's some type of leak, whether it's water or  
11 something else, for the monitor to pick it up and trigger it  
12 and shut down the station?  
13 A That would vary with the nature of the problem,  
14 but typically minutes, we're talking about either  
15 immediately in the case of a pressure loss or a liquid  
16 accumulating as soon as it reaches like one inch in the  
17 sump, typically that would shut it down.  
18 Q Now that's if the, if I understand, that's how, if  
19 the underground water senses and shuts off, what if  
20 something occurs above-grade and the attendant hits that red  
21 button, how does the station get restarted in that instance?  
22 A Well, they have to pull the button back out and,  
23 first, before they pull the button back out, of course, they  
24 address the issue, whatever has caused them. The red button  
25 is a judgment call, in essence, in that if the attendant

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1 sees that, hey, there's something bigger than I can handle  
2 immediately and there's a threat to health and safety, the  
3 button shuts everything down, ends all transactions. By  
4 shutting off the power, everybody fueling at that moment is  
5 now not fueling and so everyone's head comes up and the  
6 attendant has a procedure as to how they react to that.  
7 And, of course, they call for assistance inside as needed.  
8 They could call 9-1-1, whatever they need to do, but the  
9 system is no longer running at that point. So --  
10 Q Does an attendant have the authority to then  
11 decide things are acceptable now and start the station back  
12 up?  
13 A That would vary. If it was inadvertently pushed,  
14 for example, yes. Generally, though, no, they go, they get  
15 their warehouse management involved and our help desk. We  
16 have a whole service help desk where they call and involve  
17 other people to exercise their judgment on that.  
18 Q And you mentioned that the attendant may get help  
19 from people inside the warehouse? Who are those people?  
20 A Yes. Well, each warehouse is going to have  
21 usually 150 to 200 employees in the building, including the  
22 warehouse manager, assistant managers and staff level  
23 managers all with different levels of authority. Most of  
24 those people are cross-trained, as we train all of our  
25 people, in gasoline operations. So they have an enormous

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1 number of people out there with management skill to come out  
2 and assist and apply their judgment. Again, above ground,  
3 it's that local judgment that we feel is the key, the key  
4 element of responding accurately and safely to any issue  
5 that might arise that we can't foresee.  
6 Q And you mentioned various pieces of equipment  
7 monitoring the emergency buttons and such. How often are  
8 those tested or inspected to make sure that they are, in  
9 fact, functioning at 100 percent?  
10 A Well, every year we go through and turn every  
11 sensor, test every single one of them to make sure that the  
12 program works and that it, indeed, shuts down, sounds the  
13 alarm and that's called a monitor certification and that's  
14 done annually. It requires -- it has to be done at night,  
15 obviously, or the station has to be shut down to be doing  
16 that. And then we have daily inspections. We have --  
17 there's a lot of detail, all the inspections and testing.  
18 Some of it is required by regulation. Much of it is  
19 voluntary by Costco.  
20 Q So there's daily inspections that occur of some of  
21 the equipment?  
22 A Yes, all the hoses, hanging hardware is the hose  
23 nozzle breakaway assembly, that's all inspected every single  
24 day with a checklist and we have procedures all around now,  
25 so making sure that the station is operable. There's also

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1 data security inspections and checklists and whatnot.  
2 Q Are those things required by code or is that what  
3 Costco enforces at each of its stations?  
4 A It varies by jurisdiction. Stage two typically  
5 has requirements that come with it. Those vary widely by  
6 state. We take the toughest typically and apply it  
7 everywhere and have just made that our operating procedure.  
8 So we have those inspections everywhere regardless of  
9 whether it's required or not.  
10 Q Moving on to the physical layout of the station,  
11 can you explain the decisions that have been made to place  
12 the physical components where they are to maximize safety?  
13 A Yes. We have a master design that is part of my  
14 responsibility to make any changes as needed, but I'll use  
15 this as an example. This is very consistent with --  
16 Q And I would note this is Exhibit 119(c).  
17 MR. GROSSMAN: Okay. And that being page 3 of the  
18 special exception site plan?  
19 MS. HARRIS: Correct.  
20 THE WITNESS: This is a particular plan sketched  
21 out for this particular site, but it follows quite closely  
22 our typical design. The key feature is to try to have the  
23 delivery truck not interfere with the cars coming in and out  
24 of the station, trying to keep it separate, in this case  
25 over to the left-hand side. The trucks drop-off the right-

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1 hand side. We try to manage that as best we can. And then  
2 the spacing of the lanes, the amount of room to bring cars  
3 in the data hut, how close it is in case the attendants in  
4 there who have a big window in it, they can see out if  
5 they're entering or receiving or something. Those are all  
6 parts of our design.  
7 BY MS. HARRIS:  
8 Q And this, the proposed Wheaton station will have a  
9 single entrance at the southern portion of the special  
10 exception area. Do you have other sites that have a similar  
11 entrance similar to this?  
12 A Yes. Yes, it's quite common.  
13 Q And are there particular benefits to that single  
14 entrance layout?  
15 A Well, because our stations are designed with one-  
16 way traffic flow, which makes it easy to get in and out and  
17 there's no jockeying for position or trying to remember what  
18 side of your car the fill port is, we have hoses that can  
19 fuel the car from any position. So it's very orderly in  
20 that sense. And, therefore, we try, we pay some attention  
21 to the entrance to make sure that it's easy to come in, find  
22 the most opportune fueling position and proceed to it safely  
23 so we have striping and different things to help with that.  
24 And so the design of the entrance is part of that.  
25 Q And you're familiar that the proposed station as

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1 currently, as shown on Exhibit 119(c) on both the east and  
2 west side does not have curbing along the entire side,  
3 correct?  
4 A Yes, on the tank side there's the gap for the  
5 truck hoses to go from the truck, which is outside the  
6 queuing area to the fill ports and so that's very typical  
7 and we control that typically with a chain and some bollards  
8 which are concrete-filled posts on either side. So it's not  
9 an entrance, but it still allows access to the driver and a  
10 safe path for the driver to hook up his equipment and for  
11 the hoses to rest and the hoses then and the connection,  
12 they're protected by the curbing and by the truck itself.  
13 MR. GROSSMAN: Okay. Is the bollard -- it can be  
14 retracted so that the -- or is it just they're permanent?  
15 THE WITNESS: Well, on the tank side, you know,  
16 typically it's permanent on either side of the gap in the  
17 curbing and the chain runs between so that we can not have  
18 cars inadvertently go in that direction, yet still have  
19 access for the driver during the delivery.  
20 MR. GROSSMAN: So, but -- so the chain is removed  
21 during the delivery, is that what you're saying?  
22 THE WITNESS: Yes. Yes. It's just a hookable  
23 thing.  
24 MR. GROSSMAN: Okay.  
25 BY MS. HARRIS:

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1 Q And then what's the situation on the east side of  
2 the special exception area?  
3 A Well, I saw the plan for the first time yesterday,  
4 so I'm not positive. Typically I review the plans after the  
5 approval is received, so -- and I approve all the plans.  
6 And so I haven't investigated why that gap is there, but it  
7 would be easy to control in the same way with a chain or  
8 with a, like you say, a retractable bollard. Those are all  
9 options that we would have.  
10 Q And why would you, upon such a review, why would  
11 you recommend that?  
12 A Well, we don't want cars to come in sideways  
13 because one of the advantages of our one-way traffic  
14 approach is that orderly queuing and not juggling it trying  
15 to have to circle around the pumps and compete with other  
16 cars or whatever to get to a certain position and so that  
17 one-way traffic is not quite unique any more. We have been  
18 copied by a few competitors in that, but that was a unique  
19 thing to Costco.  
20 Q Thank you. And you mentioned earlier when we were  
21 talking about above-grade safety, that the first, the first,  
22 the most important thing are the attendants and I think that  
23 Mr. Brand testified similarly. How does Costco prepare its  
24 attendants for this job?  
25 A Before any Costco employee is going to be allowed

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1 to work at a gas station, they pass, they take a course, a  
2 multimedia course on the company's computers and they go  
3 through and at the end of that they have a test, a 100  
4 question test that they have to pass prior to being allowed  
5 to work at the station at all. So that's the main deal,  
6 pictures and video and spill clean-up, how to handle  
7 problems people have with their payment cards, any number of  
8 things, but certainly all the safety is a huge part of that.  
9 And then in addition to that, we have a state  
10 regulation that we -- it's kind of coming out right now,  
11 it's called underground storage tank certification. It's a  
12 very low bar compared to what we already do, but --  
13 MR. GROSSMAN: You say a state, there's a Maryland  
14 state regulation?  
15 THE WITNESS: It's one of the Federal Government  
16 and states are implementing it on an uneven pace, so we  
17 basically already rolled that out to all our locations and  
18 just assumed that that's what's coming and so we had that.  
19 But it's very brief by comparison to what we already trained  
20 them on and that's called the underground storage tank  
21 operators. In addition, every gas station that Costco  
22 operates has a gas station supervisor who actually works at  
23 the station, takes one of the shifts and that person is  
24 trained far more extensively and becomes an A/B operator  
25 under the state regs where every attendant is also certified

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1 as a C operator under state regs. And, again, those are  
2 borne of Federal regulation, but the states implement it.  
3 Q When you said that the test for the attendants is  
4 a, I believe you said a C operator --  
5 A Uh-huh.  
6 Q -- and that is, quote, brief, can you explain that  
7 and compare that to, again, to Costco's certification  
8 process?  
9 A Yes. Our certification process goes into all  
10 manner of safety and above-ground, below-ground, deliveries,  
11 every manner of things. A Class C operator is much lower in  
12 scope and is designed more for the conventional gas station  
13 which is a C store clerk and unattended pumps and that's not  
14 our model, of course. And so it's basically what's the big  
15 red button for, how to shut the station down, who to call in  
16 an emergency, where is the fire extinguisher and that form  
17 is widely available on the Internet, what Maryland  
18 specifically, their Class C checklist is very brief by  
19 comparison to what we do.  
20 Q And you referenced a C store, I believe? Is  
21 that --  
22 A Yes.  
23 Q And can you explain what that is?  
24 A A convenience store, the opposite of a Costco  
25 warehouse.

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1 Q And --  
2 A So --  
3 MR. GROSSMAN: I'm afraid to touch that one.  
4 THE WITNESS: Well, a small store, obviously, with  
5 gas pumps out front and typically the employee is inside the  
6 store minding the cash register and not active on the fuel  
7 islands. So a big part of the safety of our design is by  
8 having that trained person who actually works on the fuel  
9 islands as we don't have a cash register there. We -- it's  
10 all card only payment. It's members only. And so that  
11 attendant is physically out on the islands helping disabled,  
12 elderly, making sure that cars engines are shut off, there's  
13 no smoking, portable containers are being filled properly  
14 and that's where a lot of the problems arise in gas station  
15 operations is because it's relatively unattended and some of  
16 those regulations that are long-standing, but just aren't  
17 enforced and we take great exception to that.  
18 Q I think earlier you mentioned the fact that you  
19 have a kiosk and at one point or another the attendant could  
20 be in the kiosk?  
21 A Yes, very briefly.  
22 Q Okay.  
23 A One of the first things I wrote in the manual is,  
24 you know, get out of the hut. Don't stay in the hut. Be  
25 out on the island. And, however, we put a big window in

1 that hut so that when they're in there keying or receiving,  
2 and they have a computer in the hut which has all the  
3 training materials and everything available as well, but  
4 those are also available in the building. So they'll go in  
5 there, they'll key the receivings so our re-ordering is as  
6 effective as possible. We know immediately where, you know,  
7 whether they've taken a delivery because that computer entry  
8 has been made. That's just a matter of a couple minutes.

9 Q And once an attendant passes the certification  
10 test that you mentioned, what are the next steps in terms of  
11 their role as a Costco employee?

12 A Well, they would then go out and work with the gas  
13 station supervisor or another experienced attendant or  
14 someone from management to, they would do like a double-duty  
15 or --

16 Q Okay.

17 A -- a buddy system kind of thing until, until they  
18 got the ropes. There's a lot of intangibles, of course, day  
19 in and day out, most of what they do is help people. And so  
20 it's a member service how to be helpful, how to rotate  
21 amongst the islands, also how to keep the pumps clean and  
22 everything, you know, to maintain the Costco standards. So  
23 they get the technical background and all the testing and  
24 pass that test and then they come out and they work with  
25 someone and then they're capable of running the gas station

1 on their own.

2 Q Thank you. And how long is the certification good  
3 for?

4 A One year. We have them recertify every year and  
5 the 100 question test has questions that rotate. So we have  
6 much more questions for the test than we, than 100, and they  
7 rotate so that it's always a little different.

8 Q And so in your opinion how do the Costco  
9 attendants make the station safer?

10 A Because they're out on the fuel islands and  
11 they're, and they're knowledgeable. And so when they're out  
12 there, they're actually seeing what happens.

13 Q Okay.

14 A One of the biggest challenges our attendants have  
15 is telling people shut their engines off, which is a long-  
16 time part of fire code. It's on every single dispenser in  
17 the United States by code. Note, you have to shut your  
18 engine off. It's a source of ignition under the fire code  
19 and it's not enforced and so when our attendants come up and  
20 enforce that, a lot of times people go, what, they're not  
21 even aware it's the law. But we train them in how to handle  
22 that diplomatically and enforce it without causing undue  
23 anguish on the part of people who are used to getting away  
24 with it because there's nobody on the island at other gas  
25 stations.

1 Q Thank you. Before I move on to daily operations,  
2 I want to go back for one moment to talk about the equipment  
3 and that is there's been a lot of testimony about the air  
4 permeator that Costco employs. Given your experience with  
5 the company, can you please provide, explain what the  
6 purpose of that piece of equipment is?

7 A Yes. This is technical, but what it does is it  
8 reduces the total emissions from the underground storage  
9 tank system to less than 1 percent of the volumes of what  
10 would otherwise be escaping from the vent. And, again, the  
11 vent is the tall pipe rising out of the ground with a cap on  
12 it that releases pressure if the pressure gets too great; it  
13 draws air in, if the vacuum gets too great, okay? So in  
14 that line we've piped a membrane processor, it's a  
15 differential membrane that allows small air molecules to go  
16 out and the large, hydrocarbon molecules to stay in and they  
17 get routed back to the underground storage tank. And so  
18 that system is always working. It comes on whenever the  
19 pressure gets slightly above zero and will process that  
20 vapor to make sure that we never exceed what's called the  
21 cracking pressure of the pressure vacuum vent on, cap on top  
22 of the vent. And so it's never venting other than pure air  
23 and that's the purpose of it. That's a voluntary piece of  
24 equipment that we put in there to make sure that the station  
25 emits virtually no hydrocarbons whatsoever from the

1 underground storage tank system.

2 Q So when you say virtually no, do you have a sense  
3 of what percentage that is?

4 A Yes. It's over 99 percent effective.

5 Q Okay. And do other stations, are other -- is this  
6 a piece of equipment required by other stations?

7 A By other stations you --

8 Q By other -- not Costco stations, other, just gas  
9 stations in general? Is there a Federal requirement to have  
10 this piece of equipment?

11 A Certainly no Federal requirement. Stage two vapor  
12 recovery is required by air district or pollution area  
13 basically. So that varies widely around the state and is  
14 changing because of the changes in Federal law. So Federal  
15 law says you have to have it if your pollution is beyond a  
16 certain point. So the permeator, though, is -- we just made  
17 a decision as a company long ago that we were going to put  
18 in the best equipment for controlling pollution of any kind  
19 as, because we're members of the community and it's the  
20 right thing to do. So it is a very expensive piece of  
21 equipment, very high tech. But in the long run it's the  
22 right thing to do because we're not pumping vapor into the  
23 atmosphere and it's the best thing that I've found on the  
24 market for doing that.

25 MR. GROSSMAN: Let me just see if I understand

1 something. In answer to the question about the air  
2 permeator, you referred back to stage 2 controls. I take it  
3 the air permeator is not part of stage 2 controls?

4 THE WITNESS: Not directly, but it resolves a  
5 conflict between the regulations mandating vapor recovery in  
6 all cars which is called ORBR and that's, took effect in '98  
7 through 2011. So all cars now collect their own refueling  
8 vapor. And, again, that's when liquid is going into the  
9 tank, it displaces the vapor. Now cars have a carbon  
10 canister that captures that.

11 MR. GROSSMAN: The little rubber thing on the tip  
12 of the --

13 THE WITNESS: Well, no, inside --

14 MR. GROSSMAN: Okay.

15 THE WITNESS: -- the car there's a carbon  
16 canister.

17 MR. GROSSMAN: Oh, okay.

18 THE WITNESS: So the car is capturing it. Stage  
19 two is station-based in the nozzle and it's got that rubber  
20 boot to capture any displaced vapor and it's vacuumed back  
21 to the underground storage tanks.

22 MR. GROSSMAN: Right.

23 THE WITNESS: So the two systems are designed to  
24 do the same thing and that's capture displaced refueling  
25 vapor. The problem is when you, when the car increasingly

1 captures its own vapor, stage two pulls back mostly air  
2 because the car gets it first which is as it should be. The  
3 air goes back into the underground storage tank through the  
4 separate piping I mentioned earlier. When you put air on  
5 top of gasoline, the gasoline liquid wants to evaporate into  
6 the air and it's like 520 to one vapor pressure and so that  
7 increases tank pressure and then vents out the vent stack  
8 unless you process that vapor to keep the pressure down and  
9 that's what the air permeator does. So it resolves the  
10 conflict between the Federal regulation for cars and the  
11 state regulations for stage two vapor recovery. And the  
12 Federal Government has recently ended their requirement for  
13 stage two for that reason, because of that incompatibility  
14 and state by state they're starting to withdraw from stage  
15 two, but Maryland has not yet.

16 MR. GROSSMAN: Well, I guess the essence of my  
17 question was when you refer to stage two requirements,  
18 that's, those stage two requirements do not per se require  
19 the ARID permeator, am I correct?

20 THE WITNESS: No, they do not.

21 MR. GROSSMAN: So the ARID permeator is something  
22 that you and I guess other operators may have, have added so  
23 that you're ensuring that the vapor, that hydrocarbons are  
24 not escaping into the atmosphere from the vent?

25 THE WITNESS: Yes.

1 MR. GROSSMAN: Okay. I, the reason for my, that I  
2 wanted to clarify this is because the question actually,  
3 when counsel was directed to the ARID permeator and your  
4 answer started out with stage two. And I just want to make  
5 sure I know what's required --

6 THE WITNESS: Yes.

7 MR. GROSSMAN: -- and what is your voluntary  
8 addition?

9 THE WITNESS: Right. The permeator is voluntary.  
10 Stage two is required.

11 MR. GROSSMAN: Okay.

12 MS. HARRIS: Thank you. That was helpful.

13 BY MS. HARRIS:

14 Q Moving on to daily operations, what are the hours  
15 of operations for the Costco station?

16 A 6:00 a.m. to 9:30 p.m., Monday through Friday;  
17 typically 6:00 a.m. to 7:00 p.m. Saturday and Sunday. There  
18 are some variation in weekend hours, maybe an hour later or  
19 an hour earlier depending on locality, but very, very common  
20 are the hours I just mentioned.

21 Q Are all Costco gas stations operated in basically  
22 the same manner?

23 A Certainly. We have the same certification testing  
24 and procedure and even a prototypical layout, the idea being  
25 that if it's the best approach to retailing fuel, then it's

1 the best approach everywhere and there's not a lot of  
2 regional variation. There are quite a bit of regional  
3 variation and regulations, but we typically go beyond that  
4 anyway. So it's quite standardized, yes.

5 Q How many attendants are typically on a Costco gas  
6 station site?

7 A Always at least one. We specifically do not allow  
8 the station to operate without a certified, trained  
9 attendant out on the fuel islands. In certain cases, we  
10 will have more than one and, of course, the building has,  
11 you know, a hundred people there, many of them cross-  
12 trained, and so they can rotate another person out if  
13 there's unusual traffic congestion or any other thing at the  
14 judgment of the warehouse management they think additional  
15 help is out there, needs to be out there.

16 Q And what types of situations would render a  
17 decision to bring out another employee?

18 A Usually traffic. In a case, for example, of an  
19 impending hurricane which, of course, in Florida is very  
20 common, New York just had a great example of that, great  
21 example, probably not so great, big example certainly, and  
22 people will typically want to fuel their tanks prior to a  
23 weather event and so suddenly, you know, we get radically  
24 increased demand as people do that. And to manage that  
25 process and to make sure everything is still running

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1 smoothly, they'll very frequently put another person out  
2 there.  
3 Q So in order to maximize your efficiency, in your  
4 opinion there would be no reason to limit the number of  
5 attendants that could be out on the site at any given time?  
6 A No. No. If I understand your question right, no,  
7 because we like the local managers to have some discretion  
8 on how best to manage their local situation rather than try  
9 to have me from my desk in Seattle, Washington, determine  
10 what's the right thing for a storm approaching in Maryland.  
11 That's why we have such high-quality people running our  
12 Costco warehouses and all the staff management and  
13 everything that's under them. That judgment is going to be  
14 a little bit better than ours typically and so we create the  
15 guidelines for staffing and we let them decide what's the  
16 right amount for that day or that situation.  
17 Q I want to move on to fuel deliveries now and  
18 there's been some testimony on --  
19 MR. GROSSMAN: Let me interrupt a second --  
20 MS. HARRIS: Yes.  
21 MR. GROSSMAN: -- on that. So your preference for  
22 any conditions if this were to be granted is that there be  
23 no limit on attendants, but that basically you'd have two,  
24 but there would be no limit on them?  
25 THE WITNESS: Correct. I think that's correct.

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1 Now the Planning Board or the staff has recommended a  
2 condition which was a maximum of one and then the Planning  
3 Board adjusted that to say, I don't have the wording right  
4 in front of me, but I thought it said potentially two, but I  
5 don't see any reason to have a strict limitation.  
6 Obviously, I think it should be left to the best judgment of  
7 the supervisor if they need for some reason to have a third  
8 person out there, though, that would be very rare I believe.  
9 MR. GROSSMAN: Ordinarily such limits are placed  
10 to avoid parking problems or too much traffic problems as  
11 limits are placed on staff. I'm not sure that applies to  
12 this kind of situation, but let me turn to the opposition  
13 for a second while we're talking about that. What are your  
14 thoughts on that, Ms. Rosenfeld?  
15 MS. ROSENFELD: With respect to Kensington  
16 Heights, I don't see why there, you would want or encourage  
17 a limit on the maximum number of attendees if, you know,  
18 public safety and the operations are enhanced by having two  
19 or three or four --  
20 MR. GROSSMAN: Okay.  
21 MS. ROSENFELD: -- in certain circumstances.  
22 MR. GROSSMAN: Does the Stop Costco Gas Coalition  
23 have a statement on that?  
24 MS. ADELMAN: I thought the Planning Board had  
25 said that there would be a minimum of two, of additional

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1 staff available for traffic issues.  
2 MR. GROSSMAN: That's -- I understand you oppose  
3 the special exception, but if one were granted, that would  
4 be an appropriate condition or you would be interested in  
5 having no limit if the, if circumstances warranted it?  
6 What's your --  
7 MS. ADELMAN: Yes.  
8 MR. GROSSMAN: Okay. All right.  
9 MS. HARRIS: And I just pulled out the Planning  
10 Board letter, which reads limiting the number of employees  
11 to two, which that's the condition in the Planning Board  
12 letter, the recommendation which we would suggest that  
13 there's no reason to limit it and I would certainly concur  
14 with your opinion that there's not a parking issue. Again,  
15 this is a different situation.  
16 MR. GROSSMAN: Yes, I don't really -- I don't want  
17 to state that as an opinion at this point. It may not be --  
18 MS. HARRIS: Okay.  
19 MR. GROSSMAN: -- applicable here and then maybe  
20 many other reasons why all parties concerned might prefer no  
21 limit on attendance in these circumstances when it's a very  
22 small portion of the parking and traffic issues that would  
23 relate to Costco's operations.  
24 MS. HARRIS: Thank you.  
25 MR. GROSSMAN: Okay. Thank you.

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1 BY MS. HARRIS:  
2 Q Moving on to fuel deliveries. There's been  
3 several people that have testified regarding the fuel  
4 deliveries and a little bit of discrepancy, so as the expert  
5 can you please identify how many fuel deliveries you would  
6 anticipate at this station?  
7 A There's some variables there. We have a lot of  
8 tank capacity, 90,000 gallons is obviously a bigger than  
9 average amount of capacity underground and that allows us to  
10 schedule our deliveries advantageously, typically trying to  
11 bring one or two in earlier in the morning for traffic. It  
12 gets busy. It allows us to fill the tanks up in the case of  
13 an impending storm or other situation that would require  
14 that. It also allows us to draw them down between  
15 deliveries a little bit more. So there's some flexibility  
16 in our scheduling there.  
17 The amount, though, is obviously going to depend  
18 ultimately on the amount of sales we do and how fast the  
19 fuel is drawn down and so we never want to close the station  
20 for lack of fuel because there's no way to notify our  
21 members that we're closed and they pull up on E, they expect  
22 to get their gas and so it's a huge importance to us  
23 everywhere in the country to stay in fuel. And when you  
24 have a hurricane situation or whatever, that shows how  
25 critically important that can be for the whole community so

1 that they can not only run their cars, but power their  
 2 generators or whatever else they're using gasoline for. So  
 3 it will vary. I don't know how to characterize it. We have  
 4 stations that take no deliveries in a day and maybe take  
 5 several a week lower volume. We have others that take  
 6 several a day every day because they have very high volume.  
 7 Q There was testimony by Mr. Brann that the number  
 8 of deliveries could be between one and six and then there  
 9 was testimony by the traffic engineer which suggested a  
 10 number higher than that. Do you have a sense between the  
 11 one and the six, would it be higher than six a day?  
 12 A Six would be an extreme outlier on the high side.  
 13 Six deliveries is -- that would be very unusual, extremely  
 14 unusual in fact. One would also be somewhat unusual, but  
 15 that would, that would be very possible on a given day. The  
 16 average is probably going to be closer to two to four,  
 17 depending on the sales, and we would anticipate the sales of  
 18 this location to be in that range.  
 19 Q Of two to four you said deliveries a day?  
 20 A Yes, the trucks in Maryland are 8,800 gallons  
 21 each. We take full fuel loads to minimize the number of  
 22 delivery and the time on site and that would be a reasonable  
 23 expectation on a given day.  
 24 Q Thank you. Another one of the Planning Board  
 25 conditions had to do with, well, a recommendation to

1 prohibit deliveries on a Saturday or a Sunday.  
 2 A Uh-huh.  
 3 Q Saturday and Sunday. Can you please give your  
 4 opinion about how this many affect operations?  
 5 A Well, Saturdays are our busiest days of the week.  
 6 On a gallon per hour basis, we're open a little bit less, 2  
 7 1/2 hours less. So Mondays and Fridays are typically our  
 8 highest total gallon days, but Saturdays are close behind.  
 9 And so the other thing about Saturdays and with weather and  
 10 with prices and a million other variables is our volume can  
 11 ebb and flow based on those factors and so we require that  
 12 we take deliveries every day as needed. It certainly could  
 13 work around one day perhaps, but if we had to work around  
 14 two successively, the chances are we would consistently be  
 15 running out of fuel and, therefore, be an unreliable source  
 16 of fuel for our members and that would be disadvantageous.  
 17 Q And if you ran out of, excuse me, if you ran out  
 18 of fuel, for instance, on a Sunday, what would that mean in  
 19 terms of deliveries on Monday?  
 20 A Well, we would have a lot more to get, to catch  
 21 back up. So, yes, to -- we're, we would inconvenience our  
 22 members to not be able to take a delivery as needed to keep  
 23 the station going and then that would also, even if we were  
 24 able to stay in fuel, it would increase the number on the  
 25 successive days or the preceding days to work around that

1 because ultimately every gallon that goes out, a gallon has  
 2 to be brought in if you're averaging out over the long term.  
 3 Q How and when --  
 4 MS. ROSENFELD: I'm sorry, I didn't hear your  
 5 question.  
 6 BY MS. HARRIS:  
 7 Q How and when is the gas delivered?  
 8 A Well, the --  
 9 Q So when I -- the how is, well --  
 10 A By tanker truck. I mean I'm missing the point.  
 11 I --  
 12 Q How, what time during the day do the deliveries  
 13 occur?  
 14 A We are not entirely in control of that.  
 15 Q Okay.  
 16 A It's extremely common all over the country that we  
 17 try to bring in trucks in the morning. They're big trucks  
 18 and we want to minimize their impact on site and also manage  
 19 they're on the road during different traffic times. That  
 20 varies widely with how far our gas station is from the rack  
 21 terminals where the trucks fuel and those are separate  
 22 companies. We don't own the trucks. We don't own the  
 23 terminals. So we contract for that and we say, you know,  
 24 we'd like to -- typically we try to shoot for a 2 hour  
 25 window. Sometimes the suppliers can manage that. In a case

1 of extreme traffic, they might not. There's a variable  
 2 there, but we shoot for minimizing the impact on the traffic  
 3 around the site and on the business.  
 4 Q So when you say in the morning, is it technically  
 5 early in the morning or are you closer to noon desirably for  
 6 that first delivery?  
 7 A Well, the warehouse opens at 10:00 a.m. --  
 8 Q Okay.  
 9 A -- and that's when the parking lot really starts  
 10 to fill up. And so we like to have, if we can bring trucks  
 11 in prior to that time, that's advantageous. It's very, very  
 12 common that we would have a truck in the morning before 7  
 13 o'clock, you know, one or sometimes two to move in there,  
 14 get that out of the way, and charge us up for the day's  
 15 sales.  
 16 Q And how long does it take delivery to offload?  
 17 A That can vary. A full tanker into one tank takes  
 18 typically 30 minutes. If -- it's very common because of our  
 19 layout, we have one tank for premium and two for unleaded  
 20 regular because we have a simple product slate that they  
 21 hook up two sets of hoses and can do a simultaneous drop  
 22 into both unleaded tanks because the trucks are  
 23 compartmentalized and so they can empty separate  
 24 compartments simultaneously, in which case -- and that is  
 25 the most common situation. We sell a lot more unleaded than

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1 premium and so that would be in the 15 to 20 minute range  
2 typically for a divided delivery. And I would estimate  
3 that's going to be in excess of 70 percent of the  
4 deliveries.  
5 MR. GROSSMAN: Well, I'm not sure I understand.  
6 Ordinarily it takes 30 minutes for a truck to unload into  
7 one tank?  
8 THE WITNESS: Yes.  
9 MR. GROSSMAN: Is there additional time, that 15  
10 minutes, is that additional time if you have the divided  
11 delivery, is that what you're saying, or --  
12 THE WITNESS: No, that's the total time. So it  
13 takes roughly half the time to delivery simultaneously into  
14 two tanks through two separate hose assemblies than it would  
15 be to empty the whole truck into a single tank through one  
16 hose.  
17 MR. GROSSMAN: Okay. And in this particular setup  
18 in this case, how long would a delivery take?  
19 THE WITNESS: If it's -- the most common delivery,  
20 which is unleaded regular, and they connected to both  
21 unleaded tanks the same which, again, is in excess of 70  
22 percent of our deliveries, it's typically 15 to 20 minutes.  
23 BY MS. HARRIS:  
24 Q And that is based on, do you have a sense of how  
25 quickly the gas unloads?

