

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
:
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A hearing in the above-entitled matter was held on June 4, 2013, commencing at 9:37 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman
Hearing Examiner

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A P P E A R A N C E S

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E X H I B I T S

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1 P R O C E E D I N G S
2 MR. GROSSMAN: This is the fifth day of a public
3 hearing in the matter of Costco Wholesale Corporation, Board
4 of Appeals No. S-2863, OZAH No. 13-12, petition for special
5 exception pursuant to Zoning Ordinance 59-G-2.06, to allow
6 petitioner to construct and operate an automobile filling
7 station which would include 16 pumps. The subject site is
8 located at 11160 Veirs Mill Road, Silver Spring, Maryland,
9 Lot N, 631 Wheaton Plaza, Parcel 10, also known as Westfield
10 Wheaton Mall, and is zoned C-2, general commercial. The
11 hearing was begun on April 26th, 2013, resumed on May 1, May
12 6, and May 23, 2013. It was noticed to resume again today.
13 The next session has been noticed for Monday, June 17, at
14 this location, second floor hearing room in the COB.
15 This hearing is conducted on behalf of the Board
16 of Appeals. My name is Martin Grossman. I'm the hearing
17 examiner, which means I will take evidence and write a
18 report and recommendation to the Board of Appeals which will
19 make the final decision in the case. Will the parties
20 identify themselves, please, for the record?
21 MS. HARRIS: Good morning. Pat Harris with Lerch,
22 Early & Brewer here on behalf of the applicant.
23 MR. GROSSMAN: Thank you, Ms. Harris.
24 MR. GOECKE: Good morning. Michael Goecke on
25 behalf of the applicant.

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1 MR. GROSSMAN: Mr. Goecke.
2 MS. CORDRY: Karen Cordry. I'm with Kensington
3 Heights Civic Association.
4 MR. GROSSMAN: Ms. Cordry.
5 MS. ROSENFELD: Michelle Rosenfeld, legal counsel
6 to KHCA.
7 MR. SILVERMAN: Larry Silverman, Stop Costco Gas.
8 MR. ADELMAN: Dr. Mark Adelman for the Coalition.
9 MR. GROSSMAN: Thank you. Okay. And Kensington
10 View Civic Association? Ah, yes.
11 MS. DUCKETT: Eleanor Duckett.
12 MR. GROSSMAN: Ms. Duckett. Okay. And I see
13 Ms. Sheard in the back also. Anybody else who may want to
14 be heard today?
15 (No audible response.)
16 MR. GROSSMAN: Okay. All right. Let me take up a
17 few preliminary matters. Since our last meeting, I've sent
18 out notice to the new hearing dates, the additional hearing
19 dates that are all agreed to. They've been formally noticed
20 for Monday, June 17, 2013 -- all of these are 2013 dates --
21 Wednesday, June 19; Monday, July 8; Thursday, July 11;
22 Tuesday, July 30; Wednesday, July 31; and Friday, August 2,
23 each hearing beginning at 9:30 a.m. The hearing
24 scheduled -- the hearing scheduled for Wednesday, June 19,
25 and Wednesday, July 31, will be held in the seventh floor

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1 council hearing room located in this building, Council
2 Office Building, and the remainder of the hearings will be
3 held in this room, the second floor Stella B. Werner hearing
4 room of the COB, unless attendance is so large that we have
5 to move it in which case we'd look for either the COB
6 auditorium or the seventh floor council hearing room to move
7 it to. And I've also reserved, with everybody's consent,
8 the morning of Wednesday, July 31, 2013, to set aside for
9 testimony from community members who may wish to be heard
10 individually.
11 Okay. In going over the Board rules, I noticed
12 that there actually is a Board rule regarding videotaping,
13 which I hadn't ever run across before because I never had a
14 videotaped session before, and it provides -- it's Rule
15 7.1 -- and it provides in relevant part,
16 "A person wishing to videotape, televise,
17 photograph, broadcast, or record a hearing must
18 obtain permission from the presiding officer.
19 Such permission will be granted unless the
20 activity will disrupt the hearing."
21 Although this, that permission was not sought by Blue
22 Lagoon, which is taping this, these sessions, it was granted
23 by me on the first day of the hearing because I felt that it
24 did not appear that it would disrupt, and it has not
25 disrupted, these proceedings. So I guess I stumbled upon a

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1 ruling consistent with the extant Board of Appeals rules.
2 We follow the Board of Appeals rules in cases that
3 emanate from the Board of Appeals, although this office, the
4 Office of Zoning and Administrative Hearings, is not a part
5 of the Board of Appeals. We conduct hearings for other
6 agencies, as well for the council for the, for the Office of
7 Human Rights and so on. However, when we conduct hearings
8 for agencies, we try to follow their rules as well as our
9 own. Okay. I do suggest, however, to Blue Lagoon, that
10 given the Board rule, that if you're intending to tape a
11 Board of Appeals session -- and there will be a work
12 session, at the very least, after I submit my report and
13 recommendation -- that it be, that you seek permission from
14 the chair of the Board of Appeals before you attempt to do
15 that.
16 Okay. Now, in going over the transcript of the
17 first hearing day, I noticed that Ms. Adelman had made the
18 following statement, quote,
19 "The applicant must satisfy adequate public
20 facility requirements."
21 That's Transcript 4/26/13, page 53. I wanted to
22 draw your attention, Ms. Adelman, to the following language
23 in Zoning Ordinance, Section 59-G-1.21 parens (a), parens
24 (9), parens capital (B), and that provides,
25 "If the special exception, sub (i), does not

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1 require approval of a new preliminary plan of
2 subdivision,"
3 which is the case here,
4 "and, sub (ii), the determination of adequate
5 public facilities for the site is not currently
6 valid" -- "not currently valid" -- "for an impact
7 that is the same or greater than the special
8 exception impact, then the Board of Appeals or the
9 Hearing Examiner,"
10 now I'm paraphrasing, would have the authority to go ahead
11 and make a determination regarding adequacy of public
12 facilities.
13 In my -- since technical staff tells us in their
14 report -- that's Exhibit 70, pages 8 to 10 and pages 17 to
15 18 -- that the determination of adequate public facilities
16 for the site is currently valid, and that is for the whole
17 Wheaton Plaza, and sufficient to cover the impacts on public
18 facilities anticipated from this proposed gas station, so my
19 question is, where does the Board of Appeals or the hearing
20 authority get jurisdiction under the statute to make a
21 determination of the adequacy of public facilities? And I'm
22 not now talking about traffic nuisance or compatibility
23 issues because I consider them a separate thing and they are
24 separately enumerated, at least traffic nuisance, in the
25 provisions that, in part, govern this proceeding, and

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1 compatibility is always an issue. I'm just talking about
2 the formal finding with regard to the adequacy of public
3 facilities. And so you don't have to answer that question
4 now, but I did want to raise it because it caught my
5 attention when I went through the transcript and I wanted to
6 alert you to the fact that there is a legal question as to
7 whether or not the Board or the Hearing Examiner has
8 authority in this case to make a specific adequate public
9 facilities finding, which is a technical finding, under the
10 circumstances here. All right. And anyway, anybody who
11 wants to be heard on that issue, feel free to speak up now
12 or later or file something before the record is closed.
13 All right, another point. At our May 23 session,
14 we discussed the possibility of changes by applicant to its
15 plans with regard to pedestrian walkway, possibly plans for
16 the southern ring road, and the possibility the applicant
17 would move the location of the filling area for its
18 underground tanks a few feet to the east to minimize any
19 imposition on the parking lot traffic lanes during truck
20 unloading, as recommended by Mr. Hurlocker. Applicant must
21 decide by today and thereafter send out notice of the
22 amendment and a copy to technical staff and the Planning
23 Board. So where do we stand on that, Ms. Harris?
24 MS. HARRIS: We are going to be making minor
25 revisions, and our intent is to circulate by tomorrow by

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1 hand delivery to the planning staff and Planning Board, as
2 well as to the ZHE and opponents, copies of that plan
3 including a redline to make it easy to review the changes.
4 MR. GROSSMAN: Okay. And what are the changes?
5 Give us a hint. We're all curious.
6 MS. HARRIS: Okay. Reinstatement of the
7 pedestrian path --
8 MR. GROSSMAN: Along the southern ring road.
9 MS. HARRIS: -- along the southern ring road.
10 MR. GROSSMAN: Will that comply with ADA
11 requirements?
12 MS. HARRIS: Yes. Further research indicates
13 that, in fact, it can be a three-foot wide path except that
14 every, I think it's 150 feet or 200 feet there needs to be a
15 turnaround area, and so that's been incorporated.
16 MR. GROSSMAN: Great.
17 MS. HARRIS: The second thing is the extension of
18 the wall 46 feet to the east. The third thing is very minor
19 reconfigurations of the kiosk island and the southern
20 landscaping islands in order to accommodate the loading, the
21 gas delivery truck, and to provide for a 20-foot wide
22 parking aisle at all times, drive aisle to the west.
23 MR. GROSSMAN: Drive aisle. In other words, the
24 truck will not impact the drive aisle --
25 MS. HARRIS: That's correct.

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1 MR. GROSSMAN: -- after this is finished.
2 MS. HARRIS: That's correct. And then we've noted
3 along the east side the removal, excuse me, the removable
4 bollards --
5 MR. GROSSMAN: Yes.
6 MS. HARRIS: -- to block, and I believe that
7 was -- that was it except that because of the minor changes
8 in the, in the landscaping island, we're submitting
9 landscaping plans because that changed ever so slightly.
10 MR. GROSSMAN: Okay. Yes, there's actually a,
11 there's a, there's a section in there or a condition
12 recommended by the technical staff that a landscape plan be
13 submitted for their approval prior to the special exception
14 going forward. I just want to bring to your attention that
15 technically that has to be submitted prior to the Board of
16 Appeals, prior to this record closing, because under
17 Constellation-Potomac you can't have, you can't leave open
18 an important condition. The Board of Appeals can't cede
19 that to a subsequent development --
20 MS. HARRIS: Okay.
21 MR. GROSSMAN: -- with the exception, actually, of
22 the public facilities findings and subdivision, which is a
23 specific provision of that if there's going to be a
24 subdivision in the code, but under -- well, you could
25 consider it dicta in the Constellation-Potomac decision, but

1 Parts 2 and 3, if I recall, talk about that.

2 MS. HARRIS: So when we submit this to staff, I'm
3 going to specifically note that we, that we're submitting it
4 for that purpose, as well --

5 MR. GROSSMAN: Right.

6 MS. HARRIS: -- so they can comment on the
7 landscaping.

8 MR. GROSSMAN: There might be one other proposed
9 condition that had a similar thing by technical staff. Let
10 me just see, looking at Exhibit 70 and their proposed
11 conditions on page 3 and 4. Oh, yes, the one I was talking
12 about is Condition, Proposed Condition 10 by the technical
13 staff on page 4 of Exhibit 70. That's the landscape plan.

14 And then No. 11 says,

15 "Before this special exception takes effect,
16 the applicant must submit detailed installation
17 and construction plans for the proposed green wall
18 to the Planning Board staff for approval and entry
19 into the record."

20 Now, I'm not sure how they're conceiving that
21 because the record will be closed and usually the detailed
22 construction plans are not something that the Board of
23 Appeals needs to see because really we're talking about land
24 use issues for the Board of Appeals, and -- but, of course,
25 the plans would have to show whatever the wall is that is

1 intended to be constructed before the record closes.

2 So, I'm not sure how we would handle that
3 particular condition but that's my feeling about whether or
4 not you'd have -- I don't think you have to show how you're
5 going to construct it exactly. It just has to say, show
6 what it's going to be when it's finished, I think, as far as
7 the Board of Appeals, unless it has some impact -- unless
8 the construction plan has some impact, somehow, on other
9 things in land use terms, but --

10 MS. HARRIS: Just to be clear, are you suggesting
11 that per Condition 11, we should also send them any
12 information -- and, actually, we submitted it to them
13 previously --

14 MR. GROSSMAN: Right.

15 MS. HARRIS: -- but make sure that they have any
16 information we know at this point in terms of the --

17 MR. GROSSMAN: I don't think it can harm you to
18 have it in the record --

19 MS. HARRIS: Okay.

20 MR. GROSSMAN: -- I just don't, it's an unusual
21 condition, and it --

22 MS. HARRIS: Yes.

23 MR. GROSSMAN: -- and it seems to confuse the
24 timing of things --

25 MS. HARRIS: Yes.

1 MR. GROSSMAN: -- because submitting it
2 afterwards, after the record is closed here, doesn't seem to
3 make any sense from our perspective. So I don't know how we
4 would have it as a condition, but I don't see how it can
5 hurt to have that done, even if that specific language is
6 not in the thing. I mean, the Board of Appeals can make it
7 a condition, but if it's something like a landscape plan,
8 which was actually a specific thing in that
9 Constellation-Potomac case, Parts 2 and 3, that was of
10 concern, where the Board of Appeals said, well, kind of, you
11 guys figure it out and after the fact --

12 MS. HARRIS: Yes.

13 MR. GROSSMAN: -- and the court said that's a
14 no-no.

15 MS. HARRIS: Okay.

16 MS. ROSENFELD: Excuse me. Mr. Grossman, in
17 light --

18 MR. GROSSMAN: Yes.

19 MS. ROSENFELD: -- in light of the proffer that
20 was just made that this revised plan is going to be
21 submitted tomorrow, may I have a moment to speak with my
22 client and to confer with Stop Costco Gas, please?

23 MR. GROSSMAN: Well, certainly. Certainly.

24 MR. SILVERMAN: Could I just raise one question
25 before -- just one question. The landscaping, part of the

1 landscaping, I believe, is the stormwater system. I was
2 wondering if that's going to be changed.

3 MS. HARRIS: No, that's not affected.

4 MR. GROSSMAN: The stormwater system will not be
5 changed --

6 MR. SILVERMAN: All right.

7 MR. GROSSMAN: -- according to Ms. Harris.

8 MS. CORDRY: And just to clarify, when you're
9 talking about reinstating the path, you were talking about
10 not the six-foot path that was in the proposal, but you're
11 talking about a three-foot path only, correct?

12 MS. HARRIS: There was never a --

13 MS. CORDRY: Your special exception, landscaping
14 proposals at every point, since they were filed in November,
15 have shown a six-foot path and numerous exhibits. I mean,

16 we can put them in if we need to, but let's just be clear,
17 you're not talking about the six-foot path shown in your

18 exhibits anymore, you're talking about a three-foot --

19 MS. HARRIS: It's a three-foot wide path.

20 MS. CORDRY: Okay, which was not proposed until
21 this point. It's also not proposed in the prior special
22 exception either, which was a four-foot path. Are we just
23 clear, we're talking about three feet? All right.

24 MS. HARRIS: It's a three-foot path.

25 MS. ROSENFELD: Okay. If you --

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1 MR. GROSSMAN: I sense your tension about this,
2 Ms. Cordry. Is --
3 MS. CORDRY: Well, I'm just surprised that there
4 would be a debate about something that is shown in their
5 exhibits. That's all.
6 MR. GROSSMAN: Well, I don't know if there's a
7 debate. I mean, is there --
8 MS. CORDRY: Well --
9 MR. GROSSMAN: -- does that create an issue for
10 you, the width of the path?
11 MS. CORDRY: Yes. I mean, we'll go out and confer
12 and we'll come back, but it makes --
13 MS. ROSENFELD: A material issue.
14 MS. CORDRY: -- it makes significant differences
15 in a number of respects, yes.
16 MR. GROSSMAN: Okay. All right. I guess we'll
17 have a brief recess.
18 (Whereupon, a brief recess was taken.)
19 MR. GROSSMAN: All right. It's 10:00. Are we
20 ready to go back on the record, everybody?
21 MR. SILVERMAN: We are.
22 MS. ROSENFELD: Yes, we are.
23 MS. HARRIS: Yes.
24 MR. GROSSMAN: All right. I see a hand.
25 Ms. Adelman.

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1 MS. ADELMAN: Yes. I didn't speak up before to
2 put my name on the record. It's Abigail Adelman for the
3 Stop Costco Gas Coalition.
4 MR. GROSSMAN: Thank you.
5 MS. ADELMAN: Thank you.
6 MR. GROSSMAN: Okay. By the way, Ms. Harris, when
7 you send out the notice to everybody, when I say everybody,
8 I mean it has to go to all the people who were originally
9 entitled to notice, to notice of the amendment, as well as
10 all the parties of record. And you can use as a model the
11 last time we sent out a notice in this case of a motion to
12 amend.
13 MS. HARRIS: So original parties plus the party of
14 record?
15 MR. GROSSMAN: Right, the original, the people,
16 all the people --
17 MS. HARRIS: Right.
18 MR. GROSSMAN: -- who were entitled to notice --
19 MS. HARRIS: Okay.
20 MR. GROSSMAN: -- initially of the case, plus
21 anybody who's a party of record.
22 MS. HARRIS: Okay.
23 MR. GROSSMAN: That's routinely what is done in a
24 formal notice. Ms. Sheard.
25 MS. SHEARD: Excuse me, Mr. Grossman. Virginia

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1 Sheard. When they send out the notice at Park and Planning,
2 is there going to be a period of time that -- we're just
3 going to be seeing the details at the same time it goes to
4 them.
5 MR. GROSSMAN: That's correct.
6 MS. SHEARD: Is there going to be a period of time
7 for us to comment to Park and Planning about the details?
8 MR. GROSSMAN: Oh, you can certainly comment to
9 Park and Planning any time you want about the details. The
10 record in this case is going to remain open for quite some
11 time because we, we still have a hearing date scheduled --
12 MS. SHEARD: Well --
13 MR. GROSSMAN: -- all the way to August 2. So
14 you're welcome to comment at any point that you wish to Park
15 and Planning. I'm not, I'm not requiring a response from
16 Park and Planning, you know. We are required to send them a
17 copy of it, and they have an opportunity to comment if they
18 wish to. So --
19 MS. SHEARD: Okay. Thank you.
20 MR. GROSSMAN: -- it's perfectly open for, and
21 perhaps not a bad idea, for me to ask for them to comment.
22 They probably will anyway. And usually, I do send them an
23 e-mail and ask if they can get back to me, and in this case,
24 I'd probably say, unless it's problematic for them, to get
25 back to me by the next session, which would be June 17. So

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1 that gives them a couple of weeks to take a look at this, to
2 see if they have any additional, additional comments.
3 MS. HARRIS: Mr. Grossman, just to be --
4 MR. GROSSMAN: Yes.
5 MS. HARRIS: -- clear, the notice would go to the
6 parties of record and those initially entitled to notice,
7 and then our intent was to send copies of the plans,
8 however, to the three opposing groups, Park and Planning and
9 ZHE.
10 MR. GROSSMAN: That's correct.
11 MS. HARRIS: Okay.
12 MR. GROSSMAN: You don't have to send out the
13 plans themselves. They're --
14 MS. HARRIS: Right.
15 MR. GROSSMAN: -- part of the public record and
16 can be inspected by anybody.
17 MS. HARRIS: Okay.
18 MR. GROSSMAN: This is a notice of the amendment.
19 MS. HARRIS: Thank you.
20 MR. GROSSMAN: Okay. That's why I'm quite careful
21 to make sure that when we have an e-mail exchange on
22 anything that might be characterized as substantive with any
23 of the parties here, that I also make sure that a copy is
24 put into the, into the record so that anybody can inspect
25 anything. In fact, we did have an e-mail exchange they put

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1 in the record that got to me from staff. Actually, I'm not
2 sure exactly why it was copied to me, but it was, of an
3 exchange with Dr. Adelman and technical staff. So, as long
4 as it got to me, I put a copy in the record and that was
5 Exhibit 146.

6 Okay. Also, Ms. Harris, applicant was to supply
7 additional evidence of authority from Wheaton Plaza to place
8 the proposed wall and the pedestrian path on their property.
9 Where do we stand on that?

10 MS. HARRIS: We have that letter and we can
11 distribute that, and then we will be sending electronic
12 copies first thing tomorrow morning, as well, so you have
13 those.