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1 A Yes. It's going in through a 3-inch hose and into  
2 a 3-inch drop tube, so that's a very large volume, between  
3 300 and 350 gallons per minute would be a good estimate.  
4 Q And you said the trucks handle, carry a total of  
5 how many gallons?  
6 A In Maryland, 8,800 gallons per truckload.  
7 Q So I'm assuming you get that period of time by  
8 just simply doing the math, dividing the 300, the 880 by the  
9 300?  
10 A Good question. I am -- anyone with a calculator  
11 can test my numbers, but that also comes from years and  
12 years and years of taking deliveries, so we have a pretty  
13 good feel for that.  
14 Q Can you walk us through the step by step  
15 procedures of what happens on the site from the time the gas  
16 truck pulls up to unload?  
17 A Okay. Part of our training that every attendant  
18 gets is how to assist with a fuel delivery and we, our  
19 Veeder-Root system, again, that monitors all of the sensors  
20 underground also monitors the inventory level inside the  
21 tanks. So the first step when the truck arrives is our  
22 attendant prints out what the inventory level is in all  
23 three tanks and gives that to the driver, looks at the bill  
24 of lading or the manifest from the driver, confirms the  
25 product to be dropped from the manifest, unlocks the tanks

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1 for that product and that helps us minimize the chance of a  
2 driver making an error and dropping the wrong product in the  
3 wrong tank. That wouldn't hurt any consumers, but obviously  
4 there's a financial consideration because premium is more  
5 expensive and you can't sell regular as premium. We'd have  
6 to shut the premium down if they made that mistake. And  
7 it's rare, but it has happened.  
8 So they go out and they get that printout and they  
9 meet with the driver, they bring out a fire extinguisher and  
10 then they let the professionally trained driver make the  
11 drop. We don't try to have our attendant be that  
12 professional. Those people go through a great amount of  
13 training. What we make sure is that the driver does what  
14 they're supposed to, for example, shuts their truck off,  
15 stays outside their truck in direct proximity to their  
16 connections and the valves and everything, so, you know,  
17 make sure the driver doesn't walk off and get a hot dog kind  
18 of thing. But it's the driver's responsibility as a  
19 professional handler of gasoline. But we kind of oversee it  
20 and hold them accountable to the rules which we, of course,  
21 do know and train our attendants on.  
22 Q And one last question.  
23 A I'm sorry, the -- then, of course, they also key  
24 the receiving once it's done and then our automated ordering  
25 system goes, you know, acknowledges that we've got the

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1 increase in fuel.  
2 Q Does the large volume of gas sold at a Costco  
3 station affect your design of the station?  
4 A Yes, certainly that's one of the reasons for the  
5 one-way traffic flow.  
6 Q Okay.  
7 A We want to get people in and out orderly and  
8 that's the best way we've found to do that. There, the, you  
9 know, it also determines like the number of dispensers. We  
10 have eight dispensers, each with two hoses, so there's 16  
11 total fueling positions. That's pretty large. We utilize  
12 those dispensers much more than the industry average because  
13 we have that efficient traffic flow through there and we  
14 don't have a lot of driving around and also because we don't  
15 have people leaving their car in front of a dispenser while  
16 they go in and shop in a convenience store.  
17 Q The fact that Costco has such great volume, has  
18 that influenced the level of certification for your  
19 attendants?  
20 A Not by regulation, but the way I thought of it,  
21 and I hate to quote Spiderman, but with great volumes comes  
22 great responsibility. And I truly believe that. I don't  
23 mean to be flippant. We know that we're going to be doing a  
24 brisk business and so we have a responsibility to do it as  
25 safely as possible, that's informed everything we've done

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1 for, everything I've done for 16 years in developing the  
2 program and making sure that we have thousands upon  
3 thousands of Costco employees now that know the program and  
4 are capable of managing a safe gas station. It's a great  
5 responsibility, but we've -- our record shows that we've  
6 done an excellent job at that.

7 Q I want to move now into disaster planning type  
8 issues --

9 A Okay.

10 Q -- which the opponents have raised as potential  
11 issues. Is the training provided to the attendants intended  
12 to handle disasters?

13 A Disaster is a big word. Yes, certainly. We have  
14 a great amount of information. We have a 9-1-1 phone.  
15 That's something I missed earlier. It automatically calls  
16 the fire department. They all are equipped with a walkie  
17 talkie and we have, like I said, a hundred people inside the  
18 warehouse ready to assist as needed, somebody, you know,  
19 management and elsewhere. So they quickly can call out for  
20 great additional support and that's probably the biggest  
21 single thing is a disaster by its very definition is  
22 unpredictable, unusual, and so when something happens, we,  
23 the first instruction is to get help and preserve member  
24 safety, get people away if need be, shut the station off  
25 quickly and, again, that's really enhanced by the fact that

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1 that trained attendant is out on the fuel islands and not  
2 selling something across a counter and maybe missing those  
3 critical seconds when something is unfolding.

4 Q I want to go through a number of potential types  
5 of accidents and I'll identify them and then if you can  
6 explain how the Costco operations would address each of  
7 these potential types of incidences. And we'll start with  
8 fire. What would happen if there was a fire at the station?

9 A First, you hit the big, red button and we instruct  
10 our attendants to loudly warn everybody at the station and  
11 you've got to make a deal about it, shout, you know, don't be  
12 embarrassed, shout. And hitting the red button, of course,  
13 shuts every fueling transaction off and so everyone's head  
14 comes up, what happened and that helps make everybody aware  
15 also. So very quickly it's helping human safety, what, you  
16 know, what can be done to stop further advance of any  
17 potential problem like a fire.

18 The vast majority of fires, in fact, virtually all  
19 I would go so far to say, are cars themselves on fire. And  
20 either their engine is on fire, which happens occasionally,  
21 but most often is static electricity, when the member is  
22 charged, the member being our customer, it's our parlance,  
23 they go back, they're charged from their cloth seat, they  
24 take their fill cap off and the metal rim of their filler  
25 neck discharges static. Static is not many amps, but it's a

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1 lot of volts and it can ignite gasoline vapor, and so you  
2 basically get a big pilot light coming out of the fill port.  
3 That's much more common in dry, cold climates than it would  
4 be here in Maryland, so it's a very minimal issue typically  
5 in the more humid east. But somewhere like Utah, it's  
6 fairly common, fairly common being it happens. And when it  
7 happens, of course, we shut down, fire extinguished  
8 typically and usually the car is not even damaged. It's  
9 more like a pilot light.

10 Q Any chance of the station blowing up?

11 A Well, no. I would say virtually none and that's  
12 not because we don't want it to. That's all if you ask, we  
13 don't want it to. The entire industry is built so that that  
14 is virtually impossible and mainly because gasoline vapor in  
15 its equilibrium state above liquid in a confined tank  
16 underground is too rich to burn. So the only time it can  
17 burn is when it's mixed with air and that's the fundamental  
18 premise of an internal combustion engine is it mixes air and  
19 gas vapor. So you have this narrow range of vapor to air  
20 that's flammable and so that's where you can get a pilot  
21 light or anything, but the fire cannot go back inside the  
22 gas tank of the car, it cannot get sucked back into the gas  
23 tanks underground. It's a matter of physics and so all the  
24 valves and equipment designed into the system over many,  
25 many years by many, many engineers is designed to make sure

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1 that there's no way that air can be ingested back into those  
2 enclosed areas to possibly create an explosive situation.  
3 Every car is designed that way, every nozzle is designed  
4 that way and every storage tank piping system is designed  
5 that way.

6 Q Moving on to underground storage space, how is  
7 that situation handled?

8 A Okay. Going back to my earlier discussion of  
9 double-walled tanks and the fact that they're continuously  
10 monitored, the tank itself is sitting in pea gravel and the  
11 double wall space, there's a little bubble on top of the  
12 tank called the reservoir and that space is filled with salt  
13 water called brine. It's dyed bright green so you can see  
14 it if it is ever evident. And so there's a float sensor in  
15 that reservoir carefully monitoring that brine level. And  
16 because this is a very stable system, they're anchored down  
17 and they don't move around, that just sits there quietly  
18 with a float on it. If we lose double containment, meaning  
19 we lose either a breach on the inner or outer wall, that  
20 brine is going to fall and it's going to sound an alarm,  
21 it's going to shut the tank down and so as soon as that  
22 happens, all our monitoring, our outside monitoring company  
23 will automatically send a technician out. Even if it  
24 happens at night where no attendant is on duty, a service  
25 technician will be there to respond to that. So we're not

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1 selling product out of that tank if we've lost double  
2 containment, much less actually had a breach into the  
3 environment. So that's our first line of defense and that's  
4 been successful in the 16 years we've operated.  
5 Q Moving on to spills.  
6 A Uh-huh.  
7 Q And I want to start with large spills and it may  
8 be helpful first to define what a large spill is.  
9 A Well, spills is probably the key safety variable  
10 in gas station operations and spills is where the  
11 attendant's presence on the island is the most valuable.  
12 And they're all trained, every single attendant is part of  
13 our test and certification. We have an embedded video clip  
14 and questions and spill kits and all the stuff. I'll skip  
15 some of that detail just to get to the point of it and that  
16 is any time gas is on the ground there's a potential fire,  
17 it's a potential slip hazard, it's also air pollution as it  
18 evaporates. So every attendant is trained to immediately  
19 address every spill. They're never allowed to lie and we  
20 have a very extensive process whereby we spray it with a  
21 solution to immediately make it non-flammable and that's the  
22 key point. And they we have a process to clean it up. So  
23 that's every spill, small spills which are typically saucer  
24 size or just the little things that most people have  
25 experienced filling their own car. And so in our training

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1 we have that small spill procedure isolated and identified  
2 clearly because that's a little more routine, not common,  
3 but frequent enough that it's a regular thing and an  
4 important part of our training.  
5 Q I want -- I'm going to stop you there for a  
6 moment.  
7 A Uh-huh.  
8 Q So you said there's a product that is applied to  
9 the spill. Can you detail that a little bit more and where  
10 is the product kept?  
11 A Well, out on the island is a garden sprayer.  
12 Q Okay.  
13 A Usually one or two garden sprayers, depending on  
14 the size of the station. And as soon as it's -- again,  
15 without getting too technical in it, what it does is it  
16 stops the gasoline from evaporating, so that takes the smell  
17 and the flammability away instantly. If you spray it, boom,  
18 now there's no safety hazard. Now it's just a clean-up  
19 problem.  
20 MR. GROSSMAN: What is the substance you're  
21 spraying?  
22 THE WITNESS: It's called FM-186, Fuel Mitigation  
23 186. It's made by a company in Washington state. We've  
24 used it for about 13 years. We consider it the best  
25 management practice for handling surface spills. Now the

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1 large spill, of course, is a separate category. Should I  
2 proceed to that?  
3 BY MS. HARRIS:  
4 Q Well, one question. Do other gas stations have  
5 this FM-186 that you're aware of?  
6 A Some do. We were a pioneer with it back in 2000.  
7 So a number of other companies have used it, fire  
8 departments are a big part of the business of a vendor that  
9 supplies us is fire departments for cleaning up accident  
10 scenes. So it's now widely available, but I don't see it  
11 very commonly at other gas stations because they don't have  
12 anybody out on the island to use it. Most of the time the  
13 spills would just evaporate at an unattended station. So  
14 I'm not sure how widespread it is, but we use it everywhere,  
15 all the time at every single station.  
16 Q Now moving on to large spills.  
17 A Different category, a beast, yes.  
18 Q What constitutes a large spill?  
19 A Well, there's two ways to look at that  
20 categorized. There's Government reporting quantities and  
21 whatnot which vary around the country. Our standard for  
22 large spill is far smaller than that, which translates  
23 roughly into a quart of gas or so. We don't try to have our  
24 attendants estimate liquid quantity when you're seeing a  
25 spill spread out over the ground, so we look at it as a

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1 surface area thing and also as a containment thing and let  
2 me explain that.  
3 What we use is the size of a footprint of a car.  
4 If the spill is larger than the size of the car, you can  
5 call it a large spill and it triggers a whole separate line  
6 of response training, et cetera, first being hit the red  
7 button, okay? If you have a large area, then we have to  
8 give it our undivided attention. We have to alert all the  
9 other members that we have gas on the ground. So size of a  
10 car or larger.  
11 If it escapes the concrete drive slab where the  
12 dispensers are, which is a liquid controlled area with the  
13 oil/water separator and all that, I am sure, well, separate  
14 subject. If it escapes the drive slab and the surface area  
15 around the pumps, that's automatically a large spill of any  
16 quantity. If it escapes into landscaping or into the  
17 environment in some way, it's automatically a large spill,  
18 meaning station shut down and call inside the building, get  
19 more people out, call 9-1-1 as necessary. Another example  
20 might be if a car pulls up and has a leaking gas tank, you  
21 know, almost always that will require a fire truck response  
22 because we're going to be safe than sorry. And, of course,  
23 once those steps are taken, they're spraying it down to make  
24 it non-flammable and now again we have a big mess and we  
25 have an interruption to our business, but we don't have a

1 fire hazard. And that's, of course, always first and  
2 foremost with gasoline.

3 Q You stated that Costco's trigger point, if you  
4 will, is approximately a quart. What is, what does -- do  
5 you know what the state of Maryland's trigger point is in  
6 terms of a large spill?

7 A The state of Maryland is one of the few states  
8 that is very vague on that subject and so in states like  
9 Maryland that don't say, okay, for example, a typical  
10 minimum reporting quantity is 10 gallons. Okay. That means  
11 nozzle on full one full minute pouring on the ground, you  
12 can get an idea of how much 10 gallons is, and that would be  
13 a lot of gasoline on the ground. And so, but typically the  
14 states want to know if the community is going to be harmed  
15 or if there is a safety or an environmental harm and usually  
16 10 gallons is that threshold.

17 Maryland doesn't have a precise limit, so there  
18 it's more of a judgment call. So we just say any time we  
19 define it as a large spill, meaning all the way down to a  
20 quart or something into the landscape or anything like that,  
21 which again is quite rare, we'll call the agency, report it  
22 and voluntarily start that process to make sure that we're  
23 not missing reporting when we should be. But typically that  
24 means we're reporting things that are far less than the  
25 standard reporting requirement.

1 Q And do you know when you call in your report, then  
2 what happens from the receiver's end of the people that are  
3 taking that report?

4 A Well, this happens, you know, this happens around  
5 the country enough where typically we call the report and  
6 they go thank you very much. After they ask a few questions  
7 like did the gas get into the ground, did it get into a  
8 stream, did it, you know, harm anybody and once we satisfy  
9 those questions that, no, we contained it, here are the  
10 things we did, here is our estimate of the quantity, they  
11 say, great, thank you very much and that's that.

12 Q Moving on to another potential accident. What  
13 happens in the case of a power outage?

14 A Power outages happen, of course, all the time.  
15 And when they do, the station is shut down. If it's an  
16 extended power outage, all our new stations are equipped  
17 with transfer switches for generators. A generator big  
18 enough to run the whole fueling facility is a truck-mounted  
19 diesel massive thing, but we do have the capability in an  
20 extended, let's say a wind storm situation or whatever, we  
21 could bring a generator on and that was very common in the  
22 aftermath of Hurricane Sandy. But that's kind of the rare  
23 event.

24 More commonly, somebody runs into a power pole and  
25 we lose power for an hour or two. And when that happens,

1 the station is, of course, down. But the monitoring system  
2 remains because it's powered by an interruptible power  
3 supply which is part of our power conditioning equipment to  
4 make sure we have good, clean power all the time so all the  
5 stuff works as advertised and that -- what maintained the  
6 monitoring system for varying, depending on the battery,  
7 maybe two hours or so and usually by that time everything  
8 can be secured and if it's going to be more extended, then  
9 we start to arrange for a generator if need be.

10 Q And then one final potential accident is extreme  
11 weather, which we've seen a lot of lately. What happens in  
12 those situations?

13 A Well, first, that's a great of example of when we  
14 defer to the local, the local management and we support  
15 that. We'll reach out to them and say what's coming, what  
16 do you need. We might bring in deliveries ahead of a storm,  
17 that kind of thing. But a storm hits, let's say an  
18 electrical storm or something and it's crackling lightning  
19 and a driver pulls up, for example, we don't take the  
20 delivery, standby. If necessary, if it's real extreme,  
21 maybe in the event of a tornado or something, then we  
22 evacuate and close just as anybody would as a precaution in  
23 the face of an advancing weather event. So, you know, we  
24 try to keep our finger on the button there and make sure  
25 that we're not plunging ahead or not responding because

1 there is, you know, there's a huge unpredictability, of  
2 course, as we just saw in Oklahoma.

3 Q Could a tornado lift a pump dispenser and what  
4 would happen in a situation like that?

5 A Good question. There were a couple of cassing  
6 dispensers in the 1999 Joplin, Missouri, category 5 tornado  
7 that were literally pulled right up off of their island and  
8 flew away literally in Joplin. In Oklahoma, we also saw  
9 some gas pumps just torn right off their mounts. All gas  
10 stations, including all of Costco's gas stations, have  
11 what's called an impact valve, sometimes called a shear  
12 valve and occasionally called an earthquake valve for  
13 similar reasons, that's anchored into the concrete drive  
14 slab and to that valve is where the product pipe comes up.  
15 And so all of the gas that's dispensed through a nozzle has  
16 to go through this valve that's held open by a spring. If  
17 that trips either because of fire or shaking or a car  
18 hitting the pump or whatever, closes instantly and prevents  
19 the pressurized line from creating the, a geyser of fuel and  
20 that's common, no gas station can be built in the United  
21 States without that equipment.

22 Q Thank you.

23 A And, indeed, there were no fires or massive  
24 releases in either the Joplin, or as determined yet, in  
25 Oklahoma.

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1 Q Okay. In your description of a number of these,  
2 it's, you've placed a lot of reliability on the judgment of  
3 your attendants.  
4 A Uh-huh.  
5 Q What kind of guidance do you give them in terms of  
6 making decisions?  
7 A Well, the first thing is when in doubt, get help.  
8 Q Okay.  
9 A The other guidance is, it's something I came up  
10 with years and years ago. It's called the heart rate  
11 indicator, meaning sometimes we anticipate that the  
12 attendant might not know when to push the red button and  
13 maybe be hesitant because, well, you know, I don't want to  
14 inconvenience these other people or whatever. And so our  
15 guidance is if your heart rate goes up in response to  
16 something you're seeing at the gas station, hit the red  
17 button. You know, if you get that flash of --  
18 Q Yes.  
19 A -- like, oh my gosh, what, you know, hit the red  
20 button. We'll sort the problem out later, better sin of  
21 commission than omission in that sense and that's actually  
22 part of our training program.  
23 Q Are there any repercussions if you end up with an  
24 attendant pushing the red button?  
25 A Never yet because we've always stood behind them

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1 and, yes, there's an inconvenience and, yes, they have been  
2 pushed in retrospect unnecessarily, but that red button also  
3 is -- any member can push that button. So -- and that's  
4 true of every gas station. They have it. It has to be  
5 signed and those regulations around it.  
6 MR. GROSSMAN: That sounds an audible alarm that's  
7 audible there or just the monitoring station? What is this?  
8 Where does it sound?  
9 THE WITNESS: No, the, the red button doesn't  
10 sound an alarm. It just shuts power instantly.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: The Veeder-Root system detecting  
13 stuff underground sounds the audible alarm. So the red  
14 button is just a big disconnect and then, of course, nothing  
15 is happening, so everyone's attention is immediately gained.  
16 MR. GROSSMAN: Okay.  
17 BY MS. HARRIS:  
18 Q Is there any other piece of equipment on the, at  
19 the station that puts out an audible sound besides the  
20 Veeder-Root system?  
21 A No, not directly, no.  
22 Q Okay. So --  
23 A There are systems used elsewhere, but not at a  
24 Costco.  
25 Q In terms of monitoring, is it -- going back to

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1 that for just one moment -- is there offsite monitoring of  
2 those systems?  
3 A There's offsite monitoring of the Veeder-Root  
4 system which any alarm --  
5 Q Can you explain that?  
6 A -- on the Veeder-Root, meaning an underground  
7 sensor going off, is going to ring in an office at the  
8 monitoring center and those are all trained people in their  
9 system, in fact, and the monitoring system we use is  
10 actually a division of the manufacturer Veeder-Root and it's  
11 all, that in turn is a division of the company that makes  
12 the pumps, Gilbarco, and we're uniform in that equipment.  
13 And so when those alarms go off, they sound at the location  
14 and our attendants know what they are, but they also are  
15 sounding at the monitoring desk and so service is always  
16 dispatched in response to one of those sensors going off.  
17 Q Okay. That's helpful. I want to turn now to  
18 focus just for a moment on other Costcos in other states  
19 throughout the country.  
20 A Uh-huh.  
21 Q In terms of -- can you identify in the last 15  
22 years what significant releases have occurred in any of  
23 these stations?  
24 A In the last 15 years, releases, well, let me just  
25 focus on reportable releases that ended up involving the

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1 Government. That's a good way to put it because there are  
2 so few. I can think of three.  
3 Q Okay.  
4 A Uh-huh.  
5 Q Can you describe briefly those three situations?  
6 A Yes. Going by memory, this is over quite a long  
7 period. In the early 2000's, in California, we had a,  
8 apparently from the very earliest days of the station before  
9 I even came on, this was one of our pilot locations, there  
10 was a surface spill and it found a path to ground water,  
11 very minor, but at the time gasoline contained a chemical  
12 called methyl tertiary-butyl ether, or MTBE, and that, that  
13 particular element of gasoline is soluble in water and so  
14 when that became a scare, the Government came in and just  
15 said do you mind if we test under your station and they  
16 found trace amounts of MTBE, in which case then we worked  
17 with the local authorities and put in a remediation system  
18 that pumped the ground water, cycled it through carbon  
19 filters and that process has ended now several years ago.  
20 Very trace and it was kind of the whole industry got caught  
21 by the MTBE issue which was in virtually all the gas in the  
22 United States.  
23 Q And the other two instances?  
24 MR. GROSSMAN: Well, is it no longer in the gas?  
25 THE WITNESS: No, it's been out for now a number

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1 of years and it's been replaced by ethanol.  
2 MR. GROSSMAN: Okay.  
3 THE WITNESS: It served the same purpose as  
4 ethanol, adding oxygen content to the fuel to make it  
5 cleaner burning was the idea at the time.  
6 MR. GROSSMAN: Okay.  
7 BY MS. HARRIS:  
8 Q As a result of that, well, the Government  
9 certainly made a change, did Costco make any changes?  
10 A Well, the entire industry took MTBE out of the  
11 fuel.  
12 Q Okay.  
13 A Again, it was in all the gas --  
14 Q Okay.  
15 A -- as an oxygenate per Federal regulation and then  
16 they, basically that was when all the gas switched over to  
17 10 percent ethanol and that's a big volume of the gasoline  
18 is 10 percent both MTBE and the ethanol.  
19 Q Okay.  
20 A So that was a major shift in the energy supply of  
21 the United States, so we were just part of that.  
22 Q Did Costco use FM 186 at that period of time?  
23 A Yes.  
24 Q Okay.  
25 A Yes. However, we don't know when the release was

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1 found. And, again, this is extraordinarily trace amounts,  
2 you know, parts per billion kind of thing. By the  
3 Government coming in and we voluntarily cooperated to let  
4 them drill holes in our station to see if we had a problem  
5 and at that particular station they found these trace  
6 amounts. We don't know what surface spill caused that or  
7 how that ever happened, we just took the results and  
8 remediated.  
9 MR. GROSSMAN: So the MTBE problem, if I  
10 understood you, is because it's mixable with water?  
11 THE WITNESS: Yes.  
12 MR. GROSSMAN: And ethanol is not?  
13 THE WITNESS: Ethanol is and that's a big problem  
14 with ethanol, but ethanol is not a product of refining.  
15 It's a whole different chemistry. It has its own problems,  
16 including water solubility. But ethanol and ground water  
17 would be a small fraction of the issue with MTBE. MTBE did  
18 not actually -- the levels you could detect it in drinking  
19 water, it was still perfectly safe per the studies that I've  
20 read, but nobody wants a distasteful water and so that's  
21 when the Government basically said that's not an allowable  
22 way to meet the Federal standard for oxygen that's in fuel.  
23 MR. GROSSMAN: All right.  
24 THE WITNESS: Because MTBE was in there in  
25 response to a Government mandate.

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1 MR. GROSSMAN: Right, but I guess my question goes  
2 to the, whether or not ethanol removed the problems with  
3 MTBE, but did it remove the problem if it is in itself  
4 admissible with water?  
5 THE WITNESS: Well, ethanol is not nearly as  
6 harmful in drinking water as MTBE. There is no doubt. So  
7 it lessened the issue, but anywhere ethanol is getting, it  
8 would be getting there with gasoline typically. So that's  
9 the larger issue.  
10 MR. GROSSMAN: Okay.  
11 THE WITNESS: But, anyway, that was one of the  
12 releases that we worked with the Government to solve, even  
13 though we don't really know -- that was back from the very  
14 earliest days in the mid-90's when we opened that gas  
15 station at issue.  
16 BY MS. HARRIS:  
17 Q And you indicated that you determined the cause of  
18 it was surface spills, is that correct?  
19 A Yes, because around the tank and piping there was  
20 no problem. It's, the problem started underneath the  
21 dispensers of the drive slab that's built to contain that  
22 and then move with the ground water plume slightly  
23 downstream of that. So everything was at the fueling points  
24 and beyond on the non-tank side of the station. So -- and,  
25 again, a very, very small amount, but small amounts became

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1 an issue with MTBE.  
2 Q And so if you could reiterate again, how does  
3 Costco now handle surface spills?  
4 MR. GROSSMAN: He's, I think, stated that already.  
5 So let's not have him --  
6 MS. HARRIS: Okay.  
7 MR. GROSSMAN: -- reiterate it.  
8 THE WITNESS: Okay. You asked about the -- there  
9 were three releases that I can remember that involved the  
10 Government.  
11 MS. HARRIS: Right.  
12 THE WITNESS: The -- okay. The second one was in  
13 Aurora, Colorado, and was not a liquid release at all.  
14 Inadvertently, a separate contractor installing a parking  
15 lot light drilled through a vapor recovery line which was  
16 conveying that vapor back to an underground storage tank and  
17 so that took awhile to determine what the problem was  
18 because that's not a liquid monitoring system. And the  
19 vapor got out into the soil, maybe two cubic yards, but we  
20 reported it out of an abundance of caution, worked with the  
21 Colorado state underground storage tank division and that  
22 site has been completely resolved and, of course, nobody was  
23 harmed. That was just a, you know, a few cubic feet of soil  
24 around the pipe, but that did involve the Government and we  
25 treated it as a release.

1 BY MS. HARRIS:

2 Q Okay. And then the third situation?

3 A The third was in Huntsville, Alabama, and the  
4 sumps that I mentioned on top of each tank is the enclosure  
5 that has the turbines and the, all the equipment and the  
6 sensors and whatnot. And we had a driver that made a  
7 sequence of errors and overfilled the tank and typically  
8 that's never going to result in gas spewing out anywhere  
9 because of all the overflow prevention that's built into  
10 stations. Ours certainly, we have redundant systems to  
11 prevent delivery overfills.