14 MR. GROSSMAN: Okay, great. We'll wait a second
15 for that until we get to the -- you can hold off on
16 submitting it --

17 MS. HARRIS: Oh, okay.

18 MR. GROSSMAN: -- until we get through the
19 preliminary matters.

20 MS. HARRIS: Okay.

21 MS. ROSENFELD: And, Mr. Grossman --

22 MR. GROSSMAN: Yes.

23 MS. ROSENFELD: -- back on the issue of the, the
24 amended plan --

25 MR. GROSSMAN: Yes.

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1 MS. ROSENFELD: -- to be filed tomorrow, on behalf
2 of Kensington Heights Civic Association, and I believe the
3 Coalition joins us in this, we would object to moving
4 forward today with the examination of Mr. Gang on that plan.
5 The changes that are proffered as minor changes are not
6 minor changes. They are material changes -- the
7 reinstatement of the path that had triggered the whole issue
8 of whether or not the plan had been amended, in fact; the
9 bollards are new; relocating the tanks are new -- and each
10 one of these changes are in direct response to significant
11 and ongoing issues raised by the opposition in this case.
12 These issues affect conformance with the sector plan. They
13 affect compatibility with the neighborhood. They go to
14 issues of traffic nuisance and pedestrian safety -- all of
15 which are issues that Mr. Gang has addressed in his report
16 in a substantive manner. And it would be highly prejudicial
17 for us to move forward and address direct examination or try
18 to conduct cross-examination on what is right now a
19 hypothetical plan.

20 This plan could have been presented today. Even
21 then, I would submit, it would have been prejudicial because
22 we've not had a chance to review it, but certainly to try
23 and address these material issues at this time, when the
24 plan is going to be changed in many ways, on a site that is
25 this constrained, is prejudicial to the opposition. A

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1 matter of two or three feet here or two or three feet there
2 affects pedestrian safety, affects turning radiuses, affects
3 whether or not there's adequate room in drive aisles. And
4 not only would it be prejudicial to us, but I submit that it
5 would be a waste of the Hearing Examiner's time because we
6 simply will have to recall him and reexamine him again once
7 the plan has been filed.

8 MR. GROSSMAN: Okay. Anybody else on the
9 opposition wish to be heard on the point?

10 (No audible response.)

11 MR. GROSSMAN: Ms. Harris.

12 MS. HARRIS: We understand that the opponents
13 desire to review the plan prior to any testimony relevant to
14 the plan, and we are very conscious of that in our, what we
15 intended that Mr. Gang will be testifying to, and in fact,
16 as we will hear when he does testify, his testimony will in
17 no way be affected by the minor revisions that are going to
18 be set forth on the plan. I mean, he's testifying to sector
19 plan compliance, compliance with the zoning ordinance, and
20 the minor changes that we identified are not pertinent, not
21 relevant to his testimony.

22 MR. GROSSMAN: All right.

23 MS. ROSENFELD: And I suggest, having gone through
24 his report very carefully, that his testimony does go to
25 sector plan issues and that the changes that have been

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1 proffered, at least, affect those issues as well. I think
2 it would be very difficult to parse his testimony out into
3 those issues that are affected or are not affected by the
4 kinds of changes that have been proposed. We're prepared to
5 move forward with Mr. Guckert. I don't think that his
6 testimony is, is affected by the changes that have been
7 mentioned. And we're prepared to move forward with
8 Mr. Tucker for the same reason, but I continue to object to
9 presenting Mr. Gang today until we've had a chance to look
10 at and study the proposed amendments.

11 MR. GROSSMAN: Was it your intention, Ms. Harris,
12 to call Mr. Gang back for additional cross-examination on
13 anything that might relate to these points?

14 MS. HARRIS: We can certainly do that, but because
15 his testimony today is not influenced by these changes, it
16 was not our intent, but we can certainly make him available
17 to do that.

18 MR. GROSSMAN: Okay.

19 MS. HARRIS: Our intent was to call Mr. Dan Duke
20 back so that he could testify to these changes because
21 they're really within his realm. And then to the extent
22 opponents feel that they want to hear from our other
23 witnesses with respect to these minor changes, we can, we
24 will make them available, but I --

25 MR. GROSSMAN: Okay.

1 MS. HARRIS: -- but I think, given the scope of
2 Mr. Gang's testimony, it would be inefficient and a waste of
3 resources to not go forward today.

4 MR. GROSSMAN: All right.

5 MS. ROSENFELD: Well, I would suggest that
6 Ms. Harris and I have a very different view of the scope of
7 Mr. Gang's testimony then. We certainly would expect
8 Mr. Duke to return, as well, for the more technical traffic
9 circulation and turning radius issues, but as far as the
10 broader sector plan issues and conformance with the sector
11 plan and the compatibility findings, the nuisance findings
12 that Mr. Gang has made, I think they all directly are
13 impacted by the proposed changes.

14 MR. GROSSMAN: I'm not sure I understand.
15 Assuming we take for granted what Ms. Harris said, is that
16 she will attempt to limit the scope of Mr. Gang's testimony
17 to things that don't relate to these changes, whether you
18 characterize them as minor or major, but since this plan, at
19 one point or another, has had walkway, a southern pedestrian
20 walkway in it, I'm not sure that going back to some form of
21 that would be a surprise. It's also had the extended wall
22 in it for some time. So I don't think you'd be surprised by
23 that.

24 The only change that it sounds to me that was
25 different was the one that, that Mr. Hurlocker proposed and

1 apparently is now being adopted by, by counsel, to move a
2 bit to the east the truck loading area so that it wouldn't
3 obstruct the drive aisle, and I don't see how that could
4 possibly prejudice you in terms of impact on, on Mr. Gang's
5 testimony.

6 MS. ROSENFELD: Well, I don't think that's the
7 only additional change that they proffered. I also heard
8 them proffer that they intend to show bollards on the side
9 of the special exception easement relating to the loading
10 dock. One of the findings that Mr. Gang has included in his
11 report is whether or not the proposed special exception
12 affects vehicular pedestrian traffic vis-a-vis buildings or
13 structures in the vicinity of the, of the proposed special
14 exception. It's a material finding that he makes, and it's
15 certainly affected by, by these bollards that I don't know
16 exactly where they are or how they're going to be operated
17 or whether they're permanent.

18 MR. GROSSMAN: All right. Well, we can, we can --

19 MS. ROSENFELD: This is, this is a very
20 constrained site, and the suggestion that making changes of
21 three or four feet here or there and, more importantly, a
22 collective number of changes of three or four feet here and
23 there are not material changes, I think, belies how
24 constrained this site really is.

25 MR. GROSSMAN: I don't want to characterize them

1 as not material. I'm not suggesting that. I'm saying that
2 they are changes of which you've had some notice for a long
3 time because there has been a walkway proposed until -- the
4 next to the last change, there was a pedestrian walkway
5 proposed and there was also the extended wall proposed.

6 So the only thing that's really different -- and
7 you corrected me correctly, I think -- was the addition of
8 the bollard, but that came up also at the, in the previous
9 testimony. And we're going to allow you additional
10 cross-examination of Mr. Gang, if necessary, on the bollard
11 point, you know, at some later session. So, I don't -- as
12 well as Dan Duke -- so I don't see how that's really going
13 to prejudice you. I don't see how the delay, how delaying
14 helps the efficiency of this case, nor do I see how going
15 forward with testimony from Mr. Gang is really going to
16 prejudice the opposition. And we need to, you know, we need
17 to move with some reasonable dispatch in conducting this,
18 this hearing.

19 So I just don't see how those items, given your
20 prior notice of essential changes -- and I'm not sure that
21 the bollard is really going to change anything that
22 significantly --

23 MS. ROSENFELD: Well --

24 MR. GROSSMAN: Well, you're going to have an
25 opportunity for cross-examination on it anyway at a later

1 time should you feel you need it.

2 MS. CORDRY: I guess one of our concerns is, in
3 terms of efficiency, our having to prepare and come back and
4 prepare and come back, and have a plan that changes
5 constantly is really problematic for us. Yes, there was a
6 six-foot path there before. A three-foot path is different.
7 A zero-foot path is different. Trying to determine which
8 way to cross-examine Mr. Gang on a path that comes and goes
9 and, as we make a point, each one of these things goes
10 together, I mean, we can't force this, but it's not our
11 inefficiency here.

12 MR. GROSSMAN: No, no. The point is that in the
13 course of these hearings, the participation of the community
14 very often changes the proposed plans in land use hearings,
15 and in this case, it seems to me, you would agree, that
16 these changes would be for the better as a direct result of
17 community participation.

18 So it's not unusual that there are changes in
19 plans of this kind in the course of a hearing. That doesn't
20 mean that the whole hearing has to be postponed. Not every
21 change requires a postponement to regroup, especially since
22 this record is going to remain open and you're going to have
23 an opportunity to cross-examine on any point that's raised
24 here. So I just don't see the prejudice.

25 MR. ADELMAN: Mr. Grossman --

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1 MR. GROSSMAN: Dr. Adelman.
2 MR. ADELMAN: -- I believe it would be prejudicial
3 to the opposition to attempt to cross-examine Mr. Gang. I
4 prepared an extensive set of questions. I've read his
5 filing --
6 MR. GROSSMAN: Right.
7 MR. ADELMAN: -- in detail. Absent clarity on
8 what the revisions are going to be, I'm not sure how I will
9 be able to proceed with the questions I have.
10 MR. GROSSMAN: Well, why don't we see how that
11 progresses and we'll see if that's, if that becomes a
12 problem. If I think there's any prejudice that's evidenced
13 in the course of it, then we'll make adjustments as
14 necessary. Do we, Ms. Harris, do we not have a copy of the
15 plan available at this point, of the changes that you've
16 described?
17 MS. HARRIS: Not, I don't have it physically on
18 me. It's being assembled in my office this morning, and
19 then -- so I could, I could get one couriered here by this
20 afternoon or --
21 MR. GROSSMAN: All right. Why don't we do that.
22 MS. HARRIS: -- within an hour. Okay.
23 MR. GROSSMAN: Okay. That would be great. Let's
24 at least have the plan here so that people know what they're
25 dealing with, and then we can proceed with Mr. Guckert off

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1 the bat. And maybe by the time Mr. Gang takes the stand,
2 we'll actually have a copy of the plan here, which will take
3 some of the -- will alleviate some of the concerns raised by
4 the opposition. Mr. Silverman.
5 MR. SILVERMAN: Just one, just one comment, sir --
6 MR. GROSSMAN: Yes.
7 MR. SILVERMAN: -- about the changes are
8 improvements. Well, they may be improvements to one side,
9 but what happens to the other side? That's what we're
10 trying to figure out. I mean, if you take three feet off
11 the table, you change a lot of things. You may improve the
12 walkway here, but you may crowd people at the other end. So
13 I don't think we know, I don't know whether these -- I know
14 it would be better for cars to have more space between them
15 and the trucks. I'm sure that's a good thing, but I don't
16 know the consequences of it. We haven't had a chance really
17 to investigate that.
18 MR. GROSSMAN: You mean the consequences of adding
19 back a walkway along the southern boundary?
20 MR. SILVERMAN: Well, that's -- well, I mean, that
21 seems like --
22 MR. GROSSMAN: Is that what you're talking about?
23 Is that what you're referencing?
24 MR. SILVERMAN: Well, no. I'm referencing the
25 three feet, initially three feet for the tanks, moving the

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1 tanks over --
2 MR. GROSSMAN: Oh, I see.
3 MR. SILVERMAN: -- and so compressing a very
4 compressed facility.
5 MR. GROSSMAN: Well, they're going to be moved
6 underground. I'm not sure that --
7 MS. CORDRY: Well, but --
8 MR. SILVERMAN: Well, the trucks -- yes.
9 MS. ROSENFELD: Mr. Grossman, I don't think
10 anybody here is objecting to the fact that the applicant may
11 be modifying their plan --
12 MR. GROSSMAN: Right.
13 MS. ROSENFELD: -- or that they're -- I've already
14 said that clearly they're doing so in response to concerns
15 from the community.
16 MR. GROSSMAN: Yes.
17 MS. ROSENFELD: Whether or not that results in a
18 better plan, we won't know until we see it.
19 MR. GROSSMAN: Right.
20 MS. ROSENFELD: The continuing objection is to
21 have to try and cross-examine on a plan that is not before
22 us, and that's exceedingly difficult and I suggest it's
23 highly prejudicial to us --
24 MR. GROSSMAN: Okay. Well, let's --
25 MS. ROSENFELD: -- to try and do that.

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1 MR. GROSSMAN: -- let us, let's go forward now
2 with Mr. Guckert, which you all said was fine, and then
3 if -- hold on one second, don't get too anxious,
4 Mr. Guckert; we're not quite to that point yet -- and then
5 we'll see if we have a copy of the plan here before we get
6 to Mr. Gang so we don't have to twist in the wind here while
7 we may have it resolved. Ms. Adelman.
8 MS. ADELMAN: Mr. Grossman, I'm an outsider in
9 these proceedings in the sense that this is my first
10 experience.
11 MR. GROSSMAN: You're an insider.
12 MS. ADELMAN: What happens if these revisions are
13 submitted to the planning staff and your Planning Board, we
14 continue with all the testifying, although, albeit, without
15 the plan, and then they object to the plan and they revise
16 it? What, what happens then?
17 MR. GROSSMAN: Well, the planning staff can't
18 revise the plan. The planning staff can recommend
19 something, and they may come back and it's conceivable
20 they'd come back and say they don't think it's a good idea
21 or whatever they would say, but they can't change the plan.
22 Technically, an applicant is entitled to have whatever plan
23 they submit evaluated and subject -- now, very often, staff
24 will say no, we think something should be changed and then
25 an applicant will decide to change it based on that, because

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1 they don't want a negative recommendation. But technically,
2 these are recommendations by staff, all of which -- or by
3 the Planning Board if it elects to hear it again -- and all
4 of these are then evaluated by me and then subsequently by
5 the Board of Appeals.
6 MS. ADELMAN: Oh, I see. So --
7 MR. GROSSMAN: Sure.
8 MS. ADELMAN: -- so we don't start over again
9 then?
10 MR. GROSSMAN: Oh, no, no, no, no.
11 MS. ADELMAN: I see. Okay.
12 MR. GROSSMAN: This is not, it's not unusual in
13 the process to have changes of this sort happen to plans
14 once they're evaluated in the context of this kind of a due
15 process hearing, where everybody gets a chance to
16 cross-examine and see what would be best. I have no idea
17 whether or not the Board of Appeals is ultimately going to
18 approve or disapprove of this special exception, but if it
19 decides to approve it, it would be improved by, by changes
20 that take into account what the community's concerns are.
21 And now, I'm not going to say whether these particular
22 changes are going to be the best or not. That's something
23 we'd evaluate later on after we hear the record, but --
24 MS. ADELMAN: Thank you.
25 MR. GROSSMAN: -- community participation is so

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1 important for this kind of reason, and it's always greatly
2 appreciated.
3 MS. CORDRY: And just to clarify that --
4 MR. GROSSMAN: Yes, ma'am.
5 MS. CORDRY: -- it is very difficult for the
6 community to raise the funds, to continually participate and
7 participate and participate and participate when what
8 they're reacting to continually changes. I mean, all of the
9 issues that we have raised here we have raised before. The
10 one thing we didn't raise with Park and Planning was the
11 question of the pedestrian path, which quite clearly was six
12 feet wide at that time, because we thought that was great,
13 that was an improvement from the prior special exception.
14 So coming in at this point and participating much
15 after the fact of, oh, well, is it going to be six feet, no,
16 it's going to be three feet, you know, it's -- we're
17 actually, we are still going backwards, not as far back as
18 we were before, but it really makes it difficult for the
19 community to have to continually react to these kind of
20 things because this is not a community that is the third
21 largest retailer in the world. This is a small community
22 with limited resources, and we understand that things can
23 change, but they should change in ways that react to what we
24 have raised, not in ways where we have to get this plan back
25 to where it was when we were trying to put our initial input

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1 into it.
2 MR. GROSSMAN: Well, in my experience -- and I've
3 been doing this for a number of years now -- this is one of
4 the most effective communities I've ever seen in raising
5 points and adjusting. So, so I --
6 MS. CORDRY: We are and --
7 MR. GROSSMAN: -- there's no doubt about that, and
8 I've done many of these. But the second thing is, as I say,
9 it is, it is common and preferred that there be the
10 possibility of changes of plans to adjust to the evidence
11 that comes out at these hearings.
12 So, yes, I know that it makes it a little bit more
13 difficult to have things shifting a bit, but it's very
14 important that there be that flexibility. It's built right
15 into the Board of Appeals rules, and the Hearing Examiner
16 can request at any time during the proceeding that a change
17 be made, and in fact, I did at one point in the hearing
18 raise the issue with the, the applicant as to whether or not
19 there was some way of getting that pedestrian path back, as
20 I inquired of the community, and I was told yes, they would
21 truly prefer that pedestrian path along the southern ring
22 road. So I don't think we can rail against the fact that
23 there's change. I think that -- especially when the changes
24 are some attempt to accommodate things that have appeared at
25 the hearing.

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1 MS. ROSENFELD: And I'd like to clarify. The
2 objection is not to their ability to modify the plan. It is
3 to having to conduct cross-examination on a plan that we
4 have not seen.
5 MR. GROSSMAN: I understand and that's why we're
6 going to -- we're hoping that we'll get the plan here. I
7 don't know why it didn't get here by June 4. Yes, ma'am.
8 MS. HARRIS: Well, actually, we do. I realize we
9 have limited -- we have 11 by 17s.
10 MR. GROSSMAN: Okay. That's good enough.
11 MS. HARRIS: What we were doing, we ran into a
12 production problem which is why the full-size ones --
13 MR. GROSSMAN: Okay.
14 MS. HARRIS: -- won't be ready until the end of
15 the day or first thing tomorrow, but we can distribute
16 now --
17 MR. GROSSMAN: Absolutely. Let's distribute the
18 11 by --
19 MS. HARRIS: Okay. And --
20 MR. GROSSMAN: -- we'll mark them as exhibits, and
21 we'll distribute it, distribute them, and then there won't
22 be that problem. And then we'll give the -- we'll take a
23 recess after Mr. Guckert testifies since nobody seemed to
24 have an objection to him testifying before that's
25 distributed or before they have a chance to absorb it, and,

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1 and then we'll, we'll go forward. So I think that solves
2 the problem.
3 MS. HARRIS: We only have two copies. So it may
4 be helpful, is there a place in the building that we can get
5 additional copies made?
6 MR. GROSSMAN: Yes. The copier for the Board of
7 Appeals can make copies of 11 by 17s.
8 MS. HARRIS: Okay. So --
9 MR. GROSSMAN: So just go across the hall to my
10 office and ask my administrative aides to, if they would
11 make copies --
12 MR. AGLIATA: Thank you.
13 MR. GROSSMAN: -- of the 11 by 17. Thank you.
14 MS. HARRIS: My apologies, I didn't realize that
15 Mr. Brann had these.
16 MR. GROSSMAN: Okay. That's great. I think that
17 will solve that problem.
18 MS. HARRIS: Okay.
19 MR. GROSSMAN: And yes, Ms. Rosenthal -- I'm
20 sorry. I had a friend named Stuey Rosenthal. So I may call
21 you -- and, Dr. Adelman, I may call you Dr. Adelson because
22 I have a friend Dr. Adelson. So I, I blamed him the other
23 day when I saw him.
24 Okay. All right. While that's being done, I
25 understand the witnesses for today will be Wes Guckert,

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1 Wayne Tucker, and Steve Gang, hopefully, if we get a copy of
2 that, that plan made. Then any other preliminary or
3 procedural matters? I think somebody got locked out.
4 Mr. Brann probably. You can leave it open, Ms. Sheard.
5 Usually, there's not too much of a problem.
6 MS. ROSENFELD: Mr. Hearing Examiner, we had asked
7 for a copy of the turning radius map related to the loading
8 dock area. Will one be forthcoming with the amended plan?
9 MR. GROSSMAN: Ms. Harris, anything?
10 MS. HARRIS: There's turning radiuses regarding
11 the loading on the delivery, but you're talking about the
12 loading for the warehouse?
13 MS. ROSENFELD: That's correct, and Mr. Duke had
14 proffered that and you had as well.
15 MS. HARRIS: We will follow up with Mr. Duke on
16 that because that is not part of this package.
17 MR. GROSSMAN: Okay. All right. Any other
18 preliminary matters, Ms. Harris, on your part?
19 MS. HARRIS: No.
20 MR. GROSSMAN: All right. Does the opposition
21 have any other preliminary matters?
22 MS. ROSENFELD: No, thank you.
23 MR. GROSSMAN: Okay. All right. Then are we
24 ready then to proceed with Mr. Guckert, who is anxiously
25 awaiting his opportunity?