12 In this case, the rising level, the head pressure  
13 or the weight of the liquid created pressure and it popped a  
14 cap off of our inventory probe inside a containment sump.  
15 And the containment sump did its job and filled with liquid,  
16 keeping it from the environment. However, one of the piping  
17 penetrations into that sump, the station at that time was  
18 about 10 years old, had created a small crack and so the  
19 gasoline seeped out and we didn't know about the crack  
20 because the ground water was so low, water never seeped in  
21 to alert us that that had, there had been that minor -- so  
22 we lost some number of gallons, an undermined total amount.  
23 We immediately reported it to the Government and went  
24 through their process with sampling and everything and, of  
25 course, cleaned up the fuel and the sump and everything

1 right away, but then we went through and the fuel that  
2 escaped the sump got into the pea gravel, but was contained  
3 within that pea gravel. So it never left the tank hold, but  
4 we had to go through the process of making sure that it was  
5 cleaned up and doing all our sampling and borings and  
6 everything over a series of time, which was the common  
7 response.

8 Q Thank you. As a result --

9 MR. GROSSMAN: Ms. Harris, why did you pick 15  
10 years as a period?

11 MS. HARRIS: Because I believe Mr. -- how long  
12 have you been with Costco?

13 THE WITNESS: I've been with Costco 23 years.  
14 I've been the director of operations for 16.

15 MS. HARRIS: So it was based on his knowledge, his  
16 concentrated knowledge, but we can go back and ask further  
17 if you'd like.

18 MR. GROSSMAN: Have there been any other spills to  
19 your knowledge prior to the 15-year period?

20 THE WITNESS: Spills as a relative amount as I  
21 described?

22 MR. GROSSMAN: Right.

23 THE WITNESS: Releases that we reported to the  
24 Government that required us to follow-up and remediate or --

25 MR. GROSSMAN: Right.

1 THE WITNESS: -- take additional steps, those are  
2 the three in my tenure around the entire United States that  
3 I can really recall.

4 MR. GROSSMAN: And I'm saying that you know of  
5 before your tenure.

6 THE WITNESS: Before my tenure, we had five gas  
7 stations opening in late '95. I started in early '97. So  
8 we just had a couple of locations and none of them had any  
9 major release that I'm aware of.

10 MR. GROSSMAN: Okay.

11 BY MS. HARRIS:

12 Q As a result of the three instances that you  
13 described, were any changes to either the design of the  
14 stations or the operations of the stations imposed because  
15 of learning from these situations?

16 A Oh, absolutely. Yes, we learned from anything  
17 that happens, as does the industry I should add. For  
18 example, static electricity, the whole industry is involved  
19 in trying to address and minimize the risk of static  
20 electricity during refueling. And the particular examples,  
21 at Santa Clara we realized that we had to pay a lot more  
22 attention, Santa Clara being where the MTBE was detected, we  
23 had to pay a lot more attention not only that the station  
24 was caulked properly, as it was, but it turned out that the  
25 caulk that had been originally used, the caulk being the

1 filling between joints making it an impermeable surface,  
2 that caulk had been not as good as it should have been at  
3 resisting gasoline or time and --

4 MR. GROSSMAN: This is joints between concrete,  
5 joints?

6 THE WITNESS: Yes.

7 MS. HARRIS: Oh.

8 THE WITNESS: To make sure we have an impermeable  
9 seal.

10 MR. GROSSMAN: Right.

11 THE WITNESS: And so we changed that and we went  
12 with a very high-tech caulking that we've used ever since  
13 and it's performed admirably and so that really taught us  
14 that. And we have had no further releases of that nature as  
15 a result.

16 In the Huntsville case, we, the penetration  
17 failing caused us to switch so that now we have all  
18 fiberglass penetrations. We actually field fiberglass, the  
19 joints to the sump wall and that creates a very, very long-  
20 lasting and impermeable penetration. And the industry has  
21 been moving in that direction for similar reasons. But the  
22 other type of penetration fitting that we had leak at that  
23 location is still very common in the industry, but we don't  
24 use it any more.

25 BY MS. HARRIS:

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1 Q Thank you. Do you think the Costco station poses  
2 any risks to the public as greater than a station that sells  
3 a lower volume of fuel?  
4 A No, I would argue the reverse. It has less  
5 hazard. The volume of fuel is one measure, but it's -- a  
6 trained attendant at a busy station makes a safer facility  
7 in my opinion than an unattended, smaller volume station  
8 that doesn't get the attention. So I think I -- excuse my  
9 bias, I think Costco operates as safe or safer gas stations  
10 than anybody in the United States and that's been our goal.  
11 Q And if you were going to identify just a handful  
12 of features that you think make you stand out in the  
13 industry, what would those be?  
14 A The attendant. In fact, I want to say the  
15 attendant, the attendant, the attendant. All of the systems  
16 we have are well-vetted by the industry. We do have that  
17 chemistry for spill clean-up which is a major safety  
18 advance, but that would not be useful if we didn't have an  
19 attendant that used it and was trained and did it right. I  
20 have great admiration for our people and we have low  
21 turnover as a company and we have just some really, really  
22 competent people running our fuel facilities and I'm very  
23 proud of them.  
24 Q Thank you.  
25 MS. HARRIS: That's all the questions for Mr.

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1 Hurlocker.  
2 MR. GROSSMAN: Do you wish me to break for lunch  
3 before we begin cross-examination?  
4 MR. SILVERMAN: Yes, sir.  
5 MR. GROSSMAN: So why don't you have a chance of  
6 getting something from the cafeteria. All right. Then  
7 we'll break for lunch. It's now 20 of 1:00. We'll come  
8 back at 1:30, does that sound right? Okay.  
9 MS. HARRIS: Thank you.  
10 MR. GROSSMAN: We're recessed.  
11 (Whereupon, at 12:39 p.m., a luncheon recess was  
12 taken.)  
13 MR. GROSSMAN: All right. Are we all ready to  
14 begin? Mr. Hurlocker, let's -- we are resuming. Mr. -- I'm  
15 back on the record. Mr. Hurlocker can take his seat as soon  
16 as he achieves balance. All right, Ms. Rosenfeld, do you  
17 wish to begin?  
18 MS. ROSENFELD: Yes, I do. Thank you very much.  
19 MR. GROSSMAN: Oh, I might mention Ms. Duckett  
20 indicated that she had to leave. So if there's anybody else  
21 from Kensington View Civic Association who wishes to  
22 participate or ask questions, they can. Okay.  
23 CROSS-EXAMINATION  
24 BY MS. ROSENFELD:  
25 Q Okay, Mr. Hurlocker, I'm going to start by showing

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1 you what has been marked in this case as Exhibit No. 86(e).  
2 Would you take a look at that please? And are you familiar  
3 with that document?  
4 A I am not familiar with this document, but I  
5 recognize what it's talking about.  
6 Q But you didn't prepare that document?  
7 A No, I did not.  
8 Q Do you know who did?  
9 A No, I do not.  
10 Q You testified earlier, I believe, that there is a  
11 standardized station layout that Costco uses?  
12 A Yes.  
13 Q Did I understand you correctly?  
14 A Yes.  
15 Q And does this layout conform with that  
16 standardized layout?  
17 A Yes, generally, yes.  
18 Q And to the extent that it doesn't generally, where  
19 are the deviations?  
20 A Well, the prototype, the master layout, whatever  
21 term to use, is adapted to any particular piece of property,  
22 particularly the driveways, the exits, how it circulates in  
23 traffic and those are usually the variables. The basic tank  
24 and the dispenser layout is very much exactly like that.  
25 Q And so is the location of the tanks in

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1 relationship to the kiosk, is that the way they generally  
2 would be laid out?  
3 A Very commonly, yes.  
4 Q Okay. And can you please describe to me what has  
5 been altered in the prototype layout to accommodate this  
6 particular location? Well, I suppose I should ask are you  
7 familiar with the design of this particular station?  
8 A I saw it for the first time yesterday.  
9 Q Okay.  
10 A My involvement usually starts after approval is  
11 gained.  
12 Q Okay. And so could you explain what deviations  
13 you do see?  
14 A There are no specific deviations from the master,  
15 other than the traffic conforms to the particular location  
16 and the tank and piping layout is, conforms to our master  
17 design.  
18 Q Okay. And when you say the traffic conforms to  
19 the particular layout, can you explain what you mean by  
20 that?  
21 A Well, the, meaning the traffic coming into the  
22 parking lot or along the street and access, that will  
23 determine where the curb cut is for the entrance. That will  
24 determine how the exit is controlled for people leaving,  
25 where they'll go, the lane for where the delivery truck will

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1 come in and its route is going to be a site-specific thing,  
2 although it follows that convention fairly closely.  
3 Q Okay. What is -- you say you won't review the  
4 final design until after approval is granted. What approval  
5 would that be? What stage of approval? Is that an external  
6 approval or Costco approval?  
7 A Well, as I understand the normal process and,  
8 again, I jump into it typically after, as we get the okay to  
9 build a gas station, they lay it out and I approve the  
10 layout of any particular gas station as part of the original  
11 design process as they go into submit for building permit.  
12 Q And do you -- what kind of design recommendations  
13 did you make at the time of the building permit submission?  
14 I don't mean for this one, I just mean generically what  
15 types of things are you looking for?  
16 A Well, the key elements of my review are traffic  
17 circulation, tank placement, where the truck will come in,  
18 the key issues involving can we successfully operate it and  
19 will it be convenient for our members.  
20 Q Traffic circulation, tank placement, I'm sorry,  
21 and what else?  
22 A I can't remember what I just said.  
23 Q Okay.  
24 A The tank placement, certainly the kiosk because  
25 that's where all the electrical conduits come together and

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1 so, and that's where the attendant is going to be going in  
2 to key their deliveries, so that, we want that very close to  
3 the islands as shown here.  
4 Q And looking at this particular design at the  
5 moment, would there be anything you would recommend in terms  
6 of changes?  
7 A I would have to be better educated on what's known  
8 about the traffic circulation. So if I had questions about  
9 traffic circulation on a particular site, my typical  
10 response would be to contact somebody in our development  
11 group and discuss and educate myself as to where traffic  
12 comes from, where it goes, other aspects of the site that  
13 aren't always evident from the detailed gas station layout.  
14 Q And when you're looking at traffic, are you  
15 looking at the vehicles, the vehicular traffic coming to  
16 purchase gas or are you looking at particulars, are you  
17 looking at general site circulation?  
18 A Generally just how cars are going to get in and  
19 out of the gas station and where the tanker is going to come  
20 and go. Those are my key focus areas.  
21 Q And are you aware of the fact that in this  
22 proceeding, the special exception proceeding, you will  
23 establish the layout of the station itself with any  
24 amendments after this proceeding is concluded you need to  
25 come back for an amendment before Mr. Grossman and

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1 subsequently --  
2 A I'm not an expert on that.  
3 Q No?  
4 A I don't know.  
5 MR. GROSSMAN: Well, actually amendments to  
6 special exceptions go to the Board of Appeals.  
7 MS. ROSENFELD: Ultimately.  
8 MR. GROSSMAN: Well, even, not even ultimately,  
9 they are, if it's a Board of Appeals special exception,  
10 because there are some special exceptions that my office  
11 acts on itself, makes the decision on. Others such as this  
12 one as a Board of Appeals special exception, a request to  
13 amend the special exception would initially go to the Board  
14 of Appeals if it's deemed as a minor amendment, it may be  
15 granted without a further hearing, however, notice has to go  
16 to the community and if then a hearing is requested by the  
17 community, then the Board would convene a proceeding to  
18 determine whether or not, I guess you could call it a  
19 hearing, to determine whether or not the amendment is  
20 sufficient to warrant a full modification. If it's a full  
21 modification, then all of the terms related to filing for an  
22 initial special exception would have to be followed and it  
23 would be sent to my office for a full due process hearing.  
24 MS. ROSENFELD: Okay.  
25 BY MS. ROSENFELD:

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1 Q How much gasoline per year on average do you  
2 understand this, will be sold at this gas station?  
3 A It would be an estimate.  
4 Q Okay.  
5 A We would expect that it's going to be some amount  
6 and that would go into our financial calculations on the  
7 total cost of the construction versus what we expect to do  
8 as a business. I don't know those numbers off the top of my  
9 head for this particular location.  
10 Q Do you -- what is the maximum volume at any 16 --  
11 what is the highest volume Costco gasoline station gets with  
12 16 pumps?  
13 A It would be in Hawaii.  
14 Q And what is the volume in that location?  
15 A I don't know exactly, I should state that right  
16 off, because it varies. It goes up and down. The station  
17 has been open a number of years, but typically we're in the  
18 12 million gallons a year or higher, depending on market  
19 conditions.  
20 Q And do you have other 16-pump dispenser, 16-pump  
21 stations that sell in that neighborhood?  
22 A Yes.  
23 Q 12 million?  
24 A Yes.  
25 Q Is that a fairly common number for gas stations

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1 with this many pumps?  
2 A Well, industry or for Costco?  
3 Q For Costco.  
4 A For Costco, no, that's high, but we have quite a  
5 number that do that typically in California.  
6 Q And any --  
7 A And Hawaii, of course.  
8 Q And any in this region?  
9 A Yes, Sterling, Virginia, I think is our highest  
10 volume east coast gas station and it does in that range,  
11 yes. And, again, I have to stress, it goes up and down  
12 based on all the factors that affect gasoline demand, they  
13 affect us as well.  
14 Q And is there any cap on the amount of gasoline  
15 that potentially could be sold at this station if it were  
16 feasible to -- if the demand were for 12 million, you would  
17 sell 12 million?  
18 A Well, yes, we would serve our members when they  
19 came to buy gas from us. I am not aware if there is any  
20 throughput limit on this gas station, in particular, in this  
21 jurisdiction. There's some sites in California where they  
22 do limit our total throughput. Very typically, though, it's  
23 much higher than what we actually sell, so it's more of a  
24 theoretical limit than an actual one.  
25 Q Okay. And what would that theoretical limit be?

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1 A It varies with our permit and I'm speaking  
2 primarily of the Los Angeles region of California. It's  
3 administered by the South Coast Air Pollution Control  
4 District and I think we're in the 13.5 million range at a  
5 couple of our locations there, but we track it carefully,  
6 but we don't exceed that upper limit.  
7 Q Okay. And are customers allowed to fill gasoline  
8 containers at this station or just vehicles?  
9 A No, they can, they can fill portable containers  
10 with some conditions, of course. As I previously mentioned,  
11 we do not allow unapproved containers or jugs or jars or  
12 things that are unsafe to be filled and that's in accordance  
13 with the fire code. And so we actually enforce that at our  
14 islands. And, but an approved container, yes, and we make  
15 sure that they're taken out of the vehicle to minimize the  
16 static electricity hazard common with fueling portable  
17 containers in the bed of a pick-up or in the trunk of a car.  
18 Q And are some of your members business owners?  
19 A Yes.  
20 Q And do a certain percentage of your sales,  
21 gasoline sales, are they from commercially sized vehicles?  
22 A Well, not over the road diesel vehicles. We don't  
23 typically sell diesel.  
24 Q But, for example, landscaping trucks, trucks with  
25 trailers, larger --

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1 A Yeah, certainly many Costco members are business  
2 owners and, for example, a plumber's van or something like  
3 that certainly could be a customer of ours, yes.  
4 Q Did you do any of the analysis on the queuing, the  
5 vehicular queuing of this station?  
6 A No, I haven't seen this particular plan until  
7 yesterday.  
8 Q Okay.  
9 A Again, because this is all usually ahead of where  
10 I am in the process. However, that queuing arrangement  
11 there conforms to our master plan, which I do approve.  
12 Q And in your operational role, do you have sort of  
13 a rule of thumb for the length of any vehicle, the average  
14 length for purposes of calculating queuing?  
15 A That's our real estate group, I mean has that  
16 figure and I don't know what it is. I more look at the  
17 total length of the queuing area.  
18 Q What is the average length of each gasoline sales  
19 transaction by the time a customer pulls up, parks, gets out  
20 of the vehicle, pays, fills?  
21 A The average I use is just a rule of thumb in my  
22 head. It's four minutes. However, that, there's a large  
23 variability around that and there's two major factors. One  
24 is the speed at which the person can get in and out of their  
25 car and that's why we are eager to help elderly and disabled

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1 people where that becomes difficult, but there's a huge  
2 human variable in that. And then the pump speed is very  
3 constant. We control that. We monitor that very carefully.  
4 The maximum flow rate is 10 gallons per minute. But the  
5 size of the vehicle's tank is another huge variable, a large  
6 SUV or a larger vehicle is going to have a much larger tank  
7 than a small Toyota or something.  
8 Q Do you see market discrepancies or some, do some  
9 markets, or is the average size of the vehicle or the  
10 average size of the tank larger than in other markets?  
11 A Yes, meaning the averages would vary by location,  
12 particularly out west. In the Midwest, we have a larger  
13 number of pick-up trucks with larger tanks and you get into  
14 the denser metropolitan areas and you get a higher  
15 percentage of smaller vehicles. A general statement, you  
16 know, combined with the other variables, it's kind of a  
17 moving target.  
18 Q Assuming continuous sales on a day when you're  
19 busy, like a typical Saturday where you probably don't have  
20 a break in sales, a constant line --  
21 A Okay.  
22 Q -- under those conditions, what's the average  
23 number of transactions you would expect from a single pump  
24 in an hour?  
25 A A single pump in an hour?

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1 Q And if there's a better way to quantify it or  
2 overall within an hour?  
3 A Well, I know we have some maximums that we  
4 consider like full utility and that's about 180 gallons an  
5 hour per fueling position but, again, these are averages of  
6 vast amounts of data with considerable variability around  
7 that. So I don't know the median of that. Is that close  
8 enough?  
9 Q I think so. If you calculate it in terms of  
10 capacities per, gallons per hours as opposed to number of  
11 transactions, that's the way you would analyze it?  
12 A Well, number of transactions on a very busy day  
13 where traffic is lined up most of the day, which is not  
14 always the case at a Costco even though we do good volumes,  
15 we're in excess of 2,000 per day.  
16 Q And would that be at one of the 12 million or  
17 it's --  
18 A Yeah, that would be a high number, yes.  
19 Q Okay. Do you -- you talked earlier about  
20 certain -- one moment please. You talked earlier about  
21 spills, large spills versus smaller spills.  
22 A Yes.  
23 Q And you had described three that you said were  
24 reported to governmental entities. Who were those reported  
25 to? Were those state agencies? Was that Federal

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1 Government?  
2 A Yes, but may I clarify?  
3 Q Certainly.  
4 A A spill and a release are two different things.  
5 Q Okay.  
6 A A spill can be a release, but a release typically  
7 would include underground leaks or something like that as  
8 opposed to a surface spill, which is, that's, that's what  
9 that word specifically means.  
10 Q And the three that you were talking about earlier  
11 which --  
12 A Yeah.  
13 Q -- how you describe the terms?  
14 A Each in turn, Santa Clara, California, we reported  
15 to the local CUPA, which is the Consolidated, Unified  
16 Program Agency, it's a unit of local California government  
17 assigned for fire, environmental health and sometimes some  
18 other aspects of -- basically the water quality group and  
19 that is the controlling local agency in California and  
20 that's who we work with on our -- both approached us to  
21 drill their wells and then required us to do the remediation  
22 which we, of course, complied with readily.  
23 In Colorado, it was with the State Underground  
24 Storage Tank Fund. And, again, my employee, Dennis Bock, is  
25 our gasoline compliance manager and he is, he handles these,

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1 so he knows the detail a little better than I do. But it is  
2 the Colorado state, I know that.  
3 And, similarly, in Alabama it was the Alabama  
4 Underground Storage Tank Division. The specific name of the  
5 agency, I may be slightly off, but every state has a  
6 division of that nature.  
7 Q And then as I understood your testimony, you said  
8 that Costco itself has its own standards for what it  
9 considers a spill, I think something less than 10 gallons?  
10 A Yes. What we call a large spill is we define a  
11 large spill for the purposes of our attendants and how they  
12 respond to it. And that's separate from the various states  
13 that have different reporting requirements, however specific  
14 or vague, and then on each state and we have found in our  
15 operations that our standard of large spill is far, far  
16 below the reportable standards, but we report our standard  
17 just in case and that's been our policy for many years.  
18 Q And so you keep records on what you can, like  
19 Costco has defined large spill?  
20 A Yes.  
21 Q And on average in any given year, how many of  
22 those large spills do you experience nationwide?  
23 A I don't know that number.  
24 MR. GROSSMAN: And as I recall, anything larger  
25 than the approximate surface of a car in terms of spreading

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1 it out is what you defined --  
2 THE WITNESS: Right.  
3 MR. GROSSMAN: -- as a large spill, which is  
4 approximately a quart --  
5 THE WITNESS: Yes.  
6 MR. GROSSMAN: -- of gasoline?  
7 THE WITNESS: Yes. And so we'll call them up,  
8 notify them, but that's something that's handled by our  
9 compliance manager. I don't have the ready access to know  
10 how often we've reported to which agencies these, what we  
11 call large spills, but are, you know --  
12 BY MS. ROSENFELD:  
13 Q But you keep those records internally regardless  
14 of whether or not you report them to a governmental agency,  
15 is that correct?  
16 A Yes.  
17 Q And who would keep those records?  
18 A Our gasoline compliance manager.  
19 Q And what is the name of the gasoline compliance  
20 manager?  
21 A His last name is spelled, Bock, B-O-C-K, first  
22 name Dennis. He's a registered civil engineer. He reports  
23 directly to me.  
24 Q And with respect to releases, the underground  
25 releases, do you keep records of how often that occurs

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1 nationwide?  
2 A Yes. It's the three, if I'm forgetting one, I  
3 apologize, but I don't, I can't recall any others beyond  
4 those three.  
5 Q To your knowledge, though, they're the only three?  
6 A The only three where we, where the Government  
7 required us, you know, our courtesy call to the Government  
8 said here's what we want you to do and required an official  
9 response in the remediation and the testing and the closure  
10 of the cases. All three of them have been closed.  
11 Q But have there been any others that have not  
12 required remediation that you're aware of or do all  
13 underground releases require remediation?  
14 A No, well, those are the only three underground  
15 releases that I'm aware of. Spills we report as well, what  
16 we call a large spill. Those are almost always courtesies.  
17 Once we satisfy that no one has been harmed and the gasoline  
18 has been contained and managed property.  
19 Q Do you keep records of vehicular accidents at your  
20 stations?  
21 A Not at the corporate office.  
22 Q Where would those -- does somebody track vehicular  
23 accidents?  
24 A Not specifically that I'm aware of. You know,  
25 obviously people remember them when they happen, but that's

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1 typically treated as a traffic accident and police or fire  
2 will respond as appropriate if it's to that magnitude.  
3 Q And do you keep records of vehicular pedestrian  
4 accidents?  
5 A Again, same category. Those are very rare, but  
6 they have happened.  
7 Q And, again, those are just handled through the  
8 local authorities, you don't keep any internal  
9 documentation?  
10 A We're very much involved, but we don't have a  
11 database of tracking them officially. And it reflects the  
12 decentralized nature of Costco Wholesale's management. The  
13 best management is local management and we assist them, so  
14 it's kind of a, instead of a top down organization, it's a  
15 bottom up organization and that's been the case my entire  
16 tenure with Costco.  
17 Q Does Costco keep internal records on the number of  
18 fires that occur at Costco gas stations?  
19 A Not specific. The vast majority of them are the  
20 members having a problem with their own vehicle and we just  
21 assist in whatever way necessary. None of our stations have  
22 actually ever caught fire.  
23 Q And does Costco keep any records on whether fire  
24 or other emergency responders have to respond to an  
25 emergency at a Costco gas station?

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1 A No, not specifically, not at the corporate office  
2 I should express. Costco's organization is the corporate  
3 office and then we have regional offices with regional  
4 operations people and then, of course, each building is a  
5 very big business in and of itself and has very capable  
6 management there. So it's not like records are not kept.  
7 They aren't kept centrally, corporately.  
8 Q Do you know who would keep them locally in  
9 Maryland?  
10 A First, every warehouse would be the first, the  
11 first place and each station has records that they keep and,  
12 but we don't require that -- we don't collect those records  
13 in a central database or anything. They are kept --  
14 Q So Sterling would have whatever records it elects  
15 to maintain --  
16 A Yes.  
17 Q -- and Columbia would have whatever records it  
18 elects to maintain?  
19 A Yes. For example, a spill log or something  
20 recording a large spill would be kept at the location for a  
21 duration of -- off the top of my head I don't remember,  
22 perhaps three years would be a logical interval. And then  
23 different record retention for different types of documents,  
24 some are required by regulation, some by our policy.  
25 Q For this particular gas station, what would you

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1 project a work week schedule to look like for purposes of  
2 gas station attendants, how many, what time of day, what  
3 kind of coverage?  
4 A Again, being decentralized, I certainly provided  
5 considerable guidance to our stations on samples and models  
6 and ways to staff your gas station. However, the local, the  
7 local warehouse is going to decide what that station needs  
8 down to a blanket requirement that all our gas stations have  
9 had to have one certified attendant on duty at all times,  
10 including breaks, lunches, at all times there's always  
11 somebody out there and their work position is on the fuel  
12 islands. That is a blanket thing that we have imposed  
13 everywhere and certainly we get great buy-in on that too.  
14 It's, there's no resistance.  
15 Q Okay. Do you have staffing guidelines? Does  
16 Costco have written staffing guidelines for --  
17 A We have staffing suggestions.  
18 Q And what are those suggestions?  
19 A One person at the station at all times. More as  
20 local judgment dictates, traffic, weather, any number of  
21 factors, even demographic factors. In the retirement  
22 communities in Florida, for example, some of the stations  
23 typically have two people out there during busy hours just  
24 to provide the additional assistance.  
25 MR. GROSSMAN: Excuse me a second. You're saying

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1 that one at all times is only a suggestion?  
2 THE WITNESS: No. One at all -- exactly opposite,  
3 sir. Thanks --  
4 MR. GROSSMAN: Okay.  
5 THE WITNESS: -- for allowing me to clarify. One  
6 at all times is a requirement at all Costco gas stations and  
7 that's absolute. There is always going to be that certified  
8 person, has to have been, has to have passed our test before  
9 they can be that person. At the judgment of the location,  
10 they can add more people as they see, as they need, as the  
11 situation requires based on local conditions and local  
12 demand.  
13 MR. GROSSMAN: Okay.  
14 BY MS. ROSENFELD:  
15 Q What is the starting salary for an attendant?  
16 A Well, every attendant is already a Costco  
17 employee, so the Costco employee pay scale is the same, all  
18 entry levels, our entry level pay for a Costco employee is  
19 \$11. It might have just changed.  
20 MR. GROSSMAN: \$11 per hour, you mean?  
21 THE WITNESS: Yes. It just went up to 11.50. I  
22 thought that might have changed.  
23 MR. GROSSMAN: No calling out from the audience is  
24 allowed, okay? If he doesn't know, he'll just say.  
25 THE WITNESS: No, it is. It just changed. It's

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1 11.50. That's the starting minimum salary for any person  
2 working for Costco Wholesale and then there's a schedule --  
3 they make more depending on their time with Costco. So an  
4 attendant could make anything north of 11.50 depending on  
5 how long they've been there and a supervisor gets a premium,  
6 of course, for being a supervisor.  
7 BY MS. ROSENFELD:  
8 Q And what is the average salary?  
9 A Oh, I would not know that actually, not off the  
10 top of my head anyway.  
11 MR. GROSSMAN: Exactly where are we going with  
12 this?  
13 THE WITNESS: Yes.  
14 MS. ROSENFELD: I just have one, two more  
15 questions along this line.  
16 BY MS. ROSENFELD:  
17 Q What is the average length of employment for  
18 attendants?  
19 MR. GROSSMAN: Well, let's answer my question  
20 first. Where are we going with this?  
21 MS. ROSENFELD: Where I'm going is was the average  
22 length of employment, what is the turnover rate, because I  
23 would like some idea of the relative experience of the  
24 attendants who work --  
25 MR. GROSSMAN: All right.

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1 MS. ROSENFELD: -- there.  
2 THE WITNESS: Okay. I can answer that probably a  
3 little bit better than what they make because, again,  
4 they're first a Costco employee and their pay is conditional  
5 upon their time with the company and the position they hold  
6 with the company. So that can go up and down depending if  
7 you have a long-term employee out there or a newer employee  
8 out there. They would be different points on the scale  
9 which plateaus after a couple of years.  
10 As far as a turnover, Costco is famous for very,  
11 very low turnover amongst our employees, a small fraction of  
12 the industry standard in retail. Whether, but one of the  
13 huge advantages we have is we certify a great number of  
14 people inside the building to be eligible to work at the gas  
15 station and so they can come and go and that gives a great  
16 staffing flexibility and we can do that, of course, because  
17 we have such a rigorous training program where we know that  
18 person is skilled and also we know that there is a great  
19 number of people who are also skilled inside the building to  
20 come help them. So that gives us maximum flexibility to put  
21 trained people out there in the quantity and quality that we  
22 need at any given point in time.  
23 BY MS. ROSENFELD:  
24 Q You gave us some idea of what the, a gas station  
25 attendant does and Mr. Brann also testified about this.