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1 (No audible response.)
2 MR. GROSSMAN: I take that silence as a yes --
3 MS. HARRIS: Yes.
4 MR. GOECKE: We are.
5 MR. GROSSMAN: -- that smile as a yes. Okay.
6 Mr. Guckert, welcome back --
7 MR. GUCKERT: Thank you, sir.
8 MR. GROSSMAN: -- to our hearing. You're still
9 under oath.
10 MR. GUCKERT: Yes, sir.
11 MR. GROSSMAN: All right. Ms. Harris, do you wish
12 to proceed?
13 MS. HARRIS: I believe that Mr. Guckert had
14 completed, we had completed direct of him and that he's on
15 for cross-examination.
16 MS. ROSENFELD: That's correct.
17 MR. GROSSMAN: Okay.
18 (Witness was previously sworn.)
19 CROSS-EXAMINATION
20 BY MS. ROSENFELD:
21 Q Mr. Guckert, in Exhibit No. 128(b), I just have
22 some clarifying questions for that. Your exhibit shows all
23 intersections are level of service A. Can you tell me what
24 CLV number corresponds to level of service A, critical lane
25 volume?

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1 A Zero to 1,000.
2 Q And where is that standard set forth?
3 A In the guidelines.
4 Q In the traffic guidelines --
5 A Yes.
6 Q -- put out by Park and Planning?
7 A They, I misspoke, they have removed the letter
8 designations from the guidelines. The standard is set forth
9 by State Highway Administration, Montgomery County
10 Department of Transportation and, actually, all other, all
11 other government agencies in the State of Maryland. But,
12 Mr. Grossman, Montgomery County Council removed the letter
13 standards.
14 MR. GROSSMAN: Okay. And you said the level A
15 standard is equivalent of what?
16 THE WITNESS: One to 1,000.
17 MR. GROSSMAN: One to 1,000 what?
18 THE WITNESS: Critical lane volume, is what --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- what the question was, yes, sir.
21 MR. GROSSMAN: Okay.
22 BY MS. ROSENFELD:
23 Q And level of service B?
24 A One thousand to 1150.
25 Q Okay. And so when the chart references A, what is

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1 it referencing?

2 A It's referencing the document that I submitted

3 with, with the chart. And I think if, Mr. Grossman, if you

4 could tell me, is that also 128(b)?

5 MR. GROSSMAN: The chart itself was 128(b). The

6 other document, I think, was 128(a) --

7 THE WITNESS: Okay.

8 MR. GROSSMAN: -- Supplemental Traffic Analysis

9 prepared by Wes Guckert.

10 THE WITNESS: So page 1, 128(a).

11 BY MS. ROSENFELD:

12 Q So that's your designation. That's not a

13 designation that's used right now by Montgomery County, is

14 that correct?

15 A Incorrect. No, that's not correct.

16 Q It's not correct? Level of service --

17 A Correct, you're -- correct, you're incorrect.

18 Q -- level of service A is used by Montgomery

19 County?

20 A By Montgomery County, not in the guidelines.

21 MR. GROSSMAN: Not in the LATR guidelines?

22 THE WITNESS: Correct.

23 MR. GROSSMAN: Okay.

24 BY MS. ROSENFELD:

25 Q And where is it used by Montgomery County?

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1 A What do you mean by that?

2 Q When you use level of service A, what regulation

3 or standard are you referencing?

4 A The ones that are used by Montgomery County

5 Department of Transportation --

6 Q Yes.

7 A -- and the Maryland State Highway Administration.

8 Q Okay. And where are they contained?

9 A In, in SHA, in their, in their guidelines, and

10 Montgomery County DOT, would be in their guidelines as well.

11 Q Okay. But not by Park and Planning, in their

12 guidelines?

13 A Not in the LATR, correct.

14 Q Okay. Can you tell from the CLV number alone

15 whether traffic waiting to turn left, for instance, can

16 clear an intersection on a single light change?

17 A The, the, the inference of the critical lane

18 volume would, would infer that that would occur.

19 Q Where is that inference derived from?

20 A From basic traffic engineering.

21 Q Is it set out anywhere in writing, in any of the

22 guidelines?

23 A Well, it's kind of like, that reminds me of that

24 -- I'll stop. I'm sorry. I'm sorry. I'm sorry.

25 MR. GROSSMAN: Leave the anecdotes to me.

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1 THE WITNESS: Yeah, I'll save -- I was going to go

2 to a movie. The, the critical lane volume analysis was set

3 up to examine average delays and that's how the analysis was

4 originally set up in 1972.

5 BY MS. ROSENFELD:

6 Q So, at least by inference, if the CLV is somewhere

7 between zero and 1,000, you theoretically would pass through

8 an intersection in one signalization?

9 A With little or no delay.

10 Q And would the same inference hold true if you were

11 at a stop sign as opposed to a traffic signal?

12 A Basically, yes.

13 Q Is there any kind of standard that establishes the

14 free flow of traffic in terms of the speed of traffic, in

15 the context of speed limit on a particular roadway?

16 A Not in the way that you're describing it. I'm not

17 sure that I understand the question.

18 Q Is there an inference that if, if traffic is at

19 level of service A, then it can move freely at the speed

20 limit identified on that road?

21 A Well, now you're changing from intersections to

22 links? Was that a yes?

23 Q Yes.

24 A So, so the, so the answer is that if, if we're now

25 talking about a link level of service, one would assume that

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1 level of service A -- a link being between two intersections

2 or between two nodes -- that level of service A would mean

3 it's operating free flow.

4 Q Okay. So if you have an intersection and level of

5 service A and an intersection, level of service A, the

6 inference is that the link in between operates at level of

7 service A as well?

8 A And it typically would. The links would operate

9 better than the nodes.

10 Q I believe that you testified that the counts in

11 your, in Exhibit No. 28(a) and (b) were determined through

12 use of a camera, cameras located at various locations within

13 the mall, is that correct?

14 A That's correct. That's the new way to undertake

15 traffic counts.

16 Q And where were those cameras located?

17 A At the locations one through 11 shown on 28(a),

18 128(a).

19 Q Okay. Where were the cameras physically located

20 and which way were they pointing?

21 A At the intersection. At the -- they were, they

22 were located at the intersection, one through 11, pointing

23 to the intersections, one through 11.

24 Q So are they on the roadside or the side of the

25 intersection --

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1 A Yes.
2 Q -- on the curb line, essentially?
3 A No. They're going to be located in such a, in a
4 way that the entire intersection would be monitored.
5 Q And you can do that with one camera at each
6 location?
7 A In this particular case, yes.
8 MR. GROSSMAN: Does the camera tell you the number
9 of critical movements, or does it just record it and then
10 you count it up later by viewing whatever's been filmed?
11 THE WITNESS: Neither. Let me, let me explain, if
12 I would. The, the critical -- once you have the data, then
13 you do the arithmetic to do the critical lane volume --
14 MR. GROSSMAN: Right.
15 THE WITNESS: -- but the, in most cases, these
16 videos are then sent to the, a proprietary software company
17 that has software that actually counts --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- counts the vehicles, using
20 proprietary software.
21 MR. GROSSMAN: It counts the movements, actually
22 uses --
23 THE WITNESS: Yes. It sees the cars and counts
24 them.
25 MR. GROSSMAN: Okay. Thank you.

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1 BY MS. ROSENFELD:
2 Q I think you answered one of my questions. So are
3 the results determined by a computer program or by a person
4 reviewing the tape? If I understood the answer correctly,
5 it's through proprietary software.
6 A Yeah. It's just like all the other counts that
7 are used for the LATR.
8 Q Yes. Okay.
9 A No different.
10 Q Could you go to Exhibit 128(b) and show me with an
11 arrow where a camera would be located and which direction it
12 would be pointing?
13 A It's at the intersection and pointing to the, to
14 look at the entire intersection for each location.
15 Q Okay. So let's say, for example --
16 A I have one here.
17 Q Oh, okay, great. If we are looking at
18 Intersection No. 5, which is parking lot access --
19 A Uh-huh.
20 Q -- where would the camera physically be located?
21 A It would be located at, at, on one of the corners
22 of the intersection so it would be able to see all four, all
23 three lanes of the intersection.
24 Q And would you know whether it was on the
25 southernmost border, pointing in?

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1 A I would know, but if somebody were sitting there
2 in a lawn chair, I wouldn't know which corner they're on.
3 They, they just sit at a lawn chair in order to do all three
4 corners, and in this case, the camera is set up so that all
5 three corners are, are located.
6 MR. GROSSMAN: I mean --
7 BY MS. ROSENFELD:
8 Q So it really doesn't matter whether it's in the
9 upper --
10 A Does not matter.
11 Q -- like, northwest or northeast or southern --
12 A Correct.
13 Q -- it captures the same view?
14 A Correct.
15 Q And how wide is the angle of the camera? For
16 example, would it capture any of the parking spaces on the
17 periphery of the intersection?
18 A It could.
19 Q Any idea? Two? Three? Ten?
20 A No.
21 Q No idea?
22 A It could. It depends on, depends on where the
23 camera was actually situated. These cameras are situated to
24 do the traffic counts and the pedestrians, not to look at
25 the parking lot.

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1 Q Okay. And is the count designed to calculate only
2 pedestrian/vehicles, pedestrian and vehicles that are, that
3 traverse the intersection itself? Do they count anything in
4 the viewshed beyond the intersection?
5 A The information is there, but it's not -- that
6 wasn't the purpose of this data collection.
7 Q Do you know if the camera would capture any
8 pedestrians or --
9 A I have not viewed the tapes.
10 Q Okay. So basically, they would capture any
11 pedestrians or vehicles within the viewfinder of the camera
12 itself?
13 A Correct.
14 MR. GROSSMAN: Ms. Rosenfeld, let me interrupt you
15 for a second. I see the copies have arrived. So let's make
16 sure they're distributed. Now can you -- let's mark a copy
17 of the new plan in the 11 by 17 format as Exhibit 148, and
18 we'll say revised -- is this the revised special exception
19 plan?
20 (Exhibit Nos. 148(a-c) were
21 marked for identification.)
22 MS. HARRIS: Correct.
23 MR. GROSSMAN: And, okay, so it's three pages,
24 copies being distributed to the opposition, and this is
25 Revision 7, dated -- is that 5/24/13? Is that correct on

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1 the date?

2 MR. AGLIATA: Should be, yes.

3 MS. HARRIS: Yes.

4 MR. GROSSMAN: Dated 5/24/13, 11 by 17 version,

5 and we'll say, since it's three pages, it'll be (a), (b) and

6 (c), 148(a), (b), and (c). Okay.

7 MS. CORDRY: Mr. Grossman --

8 MR. GROSSMAN: Yes.

9 MS. CORDRY: -- a point of clarification, will we

10 be having the large format for this afternoon's

11 cross-examination?

12 MR. GROSSMAN: I don't know if it'll be here yet,

13 but I -- do we know that, Ms. Harris?

14 MS. CORDRY: Has it been requested?

15 MR. AGLIATA: Yes.

16 MS. HARRIS: No, we didn't request it because we

17 had these, but we can request large formats.

18 MR. GROSSMAN: Yes, let's request it. If we --

19 MS. HARRIS: Okay.

20 MR. GROSSMAN: -- if we have it available, it'll

21 be helpful, but --

22 MS. HARRIS: Okay.

23 MR. GROSSMAN: -- I think these are adequate for

24 purposes of --

25 MS. CORDRY: Well --

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1 MR. GROSSMAN: -- of notice.

2 MS. CORDRY: -- Mr. Grossman, I'd have to say --

3 MR. GROSSMAN: Yes.

4 MS. CORDRY: -- I can't read most of this, and any

5 of the details there. So the large format will be helpful.

6 MR. GROSSMAN: Yes.

7 MS. ADELMAN: Yes, the quality is not excellent,

8 but a large format for cross-examination, I think, is

9 necessary.

10 MR. GROSSMAN: Okay. So we'll try to get that

11 here, okay, and we'll give it a new exhibit number, an

12 additional exhibit number for the large version because this

13 is specifically the, the smaller version. While we're at

14 it, you have the authority documents that you said?

15 MS. HARRIS: Yes.

16 MR. GROSSMAN: Let's mark them and distribute that

17 as well. Thank you. And that'll be -- Exhibit 149 is a

18 cover letter dated June 4, 2013, to me from Ms. Harris and

19 that's the cover letter for the lease, let's see, which is,

20 will be Exhibit 149(a). And then the --

21 (Exhibit Nos. 149 and

22 149(a) were marked for

23 identification.)

24 MS. ROSENFELD: Mr. Grossman, I'm sorry, I'm

25 confused. You're marking one exhibit or two?

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1 MR. GROSSMAN: I'm, well, I'm marking now Exhibit

2 149, which is the letter from Ms. Harris to me dated today,

3 June 4, 2013, which attaches the lease agreement and some

4 other documents, which I'm getting to. And as I --

5 MS. ROSENFELD: I see.

6 MR. GROSSMAN: -- get to the -- the lease will be

7 149(a).

8 MS. ROSENFELD: Thank you.

9 MR. GROSSMAN: And then there's a first amendment

10 to the lease, which is 149(b). And then there's an

11 authorization letter from Jim Agliata, Westfield, which

12 we'll call 149(c).

13 (Exhibit Nos. 149(b) and

14 149(c) were marked for

15 identification.)

16 MR. ADELMAN: Ms. Harris, do you have an

17 additional copy of those documents?

18 MS. HARRIS: Yes, I do.

19 MR. GROSSMAN: I noticed that some pages are

20 missing. Is that a redaction? Is that --

21 MS. HARRIS: Yes.

22 MR. GROSSMAN: -- the idea?

23 MS. HARRIS: One lease was an 88-page lease.

24 MR. GROSSMAN: Okay. But I also noticed that in

25 the first amendment to the lease, it goes from page 1 to

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1 page 3 --

2 MS. HARRIS: Yes.

3 MR. GROSSMAN: -- was that intentional?

4 MS. HARRIS: It was intentional.

5 MR. GROSSMAN: Okay. So page 2 is redacted and

6 appears to be a portion of page 3 and then other pages

7 because then you have a signature page. Okay. And I take

8 it the diagrams that are attached are just, are part of

9 the --

10 MS. HARRIS: Leases.

11 MR. GROSSMAN: -- the leases? So --

12 MS. HARRIS: Yes.

13 MR. GROSSMAN: Okay. So we have Exhibits 149,

14 149(a), 149(b), and 149(c).

15 MS. HARRIS: Correct.

16 MS. CORDRY: And Mr. Agliata's letter is 149(c),

17 is that correct?

18 MS. HARRIS: Yes.

19 MR. GROSSMAN: Yes.

20 MS. CORDRY: Okay. And that's undated but that

21 would be something that is current, essentially current?

22 MS. HARRIS: Yes.

23 MR. GROSSMAN: Yes, it does appear to be undated.

24 Okay.

25 MS. ROSENFELD: Mr. Grossman, I just would like to

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1 reserve the right to make objections after I have a chance
2 to review this.
3 MR. GROSSMAN: Absolutely.
4 MS. ROSENFELD: Thank you.
5 MR. GROSSMAN: I'd never take away your right to
6 make an objection.
7 MS. ROSENFELD: I know, but I feel like I must
8 reserve it.
9 MR. GROSSMAN: Take half the fun out of it.
10 MS. ROSENFELD: You know those appellate courts.
11 MR. GROSSMAN: I know, even ones that are not
12 appellate courts that think they are. All right.
13 MS. CORDRY: Is the map that's attached to the
14 first amendment, is that a document that's available in a
15 larger size if we wanted to review that?
16 MR. GROSSMAN: I don't know. Ms. Harris, do you
17 know the answer to that?
18 MS. HARRIS: I would note that this is -- I don't
19 know the answer, I can find out -- but this is the old
20 special exception area, not the new special exception area.
21 MS. CORDRY: No, I'm talking about the one that is
22 attached to the amendment, which is the new special
23 exception area.
24 MS. HARRIS: I can find out.
25 MS. CORDRY: It has a lot of detail, but it's

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1 small enough that it's pretty unreadable, yes.
2 MS. HARRIS: Right. I would note, I would note
3 that the, that the lease, the amended lease references the
4 fact that's the general location of the special exception
5 area and that the plan attached to Jim Agliata's letter
6 specifies the specific area of the special exception area.
7 MS. CORDRY: But there are a number of notations
8 here and a number of other sort of pieces here that you
9 really can't tell what they are because the print is so fine
10 and the printing is so that you can't really see what it is,
11 but I would like to see what, what's also encompassed in
12 this map.
13 MR. GROSSMAN: If it's available, I'm sure
14 Ms. Harris will let you. I mean, it is a --
15 MS. HARRIS: Absolutely.
16 MR. GROSSMAN: -- usually a lease is on, you know,
17 this 8 and a half by 11 size. So it's probable that the
18 original of these is also small rather than large. So --
19 MS. CORDRY: Possibly, but I doubt it.
20 MR. GROSSMAN: But if it's available, I'm quite
21 sure that Ms. Harris will be happy to --
22 MS. CORDRY: Right.
23 MR. GROSSMAN: -- to show it to you. Okay. All
24 right then, everybody ready to proceed again with
25 Mr. Guckert's cross-examination?

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1 (No audible response.)
2 MR. GROSSMAN: You may proceed.
3 MS. ROSENFELD: Thank you.
4 BY MS. ROSENFELD:
5 Q Mr. Guckert, in Mr. Gang's land use report on page
6 12, he states that, quote, the total number of customers to
7 the filling station will only represent 70 new trips. Do
8 you agree with that conclusion?
9 MS. HARRIS: Objection. Mr. Guckert never
10 testified to that. I mean, again, this was his follow-up
11 testimony specifically to his counts from the 4/27.
12 MR. GROSSMAN: Would you repeat the question for
13 me?
14 MS. ROSENFELD: In Mr. Gang's report --
15 MR. GROSSMAN: Yes.
16 MS. ROSENFELD: -- on page 12, he makes a
17 statement that it is anticipated that the total number of
18 customers to the filling station -- strike that. Let me
19 start again.
20 MR. GROSSMAN: Okay.
21 MS. ROSENFELD: "Thus it is anticipated that of
22 the total number of customers to the filling
23 station, only 70 will represent new trips,"
24 and I'm asking Mr. Guckert if he agrees with that
25 conclusion.

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1 MR. GROSSMAN: That's legitimate. I'll overrule
2 the objection. Whether or not this witness stated that,
3 it's legitimate to ask if that's a correct conclusion of --
4 THE WITNESS: It wasn't part of my testimony in
5 28(a) and 28(b).
6 MR. GROSSMAN: No, that's not -- she's saying that
7 it's a statement made by Mr. Gang in his land use report,
8 and she's asking you if it's accurate, I think --
9 THE WITNESS: I'm confused. I thought --
10 MR. GROSSMAN: -- isn't that correct?
11 BY MS. ROSENFELD:
12 Q Or would you agree with that?
13 A -- I thought I was on the stand for, for the --
14 MR. SILVERMAN: If Mr. Guckert --
15 MR. GROSSMAN: Hold on.
16 THE WITNESS: -- for the redirect -- for the, for
17 the cross-examination of this new testimony.
18 MR. GROSSMAN: Well --
19 THE WITNESS: Is that correct?
20 MR. GROSSMAN: -- whether you're on the stand for
21 that or not, I'm allowing that question.
22 THE WITNESS: Okay. I don't recall what Mr. Gang
23 said. I was not here for that.
24 MR. GROSSMAN: But is the statement an accurate --
25 BY MS. ROSENFELD:

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1 Q His statement is, it's anticipated that of the
2 total number of customers to the filling station, only 70
3 will represent new trips. I'm asking, do you agree with his
4 statement?
5 A I'd have to see the statement in more context. If
6 he's saying 70 new trips in a day, in a week, in a year, or
7 an hour, I'm not sure, Mr. Grossman.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: It just doesn't make sense.
10 MR. GROSSMAN: So does Mr. Gang indicate on that
11 page of his -- I guess that's Exhibit 10, his land use
12 report, as I recall -- does he indicate what period of time
13 he's talking about the new trips? I think that's the,
14 that's the concern that this witness has, as to whether or
15 not he's indicated a time period over which there would
16 be --
17 MS. ROSENFELD: He purports to be summarizing the
18 Local Area Transportation Review report, and it's unclear to
19 me what he's trying to say. Perhaps Mr. Guckert can
20 clarify. I'm happy to show him the report.
21 THE WITNESS: I don't know, I don't know the
22 source.
23 MR. GROSSMAN: He can't clarify as to what
24 Mr. Gang was trying to say --
25 THE WITNESS: Yeah.

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1 MR. GROSSMAN: -- but he can, if you ask him a
2 question about how many new trips will be generated, he can
3 answer that, I think, certainly.
4 MS. ROSENFELD: And that was my question.
5 MR. GROSSMAN: Well, actually, your question was
6 characterized in terms of Mr. Gang's statement. So in
7 fairness to this witness, pose your new question.
8 MS. ROSENFELD: Okay.
9 BY MS. ROSENFELD:
10 Q How many new trips during a weekday peak hour
11 would you expect the gas station to generate?
12 A Show me the LATR report, and we can go through
13 that, please.
14 MS. ROSENFELD: I believe that was Exhibit 11.
15 MR. GROSSMAN: 11(a), yes.
16 THE WITNESS: Right.
17 MS. HARRIS: Wes, do you want a copy?
18 MR. AGLIATA: Do you need a copy of it?
19 THE WITNESS: Yeah, I need a copy, yes. Thank
20 you. Michele, I have it. And, Mr. Grossman, you said it's
21 11(a)?
22 MR. GROSSMAN: Yes, Exhibit 11(a) is your traffic
23 impact analysis.
24 THE WITNESS: Mr. Grossman, Exhibit 11(a), page
25 22, is the trip generation table that I went through

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1 ad nauseam when I, when I testified last time, and it shows,
2 it shows 69 net new cars in both the morning peak hour and
3 the evening peak hour.
4 MR. GROSSMAN: Okay. So I guess that was the --
5 you're saying that Mr. Gang referred to approximately 70?
6 MS. ROSENFELD: No. He said --
7 THE WITNESS: Yeah, and --
8 MS. ROSENFELD: -- he said only 70.
9 THE WITNESS: -- and then I agree with him,
10 Mr. Grossman.
11 MR. GROSSMAN: Okay.
12 BY MS. ROSENFELD:
13 Q Thank you.
14 A Net, net new, yes.
15 Q In general, would the evening peak hour be
16 expected to have higher traffic volumes than the morning
17 peak hour because of the extra store traffic?
18 A And it does. Mr. Grossman, on page 22, again, it
19 shows more. It shows almost double.
20 Q And would you expect the same results on the
21 weekend, in the weekend peak hours?
22 A We did not study the weekend peak hours for the
23 LATR, Mr. Grossman.
24 MR. GROSSMAN: Okay.
25 BY MS. ROSENFELD:

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1 Q And on your Exhibit 128(b), what were the results?
2 Or was there a disparity between morning peak hour and
3 evening peak hour?
4 A I don't understand the question.
5 Q You said that your -- Exhibit 11 did not study
6 weekend trips, is that correct?
7 A Correct.
8 Q It's weekday peak hour?
9 A Exhibit 11(a) was the LATR analysis for both --
10 Q Correct.
11 A -- the morning peak hour and the evening peak hour
12 weekday.
13 Q That's correct.
14 MR. GROSSMAN: Can I interrupt for one second?
15 I'm not sure I understand. Did you say that in the evening
16 it doubled? It looked to me that they're the same, and I'm
17 on page 22.
18 THE WITNESS: No.
19 MR. GROSSMAN: Maybe I'm misunderstanding.
20 THE WITNESS: Yeah. Let's go back. The -- I
21 believe that the question was, would there expect to be more
22 cars pumping gas.
23 MR. GROSSMAN: Oh, I'm sorry.
24 THE WITNESS: Okay.
25 MS. ROSENFELD: No, no, no, no, no.

1 THE WITNESS: That was my interpretation of the
2 question, Mr. Grossman, and the answer was, yeah, it's
3 almost double.

4 MR. GROSSMAN: But as I see, am I correct in
5 saying that on page 22, that in terms of new trips --

6 THE WITNESS: That, that, but that -- that's
7 correct, in terms of new trips, it's about the same, but I,
8 it was my interpretation that the question was cars
9 generated the gas station, not new trips, cars pumping gas.

10 MR. GROSSMAN: Okay. So what was your intention?

11 BY MS. ROSENFELD:

12 Q I apologize. Let me clarify the question. Would
13 you expect to be -- would you expect there to be more
14 vehicles entering the mall during the evening peak hour than
15 during the morning peak hour during the week?

16 A For the gas?

17 Q Entering the mall.

18 A Yes.

19 Q Okay. And is that shown in your Exhibit 11(a)
20 somewhere?

21 A Yes.

22 Q And can you show me where?

23 A See, that -- now, that's a completely different
24 question, do we agree --

25 Q Yes, we do agree.

1 A -- that before you were asking the mall and now --
2 before you were asking the gas station; now you're asking
3 the mall?

4 Q No, I was asking the mall.

5 A Okay. So you want to know, do more cars enter the
6 mall during the evening peak hour than during the morning
7 peak hour?

8 Q That's correct.

9 A Yes. And the answer is, if you look at, as an
10 example -- and I'm referring now, again, to Exhibit 11(a) --
11 as an example, if you were to look at page 13 of Exhibit
12 11(a), you'll see the differences in the morning peak hour
13 and the evening peak hour on counts that were conducted in
14 September 2012.

15 Q Thank you. And to clarify, my question about the
16 70 new trips in Mr. Gang's report was specific to the gas
17 station.

18 A That's what I thought. Thank you.

19 Q Did you find the same to be true in your
20 evaluation as shown on Exhibit 128(b)?

21 A It's apples and bananas.

22 Q Okay. And would you explain?

23 A Exhibit 11(a) is an LATR report for the morning
24 and evening weekday peak hour. 128(a) and 128(b) produced
25 data for what was happening on a Saturday at 11 locations on

1 the south side of the mall.

2 Q And how does the weekend peak, as shown on Exhibit
3 128(b), compare with the weekday peak hour in the evenings?

4 A We did not make that comparison, and it's -- and
5 they're two different, two different things.

6 Q Okay. Is there a general rule of thumb then on
7 the weekends? Do you have more traffic entering the mall in
8 the afternoon than you do, or in the evening, than you do in
9 the morning?

10 A Repeat the question.

11 Q As a general rule of thumb, do you have more
12 traffic entering the mall in the evening or --

13 A Evening weekday?

14 Q Weekend, than you do in the morning on the
15 weekend?

16 A More traffic the weekend morning versus weekend
17 evening?

18 Q Correct.

19 A It, I would say the, you've got -- it's going to
20 vary on the uses that are there. Sometimes you'll find the
21 peak hour at 11:00, 11 o'clock in the morning, sometimes
22 1:00, 2:00, 3:00, 4 o'clock in the afternoon. So it really
23 varies from site to site.

24 Q Is there any rule of thumb to compare the average
25 weekday peak hours with the average Saturday peak hours?

1 A Where?

2 Q At this site.

3 A Where at this site?

4 Q Entering the mall at any, at any given location.

5 A The volumes -- I'm not going to deal with rules of
6 thumb -- the volumes are going to vary from site to site.
7 The traffic on Veirs Mill Road is going, and Georgia Avenue
8 and University, are going to be less on the weekends than
9 they are during the peak hours, and the volumes entering the
10 mall are going to be different. So it really, you really
11 need to get a little more specific, and there would have to
12 be a lot of comparison done. That wasn't what we did and
13 that wasn't the purpose of this. The purpose --

14 Q And so --

15 A -- was to address the community concerns regarding
16 the traffic generated by Costco and what impact it was
17 having.

18 Q And I misunderstood when you said site. When you
19 say compare site to site, you're talking intersection to
20 intersection --

21 A Yes.

22 Q -- you're not talking about Wheaton Mall versus
23 Lakeforest Mall or --

24 A Well, it depends on, on which question it was, but
25 different malls have different times that they generate

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1 their peak traffic on a Saturday because it's going to
2 depend on the store, number one. As it relates to this
3 particular mall, traffic is typically lighter on roads like
4 Veirs Mill Road, Georgia Avenue, University Boulevard in
5 general than it is on the weekday evening peak hour.
6 Q As I understand you, you were saying that
7 comparing your weekday analysis in Exhibit 11(a) and
8 comparing the counts that you reflect on Exhibit 128(b) are
9 really apples and bananas?
10 A I did not do that comparison.
11 Q Okay. So you cannot take the numbers in Exhibit
12 11(a) and correlate them to what you have in 128(b), is that
13 correct?
14 A Not the levels of service, no.
15 Q All right, thank you.
16 MS. ROSENFELD: I have no further questions.
17 MR. GROSSMAN: All right. Does the Stop Costco
18 Gas Coalition have any questions?
19 MR. ADELMAN: No, we have no further questions for
20 the witness.
21 MR. GROSSMAN: All right. How about Kensington
22 View Civic Association -- have some questions?
23 MS. DUCKETT: I do have two questions.
24 BY MS. DUCKETT:
25 Q On that, on your one Saturday --

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1 MR. GROSSMAN: Ms. Duckett, do you want to come
2 forward to counsel table? We'll make room for you, if you
3 would like.
4 BY MS. DUCKETT:
5 Q Okay. I'm Eleanor Duckett from Kensington View.
6 On the Saturday that you did your study, you didn't count
7 all of the intersections entering the mall; you counted only
8 -- is that correct? Like, you have, you counted the
9 intersection at Valley View entering the mall but not
10 necessarily East Avenue, which is an exit and enter only.
11 A Correct.
12 Q Okay. So as you list A at Valley View, that could
13 have been F at East Avenue for all you know?
14 A Not likely.
15 Q Pardon me?
16 A Not likely.
17 Q But you don't know. Do you know?
18 A I know intuitively that it's absolutely not. It's
19 not even an F during the weekday evening peak hour.
20 MR. GROSSMAN: What do you mean by intuitively?
21 THE WITNESS: Forty-two years of experience,
22 knowing, looking at Exhibit 11(a) and 128(a) and (b), as a
23 professional that has, that has undertaken thousands of
24 studies, that the traffic at Location 2 and Location 1 is
25 not going to be dramatically different going from A to F;

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1 otherwise, it would impact both Locations 1 and 2.
2 MR. GROSSMAN: Okay. So you're saying it's not
3 based on an actual count at that particular intersection but
4 it's based on your experience --
5 THE WITNESS: Engineering.
6 MR. GROSSMAN: -- and projection from your
7 other --
8 THE WITNESS: Professional engineering judgment
9 and --
10 MR. GROSSMAN: Based on the other intersections?
11 THE WITNESS: Based on, based on the other
12 intersections.
13 MR. GROSSMAN: Okay.
14 BY MS. DUCKETT:
15 Q Okay. When you said that Exhibit 11(a), that was
16 done prior to Costco opening --
17 A That's correct.
18 Q -- is that true?
19 A That's correct.
20 Q All right.
21 MR. GROSSMAN: The Costco warehouse, you mean?
22 MS. DUCKETT: Pardon me?
23 MR. GROSSMAN: Prior to the Costco warehouse
24 opening?
25 MS. DUCKETT: Yes.

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1 MR. GROSSMAN: Okay.
2 MS. DUCKETT: Yes, the warehouse opening.
3 BY MS. DUCKETT:
4 Q I'd like to know -- and you might not be able to
5 answer this -- has the traffic group, Westfield, or Costco
6 requested signal length changes from the Montgomery County
7 signal shop? And I'm talking about the signal at Valley
8 View.
9 A I have not, and I do not know if --
10 Q And you don't know?
11 A -- otherwise.
12 Q Okay. Thank you.
13 MR. GROSSMAN: Yes. Okay. Anybody else in the
14 audience have a question? Seeing no hands -- yes, sir. Do
15 you want to identify yourself?
16 MR. FRITZ: Yes. My name is Marshall Fritz. I
17 live on Rampart Way, which is the Plaza Gardens Community
18 Association and which is very close to the ring road. And I
19 have some concerns or questions based on the show-and-tell
20 night that they did about two months ago, where I learned
21 about the proposed gas station.
22 MR. GROSSMAN: All right. I'm going to let you do
23 that. Ms. Cordry, would you let this gentleman --
24 MS. CORDRY: Sure, of course.
25 MR. GROSSMAN: Now, bear in mind, this is a

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1 cross-examination concerning -- this witness had already
2 testified before regarding his original study. He was
3 called back because an additional study was done on
4 Saturday, additional traffic counts, and this is technically
5 to address that, but I'm going to --
6 MR. FRITZ: Okay. And --
7 MR. GROSSMAN: -- give you some leeway.
8 MR. FRITZ: Right. And my comments are really
9 coming from two months ago.
10 MR. GROSSMAN: Well, you're not allowed to comment
11 now. You can only question the witness --
12 MR. FRITZ: Correct. Okay.
13 MR. GROSSMAN: -- now, but hold on one second.
14 Let me, once again, let me get your name again.
15 MR. FRITZ: Yes.
16 MR. GROSSMAN: Hold on one second. Okay. Your
17 name again, sir?
18 MR. FRITZ: Marshall Fritz, F-R-I-T-Z.
19 MR. GROSSMAN: Okay. And did you sign in and
20 leave your address and --
21 MR. FRITZ: I, I put it on the outside paper.
22 MR. GROSSMAN: All right, sir.
23 MR. FRITZ: Okay. So --
24 MR. GROSSMAN: You may question.
25 MR. FRITZ: -- you request that I ask questions?

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1 MR. GROSSMAN: Yes.
2 MR. FRITZ: Okay.
3 BY MR. FRITZ:
4 Q I understand from when I came to the show-and-tell
5 that in the lanes of the proposed gas station, there would
6 be two, two pumps per lane and you would have, at 16, you
7 would have, piggyback two and two and two and two, two and
8 two, two and two.
9 A Yes, sir.
10 Q I also asked -- and please let me know if I was
11 incorrect on this -- that there would be no lane in the
12 middle to leave the pumping area once the back person, let's
13 say, is finished; in other words, it would be very close
14 proximity and no extra lane in the middle. So --
15 A No. There -- that's incorrect. There is a bypass
16 lane.
17 Q Okay. That was something not mentioned when I
18 asked two months ago. Okay. So there's a bypass lane.
19 Now, my question is, once people leave the proposed gas
20 pumping area, are they not going into the general parking
21 lot area for Costco, Target, Panera, et cetera, et cetera?
22 A Correct, they are not going into the general
23 parking.
24 Q They're not, okay. I asked this question, but
25 please clarify. If they're not going into that, please show

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1 me where they're, they're exiting. Once they pump, where
2 are they exiting away from the normal parking area traffic?
3 A They're going --
4 MR. GROSSMAN: Which exhibit are you referencing?
5 THE WITNESS: 119(c).
6 MR. GROSSMAN: 119(c), okay.
7 THE WITNESS: They're going in an east-west
8 direction on a drive aisle that is dedicated for the cars
9 that are exiting the pumps, or they're going up into the
10 general parking area drive aisle.
11 BY MR. FRITZ:
12 Q Well, okay. Now, on the latter, have you done an
13 examination of the effect of those who were going into the
14 general parking area on a peak time? It seems that --
15 MR. GROSSMAN: No, no, you can't, you can't
16 testify.
17 MR. FRITZ: Okay.
18 BY MR. FRITZ:
19 Q Okay. So --
20 MR. GROSSMAN: By the way, you will have the
21 opportunity to testify when -- after the applicant finishes
22 their case, if you want to appear, we have numerous hearing
23 dates --
24 MR. FRITZ: Okay.
25 MR. GROSSMAN: -- one of which has been reserved

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1 for members of the community in the morning. You --
2 MR. FRITZ: Okay.
3 MR. GROSSMAN: -- can testify if you were to come
4 back.
5 BY MR. FRITZ:
6 Q Okay. So what fraction, if you've studied it, do
7 you expect would be coming into the general parking area
8 versus taking that exit out opportunity lanes?
9 A I'd have to do more detailed analysis; in fact,
10 I'd probably have to have the zip codes of the gas station
11 users to know whether they're going back into the Costco
12 store or whether they're making a right turn and going back
13 out to the ring road, but the drive aisles are set up in
14 such a way that it can take them north and then west to the
15 ring road or east and then south to the ring road. So some
16 will go, some will go up to the second east-west drive
17 aisle. Others will make a right turn. Others will make a
18 left turn and come down to the --
19 Q Okay. How many in a peak time -- and I can ask
20 you now how many peak hours there might be -- but in a peak
21 time, how many cars are being pumped an hour that will be
22 leaving the facility?
23 A That goes back to the LATR and we just talked
24 about that, and I'll go back again, Mr. Grossman.
25 Q Yeah. I'm sorry if I'm coming in --

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1 A Exhibit 11(a) --
2 MR. GROSSMAN: I'm giving you some leeway, but we
3 don't want to take, take too much time going back over
4 things that --
5 MR. FRITZ: Right.
6 MR. GROSSMAN: -- I mean, he's already been
7 cross-examined over --
8 MR. FRITZ: Okay. Okay.
9 MR. GROSSMAN: -- and testified at great length at
10 another hearing date.
11 BY MR. FRITZ:
12 Q Okay. Let me add a new twist, though, about the
13 number who are raising questions, how many would be
14 filtering into the general parking area?
15 A It's about -- in the, in the, in the peak hour on
16 a weekday, it's about 200 cars, would be pumping in one hour
17 at the 16 pumps.
18 Q Right. That's what I heard before. So the
19 question is, the percent who would be not taking the quick
20 exits and would be filtering through a parking lot which is
21 going to be heavily occupied at the time --
22 A Well, that's why it's a parking lot. That's why
23 the drive aisles are there, to accept cars that are either
24 leaving the gas station or backing in and out. I mean,
25 that's what a parking lot does. That's --

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1 Q Okay.
2 A -- it's function, to accept those types of
3 vehicles.
4 Q Will it be clear that those taking the quick
5 left/quick right, the quick exits back into the larger
6 lanes, that those are preferred exits for those leaving the
7 property?
8 A It's not preferred. I mean, it's -- if you are a
9 driver, you're pumping gas and you're a driver, you're
10 trying to get to the ring road, you're going to take, go to
11 the -- you're either going to make a left or right to get to
12 the ring road. It doesn't need to be preferred. It's a
13 common sense for, for drivers, that if I'm trying to get
14 back, to go east, to get down Georgia Avenue, the best way
15 for me to do is to come out, make a right, make a second
16 right on the, and then come down to the ring road and make a
17 left.
18 Q All right. So you have no proposed signage to
19 say --
20 A There's no, there's, it's like -- it would be
21 signing to say it's, if I want to go home, now is the time
22 for me to go home. This is, this is a parking lot. This is
23 what parking lots are designed for. It's not anything,
24 needs to be anything special or out of the ordinary. It's a
25 parking lot.