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1 They open the station and close the station, is that  
2 correct?  
3 A Yes.  
4 Q And they're responsible for the cleanliness of the  
5 station?  
6 A Yes.  
7 Q What kind of payment do you accept at the station?  
8 A It's -- no cash is accepted, so it's just credit  
9 cards, specifically American Express and debit cards and  
10 then we also have our Costco cash card. So you charge up a  
11 cash card, you can bring that in and you can buy things  
12 with that also.  
13 Q And the attendants, I think you said, assist  
14 customers with payment --  
15 A Well --  
16 Q -- if they need help?  
17 A Yes, if their card isn't working or there's some  
18 difficulty on the part of the member with figuring out where  
19 the card goes or typical stuff. Higher when the station is  
20 new and the members are less familiar, less in that regard  
21 when the station, when the members are more experienced with  
22 it.  
23 Q Aside from the daily check that you talked about  
24 in the, with respect to certain types of equipment, are the  
25 attendants responsible for inspection or maintenance of any

1 other equipment?  
 2 A Yes and no, and let me explain.  
 3 Q Okay.  
 4 A An attendant that has gone through supplementary  
 5 classes that we have on our Internet are capable of changing  
 6 the fuel filters, which we change very frequently for, as a  
 7 matter of both throughput speed, of nozzle flow and also for  
 8 fuel quality. That's most important. And that's a fairly  
 9 simple thing. There's a procedure. We have training on  
 10 that, but we don't ask -- the only time somebody has done,  
 11 that is going to do that has not only received the training  
 12 in it, but has also been buddy system'd with somebody else  
 13 to do that. And, similarly, changing a nozzle or part of  
 14 the hanging hardware is typically something that an  
 15 experienced attendant can do. However, we don't require  
 16 them to go learn that just to work at the station. That's  
 17 for the people who have more experience.  
 18 Q You testified earlier that one of your  
 19 responsibilities is to make sure that people fueling are in  
 20 compliance with the law --  
 21 A Uh-huh.  
 22 Q -- for example, turning off their engines.  
 23 A Yeah.  
 24 Q Are you familiar with Montgomery County's idling  
 25 law?

1 A I am not familiar.  
 2 Q Anti-idling law, Maryland's anti-idling law?  
 3 A I'm not familiar.  
 4 MR. GROSSMAN: Okay.  
 5 MS. ROSENFELD: Do you --  
 6 MR. GROSSMAN: Is that Montgomery County or  
 7 Maryland?  
 8 MS. ROSENFELD: Maryland.  
 9 MR. GROSSMAN: Okay.  
 10 MS. ROSENFELD: I apologize, Maryland. Are, and  
 11 so are the attendees trained to enforce that provision --  
 12 THE WITNESS: Well --  
 13 MS. ROSENFELD: -- if you know?  
 14 THE WITNESS: -- I'm not familiar with the idling  
 15 law. They are absolutely trained and required to enforce  
 16 the shut-off engines while fueling per the fire code.  
 17 MR. GROSSMAN: But you're talking about the cars  
 18 queued?  
 19 MS. ROSENFELD: The queued cars, that's correct.  
 20 MR. GROSSMAN: What about that? I mean what  
 21 about -- are queued cars required to turn off their engines?  
 22 THE WITNESS: No, they are not.  
 23 MR. GROSSMAN: What's the usual, since you're  
 24 obviously familiar with the operations --  
 25 THE WITNESS: Uh-huh.

1 MR. GROSSMAN: -- what's the usual occurrence in  
 2 terms of idling or in terms of queued cars? Are they  
 3 usually engine off or engine on?  
 4 THE WITNESS: Some members do turn their engines  
 5 off, but typically they don't because by not taking cash and  
 6 having the efficient throughput is not a long wait. The  
 7 lines move steadily and frequently and so it's not like the  
 8 car sits there for a long period of time before it moves  
 9 forward and that's because of our multiple fueling  
 10 positions, any line that they're sitting in has two fueling  
 11 positions ahead of them and so, you know, if you took some  
 12 very broad averages, you could take that four minutes and  
 13 say every two minutes the cars move and that's a very broad  
 14 average, believe me. But still it's dynamic enough where  
 15 typically members don't turn their car off.  
 16 MR. GROSSMAN: So, Ms. Rosenfeld, do you, can you  
 17 give me a cite to the -- I'm not familiar with the Maryland  
 18 anti-idling law, so --  
 19 MS. ROSENFELD: I will provide that to you. I  
 20 don't have it at my --  
 21 MR. GROSSMAN: Apparently I've been too idle in my  
 22 life, so --  
 23 BY MS. ROSENFELD:  
 24 Q And the, when you talked earlier about fuel  
 25 capacity when you're at full operation --

1 A Uh-huh.  
 2 Q -- what would be an average length of time that a  
 3 customer would wait from the time they entered the gas  
 4 station until they actually reached the dispenser?  
 5 A That's very difficult to estimate even for the  
 6 following reason. The majority of the time at most of our  
 7 gas stations, as busy as they can be, there are a couple of  
 8 cars maybe waiting in line. I mean, we're definitely doing  
 9 significant business, but the long lines backed up are very  
 10 periodic. They're going to be on Saturday, for example, or  
 11 certain times, Monday or Friday when the whole industry  
 12 sells more fuel. So it's not a constant thing where there's  
 13 always a line at every Costco gas station. It's easy to  
 14 presume that sometimes when you see a busy time. So it's an  
 15 ebb and flow and even if we took an average, it would be an  
 16 average of a very wide range and I don't have that number.  
 17 MS. ROSENFELD: One moment please.  
 18 MR. GROSSMAN: Sure.  
 19 MS. ROSENFELD: May I --  
 20 MR. GROSSMAN: You may, certainly.  
 21 BY MS. ROSENFELD:  
 22 Q I'm going to show you an exhibit marked previously  
 23 as Exhibit 56(f). This was prepared by the traffic  
 24 consultant. And if you could take a look at that, rather  
 25 than trying to answer the question in a hypothetical, the

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1 car at the rear of that exhibit --  
2 A Uh-huh.  
3 Q -- could you give me an approximate how long it  
4 would take for them to go from the entry of the gas facility  
5 to the pump itself?  
6 MR. GROSSMAN: Now hold on one second while I pull  
7 that out myself. All right. So you're asking him from the  
8 little red mark here?  
9 MS. ROSENFELD: In fact, why don't we -- my  
10 exhibit is in color?  
11 MR. GROSSMAN: Yes, mine is.  
12 MS. ROSENFELD: Why don't we go with the purple,  
13 the purple line, the purple queue, the cars in purple.  
14 MR. GROSSMAN: Well, okay. This -- just so we  
15 make sure we're talking about the same color here.  
16 MS. ROSENFELD: I think it would be row four.  
17 MR. GROSSMAN: Okay, yes, I see that.  
18 MS. ROSENFELD: Let's go with row four.  
19 MR. GROSSMAN: So the last car in row four?  
20 MS. ROSENFELD: The last car in row four.  
21 MR. GROSSMAN: Okay.  
22 MS. ROSENFELD: Under average operating  
23 conditions.  
24 THE WITNESS: Which is the sixth car just for  
25 detail.

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1 MR. GROSSMAN: Sixth car not at a pump?  
2 THE WITNESS: Right, sixth car waiting. So my  
3 estimate, rough estimate would be 15, 20 minutes that car  
4 would wait total as they move forward, again, subject to all  
5 the variability in vehicle size, member speed, you know, the  
6 human element of people fueling their vehicles which, of  
7 course, our attendant is there to assist, but there is a  
8 variable there.  
9 BY MS. ROSENFELD:  
10 Q Okay. There -- others have testified, and I think  
11 I understood you to testify earlier today, that the  
12 attendants also have responsibilities with respect to  
13 traffic flow?  
14 A To assist and help manage the traffic, yes.  
15 Q And can you describe what that means?  
16 A Generally, the first point, well, it depends. It  
17 depends on the age of the station. They're going to be far  
18 more active in the early days of a new station where there's  
19 many people who do not have the experience of buying gas  
20 from Costco and as we continue with our program, that  
21 number, of course, has gone down over time. There's many  
22 experienced people familiar with our stations at other  
23 locations, but particularly encouraging people to recognize  
24 that the hose can fuel from either side of the car, so they  
25 could get in the shortest line regardless of where their

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1 fuel port is and also to encourage people to move forward.  
2 And so every now and then someone will come in and they'll  
3 see a number of cars there and they'll want to sit in the  
4 entrance and potentially blocking the entrance while they  
5 wait for the line to sort itself out and figure out who has  
6 got the most loaded shopping cart so to speak. I'm sorry,  
7 that's a reference to inside the building. Their pausing in  
8 the entrance, of course, that would be a problem and that  
9 somebody else behind them trying to get in. So the  
10 attendants will go out and try to assist that and help  
11 people understand how our flow goes.  
12 Q So am I correct in understanding that it's  
13 primarily to manage traffic within the confines of the gas  
14 station itself?  
15 A Yes, except for in extreme cases like a hurricane  
16 is coming or a power outage or something has created a very  
17 unusual, you know, infrastructure shortage or gasoline  
18 storage or something in which case literally we'll have cars  
19 following tanker trucks to whatever gas station they're  
20 going to. That happened in Hurricane Sandy and it happens a  
21 lot in Florida.  
22 Q What kind of training do the attendants get in  
23 traffic management?  
24 A General training. They, of course, are all  
25 required to wear a safety vest at all times. And, but most

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1 particularly when that kind of situation occurs where the  
2 cars actually come out of the queuing area, again, that's  
3 very rare, we plan to provide plenty of space to allow for  
4 the normal ebb and flow of traffic. That's when they would  
5 call inside and have someone come out that would be  
6 stationed at the entrance with their vest and directing  
7 traffic, either waving them on or telling members what the  
8 issue was, whatever it might require. And there is also  
9 occasions where we'll actually hire a police officer to come  
10 in in uniform and we pay the police department to manage  
11 extreme traffic events like that. So it really is subject  
12 to the particulars of the event.  
13 Q And are there stations where you have a police  
14 officer managing traffic as a matter of course?  
15 A No.  
16 Q Is there a regularly scheduled --  
17 A No, that would be an exception.  
18 Q It's for a particular event?  
19 A Yes, that would be for supply outages or extreme,  
20 in cases like where the traffic was actually spilling out  
21 onto the public street.  
22 Q There was testimony earlier that in those  
23 instances were the queue would extend beyond the entrance of  
24 the gas station into what, what on this property is known as  
25 the ring road --

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1 A Uh-huh.  
2 Q -- to the south of the project --  
3 A Uh-huh.  
4 Q -- the gas station attendants would be instructed  
5 to direct traffic elsewhere. Is that a typical operational  
6 responsibility of the attendant?  
7 A Yes, generally speaking. It's going to be very  
8 site specific based on the nature of the street. On a main  
9 arterial, you know, we have a police officer there or  
10 something. That's a pretty rare situation. On a private  
11 access road like this, it's going to depend on what the  
12 situation was. In the case of let's say a hurricane  
13 response or whatever, we had, we set up cones and had people  
14 in temporary lanes going all the way around the property  
15 because we're going to serve our members as best we can and  
16 in those instances, you know, a gas station really becomes a  
17 public utility and so we just handle the situation as best  
18 we can.  
19 Q I don't think we're, that this was contemplated in  
20 the situation of a hurricane or an extreme weather event. I  
21 think that's set aside for a different category. This  
22 really was on a regular Saturday afternoon or during the  
23 regular course of operations. So, but what I'm hearing you  
24 say is that you don't have any very specific training with  
25 respect to how to direct traffic, how to direct the flow of

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1 traffic and coordinate pedestrians and vehicles?  
2 A No, because the nature of that, well, two things.  
3 First, that's why we design the station as we do. One way  
4 is fast, in and out, to manage the traffic within the  
5 confines of the gas station and that's our whole goal and  
6 that is the vast, vast percentage of the time that we  
7 successfully contain the traffic within the gas station  
8 perimeter, which as you can see is isolated from the rest of  
9 the parking lot. That's our goal and that's how all but a  
10 rare occasion that's what happens.  
11 Specific training for attendants in traffic  
12 management is much more of a judgment call. We require that  
13 they be safe. We require that if they have to be away from  
14 the gas pumps managing traffic, that's when you have another  
15 person out there doing just that, and if necessary two  
16 people or whatever the situation called for. Those are rare  
17 events.  
18 Q You talked earlier about the operations safety  
19 training program that you have. Could you explain in more  
20 detail the scope of that training, for how many hours, how  
21 many days, where is it administered?  
22 A Okay. Well, there's multiple parts to it, as I  
23 mentioned before. The primary part is our internal, multi-  
24 media training program. It's on a computer with a test at  
25 the end that typically takes between 45 minutes and an hour

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1 to complete. Then they take the Class C operator test which  
2 is very brief because it's a very limited scope, but that  
3 covers our compliance with the state regulations explicitly,  
4 even though it's really duplicative with our more advanced  
5 training.  
6 Then that person will go out and work with another  
7 experienced attendant to make sure that they understand the  
8 member service, the judgment aspects of it, which day in,  
9 day out, is largely helping people, helping elderly, helping  
10 management issues, educating people and, of course,  
11 enforcing the safety feature, but it's very much an  
12 interactive thing and we want to make sure that every  
13 attendant understands how to approach members that might be  
14 upset if we tell them to turn their engine off, for example,  
15 and how to manage those situations. So we do get some  
16 specific instruction both in our training, but also  
17 especially in our working with an experienced attendant  
18 because there's some intangibles of just dealing with human  
19 beings.  
20 Q What specific subject areas are covered by the  
21 training program?  
22 A Safety is the first and foremost and all the  
23 equipment, where everything is; how the station operates;  
24 what the bells and alarms mean; how to clean up spills,  
25 small and large; how to react; how to call for help; and we

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1 endeavor to give them the confidence to call for help and  
2 the confidence to hit the red button if needed to not worry  
3 about being second-guessed. We go out of our way to empower  
4 the attendant to use that judgment because that's, again,  
5 the most valuable thing we have out there. You just can't  
6 plan for all the things that human beings will do with their  
7 cars and so we want that person as flexible and as capable  
8 as possible within the sense of the organization. And then  
9 we also go through the checklist for when a delivery truck  
10 arrives. We talk about opening and closing procedures.  
11 Q The handout that I gave you, Exhibit 86, you don't  
12 need to -- in there --  
13 A 86?  
14 Q 86, yes.  
15 A I have it, part of 86. I haven't read this.  
16 Q 86(e).  
17 MR. GROSSMAN: E, okay.  
18 MS. ROSENFELD: Right.  
19 THE WITNESS: Okay.  
20 BY MS. ROSENFELD:  
21 Q In there it states that employee training is  
22 frequently refreshed. Would you agree with that statement?  
23 A Yes.  
24 Q And what do you do to refresh their training?  
25 A Well, we require them to recertify annually on our

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1 program.

2 Q Through the online training?

3 A Yes, through our online training, which is

4 tracked. Our online system is tracked so that everybody who

5 is trained, if you enter their name in the system, it will

6 come up with every certification they have and the date of

7 that certification. So in a multi-function warehouse like

8 we have, we have food safety training, we have a vast list

9 of different things people can be trained in, forklift

10 certification, hazmat, any number of things and gas is one

11 of those.

12 Q And is it an attendant's ability to remain an

13 attendant contingent on passing that annually?

14 A Yes. Yes.

15 Q And what percentage out of -- you said there's a

16 hundred questions. What percentage is required, is

17 considered passing?

18 A 80 percent.

19 Q Could you tell me where the visual alarms are

20 located in, on the station?

21 A The visual alarms?

22 Q I believe earlier you testified that some of the

23 monitoring system, I'm sorry, I'm changing subjects here.

24 A Okay. I can follow you.

25 Q Some of the monitoring alarms are visual. Where

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1 are those visual alarms located?

2 A Within -- but first and foremost is the Veeder-

3 Root alarm which is a big, red light and --

4 MR. GROSSMAN: Spell that, by the way.

5 THE WITNESS: Veeder, V-E-E-D-E-R, dash, Root.

6 It's a brand name of the monitoring system.

7 MR. GROSSMAN: Right.

8 THE WITNESS: It has huge market share. It is the

9 predominate monitoring system used in the United States for

10 gas stations for this purpose. Because it functions also as

11 a delivery overfill alarm, when the tank level reaches 90

12 percent, it's required to sound an alarm to alert the driver

13 that maybe he miscalculated on how much the tank would hold

14 and so that has to be within visual sight line and hearing

15 distance of the delivery driver.

16 MR. GROSSMAN: Did the driver not fill it up all

17 the way? Did the driver only go to some, something around

18 90 percent?

19 THE WITNESS: Well, yes. By law, in an

20 underground storage tank containing gasoline, you can only

21 fill it to 90 percent where, after which an alarm has to

22 sound --

23 MR. GROSSMAN: Okay.

24 THE WITNESS: -- and you can go up to 95 in

25 emptying the hoses and, but that's the range at which the,

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1 it's required that the driver be alerted --

2 MR. GROSSMAN: Okay.

3 THE WITNESS: -- that there's an issue or there

4 might be an issue with the tank becoming full. There are

5 other overfill prevention devices built into the tank, so

6 it's not subject simply to the driver hearing that alarm.

7 MR. GROSSMAN: Okay.

8 THE WITNESS: But that is a key element of it, of

9 course. And so that is typically located on the controller

10 enclosure which is the little square there to the left of

11 the dispensers in the exhibit display.

12 BY MS. ROSENFELD:

13 Q And can you show me?

14 A Yes. This little square here is the --

15 MR. GROSSMAN: Pointing to, the witness is

16 pointing to Exhibit 119(c) on the, I guess that's the

17 western, sort of the western corner, the northernmost.

18 THE WITNESS: The western side of the fuel

19 island --

20 MR. GROSSMAN: Right.

21 THE WITNESS: -- is how I would describe that.

22 MR. GROSSMAN: All right. I'll let you describe

23 it.

24 BY MS. ROSENFELD:

25 Q Is it on the western side of the kiosk? Is it

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1 mounted on the wall of the kiosk?

2 A Since this is preliminary, I don't know where this

3 specifically would be, however, it's likely it's going to be

4 on this corner, either on this side or this side because the

5 driver is going to be here. It would be like that.

6 MR. GROSSMAN: You used the word this. Which is

7 this side --

8 THE WITNESS: I'm sorry.

9 MR. GROSSMAN: -- you're referring to?

10 THE WITNESS: It's going to be on a side of the

11 data hut visible to the driver as he makes his --

12 MS. ROSENFELD: Or is it north?

13 THE WITNESS: -- delivery. North is up. It's

14 going to be on the south or southwest or southeastern

15 corners of that data hut. Now if for some reason that isn't

16 visible enough, we will occasionally put the enunciator and

17 alarm out by the tanks and whatever it takes because that is

18 part of the code we have to comply with, but by far the most

19 common place in on the wall of that hut just because it's a

20 central place and it's visible to most of the station.

21 BY MS. ROSENFELD:

22 Q Does it -- how big is it? What does it look like?

23 A Well, the enunciator box is about a foot by a foot

24 square and then the bulb is maybe eight inches in diameter

25 and, of course, it's got the box contains it, a Clarion horn

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1 basically so it's both an audible, you know, audible and  
2 visual alarm. And that will go off whenever there is any  
3 alarm from the Veeder-Root, but it's specific because it  
4 controls overfill prevention. As part of that process, it  
5 has to be visible to the driver.  
6 Q And are those the only two alarms, the Veeder-Root  
7 alarms?  
8 A Well, no. No, that's by far the biggest one.  
9 When there's an alarm on the Veeder-Root, it also displays  
10 the alarm and flashes a red light and a small horn inside  
11 the building.  
12 Q And you --  
13 A Go ahead.  
14 Q I didn't mean to cut you off.  
15 A Oh. Well, each dispenser, if a dispenser  
16 malfunctions, they have their own error codes, but they are  
17 on audible. They just flash a code on the dispenser and the  
18 dispenser doesn't work, but those are fairly minor and they  
19 just show that there's something wrong with the dispenser's  
20 function because there are many shutdown features programmed  
21 into the dispensers as well. For example, if the vapor  
22 vacuum motor that captures the stage two vapor fails, the  
23 pump is out of commission.  
24 Q And did you say that the Veeder-Root alarm also is  
25 connected to an independent security company, an off-site?

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1 A Yes. Yes.  
2 Q Where would the company be located that serves  
3 this facility?  
4 A The, it's a call center located in North Carolina  
5 and it's a division of the company that, it's a division of  
6 Gilbarco, Veeder-Root, that makes the dispensers and the  
7 monitoring system.  
8 Q And so what do they do when they get an alarm?  
9 A When a Veeder-Root alarm comes in that's not  
10 related to inventory, meaning delivery needed or 90 percent  
11 breached because they're not onsite, everything involving a  
12 sensor going off they immediately call the location and  
13 dispatch service that's been already set up as to which  
14 service company they're going to call, a local service  
15 company to come out and address the alarm. So that's  
16 happening whether we have an attendant onsite or not because  
17 we are closed at nighttime. But they coordinate, explicitly  
18 they coordinate with the attendant as part of that process.  
19 Q And who is responsible for the maintenance of  
20 those visual and audible alarms, the Veeder-Root alarms?  
21 A Well, service technicians are responsible for  
22 maintaining the, everything other than the filters and  
23 nozzles, I explained earlier. Service techs are certified  
24 and trained in the equipment and also working in the various  
25 areas of a gas station. We don't have our employees do any

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1 electrical or we also prevent them from going into those  
2 underground enclosures for OSHA compliance space entry  
3 issues. That's all -- service techs do all that.  
4 Q So these are third-party --  
5 A Yes.  
6 Q -- service contracts?  
7 A Yes.  
8 Q Okay.  
9 MR. GROSSMAN: Ms. Rosenfeld, how much longer do  
10 you anticipate your cross-examination?  
11 MS. ROSENFELD: I would say probably at least an  
12 hour.  
13 MR. GROSSMAN: Okay. I'm not, I'm not trying to  
14 cut you off here, but -- because I think you're, you know,  
15 you're well within the scope of the direct, and I think you  
16 should consider whether the information being elicited here  
17 is really probative of any issue that I will have to decide  
18 unless you in some way differentiate this gas station  
19 negatively compared to others. And so, you know, you should  
20 consider that in terms of whether or not the time spent on  
21 that area of cross-examination, unless you have some  
22 evidence that this is deficient compared to others given the  
23 general proposition that gas stations are permitted by  
24 special exception and we're looking for non-inherent  
25 characteristics for the most part, not, you know, not

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1 totally. So I just want you to think about that in terms of  
2 the cross-examination. But you may continue so you are  
3 within the scope of the direct.  
4 MS. ROSENFELD: Thank you very much.  
5 BY MR. ROSENFELD:  
6 Q In the handout, Exhibit 86(e), which I gave to  
7 you, there's a section in there that also says that fueling  
8 areas are isolated from the overall storm water system for  
9 pretreatment and/or containment of a catchment area of  
10 nearly 30,000 gallons. My first question is is the  
11 terminology, catchment, C-A-T-C-H-M-E-N-T, is, do you know  
12 what that is?  
13 A Yes. That's not a term that we use in operations,  
14 of course, but it refers to the civil design of the station,  
15 meaning the grading and where surface flows would go, which  
16 is all very carefully considered in designing a gas station  
17 and getting it permitted.  
18 Q And do you know on this particular site where that  
19 catchment area is?  
20 A Generally just from what I saw yesterday -- would  
21 you like me to speak generally about stations or this  
22 particular station?  
23 Q This particular one please.  
24 A My understand is that there is a double oil/water  
25 separator arrangement here. A standard feature of all

1 stations is anything that runs off the fueling area around  
 2 the dispensers which is covered by the canopy and,  
 3 therefore, covered, exempt from rainfall, is going to flow  
 4 down a gutter, a swale or some kind of a drain into an  
 5 oil/water separator. An oil/water separator, of course, any  
 6 hydrocarbons would float out, be trapped and the water  
 7 passes through. And then in this particular location, my  
 8 understanding is that it then goes to a larger site,  
 9 oil/water separator that's handling a greater part of the  
 10 parking lot, how much I don't know, and then it in turn goes  
 11 on to something else and I'm forgetting what that was, but I  
 12 think it's like a three layer step before it ever gets out  
 13 to the sanitary or storm sewer and I don't understand the  
 14 details of connecting to public utilities on this site. I  
 15 don't know that detail.

16 Q So it's the underground, system, it's not a  
 17 surface?

18 A Well, it's designed to convey any hydrocarbon  
 19 drips or spills that happen at the dispenser and generally  
 20 speaking this is crank case oil drips. That's the most  
 21 common thing and that's true of anywhere where cars park,  
 22 you know, you'll have your crank cases dripping. And any  
 23 flow from the drive slab or the concrete area around the  
 24 dispensers is, it's graded to flow to a particular place.  
 25 That drain goes to an oil/water separator and then on for

1 either additional containment or off to the storm sewer,  
 2 whatever the situation is.

3 Q You testified earlier that in gas stations that  
 4 have open areas that would allow for vehicles to cut into --

5 A Uh-huh.

6 Q -- queue lines --

7 A Uh-huh.

8 Q -- that typically you would expect bollards and  
 9 chains to prohibit that.

10 A Well, the most common one is at the tank pad where  
 11 we want to have access for the driver to safely move between  
 12 his truck and our tank attachments which are on the left-  
 13 hand side of the tank, so it's the west-hand side.  
 14 In this case the ends of the tanks on the west are where the  
 15 connections are.

16 Q And do you know if there is that kind of a bollard  
 17 and chain system on this property?

18 MR. GROSSMAN: You mean proposed property?

19 MS. ROSENFELD: Proposed.

20 THE WITNESS: Proposed, well, it's part of our  
 21 master design so, yes, I would say that that would be an  
 22 automatic part of our design. And then that chain is just a  
 23 plastic chain. It's detached, but it's just a visual and  
 24 quasi-physical barrier to let people know you don't drive  
 25 your car through there casually.

1 BY MS. ROSENFELD:

2 Q And is that typically put up when, back-up when  
 3 the tanker is unfueling or is it down the whole time the  
 4 tanker is fueling?

5 A Well, the driver is there with the truck blocking  
 6 that gap. The chain is down. When the delivery is over,  
 7 the chain is hung back up and it's just a link to the  
 8 bollard at the other end. So it's like two fence posts  
 9 within a long, plastic chain in between.

10 Q And you would expect that at any opening aside  
 11 from the entrance?

12 A Generally speaking, yes, we would want to control  
 13 alternate entrances if we had to have a curb interruption  
 14 generally speaking, yes.

15 Q Do you know the average gross square footage area  
 16 of a typical gas station allocated to queuing?

17 A Well, we like the, we like the queuing area to be  
 18 100 feet.

19 Q And do you know if it's 100 feet, 100 feet in  
 20 length, is --

21 A 100 feet in length, yes.

22 Q And --

23 A I think this one, I think I saw yesterday that  
 24 it's shown as 100 feet. So, yes, this would be per our  
 25 normal model. There is some variability in how much

1 property and where the thing is located on different pieces  
 2 of property. That queuing area can fluctuate, but 100 feet  
 3 is very common.

4 Q 100 feet for a car to completely line up or just  
 5 100 feet in order for cars to maneuver?

6 A 100 feet from the end of the entrance side, the  
 7 first pumps they would reach back to where cars that first  
 8 get in line we like to have 100 feet.

9 Q Okay. And based on your experience, could you  
 10 show me how a car would enter and where they could first  
 11 actually physically, given turning radiuses, get in line?

12 A Just point to it on the --

13 Q Yes.

14 A They would enter from the south side of the  
 15 station here through the one-way entrance.

16 MR. GROSSMAN: Once again, the witness is  
 17 referring to Exhibit 119(c).

18 THE WITNESS: The south side of it and we have  
 19 enter only signage in other parts of our master traffic  
 20 guidance. And then when they come in here, they can see  
 21 which is the shortest line or which is the available pump  
 22 that they were to approach and then we have the lane  
 23 striping that extends 60 feet and they get into the right  
 24 lane and proceed to the pumps, depending on volume or how  
 25 many people are there with them.

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1 BY MS. ROSENFELD:  
2 Q Okay. And if I were to show you again Exhibit  
3 56(f), looking at 56(f) --  
4 A Uh-huh.  
5 Q -- does that 100 feet give full, a full queuing  
6 line for each of the, each of the queues, a 100-foot queuing  
7 line?  
8 A Okay. 100 feet would be right to the outside of  
9 the curb, so as a practical matter, as you show here, they  
10 would, as they came in, they bent around. The actual  
11 queuing distance would be slightly under 100 feet.  
12 Q Thank you.  
13 MR. GROSSMAN: Would that mean that there might be  
14 marginally fewer cars queuing within the station grounds?  
15 THE WITNESS: Marginally fewer than, wouldn't --  
16 MR. GROSSMAN: Would --  
17 THE WITNESS: If there was no curb there and there  
18 was a wide open entrance, yes, you'd probably get an extra  
19 car in line because you wouldn't have the curbing and you  
20 see the very fat landscaping --  
21 MR. GROSSMAN: Right.  
22 THE WITNESS: -- there that -- and I'm not an  
23 expert on what the landscaping requirements are, but there  
24 are always requirements for landscaping.  
25 MR. GROSSMAN: Okay.