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1 Q Well, okay, but are there not different kinds of
2 parking lots, like Beltsville, where the exit is completely
3 away from the property and not back into the normal middle
4 of the, of the pedestrian area?
5 A There are different types of parking lots, but
6 parking lots are meant to accommodate this amount of
7 traffic. I mean, that's, that's the way they're designed.
8 Q Well, the question is, at peak hours, such as a
9 mid-Saturday -- which is what, at the show-and-tell, they
10 proposed, that 200 could easily be early Saturday afternoon
11 -- that you have lots of kids with families in the parking
12 lot who are coming there. So has that been addressed by, by
13 how many are likely to be added to that close part near the
14 shopping buildings?
15 A Whether, whether they were -- whether that whole
16 area of the special exception were parked cars or whether
17 the area is cars that are pumping gas, the cars are leaving
18 the parking lot or they're leaving the gas. It's the same
19 type of situation.
20 Q You're saying that you would expect that those who
21 have pumped and are leaving the property are going to be
22 driving the same way as someone who is looking for a parking
23 space and parking in the immediate vicinity? In other
24 words, someone, the speed expectations of someone leaving
25 who is parked --

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1 A The speed expectation --
2 Q In other words --
3 A -- is that what you said?
4 Q Yeah, in other words, one mile an hour, five mile
5 an hour, 10 mile an hour. Have you found in your studies of
6 other, Sterling, whatever, that someone who is leaving after
7 pumping is going to be driving at the same speed as someone
8 who is looking for a parking space in a crowded parking lot?
9 A Unaware that it's ever an issue.
10 MR. SILVERMAN: Was that a yes or a no?
11 BY MR. FRITZ:
12 Q Okay. But in Sterling, which was your comparative
13 facility, how was, how was the exit lanes designed? Were
14 they going right into the middle of the commercial parking
15 for shoppers, or are they dedicated exit lanes or clearly
16 marked as so for that purpose, to get out of the property
17 quickly?
18 A And Sterling wasn't -- I'm not sure where you got
19 that information.
20 Q Well, when I came to the show-and-tell, I was
21 told --
22 MR. GROSSMAN: Well --
23 BY MR. FRITZ:
24 Q -- it was modeled after Sterling. So I, I ask --
25 MR. GROSSMAN: Mr. Fritz, Mr. Fritz, you're very,

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1 very far beyond the scope of the --
2 MR. FRITZ: Okay.
3 MR. GROSSMAN: -- the direct exam here. So --
4 MR. FRITZ: Okay. Okay. Let, okay, let me switch
5 to something else.
6 BY MR. FRITZ:
7 Q Is there a limit to the number of cars intended to
8 be queued, waiting to be pumped?
9 A Is there a limit? By, by --
10 Q Right. In other words, there's a -- clearly,
11 there must be a space limit for the number of cars you can
12 fit waiting to be --
13 A Yes. Okay. There is --
14 Q Okay.
15 A -- there is a limit, yes.
16 Q Okay. Does your proposal or the code require a
17 specific number there?
18 A No.
19 Q So what is your expected number queued, and how
20 will you limit the number of cars waiting for gas?
21 A We had that -- it's been testified to once before.
22 MR. GROSSMAN: Yes. The problem is, I know, if
23 you didn't see the earlier sessions, there's been testimony
24 from Mr. Brann on behalf of Costco that there would be an
25 attendant -- if, if it reached more than the 40 cars that

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1 could queue, waiting to fill, there would be an attendant
2 provided to make sure that people were waved on if they
3 backed onto the ring road, not, not this witness, but from,
4 from Mr. Brann. So I'm just saying that --
5 MR. FRITZ: Okay. Was there testimony on the
6 likelihood --
7 MR. GROSSMAN: -- that's why you're beyond the
8 direct of this witness, and I'm trying to give you some
9 leeway, but if you haven't participated --
10 MR. FRITZ: Okay. Okay.
11 MR. GROSSMAN: -- in the rest of the hearing, it's
12 problematic.
13 BY MR. FRITZ:
14 Q Does Costco, as a rule, adhere to its self-imposed
15 limits for, for queuing?
16 MR. GROSSMAN: I don't think you can ask -- this
17 witness is a traffic expert, not a representative of
18 Costco --
19 MR. FRITZ: Well --
20 MR. GROSSMAN: -- per se, and I don't think it's
21 fair and that's also well beyond the direct examination.
22 The problem is, as I said, we've had -- this is the fifth
23 day of hearings, and we've talked about many of these things
24 before, and I'm trying to give you leeway because I want --
25 MR. FRITZ: I understand.

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1 MR. GROSSMAN: -- participation from members of
2 the community, but I can't let it go on too far, way beyond
3 the scope of the direct of this witness, in fairness to
4 everybody. You know, this is a multiday hearing, and I'm --
5 MR. FRITZ: Okay. Okay.
6 MR. GROSSMAN: -- if you have testimony you want
7 to offer, you're going to have an opportunity to do that,
8 and if you want to ask questions that pertain to the direct
9 examination, cross-examination, pertaining to the direct
10 examination of this witness --
11 MR. FRITZ: Uh-huh.
12 MR. GROSSMAN: -- you may do it, but this is the
13 second day this, actually now the third day this witness has
14 been on the stand. So --
15 MR. FRITZ: Okay.
16 MR. GROSSMAN: Do you have questions pertaining to
17 his direct examination?
18 MR. FRITZ: Well, he said 40 cars right now. That
19 was --
20 MR. GROSSMAN: Well, I actually provided you with
21 what earlier testimony has been in the case. He said
22 there --
23 MR. FRITZ: Okay. At the show-and-tell night, it
24 was not 40 but it was 50. Has that been changed in the
25 plans?

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1 MR. GROSSMAN: Well, I have no idea about the
2 show-and-tell night. It's not part of my record. The
3 question before me is whatever the evidence is, and I can't
4 sit here and go back over all the evidence, but there has
5 been testimony, if I recall, that the, that the number of
6 anticipated people that would fit in the queue lines is 40,
7 is that correct?
8 THE WITNESS: The, the, at, at the show-and-tell
9 night and what I said is, you could fit about, depending on
10 size of cars, you could fit about 50 cars in the special
11 exception area. Staff believes that the maximum is going to
12 be 40 to 44.
13 MR. GROSSMAN: Okay. See, when he refers to
14 staff, he's talking about the technical staff in the
15 Maryland-National Capital Park and Planning Commission.
16 BY MR. FRITZ:
17 Q Okay. And in the plans -- and you can say you've
18 already dealt with that -- what's the maximum number you're
19 expecting to be coming to use the facility in queuing up?
20 A Forty to 44 is what -- based on the work we've
21 done and the, what the staff has done, they believe it's
22 going to be 40 to 44 for about one minute to two minutes in
23 the peak hour on a Saturday.
24 MR. GROSSMAN: The concern that was raised is what
25 would happen if the number exceeded the number that could

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1 safely queue, waiting to use the pumping facilities, and the
2 answer was that they would have an attendant who would then
3 direct people away from the station so that they would --
4 and would request to come back later if the queue got onto
5 the ring road. That's the testimony.
6 BY MR. FRITZ:
7 Q Okay. And since the, Costco is open there, do
8 they still hold that there'd be one short peak hour and not
9 many, many peak hours during the week, I mean, because it's
10 a very well used facility. I mean, give you credit, people
11 are shopping. So has that changed since you see the use of
12 the store?
13 A The answer is no.
14 Q And, again, this is not so much traffic, but is
15 the number of shoppers consistent with what was expected or
16 that exceeds it?
17 MR. GOECKE: Mr. Grossman, this is far beyond his
18 testimony.
19 MR. GROSSMAN: It is. It's --
20 MR. FRITZ: Okay. Okay.
21 MR. GROSSMAN: -- way beyond the scope of his
22 direct in terms of the number of shoppers. He's not the
23 expert --
24 MR. FRITZ: Okay. But I would be happy to offer
25 views if there's a follow-up for, for other testimony then.

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1 MR. GROSSMAN: Yes. We've actually, I sent out a
2 formal notice when we set up additional days of hearing,
3 because there are, there were some individuals who asked
4 whether or not we could reserve a specific day for
5 individuals coming in, that they would know that it wouldn't
6 be conflicting with the other witnesses. So we set, let's
7 see, July -- I'm sorry.
8 MR. BRANN: I believe it was the 31st.
9 MR. GROSSMAN: Yes. Oh, it's on this page, yes,
10 July 31st in the morning for any community members who wish
11 to come in, and they would be taken one after the other, to
12 express any views that they may have. But anybody, any
13 member of the community, anybody at all -- these are public
14 hearings -- you're welcome to, to come in and listen to the
15 hearing at any point.
16 In terms of cross-examination, since we have so
17 many people interested in this, this case, what I asked for
18 members of the community to do is, if they have
19 cross-examination questions, to first try to filter it
20 through counsel; we do have an attorney representing
21 Kensington Heights Civic Association here. If that doesn't
22 prove adequate, then we give people an opportunity, to the
23 extent that time permitted, to, to ask questions. The rules
24 permit me to assign somebody, if there are groups, to do,
25 conduct cross-examination. I try to let members of the

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1 public in on it if it doesn't get excessive, however; so
2 that's what I'm trying to do.
3 MR. FRITZ: Okay. I --
4 MR. GROSSMAN: Okay.
5 MR. FRITZ: -- I hadn't seen much in the press the
6 last two months, to clarify that, just the Gazette or
7 whatever. It hadn't, you know, it hadn't followed up as
8 much as it was in the early spring. So --
9 MR. GROSSMAN: Right. I think that the Stop
10 Costco Gas Coalition has a Web site that they may --
11 MR. FRITZ: Okay.
12 MR. GROSSMAN: -- give you more information.
13 MR. FRITZ: Okay. Thank you, sir. Okay.
14 MR. GROSSMAN: You're more than welcome. Any
15 redirect?
16 MS. HARRIS: No.
17 MR. GROSSMAN: All right. Thank you very much,
18 Mr. Guckert. All right. I guess it's 11:25 almost. So
19 let's take our mid-morning recess until 11:30 at which time
20 -- Mr. Tucker going to be --
21 MS. HARRIS: No. What we had said, remember --
22 MR. GROSSMAN: Okay.
23 MS. HARRIS: -- he's going late in the day --
24 MR. GROSSMAN: Okay.
25 MS. HARRIS: -- because Mr. Gang needs to leave by

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1 4:15.
2 MR. GROSSMAN: Okay. Right. Mr. Gang, then, when
3 we come back.
4 (Whereupon, a brief recess was taken.)
5 MR. GROSSMAN: Mr. Silverman, you had a question?
6 MR. SILVERMAN: Yes, Mr. Grossman. During the
7 break, one of the citizens asked how -- she said she had
8 things to say about this and asked how she could testify,
9 and I indicated there was a July 31st date. She said she
10 couldn't make that date. And I wonder if you could give
11 citizens some instructions as to how they could get on the
12 agenda and how they could find out what the dates are so
13 that they could schedule their appearances, because I assume
14 that if a citizen can't make it on the citizen day, that
15 you'll find some way to accommodate them.
16 MR. GROSSMAN: We will certainly try. Actually, I
17 did do that and I sent out a formal notice to everybody in
18 the world of the, of all the new dates and specifying the
19 date that we were specifically reserving for citizens, but
20 if somebody can't make it on that date, we have another date
21 after that, the August 2nd date, and we would try to squeeze
22 them in.
23 I try to let the applicant put on their case just
24 for some orderliness.
25 MR. SILVERMAN: Right.

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1 MR. GROSSMAN: We have traditionally made
2 exceptions to that when necessary. It's just that we have
3 so many participants here that the best thing I think we can
4 do is to at least get through the applicant's case, and then
5 during the opposition case, if citizens want to come in, I'm
6 sure we can accommodate them. So we'll try to do that.
7 Yes, sir.
8 MR. FREEDMAN: Okay. I have two questions, if I
9 might.
10 MR. GROSSMAN: Yes. Would you identify yourself
11 for the record?
12 MR. FREEDMAN: Mike Freedman, a --
13 MR. GROSSMAN: I'm sorry?
14 MR. FREEDMAN: Mike Freedman, glorious citizen,
15 okay, who has not been getting your e-mails, although I have
16 been to several meetings, okay?
17 MR. GROSSMAN: When you say have not been getting
18 my e-mails, I --
19 MR. FREEDMAN: You said you've e-mailed everyone.
20 MR. GROSSMAN: No, no, I didn't say e-mailed. I
21 actually sent out formal written notice to everybody who is
22 entitled to get original notice, which would be civic
23 associations, all adjoining and confronting property owners,
24 and to all the people who registered as parties of record in
25 the case. So --

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1 MR. FREEDMAN: My area --
2 MR. GROSSMAN: -- if you're outside of that
3 envelope --
4 MR. FREEDMAN: Right. Right.
5 MR. GROSSMAN: -- then you might not have gotten
6 the formal --
7 MR. FREEDMAN: Notification.
8 MR. GROSSMAN: -- written notice, but there also
9 is, I know that Stop Costco Gas Coalition has a Web site,
10 and I believe that they, they provide updates on things.
11 Maybe you could ask --
12 MR. FREEDMAN: Well, I'm concerned, because I went
13 to the Costco meeting that they had at the school --
14 MR. GROSSMAN: Yes.
15 MR. FREEDMAN: -- signed in, and apparently they
16 didn't give you or you didn't benefit from that mailing list
17 that they generated.
18 MR. GROSSMAN: No, I wouldn't be -- that's
19 something aside. My record is composed of people who
20 formally -- first of all, you can write a letter in --
21 MR. FREEDMAN: Right.
22 MR. GROSSMAN: -- at any point, and it will be put
23 in the record here as a, as your --
24 MR. FREEDMAN: Concern.
25 MR. GROSSMAN: -- stating your concerns or your

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1 views, pro/con, whatever it is. You can also testify at the
2 proceeding without giving us any notice, just show up at any
3 one of the hearing dates, but we're trying to proceed in an
4 orderly fashion because we have so many parties
5 participating in this. There are about 50 who have
6 registered as parties of record, which is a very amorphous
7 term in the administrative lexicon, but in any event, they
8 have in this case. And so we have lots of people, and we
9 have numerous organizations that are participating.
10 So what we're trying to do is get through all of
11 the applicant's testimony first, and then we'll turn to any
12 of the opposition testimony and community participants if
13 they wish, pro and con. So that's the general run of
14 things. Do you want to know what the dates are that are set
15 up?
16 MR. FREEDMAN: No. No, no. I'll find out.
17 MR. GROSSMAN: Okay.
18 MR. FREEDMAN: I apologize for misunderstanding,
19 but I have two questions or responses. One is Costco has
20 identified a queuing process and the guard that will be
21 provided when they exceed that.
22 MR. GROSSMAN: Yes.
23 MR. FREEDMAN: Okay. I think observations at
24 other locations at Costco has found that --
25 MR. GROSSMAN: Well, you can't, you can't testify

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1 now. I mean, I --
2 MR. FREEDMAN: No, no. I'm making a, I'm going to
3 make a -- what control --
4 MR. GROSSMAN: You can't make a -- no, no. Sir --
5 MR. FREEDMAN: -- will the County have --
6 MR. GROSSMAN: Mr. Freedman --
7 MR. FREEDMAN: Yes, sir.
8 MR. GROSSMAN: -- you can't do that. I'll tell
9 you why you can't do it.
10 MR. FREEDMAN: Okay.
11 MR. GROSSMAN: Anything that you say to me --
12 MR. FREEDMAN: Uh-huh.
13 MR. GROSSMAN: -- has to be an on-the-record
14 observation during the period of time when you can testify
15 under oath. That's the --
16 MR. FREEDMAN: Okay.
17 MR. GROSSMAN: -- requirement by law. I can't
18 just get substantive observations --
19 MR. FREEDMAN: Okay.
20 MR. GROSSMAN: -- from you like that.
21 MR. FREEDMAN: Hold on. Mr. Fritz, have you been
22 to a Costco and seen the lines longer than --
23 MR. GROSSMAN: No, no, no, no.
24 MS. ROSENFELD: No, no, no, no.
25 MR. GROSSMAN: You have to understand, Mr. --

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1 MR. FREEDMAN: He wasn't here. He wasn't here.
2 So I'm asking him --
3 MR. GROSSMAN: No, no, no. You have to
4 understand, this proceeds more or less like a courtroom.
5 Have you ever seen in a courtroom --
6 MR. FREEDMAN: Yes.
7 MR. GROSSMAN: -- where anybody can, from the
8 audience, can just ask another person in the audience and
9 have a question/answer on the record?
10 MR. FREEDMAN: Okay. Can I have a minute, can I
11 have a minute to ask him so he can raise the question --
12 MR. GROSSMAN: No. No, no.
13 MR. FREEDMAN: -- because he's the one who's
14 witnessed it.
15 MR. GROSSMAN: No, no, no, no.
16 MR. FREEDMAN: Okay.
17 MR. GROSSMAN: He can't make a statement. Mr. --
18 MR. FREEDMAN: Fritz.
19 MR. GROSSMAN: -- Fritz could not testify either.
20 He was enabled, I let him ask cross-examination questions
21 because it was the cross-examination time. This proceeds
22 like a courtroom. You have witnesses who testify, each one
23 under oath, and they are subject to cross-examination. Then
24 there's another time for people to testify --
25 MR. FREEDMAN: Okay.

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1 MR. GROSSMAN: -- who are on the other side, if
2 you're on the opposition, and you'll be given that
3 opportunity and that's the way it's an orderly proceeding.
4 MR. FREEDMAN: I'm asking just for honesty of
5 communication --
6 MR. GROSSMAN: That's --
7 MR. FREEDMAN: -- honesty of presentation, okay?
8 MR. GROSSMAN: That's why we have this proceeding.
9 It's subject to cross-examination. We have three people
10 from organizations in the opposition who cross-examine to
11 ensure straightforward examination. That's the way the
12 process works. And you're going to have an opportunity,
13 also, to testify if you wish to, okay? And you can ask a
14 cross-examination question, if you wish to, regarding a
15 witness who testifies as long as it's within the scope of
16 the direct examination.
17 We're trying, because of the number of people
18 involved, to funnel these questions through counsel and, if
19 they're opposition questions, counsel from the opposition.
20 But if we can't, if that doesn't work out, I'll make some
21 leeway and I'll let you ask some questions if you have some
22 cross-examination questions within the scope of the direct,
23 but you can't just make statements from the audience --
24 MR. FREEDMAN: Okay.
25 MR. GROSSMAN: -- it's not permitted.