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1 BY MS. ROSENFELD:  
2 Q Let me show you what was marked earlier as Exhibit  
3 No. 111. And just to orient you, it's the southern side of  
4 the sight.  
5 A Uh-huh.  
6 Q Here's the facility. To the east of the facility  
7 are the loading docks --  
8 A Okay.  
9 Q -- for the warehouse.  
10 A Uh-huh.  
11 Q And according to Mr. Duke, the civil engineer, he  
12 testified that this crosshatch area on the eastern boundary  
13 of the special exception is left open, there is not a curb  
14 cut. And according to Mr. Duke's testimony, and I'm reading  
15 from the May 26th transcript at page 248, April 26th, he  
16 said, quote,  
17 "We wanted to provide additional flexibility  
18 for the trucks' loading warehouse in case they  
19 need to extend a few feet further out."  
20 And the question was, why did they need to extend further  
21 out? The answer was,  
22 "Just for their backing in. There was just a  
23 pull-up and back in to the loading dock."  
24 Is it a typical layout design to provide turnaround space  
25 for warehouse delivery trucks within the confines of the gas

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1 station itself?  
2 A Typical meaning part of our master prototype?  
3 Q Correct.  
4 A No. That's a particular situation. Again, I saw  
5 this for the first time yesterday. I have no idea of the  
6 distances and the dynamics there. If the gap was put in  
7 there for the purposes of facilitating the dock loading, the  
8 vast majority of those trucks come and go to the loading  
9 docks prior to 6:00 a.m. and so what we would envision there  
10 is we would have a, either a chain barrier or a removable  
11 bollard or something that we would put in place once the  
12 station opened. We start taking deliveries as early as 2:00  
13 a.m. and usually the height of the activity is in the 4:00  
14 a.m., 5:00 a.m. range. So, and that's speculating. Again,  
15 I just have seen the site plan for the first time yesterday.  
16 Q Do you know if there are truck deliveries at this  
17 particular warehouse after the station would open, after  
18 6:00 in the morning?  
19 A I have no idea.  
20 Q Okay. Are you aware of any other Costco gas  
21 station layout that has this particular design specific to  
22 the loading docks?  
23 A Specific design, no, no two are absolutely  
24 identical. They're all very similar, of course, as I  
25 mentioned. We do have some gas stations close to loading

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1 docks and, you know, we had to design in where those trucks  
2 would go. One pops to mind out in Utah. But, you know,  
3 it's manageable because very little, if any, of the  
4 operations of the loading dock and the gas station overlap.  
5 Q Would your opinion change if there was  
6 considerable activity at the loading dock while the gas  
7 station was open?  
8 A That would be speculative. I just, I haven't  
9 looked at it enough. I don't know the total turning  
10 radiuses. I just don't have the knowledge right now.  
11 Certainly we would never want the loading dock to interfere  
12 with the operation of the gas station or cause a traffic  
13 conflict, but it can be managed in the hours when the  
14 station is not open if necessary.  
15 Q And the one gas station that you mentioned in  
16 Utah, does it allow for delivery trucks to enter into the  
17 gas station fueling area?  
18 A Yes, we've been successfully operating it without  
19 any conflict or accident for that site nine years.  
20 Q And are there limitations on when the warehouse  
21 trucks can actually deliver at that location?  
22 A No specific limitations. If there was an actual  
23 case where you had multiple trucks arriving all at the same  
24 time, then someone goes out and works with the drivers and  
25 helps because we have many capable people in the building

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1 and they help manage the situation.  
2 Q Meaning they direct the truck traffic elsewhere on  
3 that particular site?  
4 A Well, yes, and this is conjecture on my part, but  
5 imaginable where if you had multiple semi-tractor rigs  
6 arriving at the same time and they all wanted to back in at  
7 the same time, obviously the drivers and our receiving  
8 personnel would help sort that out, line them up, figure out  
9 who goes first, et cetera. And we have an appointment  
10 process whereby the trucks, we know when the trucks are  
11 coming inside the building for all that. So it's not a  
12 random, chaotic event, it's a very controlled, scheduled  
13 event, but in the daily world, you know, trucks come and go  
14 and any difficulty is successfully managed. We take  
15 deliveries, of course, every day at every warehouse.  
16 Q And at that Utah location, are there any uses  
17 other than the warehouse and the gas station at that site?  
18 A No, not that I recall, no.  
19 MR. GROSSMAN: Ms. Rosenfeld, would you apparent  
20 concern about that potential conflict be resolved given the  
21 witness's testimony that there's very little overlap on the  
22 loading dock and gas station operations, be resolved by a  
23 potential condition that would state that in general  
24 deliveries to the loading dock must be made during non-gas  
25 station operation hours and when that's not possible, that

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1 an attendant be, an additional attendant be available to  
2 direct the truck traffic or something to that effect? Could  
3 that resolve that concern of yours?  
4 MS. ROSENFELD: Well, I think that the concern is  
5 broader than that. There's not just the concern about the  
6 loading dock and the gas station, but you also have multiple  
7 other activities going on at that location as well. You  
8 have the tire, tire service entries, the base also or in  
9 that general location and the entry to the mall. I think  
10 it's one piece of a much more complicated conflict between  
11 truck traffic, vehicular traffic and pedestrians at this  
12 location.  
13 MR. GROSSMAN: You, well, you might keep in mind  
14 the idea that at the end of this when I do my report and  
15 recommendation, no matter what I recommend for or against,  
16 I'm going to do what technical staff did in this case which  
17 is to suggest possible conditions if the Board elects to  
18 grant a special exception. And so at the end of the case,  
19 I'm going to ask the parties first to get together and see  
20 what conditions are agreeable to both sides if the special  
21 exception were granted and then to the extent that they're  
22 not, to suggest any additional conditions that they feel  
23 would be appropriate and then I'll make up my mind as to  
24 what to recommend. But I think that's a good way and it's  
25 very helpful to have that community input on those issues.

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1 This may be one area where the, where a condition could  
2 handle the concern. I'm not saying one condition is going  
3 to handle all the concerns.  
4 MS. ROSENFELD: I appreciate that and I'll  
5 certainly take it under advisement --  
6 MR. GROSSMAN: Okay. All right.  
7 MS. ROSENFELD: -- and talk to my clients about  
8 it. Thank you.  
9 MS. HARRIS: Mr. Grossman, before Ms. Rosenfeld  
10 continues, can we take a 2-minute break or a 5-minute break?  
11 MR. GROSSMAN: Certainly.  
12 MS. HARRIS: Thank you.  
13 MR. GROSSMAN: So it's now 12 minutes to 3:00.  
14 Let's come back in 5 minutes.  
15 MS. HARRIS: Thank you.  
16 (Whereupon, at 2:48 p.m., a brief recess was  
17 taken.)  
18 MR. GROSSMAN: All right. Back on the record and  
19 continuing with your cross-examination.  
20 MS. ROSENFELD: Yes, thank you.  
21 BY MS. ROSENFELD:  
22 Q Just a couple more questions about the site in  
23 Utah. Where in Utah is this location?  
24 A The Salt Lake City area, a suburb called Lehi.  
25 Q And do you know what volume of gas they sell at

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1 that location?  
2 A I could guess an approximation.  
3 MR. GROSSMAN: Well, I don't want you to guess.  
4 You can approximate it.  
5 THE WITNESS: Yes, I mean --  
6 MR. GROSSMAN: If you don't know, just say.  
7 THE WITNESS: Yes, I could, I could estimate that  
8 it does about a half a million gallons per month.  
9 BY MS. ROSENFELD:  
10 Q Six million a year approx?  
11 A Yes.  
12 Q An estimate?  
13 A That's a good estimate, yes.  
14 Q All right. Thank you. You described earlier the  
15 protocol that the attendants follow when a fuel tanker  
16 arrives for refilling the underground tanks. Could you  
17 describe, just take me through step by step. What happens  
18 when a fuel tanker arrives, where do they park and then what  
19 happens?  
20 A Okay. When the tanker arrives or starts to pull  
21 in, the attendant goes into the data hut, which is what we  
22 call the little electronic control enclosure, and hits the  
23 print button on the Veeder-Root console and that gives him a  
24 listing of the inventory, the current inventory in each of  
25 the three storage tanks. The driver pulls up, the attendant

1 gives the driver that inventory print and the driver shows  
2 the attendant the bill of lading or the manifest that shows  
3 what the truck contains. The attendant brings a fire  
4 extinguisher out, sets it near the fill ports as an added  
5 safety precaution and the driver proceeds to hook up to the  
6 fill ports. I left out a step, sorry. First, the attendant  
7 unlocks the caps on the delivery ports for the appropriate  
8 grade, as I mentioned earlier.

9 Q But not until after they've reviewed the manifest?

10 A Yes.

11 Q They unlock only the tanks that will be receiving  
12 fuel.

13 MR. GROSSMAN: Who removes the chain?

14 THE WITNESS: That could be either the driver or  
15 the attendant. It's very common for drivers to fight over  
16 the Costco route because it's such an advantageous delivery  
17 situation that it's common that we'll have the same driver  
18 many times, not always.

19 MR. GROSSMAN: When you say fight over it, you  
20 mean to be one who is doing the delivery?

21 THE WITNESS: Yes, the delivery drivers all have  
22 their routes and different people that they supply and  
23 because the Costco buying philosophy is to take the whole  
24 tanker as opposed to delivering a compartment here and a  
25 compartment there at different stations and because we have

1 dedicated lanes for the driver and we have a trained  
2 attendant there to assist, it makes it a very popular  
3 destination for drivers. I'm relying on what drivers have  
4 told me personally and I don't have names of those drivers,  
5 but that's what I've been told over many years.

6 MR. GROSSMAN: All right.

7 THE WITNESS: So very commonly the driver is,  
8 becomes very familiar with our site and the attendant and  
9 the driver work as a team to make sure that if there's any  
10 traffic issues that the chain is removed and that the fire  
11 extinguisher is standing by and such things.

12 MR. GROSSMAN: Okay.

13 BY MS. ROSENFELD:

14 Q And so then after the attendant unlocks the caps  
15 what happens?

16 A Then the driver proceeds to couple to both the  
17 vapor and liquid drop connections and to the truck.

18 Q And then after that does he start to actually  
19 physically unload the fuel?

20 A Yes. And the --

21 Q And is there a mechanism, how does that happen?

22 A There's a valve on the truck and that valve can't  
23 open unless the connections to the truck and tank are  
24 properly secured. There's a safety feature on the truck  
25 assembly.

1 Q And approximately how long does it take the driver  
2 to hook up the hoses to, am I using the right term, the  
3 hoses to the tanks?

4 A Yes, yes, couple the hoses. I would estimate five  
5 minutes, of course there's going to be variability around  
6 that depending on the driver.

7 Q Does it vary based on whether or not they're doing  
8 a dual drop or just a single drop?

9 A Yes, bringing out two hoses and coupling them is  
10 going to take a little bit more time than a single pair.

11 Again, every delivery has two hoses, one for liquid going in  
12 and the other to capture the displaced vapor going back to  
13 the truck.

14 Q And so from the time that the tanker pulls in and  
15 goes through the manifest, the attendant unlocks the caps  
16 and the actual fueling begins, how long does that whole  
17 process take from the time he pulls up until the fueling  
18 begins?

19 A About five minutes.

20 Q Including reviewing the manifest and hooking up  
21 the, all of it?

22 A Yes.

23 Q Okay. And then after, after the fuel delivery is  
24 complete, what is the process?

25 A The attendant prints another Veeder-Root, again,

1 showing the inventory levels after the delivery, signs the  
2 paperwork for the delivery. We get a copy of the manifest  
3 and they attach that Veeder-Root printout to it as the  
4 driver disconnects the hoses and puts them back.

5 Q And how long does it take to reconnect, to  
6 disconnect the hoses and reassemble them on the truck?

7 A Probably another five minutes.

8 Q And would that be the same for the double drop?

9 A A little bit longer. The -- it's actually a very  
10 quick process in the sense that every truck, and you can  
11 verify this by seeing a gas truck on the street, you'll see  
12 long, aluminum tubes running along the gutter along the  
13 bottom of the tank, the oval tank on the truck and that's  
14 where the hoses go. So the hose comes out of that tube,  
15 couples up, slides back into that tube very quickly and the  
16 drivers become very efficient at that.

17 MR. GROSSMAN: So the whole process of arrival,  
18 going through the paperwork, et cetera --

19 THE WITNESS: Uh-huh.

20 MR. GROSSMAN: -- emptying into the two tanks and  
21 then putting it back all together again and getting ready to  
22 drive away takes a total of how much for an average delivery  
23 like that?

24 THE WITNESS: 20 to 30 minutes.

25 MR. GROSSMAN: All right.

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1 THE WITNESS: Again, with some variables depending  
2 on how they're connecting and which tanks and whatnot.  
3 MR. GROSSMAN: Okay. Because one of the concerns  
4 raised already in this case was the amount of time trucks  
5 would be occupying a portion of a lane of traffic within the  
6 parking area and so that is a concern that's been voiced.  
7 Okay, Ms. Rosenfeld.  
8 BY MS. ROSENFELD:  
9 Q I, your testimony earlier had suggested the time  
10 was closer to 45 minutes for unloading. That was Mr.  
11 Brann's testimony. Do you have any reason to think he was  
12 incorrect in his testimony?  
13 MR. GROSSMAN: The gentleman is sitting in the  
14 audience, but --  
15 THE WITNESS: Well, I can only answer truthfully.  
16 Yes, I think that was overstating the amount of time.  
17 MR. GROSSMAN: And I can't recall exactly what Mr.  
18 Brann's testimony was on that point, so I'm going to take  
19 your word for it that that is what was said.  
20 BY MS. ROSENFELD:  
21 Q You had stated earlier that one reason why drivers  
22 like delivering fuel to Costco is because there's a, quote,  
23 dedicated lane for drivers? Can you explain what that mean?  
24 A Dedicated lane, a dedicated spot for them to line  
25 up where they're isolating from the queuing gasoline

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1 customers.  
2 Q Could you show me where that dedicated lane would  
3 be on this Exhibit 111?  
4 A A dedicated lane might imply more specificity than  
5 what we actually have, meaning just that there's a  
6 prescribed route for the truck to come in and out of the  
7 station and complete its delivery in a safe manner. On the  
8 Exhibit --  
9 MR. GROSSMAN: 111.  
10 THE WITNESS: -- 111, in this case they would come  
11 in on the south side, not through the station entrance, but  
12 just beyond it to the west. They would come up in line with  
13 the tank fills and make their drop and then they would  
14 proceed out to the north and take a left back to the west  
15 and come back out on the ring road, just spending a minimum  
16 amount of time in the parking lot with their truck.  
17 BY MS. ROSENFELD:  
18 Q And the yellow sheet, the little yellow tab on  
19 Exhibit 111, another witness had placed that as the general  
20 location of where a tanker would be at the time of this  
21 unloading fuel. Does that look approximately correct to  
22 you?  
23 A Approximately.  
24 Q Okay. Would you place it in a different location  
25 if you were locating it?

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1 A No. Given that this is the first time I've seen  
2 this plan is yesterday, so I'm not familiar with the  
3 specific dimensions of this particular plan yet, but in  
4 concept, absolutely this is normal.  
5 Q Are you aware that the tanker would be located  
6 within a portion of the drive aisle.  
7 A That's the kind of thing I have no ability to  
8 evaluate. I'm not sure if this is to scale or I'm not sure  
9 of the distances of all -- I haven't seen --  
10 Q Assuming just for the sake of question that's  
11 true, are you aware of any other Costco gas station where a  
12 fueling tanker would park within a drive aisle while  
13 unfueling?  
14 A We have stations we've built over many, many years  
15 and we've learned some lessons about how to bring the truck  
16 in. There's examples in the state of less favorable places  
17 for the truck to be. This is one of those learning by  
18 experience things where we try to keep the truck out, try to  
19 make it easy for them to get in and out as a preventative  
20 thing. We have a great safety record on deliveries, but we  
21 feel the easier it is for that driver to get in and out  
22 easily and quickly and separate from the queuing cars is to  
23 the good. So it's a slightly general statement, but it  
24 would apply to this site.  
25 MR. GROSSMAN: I don't think that exactly answered

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1 the question, Mr. Hurlocker. She asked you whether or not  
2 you're aware of any other Costco stations where the  
3 refueling truck would be partially into the drive aisle, is  
4 that correct, counsel?  
5 MS. ROSENFELD: That was my question.  
6 MR. GROSSMAN: So try to address that, that are  
7 there others where you have the same setup.  
8 THE WITNESS: Sure. By drive aisle, you mean --  
9 MR. GROSSMAN: The parking drive aisle.  
10 THE WITNESS: -- this aisle or this aisle?  
11 MR. GROSSMAN: No, the one to the west of the --  
12 MS. ROSENFELD: The general --  
13 THE WITNESS: Okay.  
14 MR. GROSSMAN: -- of the special exception area  
15 which is --  
16 THE WITNESS: Yes. We have a wide range of  
17 situations, including in drive aisles and mini-stations  
18 where the truck is actually in the queuing area and that's  
19 why we've learned from that and we design it outside the  
20 queuing area as a result. But, yes, we have a great many  
21 different arrangements based on property and what we knew at  
22 the time.  
23 MR. GROSSMAN: All right.  
24 BY MS. ROSENFELD:  
25 Q And why would you want it outside of the queuing

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1 area?

2 A To inconvenience our members the least and to make

3 it as easy as possible for the driver to get in and out

4 without mishap.

5 Q What kind of mishap?

6 A Well, like I said, it's preventative. Whenever

7 you have a truck on the property, you want to be careful

8 with it and you want to be safe and have a good, good room

9 for it. That applies to the loading dock or traffic

10 management in general. We want to make it as easy as

11 possible to get in and out of the site for anybody that's a

12 member or a vendor.

13 Q So would you -- is it fair to say that you prefer

14 the fuel trucks outside of the queuing area because it's

15 safer for pedestrians or safer for other vehicles?

16 A Well, it lessens the chance of a vehicle

17 interfering with the drop, again, people driving their cars.

18 But, no, pedestrians are typically not inside this queuing

19 area here, which is why we don't put parking in there or

20 anything else because we don't want pedestrians in where

21 people are driving their cars and approaching the pumps. So

22 did I miss your question there, the pedestrian part

23 generally isn't the issue because people aren't out of their

24 cars in this area until they reach the actual pumps.

25 Q And what about the convenience and safety of

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1 people driving vehicles outside of the gas station area?

2 A Yes, of course, we want to preserve that the best

3 we can.

4 Q And is locating the fueling truck within the

5 driver aisle of the parking lot the best way to achieve

6 that?

7 A Best, better, best, I'm not -- best would be a

8 huge dedicated area of nothing but that, but it's not always

9 completely possible to have the best situation in anything,

10 anybody ever does, so I'm not sure -- I can't address best,

11 I guess. I could say better. I think this is better than

12 most gas stations where the truck is right, right in the

13 middle of everything. That's what we try to avoid.

14 Q Better than being right in the middle of the

15 special exception site?

16 A Special exception is a term I'm not sure. I mean

17 I can understand that it means the site.

18 MR. GROSSMAN: In the middle of the site of the --

19 MS. ROSENFELD: In the middle of the site --

20 MR. GROSSMAN: -- of the site area.

21 MS. ROSENFELD: -- of the gas station.

22 THE WITNESS: Oh, okay. Well, obviously the truck

23 has to come very close because that's where the tanks are,

24 but we want to try to make it easy for them to get through

25 and to minimize traffic. There's never a perfect situation.

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1 That's where I, I'm not sure what you mean by best. This

2 is, given this situation, this is a very workable plan in my

3 opinion for gaining that benefit of having a good access for

4 the truck. The truck is in the parking lot a very limited

5 amount of time and has a nice, straight exit in and out.

6 So, yes, this is a good plan in my opinion.

7 BY MS. ROSENFELD:

8 Q And based on your experience with the traffic

9 circulation, how would you see vehicles that are either

10 backing out of the parking spaces to the west of the

11 facility, maneuvering around the fuel tanker?

12 A Again, I have not been able to look at the

13 distances, precise distances here. I have just -- I don't

14 know.

15 Q Okay. Given the volume -- given the volume of

16 gasoline sales projected, what would be your estimate of the

17 average number of deliveries on a Saturday?

18 A Average number of deliveries on a Saturday? I'd

19 say two to four.

20 Q And on a Sunday?

21 A Generally less. We typically take fewer

22 deliveries on Sundays, so probably two. Again, those are

23 broad averages based on -- there's a lot of conditions that

24 affect availability of fuel and truck availability and

25 things that we don't control, so there's some variability

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1 there.

2 Q And given the fact that at this particular

3 location the testimony earlier from another witness was that

4 the fuel tanker would be parked partially within the drive

5 aisle for the parking lot itself, would you expect that the

6 attendants would get involved with managing traffic and

7 helping traffic outside of the gas station maneuver around

8 the truck?

9 A Well, certainly as needed. That's what the

10 attendant is there for and that's a perfect example of the

11 benefit of having an attendant out there actively assisting

12 and helping with whatever situation might arise. Is it

13 possible for me to ask a question here?

14 MR. GROSSMAN: No.

15 THE WITNESS: I'm a little -- I have not seen this

16 plan, so I'm kind of speculating on some detail here that I

17 just haven't researched, so --

18 BY MS. ROSENFELD:

19 Q I understand.

20 MS. HARRIS: Do you want to put the other plan up,

21 the one before it?

22 MR. GROSSMAN: Ms. Rosenfeld has the right to have

23 any exhibits --

24 MS. HARRIS: Okay.

25 MR. GROSSMAN: -- she wants up there.

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1 BY MS. ROSENFELD:  
2 Q And in your experience, did the attendants help  
3 manage the pedestrian traffic outside the gas station area?  
4 A If needed, absolutely. Again, that's the point  
5 where I said the eyes, ears and good judgment of a trained  
6 attendant, and especially an experienced attendant because  
7 we have people out there, and the ability to bring someone  
8 else out to help with a specific issue, that's what gives us  
9 that great flexibility that allows us to react to whatever  
10 situation is, comes up and that's why we have such a great  
11 record.  
12 MR. GROSSMAN: Would Costco, Ms. Harris, object to  
13 a condition that would require at least two attendants to be  
14 present at all times given the circumstances of this  
15 station?  
16 MS. HARRIS: May I confer with my client?  
17 MR. GROSSMAN: Sure.  
18 MS. HARRIS: I think there's concern that there  
19 are certain times of the day where it's certainly not needed  
20 at all. The station opens at 6:30 in the morning, from 6:30  
21 to 8:00 or 10:00 before the warehouse opens.  
22 MR. GROSSMAN: Well, let me modify that, that  
23 question and then -- would Costco object to a condition that  
24 would require two attendants to be present at any time there  
25 was a truck filling, you know, unloading there to the gas

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1 tank?  
2 MS. HARRIS: Can we confer with our gas ops  
3 expert?  
4 MR. GROSSMAN: Certainly. I mean, I don't even, I  
5 don't need an answer now.  
6 MS. HARRIS: Or we can put our -- okay.  
7 MR. GROSSMAN: It's something that is a question  
8 that when at the end you all confer about the number, about  
9 the conditions that you would each recommend --  
10 MS. HARRIS: Right. Okay.  
11 MR. GROSSMAN: -- if, in fact, there is, well, for  
12 my, for purposes of my report.  
13 MS. HARRIS: Yes.  
14 MR. GROSSMAN: Then you can consult about that.  
15 MS. HARRIS: Okay.  
16 MR. GROSSMAN: I didn't know how to phrase it.  
17 And, Mr. Hurlocker, you don't have to worry about the,  
18 about -- not knowing about the specific on this particular  
19 diagram because your testimony has been very clear, I think,  
20 and helpful to us in understanding the situation. So, okay.  
21 MS. ROSENFELD: Just several more things.  
22 BY MS. ROSENFELD:  
23 Q What is your understanding the hours of truck  
24 deliveries at the warehouse are?  
25 A The merchandise deliveries --

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1 Q The merchandise to the warehouse.  
2 A -- to the warehouse loading dock?  
3 Q Yes.  
4 A General awareness based on a long history with the  
5 company, but that's not my specific area of detailed  
6 expertise, other than it's --  
7 Q And what is it?  
8 A It's company-wide policy to bring the trucks in  
9 early in the morning. That's always been the case.  
10 Q Do you know how early?  
11 A Not exactly. As early as 2:00 a.m., but I'm sure  
12 that varies with time of year. During Christmas, I'm sure  
13 it's different than at other times.  
14 Q And in the evening?  
15 A I'm sorry. I could elaborate just a little bit.  
16 There's not a whole, a great number of trucks that come into  
17 that loading dock because our depot operations which means  
18 we have consolidation centers and the truck, one truck will  
19 come in with a broad range of merchandise categories through  
20 the depot and that's one of the distribution efficiencies  
21 that make us famous, frankly, and so the number of trucks to  
22 bring all the different kinds of merchandise is very small.  
23 We don't have to bring in a separate truck for every  
24 product, for example, of all the things that we sell. So  
25 it's an extraordinarily efficient process and it results in

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1 a relatively small number of trucks each day.  
2 Q On average, do you have a number?  
3 A Yes, I do not know that number. I don't.  
4 Q Is there any time of day when trucks are not  
5 allowed to make deliveries? I'm talking about warehouse.  
6 A I don't know if there's a prohibition after a  
7 certain amount of time, no, I don't. I don't know the  
8 specifics there.  
9 Q And do you know if there are any hours where fuel  
10 tanks are not allowed to make deliveries to the gas station?  
11 A Generally speaking at nighttime. We want to, we  
12 want one of our attendants to be there. And, of course, we  
13 try to minimize both their time in traffic and interruption  
14 with the warehouse lot by scheduling them to the best of our  
15 ability, given what I said previously, that we don't own the  
16 trucks or the terminals.  
17 Q Do you know the number of vehicular and pedestrian  
18 accidents in Montgomery County?  
19 A No.  
20 Q Do, or the number of vehicular and pedestrian  
21 accidents in parking lots in Montgomery County?  
22 A No.  
23 Q Do you know if the number of vehicular and  
24 pedestrian accidents in parking lots in the County is  
25 increasing or decreasing?

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1 A No.

2 Q And are you familiar with Montgomery County's

3 program designed to reduce vehicular and pedestrian

4 accidents in parking lots?

5 A Not at all familiar, no.

6 Q There's been much discussion about a proposed

7 pedestrian path along the southern edge of the ring road.

8 Were you involved in any of those discussions?

9 A Not at all.

10 Q Not at all, whether it's placed or not placed or

11 where it might be?

12 A Not at all, no.

13 MS. ROSENFELD: That concludes my questioning.

14 Thank you.

15 MR. GROSSMAN: Okay. Does Stop Costco Gas

16 Coalition have any questions?

17 MR. SILVERMAN: Yes, sir.

18 MR. GROSSMAN: Mr. Silverman.

19 BY MR. SILVERMAN:

20 Q Good afternoon.

21 A Hello.

22 Q What's the average age of Costco gas stations?

23 A I don't know the average age. We've been building

24 them since late 1995 and we now have -- that was our very

25 first one and we now have 368 in the United States at a rate

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1 of about 20 to 30 per year. So, you know, obviously that

2 ebbs and flows a bit between years. So I'm not sure what

3 that specific average would be.

4 Q The, do you know the ages of the three gas

5 stations where you had spills?

6 A At the time we had the spills?

7 Q Yes.

8 A The Santa Clara location was built, was opened in

9 October of 1996 and they discovered the MTBE in 2001. So

10 that's to the best of my recollection. Aurora, Colorado

11 station was built around 2000 or 2001 and I think that event

12 happened in 2007, but I'm again going by recall. I could be

13 wrong a little bit there. And the third one, Huntsville,

14 opened about 10 years ago, about 2003, and that problem

15 occurred in 2011.

16 Q You said in trying to manage truck traffic you

17 want to give them as clear a path as possible. Do you

18 actually know whether the passage through the parking lot

19 and then through the main drive of the parking lot is, meets

20 that criteria? I mean do you have any sense of just how

21 good or bad that is?

22 A Well, yes and no. Do you want me to explain?

23 Q Yes.

24 A Yes, in the sense that I review all the gas

25 station plans and I specifically look at truck routes and I

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1 ask questions as needed to confirm that the truck routes

2 meets an operability standard and that's my role in the

3 process is make sure we build something we can safely

4 operate. So in that sense I look at this plan, I say yes

5 unequivocally.

6 On the other hand, though, like I said, I first

7 saw this plan yesterday and this whole process for me

8 reviewing the plan is entirely reversed from normal.

9 Specifically, the truck lane --

10 MR. GROSSMAN: That's the way we do things in the

11 County.

12 THE WITNESS: Well, I mean I, no, normally I would

13 see the plan, I would offer suggestions, we would go back

14 and forth on what the property allows and what kind of

15 setbacks and easements and all that, and then I have that

16 input and then we go in for permit with that final plan. In

17 this case, if I understand it correctly, this is the set in

18 stone before I ever saw it and that is remarkably different

19 than every other plan set I have ever had the chance to

20 review. So in that sense I am not an expert yet on this

21 plan. I have -- it hasn't gone through our normal process

22 because it's ahead of the building permit submittal instead

23 of after or as part of that process.

24 BY MR. SILVERMAN:

25 Q Well, does your employer seek your advice on where

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1 to put gas stations?

2 A Yes. Now we have a real estate group and they're

3 very skilled and they propose -- they look at the property.

4 They know much more about the property and they say here is

5 where we think it can fit based on what they know and,

6 believe me, they're very skilled. I'm sure you've heard

7 from some of them. And then I say, well, does that also

8 conform with my knowledge of how to operate the station?

9 And over time, of course, we have a huge overlap in our

10 understanding, notwithstanding the time it takes to make a

11 delivery. But, still, we have a common base of knowledge

12 about siting a gas station and that we work as a team to

13 develop the best plan to submit for permit.

14 Q Did you know that the original plan of the real

15 estate group was not to put the station there, but to put it

16 in the southwest corner of the mall?

17 A Yes, I am aware of that.

18 Q And do you think that's a better location in terms

19 of truck traffic let's say?

20 MR. GROSSMAN: What difference does it make at

21 this point?

22 MR. SILVERMAN: Well, we're talking about good,

23 better, best and this is worse at this point.