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1 MR. FREEDMAN: Okay.
2 MR. GROSSMAN: Okay. Mr. Silverman.
3 MR. SILVERMAN: Mr. Grossman, I just want to say,
4 first of all, I am positive that you are very open to
5 community input, but I fear that that's not understood well
6 in the community, and I hope they'll -- maybe we can do it
7 on our side or if there's some way to accommodate members of
8 the community, because the interest is so great. The other
9 element of that is that we have changes of a plan that never
10 went through the Planning Board hearing. I mean, as you
11 know, when you make changes, it's not just a question of
12 notice; it's a question of public access. That's a more
13 accessible forum for people. They don't have that.
14 So I know that your intentions are the same as
15 mine, to let as many people who have something to say, say
16 it, but I hope we can figure something out. Perhaps we
17 should do it on our side and suggest it to you or post
18 something somewhere. That would --
19 MR. GROSSMAN: Well, I'll be happy to listen to
20 any suggestions. I think you won't find a more open process
21 than this one --
22 MR. SILVERMAN: I'm sure of that, sir.
23 MR. GROSSMAN: -- where people are entitled to
24 come in and there's no specific time limit placed on their
25 testimony; it's based on relevance and materiality and

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1 probative value in the case and privilege, to the extent the
2 rules of evidence apply.
3 So we do try to encourage community participation,
4 as I think anybody who has participated in this case so far
5 will, will attest. And I value that community
6 participation, but we can't have people just calling out
7 from the audience who are not under oath, offering their,
8 their assessment of things.
9 Okay. So, anyway, I'll listen to whatever
10 suggestions anybody has. Are we ready to proceed with
11 Mr. Gang?
12 MS. HARRIS: Yes, we are.
13 MR. GROSSMAN: All right. So your next witness?
14 Want to call Mr. Gang?
15 MS. HARRIS: Yes. Our next witness is Mr. Gang
16 from Lessard Design Group, our land planner.
17 MR. GROSSMAN: I won't tell you to raise your
18 right hand because you already have done so.
19 (Witness sworn.)
20 MR. GROSSMAN: Okay. You may proceed.
21 MS. HARRIS: Thank you.
22 DIRECT EXAMINATION
23 BY MS. HARRIS:
24 Q Mr. Gang, can you please introduce yourself to
25 Mr. Grossman and explain what you do and what your

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1 background is?
2 A Sure. My role at Lessard Design is, is principal
3 in charge for urban design. I have testified in front of
4 this body regarding rezonings four times recently. Those
5 four times was for the Plyers Mill Medical Park, which has
6 been rezoned to townhomes now; the Good Counsel High School
7 site; the Shorefield Manor Apartments, which is the site
8 entering into Wheaton Regional Park; and the Glenmont
9 Shopping Center.
10 MR. GROSSMAN: Yes. I don't think you've ever
11 testified before me, is that correct, Mr. Gang? I don't
12 know how you escaped that.
13 THE WITNESS: No. I've had -- I don't know if
14 I've had that honor yet. So this will be a great honor --
15 BY MS. HARRIS:
16 Q So, Mr. --
17 A -- at least from my perspective.
18 MR. GROSSMAN: Okay. Yes, sir.
19 BY MS. HARRIS:
20 Q Mr. Gang, were you qualified as an expert witness
21 in those cases that you just noticed and --
22 A Yes, I have, and I've also testified in front of
23 other jurisdictions as being an expert in land planning.
24 Q An expert in land planning.
25 MS. HARRIS: I'd like to offer Mr. Gang as an

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1 expert in land planning, and his résumé is submitted as
2 17(b).
3 MR. GROSSMAN: Okay. Yes, and I, I do have a copy
4 of Mr. Gang's résumé. Was it 17(b)?
5 MS. HARRIS: B. B.
6 MR. GROSSMAN: B, as in boy?
7 MS. HARRIS: Yes.
8 MR. GROSSMAN: Okay. All right.
9 BY MS. HARRIS:
10 Q Mr. Gang, can you, I want to start with a summary,
11 and I'd --
12 MR. GROSSMAN: Well, hold on one second --
13 MS. HARRIS: Oh.
14 MR. GROSSMAN: -- before you do. Do we have any
15 questions regarding the qualifications of this witness from
16 the opposition?
17 MS. ROSENFELD: No, Mr. Grossman, not from
18 Kensington Heights.
19 MR. GROSSMAN: Okay. Anybody else?
20 MR. ADELMAN: Not from, not from the Coalition,
21 no.
22 MR. GROSSMAN: All right. And you're proffering
23 him as an expert in?
24 MS. HARRIS: Land planning.
25 MR. GROSSMAN: Land planning, all right. Based on

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1 Mr. Gang's résumé, which includes a list of his testimony as
2 an expert in land planning and before this body and a number
3 of others in Montgomery County and other jurisdictions, and
4 his background/qualifications, I accept him as an expert in
5 land planning.
6 MS. HARRIS: Thank you.
7 MS. ROSENFELD: Mr. Grossman, a point of
8 clarification before the direct examination begins, in terms
9 of the site plan itself, the special exception site plan,
10 could Ms. Harris identify which exhibit he will be
11 referencing?
12 MS. HARRIS: He will not be referencing any of the
13 plans that we submitted this morning, which was the point
14 that we were trying to make.
15 MR. GROSSMAN: Okay. All right. Well, we'll
16 see --
17 MS. HARRIS: Okay.
18 MR. GROSSMAN: -- how this proceeds, and then
19 we'll, we'll go with that.
20 MS. HARRIS: Now, if a question, if we have a
21 clarifying question, we may need to, but it was never our
22 intent to submit -- to refer to those plans because we
23 hadn't introduced them yet.
24 MR. GROSSMAN: Okay.
25 MS. ROSENFELD: Meaning you don't anticipate

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1 you'll have questions regarding Exhibit 148?
2 MS. HARRIS: That is correct.
3 MS. ROSENFELD: Thank you.
4 MR. GROSSMAN: If that changes, we'll --
5 MS. HARRIS: Right.
6 MR. GROSSMAN: -- we'll find out.
7 MS. HARRIS: Thank you. I'd like --
8 MR. GROSSMAN: You do have a copy of Exhibit 148.
9 So, I mean --
10 MS. ROSENFELD: Yes, which I was able to look at
11 after we finished with Mr. Guckert, just briefly --
12 MR. GROSSMAN: Okay.
13 MS. HARRIS: And we're, we're getting full-size
14 plans. They're on their way.
15 MS. ROSENFELD: -- during the five-minute break.
16 MR. GROSSMAN: Okay.
17 MS. HARRIS: Thank you.
18 MR. GROSSMAN: So are you getting the
19 full-size --
20 MS. HARRIS: The full-size plan should be here
21 within the next 10 or 15 minutes.
22 MR. GROSSMAN: Great. Okay.
23 MS. HARRIS: Okay. May I proceed?
24 MR. GROSSMAN: You may proceed.
25 MS. HARRIS: Thank you.

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1 BY MS. HARRIS:
 2 Q Mr. Gang, I'd like to start with a general
 3 summary, and I'd be interested in your conclusions regarding
 4 the proposed special exception as it relates to compliance
 5 with both the sector plan and the zoning ordinance.
 6 A Sure. First, in regards to the zoning ordinance,
 7 the existing special exception parcel is located in a C-2
 8 zone, and the use is a permitted special exception in the
 9 C-2 zone.
 10 Now, regarding specifically for the sector plan,
 11 the, the filling station is in complete conformance with the
 12 filling station and the specific goals for the mall
 13 district. The filling station is in complete conformance
 14 with the general goals of the sector plan. The filling
 15 station does not undermine the specific goals of the other
 16 districts within the sector plan. And the fourth is, the
 17 filling station does not adversely impact the opportunity
 18 for mixed-use developments within the sector plan area.
 19 I want to emphasize, and the reason I feel very
 20 confident that we conformed to the sector plan conformance
 21 and the zoning ordinance conformance is the zoning ordinance
 22 under Section 59-G-1.21(3) specifically states that the
 23 appropriateness of a special exception is determined at a
 24 particular location, and I really want to stress particular
 25 location.

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1 MR. GROSSMAN: You're talking about
 2 59-G-1.21(a)(3), right?
 3 THE WITNESS: (A)(3), right, sorry, yes.
 4 MR. GROSSMAN: Okay.
 5 BY MS. HARRIS:
 6 Q And why is particular location so important in
 7 this case?
 8 A Sure. Well, in this particular case, the sector
 9 plan has specific recommendations for the Westfield
 10 District, and, and, and the sector plan also has
 11 recommendations for the other districts. When you review a
 12 sector plan in this case, there's both general and specific.
 13 The specific, as I mentioned, is the Westfield District, and
 14 you also have general that deals with the overall goals for
 15 the sector plan. Specific outweigh and trumps the general.
 16 So I will go over the very specific recommendations for the
 17 Westfield District.
 18 MR. GROSSMAN: And when you say the specific
 19 outweighs and trumps the general, you're stating that as a
 20 general rule of statutory construction? Is that what you're
 21 saying?
 22 THE WITNESS: Yes.
 23 MR. GROSSMAN: Okay.
 24 THE WITNESS: In reference to reviewing sector
 25 plans.

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1 MR. SILVERMAN: I object.
 2 MR. GROSSMAN: All right. So -- all right. And I
 3 presume your objection is based on this witness --
 4 MR. SILVERMAN: He's not an attorney. He's --
 5 MR. GROSSMAN: -- offering a legal opinion?
 6 MR. SILVERMAN: Yes.
 7 MR. GROSSMAN: Yes. So, so yes, I just want to
 8 make sure that we understand where this, this proposition
 9 comes from. It is true that there is a proposition in terms
 10 of statutory construction, as, as you enunciated it. I
 11 wonder if you're saying there's also a proposition to that
 12 effect in terms of land use planning, because that's your
 13 area of expertise, right?
 14 THE WITNESS: Correct, and again, this sector plan
 15 has very specific recommendations for this parcel.
 16 MR. GROSSMAN: So you're saying in terms of land
 17 use planning, that a specific recommendation in a, in a
 18 master plan will trump general statements in the master
 19 plan? Is that what you're saying?
 20 THE WITNESS: That is correct, and --
 21 MR. GROSSMAN: Okay.
 22 THE WITNESS: -- we're still in conformance to all
 23 the general, general goals of the sector plan --
 24 MR. GROSSMAN: Okay.
 25 THE WITNESS: -- just want to, you know, that,

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1 that -- and I think the important point is, is the sector
 2 plan is 475 acres or 485 acres. There are numerous goals
 3 that, you know, that are generally discussed of what is
 4 appropriate for a sector plan. Every parcel can't meet
 5 every general goal in a plan. That's why I wanted to point
 6 out to why, you know, the zoning ordinance, you know, has
 7 that finding; that if, you know, that when you are reviewing
 8 a sector plan, it deals with the specifics, not with the,
 9 not with the generals, if there was an option of which one
 10 to choose.
 11 MR. GROSSMAN: Well, I'm actually not sure that
 12 that section of the code you're referring to,
 13 59-G-1.21(a)(3), says exactly what you're saying. I'm not
 14 saying you're wrong as a general proposition, but -- let's
 15 see if I have a copy of it here by any chance. Do you have
 16 the language there that you're relying on?
 17 THE WITNESS: Yes, I do.
 18 MR. GROSSMAN: All right. Read that section, that
 19 subsection.
 20 THE WITNESS: Sure, I'd be happy to read it. It
 21 says that
 22 "the use at the proposed location will not
 23 adversely affect nor retard the location,"
 24 I'm sorry,
 25 "the logical development of the general

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1 neighborhood"
2 -- sorry.
3 Sure,
4 "Will be consistent with the general plan for
5 the physical development of the District,
6 including any master plan adopted by the
7 Commission. Any decision to grant or deny a
8 special exception must be consistent with any
9 recommendation in a master plan regarding the
10 appropriateness of a special exception at a
11 particular location."
12 MR. GROSSMAN: I see. I mean, I'm not sure that I
13 read that, that I interpret that as meaning that it's a
14 license to not apply more general recommendations and it's
15 only particularized to that, that specific site, but I, I
16 understand your interpretation of it.
17 THE WITNESS: And what I did mention is that we
18 are in conformance with the general conditions also. I'm
19 not denying that the general conditions do not apply to
20 this. I'm saying that there are very specific
21 recommendations for the Westfield District --
22 MR. GROSSMAN: Right.
23 THE WITNESS: -- and that, that we are in complete
24 conformance to those specific conditions. The general
25 conditions, as I mentioned, is, is just -- you know, a

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1 sector plan is huge; you know, it's 485 acres. Every
2 general condition, generally, is, are not met by every
3 property within that sector plan --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- that's the point I want to make.
6 MR. GROSSMAN: All right.
7 THE WITNESS: And when we go through this, when I
8 go through all the general conditions, I will show that the
9 filling station is in compliance with those general
10 recommendations.
11 MR. GROSSMAN: All right. Well, I mean, I know
12 I'm jumping ahead of where the plan was for the direct, but
13 since we do have a recommendation from the Planning Board,
14 which seems to be directly contrary to that -- their
15 recommendation of denial was based, at least on a three/two
16 vote, was based on their interpretation of the sector plan
17 saying that, that this proposal did not, is not in
18 conformance with the sector plan's public transportation
19 vent.
20 THE WITNESS: We'll get into all of that, and I
21 just want to stress in this, I thought we're not allowed to
22 talk about, you know, other past, how should I say, bodies
23 that have made determinations, but in their case, they made
24 their determination, again, on very general overall things.
25 They did not look at what was specifically recommended for

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1 at this site, and when you review what was recommended for
2 this site, the filling station is in complete conformance
3 with the sector plan. We'll go through, we'll go through
4 each -- well, I'm willing, I'm going to go through each one
5 of these items. It's going to be, you know, it's going to
6 take us a while to show, again --
7 MR. GROSSMAN: Okay.
8 THE WITNESS: -- specific/general, does not
9 undermine any of the objectives regarding mixed-use,
10 mixed-use development where the, where it is proposed within
11 the sector plan.
12 MR. GROSSMAN: All right. I'll leave that to you
13 to, and Ms. Harris, to get through, as you will. I do have
14 two questions that I wanted to mention while they're on my
15 mind, and that is, one is the question of the definition of
16 the neighborhood here, which was a question I raised, and I
17 presume, I believe both sides said that by today they would
18 be giving me responses to the 20 questions I posed at the
19 beginning of the hearing. But your definition of the
20 general neighborhood, it differs from technical staff's
21 definition of general neighborhood in that technical staff
22 recommended including some of the neighborhoods to the south
23 and the west of the site, whereas you cut it off at the, at
24 the boundary of Wheaton Plaza.
25 THE WITNESS: Sure.

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1 MR. GROSSMAN: Do you still adhere to your
2 proposed definition versus staff, and if so, why? And if
3 not or if you find staff's acceptable, tell me that too.
4 THE WITNESS: Sure. The answer is I still stick
5 by my definition. I --
6 MR. GROSSMAN: Okay.
7 THE WITNESS: -- do not agree with staff's
8 definition.
9 MS. HARRIS: But, Mr. Grossman, we had a whole
10 line of questioning regarding that, and if you would like,
11 we can start off with that --
12 MR. GROSSMAN: No. I'll --
13 MS. HARRIS: -- would that be helpful?
14 MR. GROSSMAN: Well, I'll let you handle it the
15 way you will. The other question in which I'm interested is
16 the specific distances from residences. I seem to -- I find
17 some conflict in the evidence about that, and I find some
18 conflict even in the evidence in the land use report. And
19 maybe I'm misreading it, but when I read page 3 of the land
20 use report, which is Exhibit 10, actually on a sentence in
21 the last paragraph, it says,
22 "The improvements on the property are located
23 approximately 396 feet from the residential
24 property line to the west and approximately 258
25 feet from the residential property line to the

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1 south."
 2 Then when I read page 24, the last paragraph, it
 3 says,
 4 "First, the proposed filling station is
 5 approximately 332 feet and 122 feet from the
 6 nearest residential property to the south and west
 7 respectively, measured property line to property
 8 line."
 9 So those seem to be, on the surface, in conflict
 10 with each other and certainly with some other evidence in
 11 the case. So I would like you to also address that.
 12 MS. HARRIS: We will.
 13 MR. GROSSMAN: Okay. And now I'll let you
 14 proceed, and I apologize for my interruptions.
 15 BY MS. HARRIS:
 16 Q I'd like to start with the sector plan, Mr. Gang,
 17 and can you explain briefly how you reached the conclusion
 18 that the special exception was in fact consistent with the
 19 sector plan?
 20 A Sure. What I did was reviewed page by page,
 21 reviewed both the general and the specific components of, of
 22 the sector plan and, based upon what the approved and
 23 adopted sector plan stated, came to that conclusion.
 24 Q Thank you.
 25 MS. HARRIS: Mr. Grossman, what I'd like to do is

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1 hand out copies of the sector plan. It was previously
 2 submitted as Exhibit 9, but what we've done is highlighted
 3 the portions that Mr. Gang is going to emphasize --
 4 MR. GROSSMAN: All right.
 5 MS. HARRIS: -- just because I think it may
 6 facilitate discussion, facilitate his testimony.
 7 MR. GROSSMAN: Thank you. Do you want this
 8 separately marked?
 9 MS. HARRIS: Yes. That would be helpful.
 10 MR. GROSSMAN: All right. So this will be -- find
 11 my official exhibit list buried under this other stuff --
 12 Exhibit 150, highlighted Wheaton CBD Sector Plan. You may
 13 proceed.
 14 (Exhibit No. 150 was marked
 15 for identification.)
 16 MS. HARRIS: Thank you.
 17 BY MS. HARRIS:
 18 Q Let's start with the specific. What are the
 19 specific recommendations for the Westfield District?
 20 A Sure. What I'd like everybody to turn to is page
 21 42 and 43. This is part of the chapter under Land Use and
 22 Zoning. There's three things I'd like to point out on pages
 23 42 and 43. Number one is the Westfield District is its own
 24 individual district -- there might be four things -- two is
 25 there are four other districts besides the Westfield

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1 District; that each of the districts have their own unique
 2 and distinct character, as is emphasized on the top of page
 3 43; and the third line down, which states that the Westfield
 4 District has the potential to evolve into a mixed-use
 5 district, and I want to emphasize, that enhances the mall as
 6 a retail destination.
 7 Then the specifics for the Westfield District are
 8 found on page 52 through 55. Page 52 --
 9 Q And let me just stop you for a moment.
 10 A Sure.
 11 Q And so why did we just skip from page 42 to 52?
 12 A Sure. Well, I'm now talking about the relevant
 13 sections of the Westfield District.
 14 Q Thank you.
 15 A In between, you know, between 52 and 55 are the
 16 other specific recommendations for the other districts --
 17 Q Thank you.
 18 A -- which are not applicable to the Westfield
 19 District.
 20 Now, page 52, just wanted to point out, the map on
 21 the right-hand side is the zoning that was approved by the
 22 Council in number one. Number two is, it shows that the
 23 existing proposed site, filling station site, is in the C-2
 24 zone. Three is, the proposed mixed-use zoning is along
 25 Veirs Mill Road as CR 6. CR means commercial residential

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1 with a FAR of 6. FAR, for all those don't know the
 2 definition, means floor area ratio. Floor area ratio is
 3 dividing the proposed volume divided by the area of the
 4 site. So, for example, if you had a 10,000 square-foot
 5 building on a 10,000 square-foot lot, it would be a 1 FAR.
 6 If you had a 20,000 square-foot building on a 10,000
 7 square-foot lot, it would be a 2.0 FAR. In this case, it's
 8 2.0 FAR along Veirs Mill Road.
 9 The third thing I wanted to point out on this --
 10 Q Excuse me. What's the proposed density along
 11 Veirs Mill Road?
 12 A 6, 6 FAR.
 13 Q Thank you.
 14 A What I also wanted to point out is in the, in the,
 15 along the easterly property line, I'm sorry, the westerly
 16 property line and the southern property line is the location
 17 of the existing green buffer. This is the buffer separating
 18 the mall and Kensington Heights. That's the plan.
 19 Then page 53, in the opening paragraphs, wanted to
 20 emphasize that the Westfield Mall is the eastern county's
 21 regional mall, and by definition, regional malls mean,
 22 generally, people traveling 15 to 25 miles to a mall. The
 23 second thing is, I wanted to point out, is that -- and this
 24 was also testified to, and I apologize for the
 25 mispronunciation of Mr. Agliata --

1 MR. AGLIATA: Close enough.
 2 THE WITNESS: Close enough. I have a hard time --
 3 MR. GROSSMAN: That's easy for you to say.
 4 Mr. Agliata --
 5 THE WITNESS: No, I have a hard time pronouncing
 6 names; so I apologize, but anyway, the Westfield, the
 7 Westfield representative. One is the sector plan has, has
 8 specifically stated, you know, the owners have no plans to
 9 develop, you know, this property other than retail, and the
 10 C-2 zoning is conducive -- is not conducive of mixed, of
 11 mixed-use development, and again, he testified to this very
 12 fact. That is their goal for the mall.
 13 Now, for the specific recommendations for the
 14 Westfield District, which there are four; it continues on to
 15 the top of page 55. One is, is the rezoning of the
 16 property, which I just mentioned was the CR component, is
 17 along Veirs Mill Road and that's the area highlighted in
 18 blue. Two is the area where the filling station is, is
 19 going to be C-2 for the remainder of the site, and C-2 is a
 20 permitted, as I mentioned, is a permitted special exception
 21 use. Three deals with the buffer itself. One is, it says,
 22 to preserve the existing buffer in its entirety, which this
 23 filling station does. It talks about, you know, the purpose
 24 of the buffer which we agree to. The filling station does
 25 not undermine that specific goal. It says that the filling

1 -- that the buffer should be forested and be maintained as a
 2 forest, and as you will, as plants have been submitted into
 3 the record, not is it only being maintained, but it's being
 4 enhanced with additional landscaping. And then the fourth
 5 one, the fourth point I'd like to emphasize is stating,
 6 explore opportunities for expansion of the buffer as future
 7 major redevelopment occurs on the mall site. Wanted to
 8 point out, I don't think this is a major redevelopment for a
 9 number of reasons. One is the sector plan does not define
 10 what major redevelopment is. Two is, is the actual area of
 11 the special exception is approximately only one percent of
 12 the total site area. The actual physical structure of the,
 13 of the filling station itself, which has been testified to
 14 previously, is 128 square feet. Hundred twenty-eight square
 15 feet out of 1.6 million square feet in reference to the
 16 mall, I would not consider that as, as a major
 17 redevelopment, and it was never brought up by staff in
 18 reference to their review of this special exception.
 19 MR. GROSSMAN: You used the term one percent of
 20 the site area. The site, usually we refer to the site area
 21 as the special exception site. You mean one percent of the
 22 mall area?
 23 THE WITNESS: Yes, one percent of the mall. The
 24 mall area is 76 acres. We're about 38,000 square feet. So,
 25 yes, it's one percent.