24 THE WITNESS: I don't know. I don't recall the

25 original plan.

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1 MR. GROSSMAN: Hold on one second.  
2 MR. SILVERMAN: Yes.  
3 MR. GROSSMAN: You're only talking about good,  
4 better or best because questions were asked and I felt, on  
5 cross-examination I felt they were within the scope of the  
6 direct. I'm not sure that it's actually a probative aspect  
7 of this case and certainly whether or not the other location  
8 was better is not going to be, is not going to decide  
9 anything in the case. But go ahead and ask your questions  
10 if you need to, I just don't think it's -- a plan that's no  
11 longer in effect is not going to be something I would base  
12 any conclusions on.  
13 MR. SILVERMAN: Well, if the best judgment of the  
14 company was, was that from a traffic flow point-of-view,  
15 this is not the best location on the mall. Doesn't that  
16 begin to suggest maybe it's a poor location on the mall?  
17 MR. GROSSMAN: No.  
18 MR. SILVERMAN: Okay. All right.  
19 BY MR. SILVERMAN:  
20 Q Is it generally a good idea to have -- you talked  
21 about the one-way flow and that's a good thing and Mr.  
22 Guckert, the transportation expert also spoke to that. Is  
23 it generally a good idea to have the cars flowing into areas  
24 where pedestrians and other drivers, shoppers are parking  
25 and loading up their cars and so forth, do you want to

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1 unload --  
2 MR. GROSSMAN: Well, one question at a time.  
3 MR. SILVERMAN: Okay. Yes.  
4 THE WITNESS: Okay. If I understand your question  
5 correctly --  
6 MR. SILVERMAN: Okay.  
7 THE WITNESS: -- as cars leave the station, we  
8 fully expect that a great percentage of them are going to  
9 park and go in and shop in the warehouse. So that would be  
10 their natural destination, yes.  
11 BY MR. SILVERMAN:  
12 Q So you think it's desirable to do that, to push  
13 the cars into the main parking area?  
14 A Well, yes, yes, I'll say yes in that they become  
15 just like any other car moving through the parking lot.  
16 Q Is it the usual practice that people go to the gas  
17 station first and then go shopping, or the other way around?  
18 A We have statistics on that and I can't remember  
19 the general numbers. Typically it's more common for the  
20 customer to buy gas and then go shopping, the idea being on  
21 a hot day you could have ice cream or something like that.  
22 You're not then additionally delaying your return home.  
23 That varies with individual, of course.  
24 Q You haven't been to the site, have you?  
25 A To this piece of property?

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1 Q Yes.  
2 A Yes, I have.  
3 Q Okay. When did you go?  
4 A Last night.  
5 Q How was business?  
6 A It was late in the evening, so we were winding  
7 down.  
8 Q I see. You haven't seen it in its full glory.  
9 Okay.  
10 A Apparently not.  
11 Q All right. Let's see, you -- do you know how many  
12 times 9-1-1 has been dialed from a Costco gas station?  
13 A No, I wouldn't know that precise number.  
14 Q Do you have any idea?  
15 A No, because we don't really keep records on that.  
16 Again, the majority of those situations would be a car gas  
17 tank leaking or an automobile accident in the parking lot or  
18 whatever. So I don't know. Those are local.  
19 Q Okay. Did you do any investigation generally of  
20 fires at service stations in the United States, have you  
21 looked into that at all?  
22 A Yes, I'm a member of the Patrolling Equipment  
23 Institute, have been for over 10 years and as part of their  
24 publications, they talk about common issues and I am  
25 familiar with them.

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1 Q Well, that's excellent. Are you familiar with the  
2 National Fire Protection Association?  
3 A Yes.  
4 Q Do you find the reports credible and useful?  
5 A Well, most of my experience with them is their  
6 fire code that they publish and the one that pertains to  
7 fueling stations is NFPA 30(a).  
8 Q Okay.  
9 A And, yes, I am -- I don't study it daily, but I'm  
10 very familiar with it.  
11 Q Okay. I need some guidance here. I have a  
12 document that's not marked which I'd like to show the  
13 witness and put it into evidence.  
14 MR. GROSSMAN: Well, let's mark it and show it to,  
15 first show it to counsel --  
16 MR. SILVERMAN: Yes.  
17 MR. GROSSMAN: -- for the applicant and any other  
18 member at counsel table who wants to look at it.  
19 MR. SILVERMAN: How do I mark it?  
20 MR. GROSSMAN: I'll mark it --  
21 MR. SILVERMAN: Okay.  
22 MR. GROSSMAN: -- for you. It will be Exhibit  
23 142.  
24 MR. GOECKE: And have you produced this before  
25 today?

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1 MR. SILVERMAN: I referenced it in the  
2 correspondence and I gave the listing for it and I also  
3 raised a question about it last time and Mr. Grossman said  
4 can you back that up, so --  
5 MR. GROSSMAN: Well, we don't know -- we haven't,  
6 I haven't identified it yet, so --  
7 MS. HARRIS: I'm concerned that we haven't seen  
8 this yet and it's a --  
9 MR. GROSSMAN: Okay.  
10 MS. HARRIS: -- 80-page document, well, not 80,  
11 50-page document.  
12 MR. SILVERMAN: I'm going to talk about one page.  
13 MR. GOECKE: Just this Roman numeral, page 7?  
14 MR. SILVERMAN: Yes, which is a summary and which  
15 I have referenced.  
16 MR. GROSSMAN: Well, hold on one second, Mr.  
17 Silverman.  
18 MR. GROSSMAN: Thank you. I'm going to mark this  
19 document as Exhibit 142 and it's entitled, "Fires at U.S.  
20 Service Stations," put out by NFPA, and you said a reference  
21 to page Roman numeral seven, is that what you said?  
22 MR. SILVERMAN: What's that? Yes, Roman numeral  
23 seven, yes.  
24 MR. GROSSMAN: You said your reference is only to  
25 page Roman numeral seven? Okay. Reference to page VII.

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1 Okay.  
2 (Exhibit No. 142 was marked for  
3 identification.)  
4 MR. GOECKE: And just for the record, Mr.  
5 Grossman, we had not received a copy of this before today.  
6 Apparently it has been referenced and so we have no  
7 objection to him asking questions about Roman numeral seven.  
8 MR. GROSSMAN: Okay.  
9 MR. GOECKE: But we would ask if this is going to  
10 become part of the record that it be limited to Roman  
11 numeral page seven.  
12 MR. GROSSMAN: All right. Well --  
13 MR. SILVERMAN: Well, I, sometimes when you read  
14 summaries, a curious person might want to see what's behind  
15 the summary and that's why I provided at some expense the  
16 whole document and --  
17 MR. GROSSMAN: Right. I think that Mr. Silverman  
18 was trying to be, to give us the more fulsome version so if  
19 there were questions about what led to the summary, that the  
20 documentation would be behind it, but I'm not going to admit  
21 or refuse the document per se into evidence at this time.  
22 He can use it for cross-examination purposes and then you'll  
23 have an opportunity to review it in detail before the next  
24 proceeding and then usually what we do in these cases is at  
25 the end of the proceeding, there's a motion to move things

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1 into evidence. That's why I asked if everybody take a look  
2 at all the exhibits that were proffered and then any  
3 objections they had they could list out and so we could go  
4 through it in that fashion. But in any event, you may use  
5 it for cross-examination purposes today and then you may  
6 proffer it if you wish later as a, in your own case as  
7 evidence in your case.  
8 MR. SILVERMAN: Thank you, sir.  
9 MS. HARRIS: And can you also provide us a copy?  
10 MR. GROSSMAN: Absolutely.  
11 MR. SILVERMAN: Can I send you a web link or would  
12 you like to take a copy?  
13 MR. GROSSMAN: Ms. Harris?  
14 MS. HARRIS: If you can confirm that the web link  
15 reflects what's in your hands, the web link, we'll accept  
16 it.  
17 MR. SILVERMAN: I will do that.  
18 MS. HARRIS: Thank you.  
19 MR. SILVERMAN: Would you take a moment, Mr.  
20 Hurlocker, just take a look at this. This is a summary of  
21 the document.  
22 MR. GROSSMAN: That's page Roman numeral seven of  
23 Exhibit 142.  
24 THE WITNESS: I have reviewed it.  
25 BY MR. SILVERMAN:

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1 Q Good. Do you find it -- are you surprised by the  
2 conclusions in there?  
3 A No.  
4 Q It doesn't surprise you that over the 4-year  
5 period measured, which I gather is the latest measurement,  
6 there were about 1,200 or so fires at gas stations each  
7 year?  
8 A In what area?  
9 Q Across the United States.  
10 A No.  
11 Q And you said, you said almost all fires are caused  
12 by the drivers and their cars, or you're almost right, it  
13 says 61 percent. Does that sound right to you?  
14 A Yes. We don't have a structure per se in the  
15 sense of a convenience store, so I notice that some of these  
16 are structure fires, 12 percent of them. So if you took  
17 that part out then, yes, it would be very much in line with  
18 our general experience, speaking very broadly of course.  
19 Q Okay. And in general if there's a possibility of  
20 fire, which through no fault of Costco's, but just because  
21 people, cars are defective and can do stupid things, is it  
22 generally a good idea to have a gas station as close as  
23 possible to the store or should it be somewhat isolated from  
24 the store?  
25 A As close as possible is difficult for me to

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1 assess.

2 Q Well, this close, maybe, I don't know what it is,

3 120 feet?

4 MR. GROSSMAN: As close as the proposal currently

5 before?

6 MR. SILVERMAN: Yes. Yes. Would you like -- let

7 me --

8 MR. GROSSMAN: Well, no, you have a question

9 posed.

10 THE WITNESS: I don't think that station is too

11 close to the warehouse, no, because we don't have any

12 structures to -- and the truck is away from the warehouse,

13 no, I don't see a problem with that specific plan in that

14 regard if that's what your question is.

15 BY MR. SILVERMAN:

16 Q Well, the big accidents are not just caused by the

17 truck, I'm not talking about --

18 A Right.

19 Q -- the truck here, we're talking about the cars.

20 A Yes.

21 Q Now if a car, for example, were to -- I assume

22 there's some Costco members who sometimes drink too much or

23 maybe suffer from dementia or have other problems with

24 driving. If a car should crash into a pump --

25 A Uh-huh.

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1 Q -- a fire would result on this, on the lane in the

2 right is -- would you have concerns as to the safety of the

3 people in this area?

4 MR. GROSSMAN: Meaning would he have concerns if

5 that incident were to occur?

6 MR. SILVERMAN: Yes. Would you have concerns,

7 particular concerns for the safety of the people?

8 THE WITNESS: I would have concerns with any fire,

9 I mean for the record. Yes, and that's why we have all the

10 procedures we do, the training we do and fires are, even

11 though they occur, the vast majority in our experience has

12 been static electricity and very controllable, minor put-out

13 quickly and we haven't had any massive complications at any

14 of our gas stations in the 16 years I've been involved.

15 BY MR. SILVERMAN:

16 Q There have been, have there been massive

17 complications in other gas stations?

18 A I have known of some, yes.

19 Q And do you know of any in this area?

20 MR. GROSSMAN: This area being defined as?

21 MR. SILVERMAN: Being defined as the Washington

22 metropolitan area.

23 MR. GROSSMAN: Okay.

24 THE WITNESS: Not that occurs to me readily, no.

25 MR. SILVERMAN: Okay. Hold onto that.

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1 MR. GROSSMAN: We'll hold onto it here.

2 MR. SILVERMAN: Okay.

3 MR. GROSSMAN: But you can pass it to me and I

4 can -- unless you have more questions from it. Thank you.

5 MR. SILVERMAN: Could you give me a moment?

6 MR. GROSSMAN: While Mr. Silverman is thinking, I

7 want to mention something to you. Two of the dates that

8 were suggested are on Wednesdays, which means we -- I

9 checked with the Board of Appeals and they're going to be

10 using this room, so they will have to be in another room.

11 One of those dates the COB Auditorium is not available,

12 however, we're checking to see whether the 7th floor Council

13 hearing room is available, which is actually a better room

14 which we could not use during the budget period, but may

15 well be available. So we're checking on that.

16 It occurs to me, since those are bigger rooms, one

17 of those two Wednesdays might be a good day, if the parties

18 can agree, to have people in the community come in so they'd

19 have, we'd know we'd have room there for them. Does that --

20 MS. HARRIS: Which dates were those?

21 MR. GROSSMAN: You know, I don't have that

22 particular notebook, that particular, yes, notebook in front

23 of me now, so I don't remember which -- it was the two

24 Wednesday days, the ones that were suggested.

25 MS. HARRIS: We will confer with opposing

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1 counsel --

2 MR. GROSSMAN: Okay.

3 MS. HARRIS: -- and we'll get back to you on that.

4 MR. GROSSMAN: Yes. Pick out one of them --

5 MS. ROSENFELD: Okay.

6 MR. GROSSMAN: -- and then assuming we can get the

7 7th floor Council room, if not, the other date we can get

8 the COB Auditorium.

9 MS. HARRIS: Okay.

10 MR. GROSSMAN: So, anyway, we're checking on all

11 of those things.

12 BY MR. SILVERMAN:

13 Q Did you know that in 2009 there was a gas station

14 fire in Riverdale, Maryland? Do you know anything about

15 that?

16 A I am not familiar with that.

17 Q And in 2009 there was a two alarm Shell gas

18 station fire in Falls Church, Virginia, not too far from

19 here, did you know about that?

20 A No, not specifically.

21 Q Okay. And Seat Pleasant, Maryland, in 2010, a

22 service station burning overnight, did you know about that?

23 A Where was that, sir?

24 Q Seat Pleasant, Maryland. It's sort of in the

25 south part of D.C.

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1 A Those are not ringing a bell, no, I'm sorry.  
2 Q Okay. Kentland, Maryland, Shell gas station fire  
3 in 2011?  
4 MR. GROSSMAN: Let me ask you a question, Mr.  
5 Silverman.  
6 MR. SILVERMAN: Yes.  
7 MR. GROSSMAN: Let's say although, let's say it's  
8 undisputed that there were fires at gasoline stations. How  
9 does that, how is that to influence my findings here given  
10 that the Council has decided, and I'm not the policy maker  
11 here, the Council has decided that gas stations may be  
12 permitted by special exception in this area? So how does  
13 the fact that you have, you can establish that sometimes  
14 there are fires in gas stations affect how I can analyze  
15 this case?  
16 MR. SILVERMAN: Well, I think that doesn't mean  
17 that every, every commercial area of the County is open for  
18 gas station locations. The thing is gas stations have  
19 certainly inherent risks, but the way you, the think that  
20 makes a particular gas station special is that it's too  
21 close to people or it's too close to stores or it's too  
22 close to the tire and battery facility or it's too  
23 intermixed into normal traffic. That would be an  
24 exceptional special feature of a particular site that given  
25 the inherent characteristics of gas stations, that sometimes

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1 they catch fire.  
2 MR. GROSSMAN: And are you going to be able to  
3 establish that this station is closer to residences, for  
4 example, than other stations or other areas where you might  
5 have particular concerns?  
6 MR. SILVERMAN: No, because I have to say, just  
7 speaking as a person who has spent a lifetime in  
8 environmental and safety issues, that the layout of gas  
9 stations in Montgomery County is pretty core. As I  
10 understand it, this is the first time we've talked about air  
11 pollution in the County for a gas station and you can see  
12 the results on the streets all the time. So we're, I'm just  
13 saying that it's -- not that it's worse than other gas  
14 stations that have been permitted, I'm just saying it's not  
15 safe for customers, particularly when there may be  
16 alternatives. That's a fundamental, very fundamental  
17 argument.  
18 MR. GROSSMAN: Let me address for a second the  
19 question of there may be alternatives. I'm not allowed  
20 really overall to consider alternatives in general. I mean  
21 what I mean by that is the applicant is entitled to have the  
22 plan they submit evaluated and I can't require them -- I  
23 mean I do suggest alternative things sometimes within a  
24 plan, but the focus here has to be a review of the plans  
25 that are submitted against the statutory standards. So it's

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1 not -- I think we'd mis-focus if we go to every possible  
2 alternative.  
3 MR. SILVERMAN: I'll withdraw the comment --  
4 MR. GROSSMAN: All right.  
5 MR. SILVERMAN: -- about alternatives. The  
6 question is is -- can you be satisfied that the, at the end  
7 of this process we're in, can the Hearing Examiner and the  
8 Board be satisfied that this is, this is a safe gas station  
9 that does not threaten the health and safety of the people  
10 in Montgomery County?  
11 MR. GROSSMAN: Once again, the word safe, there  
12 are dangers to everything that is done in society. So I  
13 have to measure that question against the standards that  
14 have been set up, you know, and sometimes they're Federal,  
15 local or state standards. I can't just impose my own  
16 standards of what I think might be safe. I have to rely on  
17 standards that are set up. So I'm just saying that I'm  
18 wondering whether, and I'm not stopping you from putting in  
19 this evidence, I'm just wondering whether, and you might  
20 consider this, whether the more it's established that this  
21 is a general problem with gas stations, that a certain  
22 number of them are going to have fires and the more the  
23 applicant's witnesses establish that this is a particularly  
24 safe setup for gas stations, the more it leans in favor of  
25 the gas stations. I want you to think about that in terms

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1 of what evidence you're presenting to me and what it, what  
2 impact it can have on my analysis. I'm perfectly willing to  
3 listen to anything you can put forth and how you decide to  
4 go forward, I just, I have to analyze this in terms of  
5 standards that are there rather than my own vague concepts  
6 of what it should be.  
7 MR. SILVERMAN: I appreciate that, sir.  
8 MR. GROSSMAN: Okay.  
9 MR. SILVERMAN: I think there is a, what we've  
10 heard from the other side, not just in this hearing, I know  
11 you can't consider other things, but what we've heard for a  
12 long time was we're so safe and we're so well-run we could  
13 put this thing anywhere and that is exactly, that is exactly  
14 the proposition that we are contesting. If you believe you  
15 could put a station which is run by capable people like Mr.  
16 Hurlocker anywhere, then we lose. But if you think that  
17 siting should play into a decision as to where it should, it  
18 should play into the question of safety and how, then I  
19 think we win.  
20 MR. GROSSMAN: Well, siting always plays -- it is  
21 absolutely a factor that we have to consider because as it  
22 says in the code, non-inherent conditions may be the  
23 characteristics of operation, including the site and it is  
24 clear.  
25 MR. SILVERMAN: That's right.

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1 MR. GROSSMAN: So I do consider that for sure.  
2 MR. SILVERMAN: All right. Thank you. Let me --  
3 did you know, are you familiar with the Costco gas station  
4 in Redwood City, California?  
5 THE WITNESS: Yes.  
6 BY MR. SILVERMAN:  
7 Q Did you know that the fire chief had a fire drill  
8 with the Costco folks, did a special look at that station to  
9 make sure it was safe, did you know that?  
10 A Not that particular detail, no.  
11 Q Do you know whether there's been any extensive  
12 drills or consultation with the fire department here in  
13 Montgomery County about this station?  
14 A Not that I'm aware of.  
15 Q Okay.  
16 MR. GROSSMAN: Are you talking about the proposed  
17 station?  
18 MR. SILVERMAN: Yes.  
19 MR. GROSSMAN: How can they have a drill with a  
20 station that hasn't been approved yet? I don't understand  
21 that.  
22 MR. SILVERMAN: Well, the people we have drills  
23 about bombs that don't go off and drill all the time.  
24 MR. GROSSMAN: Yes, but --  
25 MR. SILVERMAN: Yes.

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1 MR. GROSSMAN: -- we have the existing  
2 infrastructure that we, that they're drilling in or about.  
3 I'm just wondering who would have a drill about a station  
4 that doesn't yet exist and hasn't even been approved?  
5 MR. SILVERMAN: Well, I just, I want -- I just  
6 want to get a sense of what, how much, how deeply they  
7 looked into the question of fire and whether this is a good  
8 location in terms of fire protection. My learned colleague  
9 is asking me to take two minutes if you don't --  
10 MR. GROSSMAN: Consult with your colleague.  
11 MR. SILVERMAN: Thank you.  
12 MR. GROSSMAN: Sure.  
13 BY MR. SILVERMAN:  
14 Q Do you know if there was an evaluation of the fire  
15 risk of this proposed station by the, by Government  
16 officials here in Montgomery County?  
17 A No, that gets back to the point I was making  
18 before. Typically every gas station has to be approved by  
19 the fire department and that's part of the submittal of the  
20 plans and getting the permits which is, which usually  
21 follows after this process of approval. It's a general  
22 statement around the country, but so I, to my understanding  
23 that process hasn't happened yet.  
24 Q The, are you aware that, and let me ask you about  
25 the fire suppression system. When you say fire suppression,

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1 does that mean that there are no flames? What is the result  
2 of a fire -- in the event of a fire, some poor soul crashes  
3 into the pump or he lights a cigarette or he does something,  
4 whatever it is, in the event of a fire, you have a fire  
5 suppression system and could you tell us a little bit about  
6 it? I mean I find it impressive, but I'd like to learn more  
7 about it.  
8 A Well, fire suppression systems that I talked about  
9 before are underground and are designed to automatically  
10 respond to an underground condition of vapors igniting where  
11 they can't be readily seen by the attendant. So the fire  
12 suppression system there is an underground deal. Above  
13 ground we have fire extinguishers on every island and the  
14 attendants are aware of where they are and if they, if it's  
15 a small, controlled thing like somebody puts their cigarette  
16 out in the trash bin or something like that, then the  
17 attendant can use the fire extinguisher. They often, too,  
18 will use the fire extinguishers for a static fire at a fill  
19 port. And part of our training is you hit the red button  
20 before you use a fire extinguisher. And, again, there's  
21 that judgment again as to how to respond. There is no  
22 overhead chemical fire suppression unless required  
23 specifically by local code and we have a few locations with  
24 those, but that is not part of our master design to have an  
25 overhead, comprehensive system.

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1 Q So, thank you, that was very helpful. So let's  
2 leave fires. If there's anything beyond the fire  
3 extinguisher, you need 9-1-1, right, you need the fire  
4 department in there?  
5 A Yes, and we're not shy about calling them.  
6 Q Okay. Let me move on to underground leaks. Are  
7 you aware of a recent case here in Maryland in Jacksonville,  
8 Maryland, regarding leaking underground storage tanks, an  
9 Exxon station, Exxon Mobile?  
10 A Yes, I am generally aware of that. I'm not an  
11 expert on the details, but I know some.  
12 MR. GROSSMAN: You said leaking. Was that where  
13 it was drilled into accidentally or was it just it sprung a  
14 leak?  
15 MR. SILVERMAN: It sprung a leak.  
16 MR. GROSSMAN: Okay.  
17 BY MR. SILVERMAN:  
18 Q Were you aware that they also had a double-wall  
19 containment system for that station?  
20 A That's not my understanding of the Jacksonville  
21 Exxon release.  
22 Q And were you aware they also had a warning system  
23 in place?  
24 A Yes, I am aware of that detail.  
25 Q Okay. Do you know why it didn't prevent the leak?

1 A All I can recall is reading the legal summary of  
 2 the details that led up to the release. Of course, the  
 3 whole industry heard about the settlement because it was  
 4 massive. And so that got a lot of news in the press and we  
 5 were generally aware. When I read the publicly available  
 6 legal brief, it was caused by a technician drilling into a  
 7 single wall pipe and so the double wall feature of our  
 8 piping would have detected that and shut it down within  
 9 minutes. My understanding of the Exxon case in Jacksonville  
 10 was that the physical failure of a technician drilling into  
 11 the pipe was compounded by an inappropriate response of  
 12 service technicians and the fact that they didn't have the  
 13 redundant leak detection systems that Costcos have and that  
 14 they were only relying on the line leak detection, which was  
 15 then bypassed by a technician, whereas we would have two  
 16 systems, the pressure-driven electronic line leak detection  
 17 and then also the secondary piping that would drain any  
 18 liquid through that secondary back to one of those liquid  
 19 sensors in either end of the piping run because they  
 20 terminate in those sumps which had those liquid sensors. So  
 21 in our case, the station would have been shut down  
 22 immediately by both methods within minutes.

23 MR. GROSSMAN: Mr. Silverman, are we talking about  
 24 the same instance --

25 MR. SILVERMAN: Yes.

1 MR. GROSSMAN: -- when she said it was not? You  
 2 answered my question it was not the result --

3 MR. SILVERMAN: I --

4 MR. GROSSMAN: -- of drilling into a --

5 MR. SILVERMAN: I've got so many cases here, I --

6 MR. GROSSMAN: Okay. Yes. I thought I remembered  
 7 reading it.

8 MR. SILVERMAN: You've got that right.

9 BY MR. SILVERMAN:

10 Q The -- in the warning system, did you ever get  
 11 false positives?

12 A Well, false positives? Yes, in the sense that the  
 13 liquid sensors will detect either water or gasoline. So if  
 14 you have a water leak into a sump, we have to repair it, we  
 15 have to get after it, but in that sense it's not a crisis,  
 16 it's just a repair, whereas if it was gasoline, it would be  
 17 much more significant, but the alarm would sound the same.  
 18 So in that sense we'd get more alarms than we actually have  
 19 serious problems. Is that what you meant to --

20 Q Yes.

21 A Okay.

22 Q I mean I keep thinking about my fire alarms in my  
 23 home, constantly wanting to take the batteries out of.  
 24 Okay. Do you think if you had a number of notifications and  
 25 shutdowns that really were not particularly consequential in

1 terms of the underlying facts, that there might be a  
 2 tendency not to always pay attention to them?

3 A That is a very real risk and I agree with that and  
 4 that's why we have extensive procedures in place to prohibit  
 5 exactly that in the sense that if a sensor malfunctions, we  
 6 replace the sensor, and they're expensive and there is a  
 7 financial -- there would otherwise be a financial interest  
 8 in just shutting it off or turning it off or something, but  
 9 that's not our policy because in the long run that would be  
 10 more expensive and, of course, would be a risk to health and  
 11 safety and we wouldn't tolerate that.

12 Q Now let me ask you about your, the battery you  
 13 have, the emergency battery operation, when the power shuts  
 14 down, you know, we here in Montgomery County are famous for  
 15 power outages often lasting weeks. Do you think that a 2-  
 16 hour battery would be adequate to our visions in here  
 17 Montgomery County?

18 A Adequate, I don't know, but I can address the  
 19 question. The two hours approximate battery life is, will  
 20 maintain the monitoring system that activates all those  
 21 sensors for two hours. If the battery was depleted and the  
 22 monitoring system was powered down, the station cannot  
 23 operate. So without the monitoring system in full effect,  
 24 the station cannot reopen. So in that case we would have to  
 25 come back, recharge or replace the battery before we'd be

1 able to bring the system back up and usually that also  
 2 requires a rest of the monitoring system and a complete  
 3 investigation of the monitoring system to make sure that  
 4 nothing went wrong as a result of the outage.

5 Q But if -- is the monitoring system, the monitoring  
 6 system is monitoring for leaks, correct?

7 A Yes.

8 Q And as the monitoring system goes down and a leak  
 9 occurs, you would not know about it?

10 A Okay, but -- yes, well, possibly. I will say  
 11 possibly. However, the, when the power is off, there is no  
 12 pressure on the lines, there is no power to the equipment,  
 13 so there would be nothing pushing any product into the  
 14 ground. So it would be a very limited problem if one were  
 15 to, unlike in that unlikely event to occur. That has never  
 16 happened in our experience.

17 Q The, well, when the power goes down, it's usually  
 18 a result of severe weather we get more and more of, so do  
 19 you think it's a good idea to put these 30,000 tanks in  
 20 ground that tends to be moisture influenced by ground water  
 21 conditions, is that something you recommend?

22 A It happens all the time, yes.

23 Q It does? Okay.

24 A The tanks, the whole system, because it's entirely  
 25 sealed and monitored and double-walled and everything, they

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1 are capable of operating under water and we experienced that  
2 in Florida and Hawaii where you have extremely high ground  
3 water and the whole industry operates safely in that  
4 environment.  
5 Q Do you think that the intrusion of water,  
6 unexpected intrusion of water could upset the, move the tank  
7 in the ground or upset its equilibrium so as to create  
8 unwanted imbalances and pressure?  
9 A That would be a catastrophic event beyond -- that  
10 would be like the entire property failing. So it would be  
11 an extreme event that's beyond my understanding even in the  
12 industry in that the tanks have extensive engineering to  
13 anchor them in place. The pea gravel bed is designed to  
14 help facilitate them not buckling or moving or rolling.  
15 They're strapped to concrete deadmen to keep them in place  
16 and they're covered by an eight inch reinforced concrete  
17 slab. It's a very stable arrangement and that's by design.  
18 Q Are you aware that in this design there are large,  
19 not tanks, but large water storage pipes, a piping system to  
20 store large quantities of water to deal with the storm water  
21 and were you aware of that? Have you looked --  
22 MR. GROSSMAN: You're saying in this system,  
23 you're saying as part of this proposed development or are  
24 you saying --  
25 MR. SILVERMAN: Yes, part of this --

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1 MR. GROSSMAN: -- pre-existing?  
2 MR. SILVERMAN: -- this proposal, yes, which we  
3 heard Mr. Duke testify about.  
4 THE WITNESS: No, I'm sorry, I don't know all the  
5 details of the water control system. I just saw the plan  
6 yesterday.  
7 BY MR. SILVERMAN:  
8 Q It's not your typical practice to monitor storm  
9 water facilities to see that they're intact and operating  
10 underground?  
11 A Well --  
12 Q Is that correct?  
13 A -- storm water facilities are common to the entire  
14 property. They tie into that, so I'm very familiar with the  
15 gas station connection to whatever the broader system is. I  
16 don't think I'm the expert on the overall drainage plan at  
17 the mall or even our portion of this parking lot as I just  
18 haven't reviewed it to that detail, nor do I normally. I  
19 rely upon the experts for that.  
20 Q But if one of those storm waters should, storm  
21 water pipes --  
22 A Uh-huh.  
23 Q -- I think that's what you call them, pipes should  
24 fail, that happens a lot in Montgomery County too actually.  
25 Is there a danger of flooding, unanticipated flooding into

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1 the gas tanks?  
2 A Certainly not into the gas station, or into the  
3 gas tanks per se. Are you talking about the tank hole in  
4 which they sit?  
5 Q Yes.  
6 A That could fill to the top with water and the  
7 station would continue to run fine and there would be no  
8 harm.  
9 Q Do you know if there's a risk there?  
10 A There are a number of stations in the country  
11 where the whole city is on high ground water and every tank  
12 is at least partially immersed all the time. That's very  
13 common in Florida, Hawaii, like I mentioned, and some other  
14 parts of the country.  
15 Q Well, I think it's not just emergent, it's unusual  
16 changes in pressures and movements of --  
17 MR. GROSSMAN: Is there a question in --  
18 MR. SILVERMAN: Well, let me rethink that.  
19 BY MR. SILVERMAN:  
20 Q Do you know, to get back to the possibility of  
21 leaks, are you saying that there will never be a serious  
22 breach of an underground gas tank, is that your testimony?  
23 A I would be very shy about using the word never,  
24 which is why we have so many redundant contingencies and  
25 protections to make sure that whatever occurred, we would

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1 handle it to the best of our ability.  
2 Q Well, if a catastrophic situation could develop  
3 and God knows we've heard about catastrophes, do you think  
4 it would be a good idea to put, or let me -- to get back to  
5 the siting of the tanks, are you aware of the fact that  
6 these tanks are sort of sited on top of a hill and below the  
7 hill there's a stream, there's ground water and some of the  
8 drainage is going to a storm water facility in Sligo Creek  
9 Park, do you know anything about that?  
10 A I'm not an expert on the hydrology of this  
11 particular site. I leave that to our geotechnical people.  
12 MR. GROSSMAN: And that's really beyond the scope  
13 of the direct anyway, but I think these questions are best  
14 addressed to the engineer, which you've already done.  
15 MR. SILVERMAN: Okay. Thank you.  
16 BY MR. SILVERMAN:  
17 Q And just to, just to nail down the, your  
18 interesting testimony about the Salt Lake City facility, did  
19 you say that was Lehi?  
20 A Lehi, L-E-H-I.  
21 Q L-E-H-I? Okay.  
22 A It's a suburb of Salt Lake City.  
23 Q Great. Would that, that is a station that  
24 operates at half the volume of what's proposed here, or  
25 approximately half, is that correct?

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1 A Approximately.  
2 Q Okay. And that's not located in the shopping mall  
3 where there's lots of other activities?  
4 A No, that facility is not in a shopping mall.  
5 Q So other than that Lehi facility, the location of  
6 this gas station in conjunction with the loading docks is  
7 unique as far as you know?  
8 A We have 369 stations, sir. I -- off the top of my  
9 head I can't recall another one where we have the loading  
10 docks near, off the top of my head, but as long as we can  
11 manage it, we site the stations where we can.  
12 Q Mr. Hurlocker, I've asked you about a couple of  
13 specific stations and you knew a lot about them, so I  
14 appreciate your answer.  
15 MR. GROSSMAN: I don't know what that means.  
16 MR. SILVERMAN: I just, I --  
17 THE WITNESS: Thank you?  
18 BY MR. SILVERMAN:  
19 Q As far as you know, all right, what it says, as  
20 far as you know, there's no other situation quite like this  
21 in the Costco constellation?  
22 A Not that I recall, no.  
23 Q But you can imagine there could be, but you don't  
24 know what it is?  
25 A Certainly.

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1 Q Okay. That's fair. Yes, also the hours of, when  
2 they're filling up the tanks, so the station opens like is  
3 it 6:30 a.m.?  
4 A Typically 6:00 a.m.  
5 Q 6:00 a.m.?  
6 A Uh-huh.  
7 Q And you never have, you never do any filling  
8 without an attendant being present, right?  
9 A I wouldn't say never. In other locations in other  
10 states we do have some exceptions where we do night  
11 deliveries. They're very carefully controlled. They're not  
12 common and we have none in Maryland.  
13 Q Okay. Now suppose you fill up a tank at 6:00 a.m.  
14 and it takes a half hour or so, so it's 6:30 and suppose  
15 it's a very busy day for gas, maybe the prices of gas  
16 spikes, something happens in the world scene or there's a  
17 snow storm coming, or you're out of milk and --  
18 MR. GROSSMAN: Well, just ask the question.  
19 MR. SILVERMAN: Okay.  
20 BY MR. SILVERMAN:  
21 Q When would be the next delivery?  
22 A That's quite a hypothetical. I'm not sure what  
23 the right answer there would be. We monitor our sales as  
24 they vary. We have a sophisticated system of monitoring  
25 sales and deliveries and we have a re-order process that

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1 recognizes when the tanks are coming down, what our lead  
2 times are to get the truck from the time of order to the  
3 time of delivery and we try to stay in business and, given  
4 that we don't operate the trucks.  
5 Q Well, I appreciate the fact that your first trucks  
6 are there bright and early.  
7 A Uh-huh.  
8 Q But I'm curious about the times that your second,  
9 third, fourth and possibly fifth trucks make it to the  
10 station.  
11 A Well, our first priority is keeping the station in  
12 fuel to provide the value. When people pull up expecting to  
13 get gas, we want to be there to serve them. Once you have a  
14 facility and that's where they get used to going, we want to  
15 be there for them and that's true of everything we do at  
16 Costco, not just gasoline. So we're going to try to manage  
17 the process as best we can, but we want the deliveries to  
18 happen sufficient to keep the station open. The station  
19 being closed when you pull up with your gauge on E is a  
20 problem and like any business we want to minimize not being  
21 there for our members.  
22 Q Well, it wouldn't be inconceivable. There might  
23 be a 10:00 a.m. or 11:00 a.m. or noontime a.m., noontime  
24 delivery of gasoline, that's not inconceivable or even  
25 unlikely, is that correct?

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1 A Inconceivable, no. Again, we're not in control.  
2 We might order a truck to come at 8:00 and if the traffic  
3 was terrible or the truck was delayed or something, it could  
4 arrive later and then we would manage that situation.  
5 MR. SILVERMAN: Well, I thank you for your  
6 testimony. Very helpful.  
7 MR. GROSSMAN: Anybody in the audience who is not  
8 related to the parties at counsel table have a cross-  
9 examination question?  
10 (No response.)  
11 MR. GROSSMAN: Seeing no hands, is there any  
12 redirect?  
13 MS. HARRIS: Yes, briefly, thank you.  
14 MR. GROSSMAN: All right.  
15 REDIRECT EXAMINATION  
16 BY MS. HARRIS:  
17 Q Mr. Hurlocker, you indicated -- can you refresh  
18 our memories, how long does the average fill take, the  
19 person at the pump, we're not talking about gas deliveries?  
20 A Oh, okay.  
21 Q The customer at the pump.  
22 A As a broad average, four minutes.  
23 Q And so the cars that are waiting behind the car  
24 fueling, how long would they be waiting before they started  
25 to move again?

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1 A Using that broad average, another broad average  
2 would be they would wait about two minutes.  
3 Q Before they moved?  
4 A Yes.  
5 Q Okay. Thank you.  
6 A Given that there's two fueling positions for each  
7 line.  
8 Q If the anti-idling law were to be applicable to  
9 this station --  
10 MR. GROSSMAN: Well, we haven't -- nobody has  
11 given me the cite to it and I haven't seen it yet, so does  
12 somebody want to do that for me?  
13 MS. HARRIS: I have a citation for you.  
14 MR. GROSSMAN: All right. What's the cite?  
15 MS. HARRIS: 22-402. It's the Transportation  
16 Code, Title 22, of the Maryland Code.  
17 MR. GROSSMAN: All right. So Maryland  
18 Transportation Code --  
19 MS. HARRIS: 22-402.  
20 MR. GROSSMAN: 22-402.  
21 MS. HARRIS: And it is (c)(3).  
22 MR. GROSSMAN: C what?  
23 MS. HARRIS: (c)(3).  
24 MR. GROSSMAN: (c)(3)? Do you happen to have a  
25 copy of that I can take a look at?

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1 MS. HARRIS: I have only one copy. We can provide  
2 another copy at the next hearing.  
3 MR. GROSSMAN: Let me take a quick look at it if  
4 you would?  
5 MS. HARRIS: It's highlighted too.  
6 MR. GROSSMAN: Thank you. Okay. Thank you very  
7 much.  
8 MS. HARRIS: Would you like a copy?  
9 MR. GROSSMAN: I'll look it up. That's fine.  
10 MS. HARRIS: Okay.  
11 MR. GROSSMAN: If you have an extra copy at some  
12 point, that would be great too.  
13 BY MS. HARRIS:  
14 Q So the question is if the anti-idling law were to  
15 be applicable and if it required people to turn off their  
16 engines while they were in the queue, would Costco enforce  
17 that law?  
18 A The first point in our mission statement is to  
19 obey the law. If that was the law, we would enforce it.  
20 Q And having the attendants on the site, how does  
21 that help you enforce the law?  
22 A Well, they would be better able to enforce the  
23 law. We would enforce it even if our competition didn't  
24 because they didn't have anybody out there.  
25 Q Thank you. I want to turn to Exhibit 54(i). In

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1 recognizing that you just saw this for the first time --  
2 MR. GROSSMAN: Let me ask a question of both sides  
3 for a second here having just looked at the statute which  
4 requires that you not idle, in general, not idle for more  
5 than five minutes except in certain exceptional  
6 circumstances that they delineate and Mr. Hurlocker has  
7 testified that the average idling time, that is the time  
8 between motion, is two minutes at his station, is that -- if  
9 Mr. Hurlocker was correct, does that mean that the statute  
10 would not apply here, Ms. Rosenfeld? You're the one who  
11 raised it initially.  
12 MS. ROSENFELD: The question is does simply moving  
13 five feet mean that a new two minutes begins, that what he's  
14 testified was that they could sit there for as long as 15  
15 minutes inching forward and does and, you know, at what  
16 point does simply inching forward several feet constitute  
17 idling? They're not progressing.  
18 MR. GROSSMAN: The statutory language talked about  
19 without moving or without motion, so you tell me, does that  
20 not mean that, even though I understand the overall point  
21 you're making, I'm just saying as a matter of statutory  
22 interpretation, how would I want to interpret that?  
23 MS. ROSENFELD: Mr. Grossman, I don't have it in  
24 front of me, but I'll be happy to respond to that.  
25 MR. GROSSMAN: Do you have a feeling about that,

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1 Ms. Harris?  
2 MS. HARRIS: Yes and it's, focusing on the very  
3 language which says not in motion means not in motion and  
4 the cars moving forward and that clearly is, it's not, it's  
5 not not in motion. It is moving forward and we would say  
6 that the statute is not applicable.  
7 MR. GROSSMAN: I also have a question about the,  
8 one of the exceptions, the standing in traffic. I don't  
9 know if this constitutes standing in traffic or not. You  
10 could also opine on that, counsel, if you wish, and other  
11 parties as well. All right. I'm sorry. Go forward with  
12 your questioning.  
13 MS. HARRIS: Thank you.  
14 BY MS. HARRIS:  
15 Q So looking at, the exhibit in front of us says  
16 54(i), but I recognize that there's a more recent special  
17 exception diagram, but the 54(i) will suffice for this  
18 question. Recognizing that you did just review the exhibit  
19 yesterday for the first time, is there anything that you  
20 could potentially suggest to move the gas delivery truck  
21 further to the east while it's, while it is unloading, any  
22 minor design revisions that in your mind -- assume that the  
23 process has taken its course, you're seeing this plan in the  
24 course when you're supposed to see it, what would you  
25 suggest?

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1 A May I paraphrase to make sure I understand --  
2 Q Yes.  
3 A -- your question? If I were looking at this plan  
4 as we normally, our process normally works where it comes to  
5 me and I offer my suggestions, yes, there would be a  
6 suggestion I would offer regarding the tanker path for this  
7 site.  
8 Q Can you share with us --  
9 A I think we could operate --  
10 Q -- what that is?  
11 A -- this site, I want to restate that, but my  
12 suggestion -- would you like me to offer what that --  
13 Q Yes.  
14 A -- suggestion would be? I would move the tanks  
15 east, I would build the landscape --  
16 Q Approximately how far east?  
17 A May I point?  
18 Q Yes.  
19 A Okay. Again, this is east. These landscape curbs  
20 here is what protects the fills.  
21 MR. GROSSMAN: We're looking at exhibit -- is this  
22 111 still?  
23 MS. HARRIS: No, this is 54(i).  
24 THE WITNESS: 54(i).  
25 MR. GROSSMAN: 54(i)? Wait a minute. Hold on,

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1 Ms. Harris, for second --  
2 MS. HARRIS: But we --  
3 MR. GROSSMAN: -- just to make sure we're --  
4 MS. HARRIS: -- can use 111 if that's --  
5 MR. GROSSMAN: Well, it doesn't have to be 111,  
6 but 54(i) may be going backwards in terms of --  
7 MS. HARRIS: Yes, that's why --  
8 MR. GROSSMAN: -- the special exception, but you  
9 can use 119(c).  
10 MS. HARRIS: Referring to 119(c) --  
11 THE WITNESS: Okay. Is this the same?  
12 MS. HARRIS: Yes.  
13 THE WITNESS: Okay. Should I continue?  
14 MS. HARRIS: Yes.  
15 MR. GROSSMAN: Yes.  
16 THE WITNESS: Okay. I would move the tanks  
17 perhaps three feet or thereabouts, again, not knowing the  
18 precise measurements, not being familiar with the details  
19 yet, move it east about three feet and would bell this  
20 landscaping out to continue to provide protection for the  
21 fills and that would create, and I would yellow cross-hatch  
22 a lane, a specific sitting place for that truck that would  
23 be further out of traffic and that would be the, that was  
24 the first thing I noticed when I saw this plan yesterday.  
25 BY MS. HARRIS:

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1 Q And when you say bell, can you explain that, what  
2 that means in layman's terms?  
3 A Yes. The landscaping island here, see it has  
4 curved edges here and it's fairly uniform.  
5 MR. GROSSMAN: Wait, you're talking about the  
6 southwest corner?  
7 THE WITNESS: South and north. These curb lines,  
8 combined with the truck sitting there, is what protects the  
9 hose fill connections which is a desirable thing and so I  
10 would just move that whole thing slightly to the east and  
11 bell this out a little bit to continue to get curve  
12 protection for the delivery without interfering with the  
13 stacking. And you see we have some space to do that. And  
14 then create a little bit more space and a hash mark area in  
15 yellow for where the truck would sit.  
16 BY MS. HARRIS:  
17 Q Thank you. In a number of your responses, you  
18 reference calling 9-1-1. Can you explain how that occurs at  
19 a Costco station?  
20 A How they call 9-1-1?  
21 Q Yes.  
22 A There's a couple different ways. They have a  
23 wireless telephone on their belt, the attendant does. And  
24 by far the most likely thing is wherever they were, they  
25 take the phone off their belt, dial 9-1-1 and that's how it

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1 happens. In case for some reason that phone wasn't working  
2 or anybody else needed to call 9-1-1, we have a dedicated 9-  
3 1-1 phone in a big, red box marked emergency hanging on the  
4 data enclosure to the west of the fuel islands there. And  
5 in addition, of course, everybody has a cell phone, so as a  
6 practical matter call 9-1-1 and somebody is going to be  
7 calling it, probably 30 people, you know, if somebody in  
8 panic says call 9-1-1, people are going to light up their  
9 phones.  
10 Q And is the red phone, do you physically, do you  
11 physically dial 9-1-1 or is it a matter of picking it up?  
12 A No, you lift the receiver and it dials  
13 automatically.  
14 Q Thank you.  
15 MS. HARRIS: I have no further questions for Mr.  
16 Hurlocker.  
17 MR. GROSSMAN: All right. Any recross solely on  
18 the issues discussed on redirect?  
19 RECROSS EXAMINATION  
20 BY MS. ROSENFELD:  
21 Q Do you require the trucks at the warehouse loading  
22 dock to turn off their engines while unloading?  
23 MR. GROSSMAN: No, that was, was that a  
24 subjective --  
25 MS. HARRIS: No.

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1 MR. GROSSMAN: -- of the redirect?  
2 MS. ROSENFELD: The idling law.  
3 MR. GROSSMAN: Pardon me?  
4 MS. ROSENFELD: With respect to the idling law.  
5 MS. HARRIS: We would, the idling law referred to  
6 the cars in the queue.  
7 MS. ROSENFELD: So there would be more laws.  
8 MR. GROSSMAN: I'll allow the question, but I  
9 think it's a little bit off the -- go ahead.  
10 THE WITNESS: I'm not sure I understood it, but  
11 let me address what I at least know and that is by law the  
12 fuel tanker truck has to turn off its engine while they can  
13 get delivery.  
14 MS. ROSENFELD: No, I --  
15 THE WITNESS: No? Let me make sure.  
16 BY MS. ROSENFELD:  
17 Q I'm talking about the trucks making deliveries to  
18 the warehouse.  
19 A I don't know.  
20 MR. GROSSMAN: Any questions, recross from the  
21 Stop Costco Gas Coalition?  
22 MR. SILVERMAN: Can I have just a second --  
23 MR. GROSSMAN: Yes, Mr. Silverman.  
24 MR. SILVERMAN: -- with my colleagues here?  
25 BY MR. SILVERMAN:

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1 Q I appreciate your suggestion, but given that you  
2 have limited familiarity with the specific proposal here, is  
3 it correct to say that you cannot predict how the proposed  
4 gas station will, in fact, operate specifically with respect  
5 to its impact on patrons of the stores in the mall parcel  
6 where the gas station is to be located?  
7 A I'm sorry, sir, can you repeat the question?  
8 Q Yes. The question is can you, can you predict how  
9 this proposed gas station will affect pedestrians and other  
10 patrons in the mall given your limited knowledge of this  
11 particular site?  
12 MR. GROSSMAN: You say in the mall. Are we  
13 talking about in the parking lot?  
14 MR. SILVERMAN: In the parking lot. In the  
15 parking lot.  
16 MR. GROSSMAN: In the parking lot? Okay.  
17 MR. SILVERMAN: Yes, the patrons of the mall.  
18 MS. HARRIS: Mr. Grossman, I want to object to  
19 that. I don't believe that was covered on redirect.  
20 MR. GROSSMAN: I'll sustain that. I don't see how  
21 that was in the redirect.  
22 MR. SILVERMAN: I thought I'd try, Mr. Grossman.  
23 MR. GROSSMAN: Okay. Any other questions?  
24 MS. HARRIS: Can I check if I'm asleep?  
25 MR. GROSSMAN: Any other recross examination

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1 questions?  
2 MS. HARRIS: No, thank you.  
3 MR. GROSSMAN: And the audience now? All right.  
4 Let me ask you, Ms. Harris, a question based on your, asking  
5 your witness whether or not he had a suggestion and he  
6 indicated possibly moving the tanks and the truck loading  
7 area that is the gas delivery truck area four feet to the  
8 east if I understood it. Are you suggesting that a new plan  
9 may be coming out from Costco?  
10 MS. HARRIS: No, I was suggesting -- first of all,  
11 as the witness testified and our others have testified, we  
12 believe this plan is very acceptable and meets all the  
13 standards. However, in the area of room for improvement,  
14 could certain things be made to make it even better. And  
15 if, in fact -- and I was picking up on your suggestion of  
16 potentially proffering conditions at the end, that that may  
17 be a condition that we should consider at the end.  
18 MR. GROSSMAN: Yes, but I think that that's --  
19 we're talking about more than an ordinary condition because  
20 you're talking about changing some structural aspects of the  
21 facility, right?  
22 MS. HARRIS: If I understood the witness  
23 correctly, it's shifting underground tanks three feet --  
24 MR. GROSSMAN: Right.  
25 MS. HARRIS: -- and simply changing curbing, a

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1 landscaping curb and so I don't really view that as  
2 structural.  
3 MR. GROSSMAN: Well, no. Here's the problem with  
4 making that a condition. Unless you have engineers  
5 testifying that it's feasible and analyzing any other  
6 impacts from that, it would be, I think it would be  
7 problematic to take just a suggestion that he, the  
8 operations director, that that might improve the operation  
9 as a possible condition. I think the Board of Appeals would  
10 be leery of imposing a condition that they hadn't heard  
11 testimony about could possibly be done and I'm not sure we  
12 want to go, you know, go with a plan that is, that's about  
13 to be changed that way. So I guess I'd ask you to consider  
14 it before the next proceeding. I mean both of those things,  
15 a pedestrian path issue on the south ring road and the, and  
16 whether or not Costco thinks that a better plan would be to  
17 move the, would be to move the tanks. It's an issue you  
18 raised. Now I'm curious about that.  
19 I mean as I said, as I said in response to Mr.  
20 Silverman, I'm not, I can't impose upon you an alternative  
21 plan. You have a right to have the plan you have reviewed.  
22 But you did raise the point of an alternative. So I just --  
23 MS. HARRIS: I'm not clear on your statement of  
24 tying the comment about witness's testimony to the  
25 pedestrian path. Can you clarify --

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1 MR. GROSSMAN: Oh, no, because --

2 MS. HARRIS: -- what the connection was you were

3 trying to make?

4 MR. GROSSMAN: No, my connection just was that if

5 you are submitting, you were going to decide by tomorrow

6 when you issued the notice whether or not you're going to a

7 plan with a pedestrian path.

8 MS. HARRIS: Right.

9 MR. GROSSMAN: I was saying that if, in fact,

10 you're going to have a new plan again, a revised plan, and

11 part of it would be moving the tanks as well as adding back

12 the pedestrian path in some format, that it make sense to

13 have it all go out at once. I just don't know what your

14 intention is. You just raised an issue.

15 MS. HARRIS: Okay.

16 MR. GROSSMAN: Okay.

17 MS. ROSENFELD: And, Mr. Grossman, from the point-

18 of-view of KHCA, the suggestion of physical changes to the

19 site plan, we do think that the site plan itself would have

20 to be revised and subject to cross-examination and not just

21 proffered through a condition. I'm agreeing with you.

22 MR. GROSSMAN: I would agree with that. I just, I

23 can't see us having a plan revised in that fashion.

24 MS. HARRIS: Noted.

25 MR. GROSSMAN: So, I mean what's the best way to

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1 handle that, the question of whether or not you were

2 planning to revise that portion of the plan? I mean I don't

3 know how long it would take you to make that decision.

4 MR. GOECKE: Yes, well, I was about to confer with

5 our client and we'd get back at another time, certainly by

6 the next hearing date.

7 MR. GROSSMAN: Right, but then I had asked you to

8 issue a notice tomorrow regarding the changes you had

9 proposed, which is the ones that took out the pedestrian

10 path and the southern ring road and added 46 feet to the

11 wall. And, you know, I would have expected that if you were

12 going to add the pedestrian path back, then that would

13 change what the notice would be. So --

14 MR. GOECKE: I think Mr. Hurlocker is finished and

15 so maybe this is a good time to take a brief recess.

16 MS. HARRIS: Yes.

17 MR. GOECKE: We can talk and maybe we'll have an

18 answer for your shortly.

19 MR. GROSSMAN: All right. I think Mr. Hurlocker

20 is finished. I presume you're grateful about that. Thank

21 you very much --

22 THE WITNESS: It was a pleasure.

23 MR. GROSSMAN: -- for your very, you know, very

24 good testimony, helping us to understand the situation.

25 Appreciate it.

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1 THE WITNESS: Thank you, sir.

2 MR. GROSSMAN: All right. We'll take a break for

3 five minutes or so.

4 MS. HARRIS: Thank you.

5 (Whereupon, at 4:33 p.m., a brief recess was

6 taken.)

7 MR. GROSSMAN: All right, Madam, we're back on the

8 record. All right.

9 MS. HARRIS: May I proceed?

10 MR. GROSSMAN: Yes.

11 MS. HARRIS: Mr. Grossman, we -- unfortunately, we

12 don't have a decision, but I, because we need to confer with

13 Westfield --

14 MR. GROSSMAN: Right.

15 MS. HARRIS: -- and as you may or may not know,

16 they actually had a catastrophe at the Westfield Mall --

17 MR. GROSSMAN: I just saw it on the --

18 MS. HARRIS: -- which our contact to vet these

19 ideas --

20 MR. GROSSMAN: Right.

21 MS. HARRIS: -- is now over at Montgomery Mall --

22 MR. GROSSMAN: Sure.

23 MS. HARRIS: -- dealing with that. So,

24 unfortunately, I think it's unrealistic, even if this had

25 never come up and just the issue of the pedestrian path --

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1 MR. GROSSMAN: Right.

2 MS. HARRIS: -- that we would have had an answer

3 by tomorrow.

4 MR. GROSSMAN: Let's go off the record for a

5 second.

6 (Whereupon, at 4:47 p.m., a brief recess was

7 taken.)

8 MS. HARRIS: So what we would like is if we could

9 make, confer with them and then make a decision and have

10 that decision made by the next hearing, the June 4th

11 hearing.

12 MR. GROSSMAN: Okay. Yes, I think that's -- we do

13 have the next hearing date after June 4th, assuming that all

14 those dates are cleared, and I assume they are, June 17 and

15 then June 19, so we certainly have plenty of time we could

16 issue a new notice then of the final changes that you make,

17 would be proposing if you are and I think that would be

18 sufficient. What do you think, Ms. Rosenfeld?

19 MS. ROSENFELD: That's certainly fine with me. My

20 question goes to the hearing on June 4th and if there's a

21 question as to whether or not the layout is going to change,

22 which witnesses would be presented on the 4th because I

23 wouldn't want to have to go through a witness twice because

24 the plan layouts have changes.

25 MS. HARRIS: No, I believe the -- except with the

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1 exception of the landscape architect, and I'll get to that  
2 in a moment, none of the witnesses that we would be calling  
3 for the 4th, this would impact them in any way and I don't  
4 think that I need -- I believe that the landscaping portion  
5 of the island is in the southern portion which would not be  
6 affected anyway. So it's simply that I would need to  
7 confirm this with the landscape architect. I don't think  
8 that minor change we were talking about will affect that in  
9 any way.

10 MR. GROSSMAN: All right. Well, is June 4 a day  
11 that we do or do not have environmental people and so on?

12 MS. HARRIS: No, we --

13 MR. GROSSMAN: I can't --

14 MS. HARRIS: -- based on the schedule that we just  
15 determined this morning, it's our thought that our  
16 environmental person would be testifying on June 17th.

17 MR. GROSSMAN: Okay.

18 MS. HARRIS: So, because, unfortunately, as you  
19 know, we've now gotten through one of our five witnesses  
20 that we were going to call today --

21 MR. GROSSMAN: Right.

22 MS. HARRIS: -- and so our plan is to put the  
23 remaining four on the 4th.

24 MR. GROSSMAN: Okay.

25 MR. SILVERMAN: Can I just ask for information?

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1 The landscaping that you're changing, is that part of the  
2 storm water plan?

3 MS. HARRIS: We need to look at that. We would  
4 obviously want to avoid that.

5 MS. ROSENFELD: The storm water management plan?

6 MS. HARRIS: Yes.

7 MR. GROSSMAN: So what's the plan for right now,  
8 Ms. Harris?

9 MS. HARRIS: So what we would want to do is by  
10 June 4th have the termination made on both of those issues,  
11 one is the pedestrian path.

12 MR. GROSSMAN: Right.

13 MS. HARRIS: I think the law is clearly settled  
14 that it will be the 46 --

15 MR. GROSSMAN: Extended.

16 MS. HARRIS: -- foot extension.

17 MR. GROSSMAN: So 46 feet, okay.

18 MS. HARRIS: And then the issue that was just  
19 raised and how we can resolve that.

20 MR. GROSSMAN: Okay.

21 MS. HARRIS: Because --

22 MR. GROSSMAN: Why was the wall extended 46 feet  
23 by the way?

24 MS. HARRIS: It occurred -- we have a, one of our  
25 many open houses occurred on February 20th.

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1 MR. GROSSMAN: Okay.

2 MS. HARRIS: And one of our consultants in  
3 discussion with one of the people that attended that open  
4 house, the person raised the question of whether, in fact,  
5 the wall would block all the visibility from all of the  
6 houses and he questioned the view from two or three of the  
7 houses further to the east. And so we did a recheck of our  
8 sight lines and it was confirmed by 3D modeling and it was  
9 determined that, in fact, the wall needed to be extended 46  
10 feet more in order to address that, the --

11 MR. GROSSMAN: In order to provide additional  
12 visual insulation in effect?

13 MS. HARRIS: Yes.

14 MR. GROSSMAN: Okay.

15 MS. HARRIS: Yes.

16 MR. GROSSMAN: All right.

17 MS. HARRIS: And I would note, I mean the wall,  
18 the whole idea of the wall came up from the residence during  
19 a walk around of the property with the Westfield folks that  
20 occurred separate and apart from the special exception.