1 MR. GROSSMAN: Thank you.
 2 THE WITNESS: So, you know, as again, you know,
 3 for those four reasons, I don't consider this a major
 4 redevelopment.
 5 Then going on to the top of page 55, basically it
 6 talks about, you know, no structures within the buffer,
 7 which I've said there isn't any, we're preserving and
 8 enhancing the buffer; and building setbacks within 200 feet
 9 of the, of the southern property line being a maximum height
 10 of 45 feet, and what has been testified to previously, our
 11 height is 17 foot 6, well, well underneath that, that
 12 building height. So in reference to the recommendations of
 13 this sector plan, we're in complete conformance with the
 14 specifics for the Westfield District.
 15 BY MS. HARRIS:
 16 Q Then can you please discuss the transition slash
 17 buffer issue that is set forth on page 58?
 18 A Sure. The --
 19 Q At the bottom of page 58.
 20 A Sure. The, yeah, page 58 is part of the chapter
 21 dealing with land use and zoning. The bottom of 58 deals
 22 with existing neighborhoods surrounding the districts. As
 23 I've identified, is, is there's five districts. The
 24 Westfield District is one of those districts. The last
 25 bullet point deals with land use and zoning, and it states,

1 existing single-family residential neighborhood should be
 2 preserved and protected from adverse impacts of nearby
 3 residential development. And, again, by the zoning --
 4 again, this was by zoning. Zoning, the Council, you know,
 5 it was, it was zoned originally C-2, it's still zoned C-2,
 6 and with the existing buffer, that specific recommendation
 7 in the zone -- in the sector plan has been met.
 8 Q Thank you. Having focused on the specific, now
 9 I'd like to go back to the general recommendations --
 10 A Sure. Yeah.
 11 Q -- and I think it makes sense to start at the
 12 beginning on --
 13 A Yeah, we're going to start at the very beginning,
 14 and we'll go through all the general goals in which the, you
 15 know, the filling station applies to. And if I miss
 16 something, it's not like -- it's getting to what is relevant
 17 to the filling station, and if I miss something, someone can
 18 ask me why didn't you talk about that. I'd be more than
 19 happy to talk about it, but I think everything I'm going to
 20 cover will cover that portions which are relevant to the
 21 filling station.
 22 Like every good novel, they start off with an
 23 introduction of, you know, what the story is going to be
 24 like. And in this case, on page 9 they talk about what
 25 Wheaton's future is about, and they basically talk about, I

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1 should say, building on its strengths and investments and
2 maintaining that special character. And Wheaton does have
3 many special characters. It's been a great place for all
4 you alls to live there. Matter of fact, I live very close-
5 by there and I love Wheaton. Then it, then it goes on to
6 what the role of, you know, Wheaton and all the aspirations
7 in there.

8 The third paragraph talks about, you know, a
9 general goal, which we'll get -- well, I'll get into more
10 specifics in the back. It talks about, you know, reducing
11 energy consumption. Then it talks about Wheaton's role in
12 the county, and those roles are its close proximity to 495,
13 want to emphasize the regional mall and its relationship to
14 Metro. I mean, you know, the sector plan is built on that
15 opportunity for one of those transportation forms.

16 Then going to Page No. 10, this is what's
17 important, is identifying where the central business
18 district area is. This is where, generally, the County has
19 envisioned the major redevelopment to occur. It's not all
20 the areas, but this is generally where redevelopment is
21 going to occur, and I want -- the relevance of this is that
22 the filling station is nowhere near the CBD. That's the
23 purpose why I wanted to point this out to you.

24 Moving on to page 12, this is also the specifics
25 of the plan, why the recommendations of the rest of the

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1 sector plan is being made, and it's based upon four
2 principles, four overarching principles: diversity,
3 connectivity, design, and environment. That is what the
4 sector plan is based upon, and the filling station does not
5 undermine any one of those principles.

6 The next relevant page want to point out is 18 and
7 19. This is basically highlighting the opportunities for
8 Wheaton. And on the top of page 19, one of those
9 opportunities is recognizing that the Westfield Mall is a
10 regional draw, and the graphic on the right is highlighting
11 where, where the mall is in relationship to the other
12 potential opportunities within the CBD area.

13 The next relevant page is pages, basically, 22 and
14 23, and 22 highlights the priority, proposed priority retail
15 streets. Those are the streets in which the sector plan has
16 identified with where a variety of mixed uses should occur,
17 and again, the filling station is nowhere near any of those
18 priority streets. There are no priority streets planned
19 through the Westfield District mall, and again, that's the
20 purpose of the retail streets.

21 Moving --

22 Q If I could interrupt you for one moment.

23 A Sure.

24 Q Did you this past weekend, I believe, did you do a
25 walk-around with the Coalition of Smart Growth?

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1 A Yeah. The Coalition of Smart Growth had a
2 walk-through this Saturday morning. It basically was from
3 10:00 to 12:00. The County Executive was there, the
4 president of the County Council. And during the
5 walk-through, the walk-through was specifically along these
6 priority streets. They talked about safety issues,
7 sidewalks, lighting, what was going to happen with parking.
8 I mean, that was one of their major concerns, as you know,
9 is the County just came out with an RFP, I think, yesterday
10 for Parking Lot 13 and the other areas.

11 So that was basically bringing up the community
12 and people of the general public, making them aware of where
13 the County was going and their emphasis on the redevelopment
14 in this area. And during that whole walk -- as I recall,
15 there were about 100 people -- there was only one item
16 dealing the Westfield, Westfield District. It had nothing
17 to do with the filling station. It was the opportunity to
18 use more parking in the, I'm going to call it, central
19 business district because there's not enough parking in
20 their minds. You know, there's short-term parking meters,
21 which the, you know, which some of the owners had an issue
22 with. So that was the discussion and the purpose of the
23 walk.

24 Q Just to clarify that point, though, the concern of
25 the community was there's not enough short-term parking

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1 meters, not --

2 MR. SILVERMAN: Objection, concern of the
3 community, really?

4 MR. GROSSMAN: Let her finish the question --

5 MR. SILVERMAN: I'm sorry.

6 MR. GROSSMAN: -- and then you can object. Go
7 ahead.

8 BY MS. HARRIS:

9 Q Was it your understanding that the question that
10 was posed pertained to the short-term meter and the shortage
11 of parking outside the mall parcel?

12 A Yeah, and this was --

13 MR. GROSSMAN: Hold on. Hold on one second. We
14 have an objection. What's your objection, sir?

15 MR. SILVERMAN: Well, that she -- the beginning of
16 the question was what the community concerns were, and this
17 is all hearsay anyway, and I think it's, it's an
18 inappropriate question. There's no, there's no reason why
19 he should be able to answer that question.

20 MR. GROSSMAN: All right. I have to say, I have a
21 question about the relevance of this, and it is true that to
22 the extent that he's attempting to communicate what he
23 considers a community concern, it is a hearsay thing, and I
24 think that the best evidence of the community concern will
25 be the evidence presented by the community here, for and

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1 against this proceeding. So I'll sustain that objection.
2 MS. HARRIS: Okay. May I ask a further clarifying
3 question?
4 MR. GROSSMAN: You can ask any question you want
5 subject to objection.
6 BY MS. HARRIS:
7 Q During the walk-around on Saturday, was there any
8 concern expressed about the shortage of parking on the
9 Wheaton Mall site?
10 MR. SILVERMAN: Objection.
11 MR. GROSSMAN: Yes, I think it's --
12 MS. HARRIS: Is that the same?
13 MR. GROSSMAN: -- the same thing. Where are you
14 going with this? What about -- let's say there is a
15 question about parking on the site. How does that enlighten
16 us here? I mean --
17 MS. HARRIS: My concern was, what the witness
18 testified to I thought there could be a misunderstanding,
19 that what he said is that they expressed concern about
20 shortages of parking on the mall site, but I don't think
21 that's what he meant to say. So I was asking him to clarify
22 that, but it's not, it's not --
23 MR. GROSSMAN: I find the whole line of --
24 MS. HARRIS: Okay.
25 MR. GROSSMAN: -- you know, what went on on the

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1 walk-through, I don't see how that really is something I can
2 base any findings --
3 MS. HARRIS: Okay. Well, we will --
4 MR. GROSSMAN: -- upon any of it. So let's, let's
5 just go to something that --
6 MS. HARRIS: Okay. Let's proceed with the sector
7 plan. Okay.
8 MR. GROSSMAN: -- that's probative. All right.
9 Sustain the objection.
10 MS. HARRIS: Thank you.
11 BY MS. HARRIS:
12 Q Can we please move on to page 23 of the sector
13 plan?
14 A Page 23 deals with revitalization strategies. One
15 is, again, acknowledging both the long-term strategies is
16 to, to provide interest in the redevelopment for those
17 investments, and those investments are identified where --
18 and they basically talk about two ways to do that. The most
19 important way is to encourage street-level activity, and
20 that street-level activity is recommended along the priority
21 streets. And, again, there's nothing in the Westfield
22 District nowhere near the filling station to show there is a
23 priority street within that area. That's the relevance of
24 what I'm pointing out on pages 22 and 23.
25 Next is pages 28 and 29. Twenty-eight talks about

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1 urban design concepts, and this was further enhanced with
2 the design guidelines. Twenty-eight talks about,
3 specifically, where open spaces are, where the streets are,
4 where the interconnectivity for missing streets are. Again,
5 the location of the filling station, you know, is nowhere
6 near where these major urban design concepts are. Just
7 wanted to point out on page 29, under Urban Design
8 Concepts/Connectivity, it talks about that there will be
9 potentially integrated pedestrian connections along the
10 street edges. Along street edges means along Veirs Mill
11 Road and University Boulevard.
12 MR. GROSSMAN: Well, just on this point, you say
13 there's nothing that affects the area where the gas station
14 is in these concepts. I do note that there's a large gray
15 arrow, which is, in the key it says, Local Access to
16 Downtown Core, and it seems to pass right through, unless
17 I'm mistaken, where the gas station will be and then goes up
18 and meets up with the red arrow, which is Mall slash Core
19 Connection. How does that jive with what you've just
20 testified?
21 THE WITNESS: Sure. It's still justified. Right
22 now there are, how should I say, there are more than one way
23 for people to, to diverse the mall site. It might not meet,
24 you know, exactly with a pathway site. For example -- I
25 went out and shot some photographs -- I forgot the name of

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1 the street, but it's the street in the upper left-hand
2 corner off of Kensington Heights, but there's a sign there
3 that states, Pedestrian Access to Mall Metro Through Target
4 Entrance, which means that the, how should I say, the
5 accessibility of walkways, not only do you have walkways
6 around the site, but there's encouragement of pedestrians
7 walking through the mall. So --
8 MR. GROSSMAN: Well, I think you misunderstood my
9 question. I'm not asking you whether or not this particular
10 site is compliant with these concepts. I'm asking you about
11 your statement that the site does not impact, if I
12 understood you, any of these broader concepts that are
13 outlined on pages 28 and 29. And I'm asking you, doesn't
14 that, that large gray arrow that flows apparently right
15 through the site location, meaning the gas station site
16 location, and it says Local Access to Downtown Core, doesn't
17 that area, isn't that area then included in these general
18 broad concepts, contrary to what you said?
19 THE WITNESS: What it basically states, the way I
20 would interpret this graphic --
21 MR. GROSSMAN: Yes.
22 THE WITNESS: -- is everything from the outside
23 points to the center. There isn't one area, specifically --
24 MR. GROSSMAN: Okay.
25 THE WITNESS: -- that says I'm going to the core

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1 area. And all I was saying was, the yellow area is
2 highlighted as the area of likely redevelopment.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: So it's like going downtown
5 Washington. Everybody goes to downtown. How they get there
6 is for the, I would say, the pedestrian to determine how he,
7 how he walks there.
8 MR. GROSSMAN: I understand. I understand, yes.
9 THE WITNESS: And by the way, it says, Local
10 Access. It doesn't say pedestrian access. It could be
11 automotive access.
12 MR. GROSSMAN: Okay.
13 MR. FREEDMAN: No, it can't.
14 MR. SILVERMAN: That's great.
15 MS. ROSENFELD: Be interesting.
16 THE WITNESS: I'm sorry?
17 MR. GROSSMAN: No, no, no. There's no calling out
18 from the audience --
19 MR. SILVERMAN: Right.
20 MR. GROSSMAN: -- allowed, and no comments in the
21 middle of the testimony, please.
22 MR. SILVERMAN: Yes, sir.
23 MR. GROSSMAN: All right. Ms. Harris, question.
24 MS. HARRIS: Thank you.
25 BY MS. HARRIS:

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1 Q Mr. Gang, you can proceed.
2 A Okay. The next relevant page is page 30. The
3 importance, what I wanted to point out is the Westfield --
4 in this case, the Westfield Mall area is highlighted in red.
5 The legend basically states that it is commercial, and I
6 wanted to emphasize, with parking.
7 The next relevant page is page 31. These are the
8 existing land uses within the Wheaton Sector Plan, and the
9 location of the filling station, proposed filling station,
10 is defined as regional shopping, and again, I defined what
11 regional shopping means.
12 The next relevant page is the top of page 33. I
13 went through the specifics of the Westfield District, and
14 again, I wanted to emphasize that the zoning, zoning, was
15 based upon five goals. The first four goals dealt with the
16 CBD area, meaning the office, retail uses within the CBD,
17 increased housing, and highest densities within that area.
18 That's why the CR zone was specifically recommended for the
19 other areas. I did go over specifically why the zoning was
20 kept in place for the C-2 zone and all those other, other
21 areas, and I'll get more specifically, but why those zones
22 were selected, and it was to protect existing residential
23 neighborhoods. Again, those were the goals.
24 The next page, I'd like to point out -- and this
25 is basically a whole series of graphics which are, they go

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1 in sequential from 36 to 40, and again, each one of these
2 graphics emphasize, 36 through 40, 11 through 15, each one
3 of these graphics emphasize where the redevelopment should
4 occur, you know, including densities, heights, setbacks, not
5 the setbacks, but what the proposed zoning is. So, for
6 example, on page 11, these are the maximum FARs as I
7 identified the Westfield District along Veirs Mill Road --
8 MR. GROSSMAN: You don't mean page 11. You mean
9 Map 11. It's --
10 THE WITNESS: Map 11, thank you.
11 MR. GROSSMAN: -- Map 11 through 15 on, beginning
12 on page 36.
13 THE WITNESS: Correct. Thank you.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: It basically shows the variations in
16 FAR from 1 to 6, and what's relevant to this page is the
17 filling station is nowhere near any one of these mixed-use
18 CR recommendations. The next page, again, shows the variety
19 of heights for the Wheaton Sector Plan.
20 Page 38 was to show what the existing zoning was.
21 It was zoned C-2 prior to the sector plan, it's been zoned
22 C-2 for as long as I know it's been there, and again, on
23 page 39, which I want to, you know, it's a blowup of the map
24 here on this easel, showing that the filling station is in
25 C-2 and that the major redevelopment which has been proposed

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1 by this sector plan and by the specific, specific
2 neighborhoods is within the CR zone. And last is the
3 proposed zoning for the CR, CR zoning. Those are the
4 variety of CR districts proposed, and again, for the
5 Westfield District and the location, specifically the
6 location of this filling station, has retained the C-2 and
7 there's no other, no recommendations for mixed use within
8 that area.
9 Those were -- then, you know, I did go through, I
10 did go specifically to page 53, which was the Westfield
11 District. Between pages 45 and 52, as I mentioned, those
12 are the specific recommendations for the four other
13 districts, and they're all unique and different. And then I
14 did, you know, briefly talk about the purpose of the
15 existing neighborhoods and surrounding districts.
16 Then -- those were the specifics for the sector
17 plan. Now I want to talk about the general, other general
18 goals and how we're in conformance, want to start on the top
19 of page 59 right now and that deals with mobility. Mobility
20 deals with transportation, and there's many forms of
21 mobility. Mobility covers everything from, from cars,
22 walking, pedestrian, the bikeway network, transit, traffic
23 demand, and parking management. This deals with mobility.
24 It does not deal with land use. I just want to make that
25 point.

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1 I want to also emphasize the third paragraph, and
2 I think this has been, was testified to by Mr. Guckert.
3 There are three major highways bypassing through Wheaton --
4 MR. GROSSMAN: That's the fourth paragraph.
5 THE WITNESS: I'm sorry, fourth paragraph. I try
6 to memorize all this stuff. And he testified that, as I
7 recall, it was 100,000 trips per day going through Wheaton,
8 and there's nothing in the sector plan that says anything
9 but, meaning that Wheaton, you know, even in light of
10 everything else, the goals of the sector plan is it will
11 still be automotive-dependent.
12 Then going on to page 61, want to point out a
13 number of relevant items on this page. First are the
14 existing pathways which there are, I would think there are
15 three to the south, even though there's two, I mean, two of
16 them, I think, are combined with the Stephen Knolls School,
17 one is off the cul-de-sac in the northwest corner, and the
18 other one which is a proposed pathway which will be
19 determined at a later stage. What this, what this plan also
20 shows is that there is no proposed pathway along the ring
21 road, nothing proposed, nothing there existing, just wanted
22 to point that out in reference to a sector plan goal. Also
23 wanted to point out, in the CBD area, general CBD areas is
24 where the streets are, where the new streets are and what
25 those goals were.

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1 MR. GROSSMAN: So no pathway in the sector plan
2 proposed for the ring road. Are you suggesting that if a
3 pathway, a pedestrian pathway is proposed as part of the
4 site plan, that it'll be a violation of the sector plan
5 recommendation?
6 THE WITNESS: Not at all. Sector plans are
7 basically, you know, giving overall goals and visions. When
8 this, you know, sector plan was developed, you know, I
9 wasn't there, part of it, but I'm just, you know, it wasn't
10 probably a major item for discussion. And my understanding
11 -- again, this is, you know, not through testimony but from
12 Ms. Harris's conversation with you at our last hearing --
13 the purpose of the pathway was suggested between Westfield
14 and the citizens who went on a walk, that as part of if this
15 special exception got approved, Westfield agreed that they
16 would build a pathway. So in reference to your question,
17 no, it would not, it would not hinder or not be a
18 non-conforming item in the sector plan.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Then wanted to point out, the next
21 relevant page is page 67. I just want to make sure I -- oh,
22 yeah. This deals with existing and proposed bikeways. It
23 shows a proposed shared roadway, on-road Class 3 bikeway in
24 front of the filling station and ringing the whole mall, and
25 we're in compliance with that. It is, it is, it's a shared

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1 roadway, on-road, and it will connect to the other proposed
2 bikeways within the sector plan.
3 Dealing with, now dealing with transit. Again,
4 transit is a form of mobility; it's not a land use, and we
5 agree with the goals of what the plan, you know, entails.
6 And, again, the filling station would not undermine any of
7 that, specific recommendations within the sector plan
8 dealing with transit.
9 BY MS. HARRIS:
10 Q Mr. Gang, I want to stop you for a moment because,
11 as Mr. Grossman noted, one of the Planning Board's comments
12 was that although the mall is auto centric, that the overall
13 vision of the Wheaton Sector Plan is to move Wheaton towards
14 a TOD development and that -- and so I want you, when you go
15 through this transit section, be very conscious of that and
16 maybe explain in a little bit more detail why -- your
17 opinions with respect to the special exception as it relates
18 to transit.
19 A Sure.
20 MR. GROSSMAN: And TOD stands for?
21 MS. HARRIS: Yes, transit-oriented development.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: Okay.
24 MS. HARRIS: We broke our own rule. I should have
25 defined that, my apologies.

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1 THE WITNESS: And I used the word mixed-use
2 development because I think it's more applicable, but we can
3 use transit-oriented development.
4 BY MS. HARRIS:
5 Q Okay.
6 A Transit-oriented development is development which
7 encourages a mix of uses in close proximity to transit, and
8 transit, you know -- and the sector plan has identified it
9 both as Metro and as buses. There is a graphic, and I'll
10 get back to your -- I just want to identify where transit
11 is.
12 On page 70 the transit stations are identified
13 both where Metro is, you know, there's an M for Metro, and
14 the location of bus stops, which is transit, and basically,
15 it's along the three major highways, along Veirs Mill Road,
16 Georgia, and University Boulevard. There is a transit stop
17 within the mall, but those are generally the locations.
18 There's a few Ride On bus locations, you know, within the
19 site, but that's -- within the sector plan -- but that's
20 generally where it is.
21 In reference to transit, again, transit is a form
22 of mobility, and what the sector plan, you know -- the goal
23 of the CR zone in conjunction with transit was you have the
24 opportunity to reduce trips within that area. Again, the
25 sector plan identified where they wanted mixed-use

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1 development to occur; it's within the CR zone. The CR zone
2 allows for those variety of options, you know, in reference
3 to whether it's commercial, residential, or retail --
4 doesn't say that specifically, it just says this is where we
5 want the density to occur.