21 MR. GROSSMAN: Okay. All right. So do you have  
22 another witness for right now?

23 MS. HARRIS: We do.

24 MR. GROSSMAN: Shall we begin another witness?

25 MS. HARRIS: Mr. Guckert.

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1 MR. GROSSMAN: Mr. Guckert?

2 MS. HARRIS: Yes.

3 MR. GROSSMAN: Yes, sir.

4 MR. ADELMAN: I'm sitting all day waiting to ask  
5 my procedural question. Yes, Mr. Grossman, has Ms. Harris  
6 clarified for the record how the new, can Ms. Harris clarify  
7 for the record how the new traffic data that's being  
8 submitted, I believe it's Exhibits 128(a) and (b), how they  
9 relate to the original exhibit, the TIA, which was Exhibit  
10 11(a)?

11 MS. HARRIS: And Mr. Guckert will be getting into  
12 that in his testimony.

13 MR. ADELMAN: Well, what I'm asking fundamentally  
14 is the graphic a separate filing or is it the line with the  
15 results of the intersection analysis?

16 MR. GROSSMAN: I'm sorry, I missed a word or two  
17 there. Is it -- what are you asking specifically?

18 MR. ADELMAN: Is the graphic a separate filing  
19 distinct from the data analysis referred to as supplemental  
20 traffic analysis that's 128(a) and traffic data plan,  
21 128(b)?

22 MR. GROSSMAN: Well, let's let them clarify  
23 through his testimony whether -- I don't know how they, how  
24 they plan to have them interact. We'll find out -- but you  
25 have, you received that back on May 10, correct? You

1 received copies back on May 10?  
 2 MR. ADELMAN: Oh, yes, there's no -- yes, yes.  
 3 MR. GROSSMAN: All right. Mr. Guckert, welcome  
 4 back. I'm sure you're glad to be here again.  
 5 MR. GUCKERT: Absolutely.  
 6 MR. GROSSMAN: And you're still under oath.  
 7 MR. GUCKERT: Yes, sir.  
 8 MR. GROSSMAN: All right.  
 9 MS. HARRIS: Thank you.  
 10 DIRECT EXAMINATION  
 11 BY MS. HARRIS:  
 12 Q Mr. Guckert, did you conduct observations of the  
 13 Wheaton Mall subsequent to the opening of the Costco  
 14 Warehouse?  
 15 A Yes.  
 16 Q And when, and when and what hours did you conduct  
 17 this, these additional observations?  
 18 A We did, we undertook more counts, more  
 19 observations on Saturday, April 27th, 10:00 a.m. to 6:00  
 20 p.m., an eight hour period on a Saturday. That was about  
 21 two weeks after Mr. --  
 22 MR. ADELMAN: Excuse me, Mr. Grossman. I thought  
 23 that once the exhibits were proffered, we had the  
 24 opportunity to object or not object to the exhibits. Am I  
 25 mistaken?

1 MR. GROSSMAN: Well, they haven't really proffered  
 2 an exhibit yet but, yes, you'll have the opportunity to  
 3 raise an objection if you wish. I mean usually objections  
 4 are made to the admission of something. The fact that they  
 5 are using it, identifying it in and of itself wouldn't be  
 6 objectionable, but you could object to its admission.  
 7 However, if you feel that there's an objection to its use in  
 8 this proceeding, you can object to that too. Just now he's  
 9 just identifying, in effect, what he did. He hasn't  
 10 referred to an exhibit yet, all right? So, I'm sorry,  
 11 you --  
 12 THE WITNESS: That's all right. About two weeks  
 13 after the April 10th opening of the warehouse.  
 14 MR. GROSSMAN: Okay. So April, I'm sorry, what  
 15 was the date? Saturday, April --  
 16 THE WITNESS: Saturday, April 27th.  
 17 MR. GROSSMAN: 27, and you observed --  
 18 THE WITNESS: 10:00 a.m. to 6:00 p.m. --  
 19 MR. GROSSMAN: Okay.  
 20 THE WITNESS: -- we undertook traffic counts and  
 21 pedestrian observations.  
 22 MR. GROSSMAN: Okay.  
 23 BY MS. HARRIS:  
 24 Q Why did you choose that date to take on those  
 25 observations?

1 A Well, we chose that date, Mr. Grossman, because,  
 2 quite frankly, we thought we'd be further along and,  
 3 therefore, it was clear from questionings and cross-  
 4 examination of myself that it would be in the best interest  
 5 of providing more detailed information about the impact of  
 6 what Costco store was having on the mall in general.  
 7 MR. GROSSMAN: Okay.  
 8 THE WITNESS: And so it seemed appropriate to do  
 9 that. Now we picked a Saturday because we all know, one,  
 10 that's the peak of the mall; two, it's the peak of the  
 11 store; and, three, I testified that it's the peak of the gas  
 12 station.  
 13 MR. GROSSMAN: Okay.  
 14 THE WITNESS: Had I had my druthers, it would have  
 15 been 90 days after the store opened or 120 days after the  
 16 store opened in order for things to calm down a bit because  
 17 we know that immediately after a new store opens, that  
 18 traffic and all types of activities are greater.  
 19 MR. GROSSMAN: Okay.  
 20 BY MS. HARRIS:  
 21 Q How were these observations conducted?  
 22 A As we did for the LATR, Mr. Grossman. We used, we  
 23 used our, what is used today as turning movement count  
 24 cameras, my vision cameras. Instead of the count boards and  
 25 the clickers in the old days, we've kind of advanced --

1 MR. GROSSMAN: Why do you look at me when you say  
 2 in the old days?  
 3 THE WITNESS: Well, because you and I are the same  
 4 age, okay? I understand that. You and I are the same age.  
 5 We're alike.  
 6 MR. GROSSMAN: Let's not go too far here.  
 7 THE WITNESS: Okay. So we used the technology we  
 8 used to do turning movement counts and count pedestrians,  
 9 which is the same technology we use to do the studies for  
 10 the LATR.  
 11 MR. GROSSMAN: Okay.  
 12 BY MS. HARRIS:  
 13 Q And which locations did you choose and why did you  
 14 choose those locations?  
 15 A We chose locations, I would say, on the south side  
 16 of the mall and we did the intersection of University and  
 17 Valleyview, Veirs Mill at the WMATA station, those locations  
 18 where they entered the mall ring road and we picked another  
 19 half dozen locations around the ring road itself.  
 20 MR. GROSSMAN: Okay.  
 21 BY MS. HARRIS:  
 22 Q And then after you completed the study on April  
 23 27th, did you produce a document reflecting your  
 24 observations?  
 25 A Well, we had all of the summary data and all of

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1 the counts and all of the pedestrian movements, all the  
2 critical lane volumes. We did critical lane volume testing  
3 at each of those locations. And then I produced a document  
4 that summarizes that information.  
5 Q And is this the document that was submitted on May  
6 10, 2013, which is Exhibit 128(a) and (b)?  
7 A Yes.  
8 MR. GROSSMAN: All right. Now I think that Dr.  
9 Adelman has an objection to that document. Do you want to  
10 state what that is?  
11 MR. ADELMAN: Yes. Actually I'm objecting, I'm  
12 objecting to the graphic on --  
13 MR. GROSSMAN: Not to the summary?  
14 MR. ADELMAN: Excuse me. I'm not sure whether  
15 this is (a) or (b). The --  
16 MS. HARRIS: Just, I believe it's the -- let me  
17 check my list.  
18 MR. GROSSMAN: Dr. Adelman is holding up the  
19 graphic, what --  
20 MR. ADELMAN: It's the same as the graphic up  
21 there.  
22 MS. HARRIS: It's the --  
23 MR. ADELMAN: I believe it's -- I'm not sure.  
24 MR. GROSSMAN: You're not objecting to the  
25 summary, which is --

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1 MR. ADELMAN: Results of intersection analysis,  
2 I'm not objecting to that.  
3 MR. GROSSMAN: The summary of the traffic analysis  
4 that's Exhibit 128(a)? Okay. I think that's all he's  
5 mentioned thus far.  
6 MR. ADELMAN: No.  
7 THE WITNESS: No, I said that that information in  
8 128(a) was then put into a more readable format.  
9 MR. GROSSMAN: I see. So that's 128(b)?  
10 THE WITNESS: (b), correct.  
11 MR. GROSSMAN: Okay. That's the traffic data plan  
12 from April 27, '13.  
13 MR. ADELMAN: Okay. Let me correct my numbers.  
14 MR. GROSSMAN: What is your -- that's 128(b). And  
15 what is your objection to 128(b), Dr. Adelman?  
16 MR. ADELMAN: Now it is -- just a minute. First  
17 of all, I believe it's factually inaccurate. I can explain.  
18 MR. GROSSMAN: It's what, inaccurate?  
19 MR. ADLEMAN: Factually --  
20 MR. GROSSMAN: Factually?  
21 MR. ADELMAN: -- inaccurate --  
22 MR. GROSSMAN: Okay.  
23 MR. ADELMAN: -- by virtue of being incomplete.  
24 Secondly, I think it's unnecessarily confusing and because  
25 of that somewhat misleading. And, thirdly, I believe that

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1 the way the exhibit is displayed is inconsistent with the  
2 way the data is presented in Exhibit 128(a).  
3 MR. GROSSMAN: Okay. I'm going to allow him to  
4 use it to explain his testimony and ultimately you can raise  
5 an objection in terms of its admission at a later time and  
6 you can certainly question the witness about the exhibit  
7 when he testifies about it, but I'm certainly going to let  
8 him reference his depiction of the evidence as, that he  
9 collected as displayed in Exhibit 128(b). And all of those  
10 possible weaknesses that you've alluded to, you can bring  
11 out in the course of the cross-examination. You may  
12 proceed.  
13 BY MS. HARRIS:  
14 Q So using 128(b) as a guide, can you please explain  
15 what you observed and counted on April 27th?  
16 A Mr. Grossman, I have another copy of this if  
17 you --  
18 MR. GROSSMAN: I have it in the file here, but --  
19 THE WITNESS: Okay.  
20 MR. GROSSMAN: -- if you have one that's handy,  
21 then I'll take it.  
22 THE WITNESS: Yes, I do. Here. I think it will  
23 be more helpful to see.  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: I have extra copies for whomever if

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1 you care to see them.  
2 MR. GROSSMAN: All right. Thank you.  
3 THE WITNESS: What was done is that we took the  
4 information in 128(a) and displayed it on the aerial  
5 photograph.  
6 MS. ADELMAN: Excuse me, Mr. Grossman.  
7 MR. GROSSMAN: Yes.  
8 MS. ADELMAN: Can Mr. Guckert move that a bit  
9 forward so the people in the last row can see and I can see  
10 also?  
11 MR. GROSSMAN: Is that better?  
12 THE WITNESS: Here or --  
13 MS. ADELMAN: More toward --  
14 THE WITNESS: -- do you want it in front of him?  
15 MS. ADELMAN: -- more towards the steps that, more  
16 toward where you're sitting.  
17 THE WITNESS: Like over here? I'm serious.  
18 MS. ADELMAN: Yes, that would be great.  
19 MR. GROSSMAN: But I won't be able to see it then,  
20 I want to see it.  
21 MS. ADELMAN: Well --  
22 MS. CORDRY: Well, don't you have your copy?  
23 MS. ADELMAN: -- I was actually hoping he'd go  
24 more toward the stairs if he steps to go up to be able to  
25 see.

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1 MR. GROSSMAN: Why don't you -- you said you had  
2 an extra copy. Why don't you hand one --  
3 THE WITNESS: I'd be happy, thrilled to. Here's  
4 multiple.  
5 MR. GROSSMAN: And then you'll be able to follow  
6 it that way. Then we can move the easel back to where it  
7 was.  
8 THE WITNESS: Move it back? Okay.  
9 MR. GROSSMAN: Okay.  
10 THE WITNESS: Let me know if you need to move it  
11 again.  
12 MS. ADELMAN: Thank you.  
13 MR. GROSSMAN: My wife says it's good to get  
14 exercise, so I'm letting somebody else get the exercise for  
15 me.  
16 THE WITNESS: All right.  
17 MR. GROSSMAN: All right. You can, you can move  
18 it back a little bit so you can --  
19 THE WITNESS: How is that?  
20 MR. GROSSMAN: -- so you can see it also. There  
21 we go.  
22 THE WITNESS: All right. So I can't stand over  
23 there. All right. What I'll do is this, so I will now  
24 explain, first, Mr. Grossman, what I want to do is explain  
25 the difference squares and blocks and circles, okay?

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1 MR. GROSSMAN: Okay, sure.  
2 THE WITNESS: And if you go to each intersection  
3 has the same basic information. One, it displays the level  
4 of service in a round circle based upon the critical lane  
5 volume at that particular location.  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: Two, we have pedestrian count  
8 information that is 11 hour count movements, excuse me,  
9 eight hour count movements, one hour pedestrian peak hour  
10 movements that coincide with the one hour peak hour auto  
11 movements. So each block, each intersection will have a  
12 level of service and then one hour --  
13 MR. GROSSMAN: Well, point to it up there so  
14 everybody can see what you're pointing to.  
15 THE WITNESS: For example, for the intersection of  
16 Valleyview extended at the ring road, we have the level of  
17 service, A. It's noted, No. 2, loop road access and that  
18 corresponds to 128(b). We have the vehicle count movement  
19 during the exact peak hour during the 8-hour period. We  
20 have an 8-hour pedestrian count and we have one hour peak  
21 hour pedestrian counts that corresponds with the vehicle  
22 movement.  
23 MR. GROSSMAN: Okay.  
24 THE WITNESS: That information exists for each of  
25 the locations that were counted along the ring road.

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1 MR. GROSSMAN: All right.  
2 BY MS. HARRIS:  
3 Q Thank you. And what was your conclusion regarding  
4 the pedestrian safety on the mall site?  
5 A Well, the pedestrian data that is shown at each of  
6 the locations depicts that there's very little pedestrian  
7 movement at either the intersections, at any of the  
8 intersections along the mall ring road. The location that  
9 has the, two locations -- the location that has the most  
10 amount of pedestrian activity is at the ring road at the  
11 WMATA entrance and very little pedestrian activity along the  
12 south side of the ring road and if you would call it a lot,  
13 there's about 20 or 30 pedestrians in the peak one hour at  
14 the extension of Valleyview and the ring road where there  
15 was a significant amount of testimony and discussion when I  
16 testified.  
17 MR. GROSSMAN: And I take it that the WMATA  
18 entrance location is No. 9, labeled No. 9 on --  
19 THE WITNESS: That's correct.  
20 MR. GROSSMAN: Okay.  
21 BY MS. HARRIS:  
22 Q Would it be helpful for you to walk around the  
23 ring road and highlight other pedestrian counts?  
24 A You wouldn't see me if I walked around that.  
25 Would it take you a little --

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1 Q Figuratively, take us on a tour --  
2 A Oh, figuratively?  
3 Q -- around Exhibit No. 128.  
4 A So up at intersection No. 2, again, there are  
5 about 20, 30 peak hour pedestrian movements during the peak  
6 one hour which occurred 11:15 to 12:15. Location No. 3,  
7 which is the drive aisle in front of the Target store, seven  
8 to 10 peak hour pedestrian movements, level to service A.  
9 And what's interesting at intersection No. 3 is that you'll  
10 see, as I testified to earlier, that the cars that are  
11 coming into the parking lot are making a left turn primarily  
12 at location No. 3 into that parking lot on the west side of  
13 Costco, making it at the Target store.  
14 You go down to the next drive aisle which is  
15 location No. 4, six pedestrians in the peak hour and, again,  
16 you have 120 some cars making a left turn going towards  
17 Costco. You move around to the No. 5 which is in the  
18 vicinity of where the north/south drive aisle will be to the  
19 west side of the special exception area and virtually no  
20 pedestrians were shown in the peak one hour and by the time  
21 you get around to the south side ring road, there's almost  
22 no one, almost no one making a left turn to go into the  
23 parking aisle, that parking field. That parking field is  
24 being used and occupied primarily by cars coming southbound  
25 and making a left turn into No. 3 and making a left turn

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1 into No. 4. There would be no reason, and this bears it  
2 out, for them to continue south to location 5 or location 6.  
3 You move around to location 7, no pedestrian activity, very  
4 few cars then making a left turn, but there are a few making  
5 a left turn into the north/south drive aisle on the east  
6 side of the Costco store.  
7 Moving up to location 13, 12 and 13, Mr. Grossman,  
8 those are the pedestrian entrances to the mall that service  
9 the Costco and you can see the, that --  
10 MR. GROSSMAN: In terms of the Costco Warehouse,  
11 right?  
12 THE WITNESS: Well, it's the mall entrance that  
13 also serves the Costco Warehouse.  
14 MR. GROSSMAN: Okay.  
15 THE WITNESS: What you see is that you've got  
16 about two times the number, two times plus the number of  
17 people are entering from the west side than from the east  
18 side garage. Moving around to location No. 8, again, peak  
19 hour pedestrian activity and that's there by the school,  
20 okay, the Stephen Knolls School, where there's pedestrian  
21 activity from the south. There's some movement, about 35  
22 pedestrians in the one hour, one pedestrian every two  
23 minutes along the ring road in that area. All of those  
24 intersections calculate at level service A using critical  
25 lane volume.

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1 Peak day, Saturday; peak hour, Saturday, only two  
2 weeks after Costco was opened. It's expected that this  
3 would still be in the start-up period for the Costco store.  
4 Even with that, we had level of service A.  
5 MR. GROSSMAN: Well, okay, first of all for the  
6 record, what does level of service A mean?  
7 THE WITNESS: It's the same thing we talked about  
8 when I testified previously for LATR. Level of service A  
9 means there's relatively little, if any, delay at the  
10 intersections caused by automobile and pedestrian traffic.  
11 MR. GROSSMAN: Okay. And you referenced the fact  
12 that this is shortly after Costco Warehouse opened, so  
13 explain why that makes a difference in terms of the expected  
14 traffic?  
15 THE WITNESS: In my opinion, and in looking at  
16 retail stores like this in general, and also in speaking  
17 with my client, they would expect higher than average  
18 conditions at their store the first 90 to 120 days. And we  
19 were only 17 days after the opening.  
20 MR. GROSSMAN: Okay.  
21 THE WITNESS: So this exhibit, 128(b), shows level  
22 of service, peak hour pedestrian movement, peak hour  
23 automobile movement, 8-hour pedestrian movements at the 11  
24 intersections, plus two pedestrian access points into the  
25 mall.

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1 BY MS. HARRIS:  
2 Q Using that somewhat as background then, and how do  
3 you think the added trips associated with the proposed gas  
4 station will affect your conclusions that you just went  
5 through?  
6 A Yes. It's the same as the conclusions we had with  
7 the LATR, that is, we would still be at level of service A  
8 condition.  
9 Q Okay. And as Mr. Grossman pointed out during the,  
10 when you testified previously there's one thing about LATR  
11 and levels of service, but there's also the issue of  
12 nuisance. Can you address your observations in terms of the  
13 nuisance on the mall site with the proposed gas station?  
14 A Well, there's one, there's very little, continues  
15 to be very little activity, especially along the south side  
16 ring road as a result of Dick's and Costco. While cars will  
17 be clearly added by the gas station, as I testified to  
18 previously, many of those cars are either from the existing  
19 shoppers within the mall, many of the cars are from the  
20 existing shoppers that are Costco customers and mall  
21 customers that are Costco that may be just getting their gas  
22 versus shopping and getting gas from Costco.  
23 And so the, while there will be an increase in  
24 traffic, the way that I look at nuisance, Mr. Grossman, is  
25 that will there be unreasonable delays? Will there be

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1 queuing? Will there be traffic congestion? And none of  
2 those things are going to happen as a result of the gas  
3 facility.  
4 MR. GROSSMAN: Okay.  
5 BY MS. HARRIS:  
6 Q Taking the issue of nuisance further onto the  
7 public roads based on your observations, will the gas  
8 station cause queuing along the University Boulevard at  
9 Valleyview entrance?  
10 A Absolutely not.  
11 Q So no queuing on the public road?  
12 A Absolutely not.  
13 Q And will the gas station cause pedestrian  
14 conflicts at University Boulevard at the Valleyview  
15 entrance?  
16 A No, ma'am, there's -- at the Valleyview entrance  
17 on University Boulevard there's pedestrian crossing and  
18 there's no reason for there to be conflicts there either.  
19 Q And do you have any reason to believe that the  
20 proposed gas station will cause a likelihood of greater  
21 number of accidents at that intersection?  
22 A No reason to believe that.  
23 Q And then moving on to the other intersection that  
24 you reviewed at Veirs Mill Road at the WMATA station, will  
25 there be queuing on Veirs Mill Road as a result of the gas

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1 station?  
2 A In my opinion there will not be.  
3 Q And what's your opinion about pedestrian  
4 conflicts?  
5 A The same thing, you know, this is another retail  
6 use within the mall whether it's, those cars are generated  
7 by the gas station or by a McDonald's restaurant. There  
8 will be more cars and they're permitted and they're not  
9 going to cause an undue hardship or nuisance in my opinion  
10 at the intersections external or the intersections internal.  
11 Q Will there, so along those lines would there be a  
12 likelihood of increased accidents at the WMATA intersection?  
13 A If there's no -- an accident is a chance  
14 occurrence typically as a result of driver error or  
15 pedestrian error and the mere fact that there are more cars  
16 does not automatically mean there would be more accidents.  
17 Q Are there any other factors that you would  
18 consider in the evaluation of nuisance that we haven't  
19 discussed that could go to suggesting that there is a  
20 nuisance?  
21 A I do not see how this use at this location is  
22 going to create a traffic nuisance.  
23 Q On the public roads?  
24 A On either the public or the internal, private  
25 roads.

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1 Q Thank you.  
2 MS. HARRIS: And then, Mr. Grossman, I have one  
3 final question for Mr. Guckert and it's a clarification  
4 reading over the transcript from May 6, if I could?  
5 BY MS. HARRIS:  
6 Q Was staff in agreement with your transportation  
7 and traffic analysis?  
8 A 100 percent.  
9 Q Thank you. The transcript suggests, it said, it  
10 suggested that they weren't in agreement when they were in  
11 agreement.  
12 MS. ROSENFELD: And could you give the page and  
13 date?  
14 MS. HARRIS: Oh, it's page 95 of the May 6  
15 transcript.  
16 MR. GROSSMAN: Okay. And you can submit a one  
17 page writing just to say that --  
18 MS. HARRIS: Okay.  
19 MR. GROSSMAN: -- so we can --  
20 MS. HARRIS: Thank you.  
21 MR. GROSSMAN: -- correct it in the record. The  
22 question of nuisance was just discussed, but there's also  
23 language in the general conditions about vehicular traffic  
24 and pedestrian safety. Is there any reason in your mind why  
25 the proposed special exception would reduce the safety of

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1 pedestrian or vehicular traffic in the mall or elsewhere?  
2 THE WITNESS: No, sir, there's no reason to see  
3 that at all.  
4 MR. GROSSMAN: Okay.  
5 THE WITNESS: And the fact of the -- quite  
6 frankly, the design of this special exception use will  
7 minimize it as compared to if the gas station were designed  
8 as other gas stations were.  
9 MR. GROSSMAN: Okay.  
10 THE WITNESS: Because of their, and I think I  
11 discussed that once before because of how things are  
12 regimented and very precise as it relates to the lines and  
13 the locations.  
14 MR. GROSSMAN: Well, I guess then what I'm asking  
15 is did your new traffic and pedestrian counts vary your  
16 previously stated opinion regarding safety?  
17 THE WITNESS: No, sir.  
18 MR. GROSSMAN: Okay. All right. Well, we only  
19 have 15 minutes left in your agenda, Ms. Harris. I don't  
20 know if that's enough time to have cross-examination now. I  
21 don't know that we have much choice because people in the  
22 opposition are shaking their head saying it's not enough  
23 time. I mean do you want to begin that now or do we want  
24 to --  
25 MS. ROSENFELD: I think given the length of the

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1 day and Mr. Adelman and I both would intend to cross-  
2 examine, I think we'd rather just start rather than --  
3 MR. GROSSMAN: I think that probably makes sense  
4 since --  
5 MS. ROSENFELD: -- do 15 --  
6 MR. GROSSMAN: -- since on your schedule, Ms.  
7 Harris, you have to leave by 5:30. All right. All right,  
8 then June 4 we'll resume. Can you make that, Mr. Guckert?  
9 THE WITNESS: It's on my calendar.  
10 MR. GROSSMAN: Okay.  
11 THE WITNESS: What time?  
12 MR. GROSSMAN: 9:30.  
13 MS. HARRIS: 9:30.  
14 MR. GROSSMAN: You'd be the first up.  
15 THE WITNESS: It's on my calendar.  
16 MR. GROSSMAN: All right. Thank you.  
17 THE WITNESS: I've got the whole day.  
18 MR. GROSSMAN: Well, let's not encourage them too  
19 much. Okay.  
20 MS. HARRIS: Thank you.  
21 MR. GROSSMAN: All right. Do we have any other  
22 matters that we should discuss before we adjourn for today?  
23 MS. ADELMAN: Mr. Grossman, will you be sending us  
24 an e-mail about how the dates that you're looking into --  
25 MR. GROSSMAN: I will, I will, indeed. I would

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1 hope that all of those dates will work out, but we will send  
2 something out to notify you. We certainly, we know that  
3 June 4 is okay. That's, you know, it was previously, it's  
4 just a question of the other dates. All right. Anything  
5 else that we need to handle? Mr. Silverman?  
6 MR. SILVERMAN: Mr. Grossman, I hope we can have  
7 further discussions about legislative history.  
8 MR. GROSSMAN: Absolutely.  
9 MR. SILVERMAN: Good.  
10 MR. GROSSMAN: I mean legislative history of, is  
11 there a particular legislative history that you want to  
12 discuss?  
13 MR. SILVERMAN: Well, I think that, I mean I  
14 witnessed the legislative history and to me the most  
15 revealing things were the subcommittee hearings and the  
16 discussion by Council members when they took the vote and --  
17 MR. GROSSMAN: You're talking about the issue --  
18 MR. SILVERMAN: The ZTA, the ZTA.  
19 MR. GROSSMAN: -- regarding the ZTA that modified  
20 the standards for gas stations?  
21 MR. SILVERMAN: Yes.  
22 MR. GROSSMAN: Okay. And, you know, we can  
23 certainly -- you know, the parties are invited to submit  
24 things regarding that legislative history, you know, we  
25 talked about that. Maybe in the context of that legal

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1 discussion, you can bring up your argument about what should  
2 be in legislative history. As I said in our e-mail  
3 exchange, which is in the record, you know, in my view based  
4 on the Garcia case from the Supreme Court, in general  
5 legislative history does not include the statements of  
6 individuals, you know, individual members of legislative  
7 bodies. It does include the report, and in Congressional  
8 cases Congressional Committee report and that sort of thing.  
9 In this case I think it would be the opinion of, that  
10 accompanied the zoning text amendment. You wanted to argue  
11 that it goes further than that?  
12 MR. SILVERMAN: Yes, sir.  
13 MR. GROSSMAN: And you want to state that -- I  
14 mean is this the good time to have that discussion?  
15 MR. SILVERMAN: Oh, I just wanted to put, I just  
16 wanted, I don't think it is a good time because I'd like to  
17 cite --  
18 MR. GROSSMAN: Okay.  
19 MR. SILVERMAN: -- cases and have a discussion  
20 about it.  
21 MR. GROSSMAN: All right.  
22 MR. SILVERMAN: But the only difficulty is when  
23 you do legislative history with Federal law, you've got the  
24 Congressional record and you've got Congressional News and  
25 administrative reports or the committee reports. You have a

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1 lot of text. In this case we have videos. So I mean  
2 that's, it has some difficulty, but we'll try to overcome  
3 that.  
4 MR. GROSSMAN: I mean generally speaking, as you  
5 know, unless something is ambiguous in a statute, you don't  
6 look underneath it, you take the words as they're given.  
7 You do try to carry out the intent of the legislatures, but  
8 you have to be careful in going too far afield in that in my  
9 opinion. But you're welcome to make any argument you want,  
10 Mr. Silverman.  
11 MR. SILVERMAN: I agree with that. I don't want  
12 to bring in, you know, a private conversation or anything  
13 else. I wanted just public record items and --  
14 MR. GROSSMAN: Even if they are public record  
15 items, they don't, as the Supreme Court said, they don't  
16 necessarily reflect the opinions of the legislative body as  
17 a whole. They reflect individual opinions and so it's  
18 problematic to have individual statements by Council  
19 members.  
20 MR. SILVERMAN: Well, when they all say the same  
21 thing, it may be different.  
22 MR. GROSSMAN: Well, then it's in the legislation,  
23 but in any event --  
24 MR. SILVERMAN: Thank you.  
25 MR. GROSSMAN: -- we can have that discussion at

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1 the appropriate time when you want to bring it up regarding  
2 the interpretation of the zoning text amendment.  
3 MR. SILVERMAN: Thank you.  
4 MR. GROSSMAN: All right then, and I raised  
5 questions as part of my 20 questions about that, the zoning  
6 text amendment. All right. Anything further?  
7 MS. HARRIS: No.  
8 MR. GROSSMAN: All right. Then we'll all  
9 reconvene here on June 4 at 9:30 a.m. Thank you all.  
10 (Whereupon, at 5:21 p.m., the hearing was  
11 adjourned.)  
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. Digitally signed by Tracy M. Hahn

**ELECTRONIC CERTIFICATE**

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

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

By:

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Tracy M. Hahn, Transcriber

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