6 Then in light of the CR zone, the CR zone, also,
7 in a little more detail, the minimums, for example, are also
8 the maximums for parking. So they acknowledge that there's
9 going to be parking within this area. At the same time,
10 they understand, as by, on page 71, the non-modal, you know,
11 non-driver modal share goals, which is a goal of how to get
12 people out of the car within that area of the sector plan.

13 And, again, I want to emphasize, you know, we're at zone CR,
14 the CR component. Compared to the mall itself, the mall has
15 been reaffirmed as C-2. It is, you know, there are 6,000
16 spaces, as was testified to: you know, the number of trips
17 going to the mall on a general day, depending upon the time
18 of day, so -- did I answer your question?

19 MR. GROSSMAN: Let me see if I understand you
20 correctly on that. So the Planning Board says establishing
21 a gas station, which is a beacon for cars, is not consistent
22 with a transit-oriented development which is what the sector
23 plan is calling for. You're saying, well, that
24 transit-oriented development is really in the area of the CR
25 zone and the central business district and the sector plan

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1 simultaneously conceives of the C-2 area, that is, the
2 Wheaton Plaza area, and that is not transit-oriented. Is
3 that what you're saying?

4 THE WITNESS: I want to rephrase instead of a
5 specific yes or no.

6 MR. GROSSMAN: Okay.

7 THE WITNESS: Transit-oriented is where you have
8 the opportunities in this case for redevelopment. You know,
9 right now the sector plan identified what the, what's there
10 right now, what is there right now in Wheaton. What the
11 sector plan does, it did not say -- the word
12 transit-oriented development is not stated at all within the
13 sector plan, as I recall. It does not state even mixed-use
14 development. What I'm saying is that there are certain
15 areas that were appropriate for, if you want to call it a
16 transit-oriented development or where you have the
17 opportunity to use Metro for, how should I say, for
18 achieving those overarching goals for mixed-use development.
19 And those areas where the County is going to, where the
20 County is emphasizing where they would like that to occur --
21 like might not even be the right word -- where they have
22 rezoned properties for that to occur is in those areas that
23 have been designated as CR. They have specifically stated
24 in the sector plan is that the mall is going to be retained
25 as a mall. The owners have no plans for changing this to

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1 anything but the mall. They retained the C-2 component to
2 the mall, and the location of the filling station is as far,
3 almost as far away from where any of this mixed-use
4 component is planned for.

5 MR. GROSSMAN: So if I understand your answer,
6 it's yes to my question without pleading --

7 THE WITNESS: I can never answer yes and no, but
8 the answer is yes.

9 MR. GROSSMAN: -- pleading an explanation; that,
10 that you're saying that the Planning Board overstated the
11 transit-oriented development concept in terms of its
12 application in the sector plan; that your interpretation of
13 the sector plan is that is intended for the CR zone area and
14 the CBD but not for the C-2 zoned area, which the sector
15 plan recognizes as a regional mall to attract cars?

16 THE WITNESS: Correct.

17 MR. GROSSMAN: All right.

18 THE WITNESS: And again, you know --

19 MR. GROSSMAN: That's your interpretation.

20 BY MS. HARRIS:

21 Q Mr. Gang, let me --

22 A Yeah.

23 Q -- I wanted a follow-up question to that. If in
24 fact the gasoline station is established here, in your
25 opinion would it affect the ridership, the decisions by

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1 employees or residents within the sector plan area as to
2 whether they choose to drive or whether they choose to take
3 transit?

4 A It would have absolutely no impact.

5 Q And, okay, and why do you say that?

6 A Because the filling station is basically dependent
7 upon outside users from the area, I think, as was testified,
8 I think, by Mr. Guckert; that approximately a third of the
9 people who are coming to the filling station are bypass
10 trips and, as I mentioned before, when I heard testimony
11 from Mr. Guckert, there's 100,000 cars going through this
12 site on a generally daily basis; the other third are people
13 who are coming to the mall regardless, which means that
14 there are -- the number of trips is what I heard. I said
15 approximately 70. You know, Mr. Guckert corrected me. He
16 said exactly 69 trips, you know, both morning and even
17 peak-hour trips -- so those combination of, you know, or
18 things, as far as you got people coming to the mall
19 regardless, you got people bypassing who would be coming
20 here, and you got the additional trips. So regardless,
21 regardless of that, you know, whether -- none of those would
22 have any impact on the ridership.

23 Q So is it correct to say that the establishment of
24 the gas station won't impede the sector plan's vision of
25 creating TOD areas within the sector plan?

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1 A None whatsoever.

2 Q Thank you. Okay. Let's proceed to --

3 A I'm on page 73 or, you know, whether we want to do

4 71 real quick regarding modal share. I did discuss 70.

5 Q Why don't we proceed to 73.

6 A Okay, 73. This is also one of the overarching

7 goals of the sector plan. It is not site-specific. It

8 deals with the environment as well as the next few items,

9 which I'll go over. There are, there are -- I want to

10 emphasize the first three bullet points in reference to how

11 the filling station is adhering to the specific goals. The

12 first is connect the built and natural environment. The

13 last bullet point with that is use native materials in

14 creating habitat for appropriate urban wildlife in parks and

15 open spaces. Within the buffer area, you, I mean, there's

16 plants and you will hear additional testimony from

17 Mr. Willard, talking about how he has used native plant

18 materials to enhance that specific goal.

19 The next one is tree canopy, retaining the green

20 buffer, which I've mentioned, which we have done. The ring

21 road is not moving, and again, it's to reduce the impact of

22 new development, and again, Mr. Willard has even enhanced

23 that. Not only have we enhanced that, we're going to also

24 -- there's an eight-foot high wall with vegetation on that.

25 So, also, that's another way we are meeting that specific

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1 goal.

2 The next one is minimizing impervious surfaces. I

3 think, as you've heard testimony from Mr. Duke, Mr. Duke

4 went specifically into the water quality for the site.

5 There's also water quality along, just to the north of the

6 ring road in reference to some green areas that will also

7 reduce impervious areas, and Costco complies with that, you

8 know, recommendation.

9 Moving on to page 74, dealing with energy, Costco

10 complies -- basically, this specific section, you know, with

11 the three bullet points, deals with how to reduce energy

12 where mixed-use pattern opportunities call for the infill

13 development; however, Costco is reducing energy by two ways.

14 One is what's been testified to before, is the opportunity

15 for those members of Costco, instead of driving to

16 Beltsville to get gas, they will have now a closer

17 opportunity to drive to this filling station in Wheaton.

18 The second way of reducing energy is what I went through,

19 was those opportunities for those bypass trips all being

20 within the general area for them to buy gas.

21 Then moving on to page 76, this deals with natural

22 systems. Again, the plan highlights and emphasizes in red,

23 calling it the Westfield Wheaton Green Buffer. Matter of

24 fact, to have a buffer in its own name is, I mean,

25 complimentary. And it shows, again, that the buffer is

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1 proposed and is existing, and within that buffer area, it is

2 a forest.

3 The last thing, the next relevant page, it's the

4 last relevant page, is page 86. This deals with adequate

5 public facilities ordinance, and again, what is highlighted

6 is that anything that was approved prior to the adoption of

7 the sector plan remains vested through their expiration date

8 and does not affect any of the rezoning. And what was

9 testified to by Mr. Agliata is they have every intention,

10 even if this filling station is not approved, that they

11 basically have -- once it's approved, they'll have, like,

12 approximately 150,000 square feet of additional retail --

13 they do have plans for the addition of development within

14 the mall to use that 150 square feet, 150,000 square feet.

15 And even if the special exception isn't used, he did testify

16 to, is there are many appropriate pad sites which are by

17 right that could potentially be within this area.

18 MR. GROSSMAN: Ms. Harris, what is the expiration

19 date on the approved adequate public facilities finding?

20 MS. HARRIS: I have to look it up, but I have it

21 here.

22 MR. GROSSMAN: Okay.

23 MS. HARRIS: I think I have it here. Oh, there it

24 is, July 18th, 2017, and that was -- and, in fact, that's in

25 the record. I would need a moment to reference the exhibit

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1 number, but it was confirmation by DPS in a letter dated

2 November 19th, 2012, signed by Diane Schwartz-Jones.

3 MR. SILVERMAN: I'm sorry. I didn't hear the

4 date.

5 MS. HARRIS: The expiration date is July 18th,

6 2017.

7 MR. GROSSMAN: And it was confirmed by DPS on

8 November 19, 2012?

9 MS. HARRIS: Yes.

10 MR. GROSSMAN: Yes, if you do have the, if you can

11 locate the exhibit number --

12 MS. HARRIS: Yes, I will. It was 86(b). Oh, I'm

13 -- (c), excuse me.

14 MR. GROSSMAN: 86(c), okay.

15 MS. HARRIS: Yes.

16 MR. GROSSMAN: Okay, thank you. That's all.

17 BY MS. HARRIS:

18 Q Mr. Gang, you referenced, or you just noted that

19 they would have, they have the APF ability to develop pad

20 sites. Can you explain what a pad site is?

21 A Sure. A pad site is a retail use. It either

22 could be one building or it could be a number of buildings,

23 but it's usually not at the mall site. For example, the pad

24 site, the pad site within the Westfield District could be

25 the area where they have the Starbucks on one corner and

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1 the, the Wells Fargo Bank on the other corner, which anchors
 2 it. That is also considered a pad site. It could be the
 3 Wendy's, for example, along Veirs Mill Road. The retail is
 4 a permitted, you know -- and quite honestly, the
 5 drive-through would be a special exception -- but placing a
 6 specialty restaurant, which is auto centric, is a permitted
 7 use. So --

8 Q Is a bank with a drive-through permitted?
 9 A I know the bank is. I am not 100 percent sure
 10 whether the drive-through is, but even if it's not, it would
 11 be a permitted special exception use.

12 Q Okay. And that's a pad site as well?
 13 A That's a pad site. Anything which is, you know,
 14 retail-oriented that can stand on its own or with a
 15 combination of a few other uses is considered a pad site.

16 Q And we'll get into this in a little bit more
 17 detail when we talk about the zoning ordinance, but a couple
 18 of follow-up questions. In your opinion, most of the
 19 permitted uses within the C-2 zone, how would you
 20 characterize those?
 21 A Meaning -- I would characterize them as auto
 22 centric, I mean, just by definition of the C-2 zone.

23 Q So that if, in fact, Westfield was going to
 24 utilize the remaining 150,000 square feet of capacity, are
 25 you suggesting that any use would, by definition, need to be

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1 -- would be auto centric?
 2 A Well, I would define it, it has to be a permitted
 3 use within the C-2 zone. It is not a mixed-use zone. You
 4 know, there are no mixed uses permitted generally in the C-2
 5 zone; thus C-2, by their own definition, is, are uses that
 6 are auto centric.

7 Q Thank you. So can you, what -- overall, what's
 8 your, what are your general conclusions, having reviewed
 9 exhaustively the sector plan?
 10 A Sure. One is, the specific land use
 11 recommendations within the Westfield District the filling
 12 station conforms to. It is a, it's zoned C-2, and the
 13 filling station is a permitted use within the -- a special
 14 exception permitted use within the C-2 zone. The site is
 15 within a regional mall, and regional malls by their own
 16 definition have parking, and has been testified to, I think
 17 there's, I think, 6,079 parking spaces within the mall once
 18 existing and, I think, once the filling station is approved.
 19 The mixed-use component of the sector plan is recommended
 20 elsewhere, and it's recommended to, in those areas of the CR
 21 zone, which is highlighted on the plan to my left. The
 22 approval of the filling station will have absolutely no
 23 effect on, let's call it TOD, on TOD and the walkable
 24 community within the sector plan. And if the filling
 25 station does get approved, it will, it will not preclude any

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1 redevelopment, as highlighted within the plan itself.
 2 Q So, in your opinion, is the station consistent
 3 with the recommendations of the sector plan?
 4 A Yes.

5 Q And is there any reason pursuant to the sector
 6 plan that the station should not be permitted at the
 7 proposed location?
 8 A There are none.

9 Q Okay. I want to move now very briefly to the
 10 design guidelines, and have you reviewed the provisions of
 11 the design guidelines that Ms. Duckett references in her
 12 written statement? And I believe that was Exhibit,
 13 Ms. Duckett's statement was Exhibit 82.
 14 A Yes, I have.

15 MS. HARRIS: I have copies of the relevant pages
 16 which I wanted to hand out.
 17 BY MS. HARRIS:
 18 Q Do you have a copy of them, or would you need --
 19 do you need a copy as well? Thank you. Okay.
 20 A I got the whole book just in case.

21 MR. GROSSMAN: Okay. So this is Exhibit 151, is
 22 excerpts from Wheaton CBD Sector Plan Design Guidelines.
 23 (Exhibit No. 151 was marked
 24 for identification.)
 25 MS. HARRIS: Thank you.

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1 BY MS. HARRIS:
 2 Q Can you identify the relevant sections of the
 3 design guidelines as they pertain to the special exception
 4 site?
 5 A Sure. There's three relevant pages. The first
 6 page is page 7. Page 7, the lower left-hand corner
 7 identifies the Westfield District and identifies, also, the
 8 other four districts and says that the Westfield District is
 9 one of those -- is a district in which these guidelines
 10 apply to.
 11 The next page, the next relevant page is page 10.
 12 The lower left-hand corner of that, of that plan basically
 13 identifies within the Westfield District along the southern
 14 property line of Kensington Heights and identifies that as a
 15 transitional area. And on page 25, 25 goes to what the
 16 appropriate guidelines are for transitions, and the actual
 17 page is called Goal to Create Appropriate Transitions. On
 18 the right-hand side is a plan view and section view of
 19 generally where the filling station is, and the items --
 20 specifically, design guidelines for this area are, one is
 21 the maximum 45-building, 45-foot building height, which I
 22 mentioned previously in my testimony; you know, it's 17 foot
 23 6. It shows labeling, preserving buffer. As I've
 24 mentioned, we're not only preserving, we're enhancing the
 25 95,000 square-foot buffer. Third, it shows the location of

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1 the mall ring road. The mall ring road stays in its exact,
2 in its exact location. And it also identifies the location
3 of where the maximum heights from that buffer area should
4 occur. So we're in compliance with the design guidelines.
5 Q Thank you. I'd like now to move on to the
6 opponents' position with respect to the sector plan, and
7 this was actually one of the questions Mr. Grossman raised
8 in his 20 questions.
9 A Okay.
10 Q Have you reviewed Ms. Duckett's exhibit,
11 statement, which was Exhibit 82, and Ms. Savage's statement,
12 which was Exhibit 80(h)?
13 A Yes, I have.
14 Q And I'll ask you some specific questions, but
15 before getting into the specifics, can you provide some
16 general observations with respect to these statements?
17 A Sure. Well, in reference to Ms. Duckett, she
18 basically broke it down into needs and into land use. Quite
19 obviously, my expertise is land use; so I'm just going to
20 talk about the land use, her analysis of land use. Two
21 things, one is, is they did not, neither one of them talked
22 about the specific recommendations in the sector plan
23 regarding the Westfield District. And what I found
24 interesting regarding Ms. Savage's testimony was, when she
25 quotes 59-G-1.21, for whatever reason the statement was left

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1 out and, I think, same thing with the Planning Board, the
2 statement was left out: the appropriateness of a special
3 exception is at a particular location. So, basically, her
4 whole testimony does not deal with conformance with the
5 Westfield District.
6 My other -- I mean, this is just my reading of
7 this -- was they seem to have been attacking the sector
8 plan, in general. It seems like there were certain things
9 that they went through in the sector plan process and it did
10 not get incorporated into the sector plan. So although
11 they, you know, we know they're not for the filling station,
12 they attacked all the other circumstantial or all the other
13 things but the filling station itself.
14 Q Okay, thank you. With respect to Ms. Duckett's
15 testimony -- and, actually, I have copies of that if that
16 would be helpful to hand out. It's the highlighted versions
17 that I'd like for you to address.
18 A Okay, sure.
19 Q So this, at the bottom right-hand corner, I noted
20 that this is currently Exhibit 82.
21 A Okay.
22 Q Do you agree with her that the special exception
23 does not meet the goals for the transition area between the
24 mall parcel and the residential area?
25 A Well, if it's in regard to the specific

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1 recommendations within the design --
2 MS. ROSENFELD: Objection. Excuse me. I'd like
3 to understand where she's talking about. Ms. Harris, what
4 are you referencing?
5 MS. HARRIS: On page 4 of the Exhibit 82.
6 MS. ROSENFELD: Thank you.
7 BY MS. HARRIS:
8 Q And actually, Mr. Gang, why don't you go ahead and
9 read that highlighted language, and then you can provide
10 your response.
11 A Sure, thank you, and that's what --
12 MR. ADELMAN: Is there an additional copy --
13 MS. HARRIS: Oh, yes. I'm sorry.
14 THE WITNESS: Instead of reading, I'll just go --
15 I mean, I read it and now I know instead of reading through
16 it. Ms. Duckett basically describes a transitional area
17 within the sector plan. She questions, again, you know why
18 something was done. She questions why this parcel wasn't
19 zoned CRN, and again, you know, the Council determined this
20 to be C-2. However, for just some history of why it did not
21 get rezoned potentially to CRN --
22 MR. GROSSMAN: Well, let's, I think you have to be
23 careful here about history and --
24 THE WITNESS: Fair enough.
25 MR. GROSSMAN: -- why something didn't get

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1 rezoned, because --
2 THE WITNESS: I know. I agree.
3 MR. GROSSMAN: -- it's always problematic and I've
4 stopped others who wanted to give their own history based on
5 individual Council member statements and that sort of thing.
6 So I prefer to deal with the language we have, and if -- to
7 the extent that it's ambiguous and acceptable legislative
8 history is available, then we'll look at it, but if it's
9 clear and not ambiguous, we'll go by the language.
10 THE WITNESS: Sure. Thank you for that advice.
11 CRN zones are those zones as they transition from CR to
12 residentially based zones. So, for example, where
13 Ms. Duckett lives it is, you have CR, then there's a
14 transition to their residential communities, and that's
15 generally the purpose of a CRN zone, doesn't mean it occurs
16 every place but that is the purpose. In our case, we were
17 transitioning from a mixed-use to commercial use, CR to C-2.
18 So, you know, why -- well, it has no applicability to this
19 case anyway, but just, you know, she brought it up, I
20 thought I'd answer it.
21 Number 2 is the areas, you know, she identified
22 within the, you know, the design guidelines, and I just went
23 through of how we conformed to those actual transitions on
24 page 25.
25 MS. ROSENFELD: Excuse me. Where are you

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1 referencing the design guidelines?
2 THE WITNESS: Right here. I've testified, she
3 says in --
4 MS. ROSENFELD: No. Where in her document?
5 THE WITNESS: It's the fourth sentence down,
6 Transition area, on page 25 of the Wheaton CBD and Vicinity
7 Guidelines.
8 MS. ROSENFELD: Thank you.
9 BY MS. HARRIS:
10 Q And, Mr. Gang, what's the purpose of the existing
11 buffer zone?
12 A The purpose of the buffer zone -- by definition, a
13 buffer is a transition between two land uses. In this case,
14 the land use for the filling station is commercial; the
15 adjoining property is residential. So, in this case, the
16 sector plan had a -- want to say a recommendation almost --
17 a demand that there be a transition between those two areas.
18 Q And it's your opinion that the buffer zone
19 provides that transition area?
20 A Yes, I do.
21 Q Thank you. Do you agree with Ms. Duckett's
22 position that because the sector plan will have a life of 20
23 years, the uses permitted on the mall parcel should be more
24 sensitive to TOD?
25 A There is nothing in the record that would indicate

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1 that. One is, again, the sector plan specifically states
2 that the C-2 zone is a mall and will be a mall, and as was
3 testified to, Mr. Agliata, he testified Westfield's goal is
4 the preservation and enhancement of new development on the
5 mall site.
6 Q And then the third and final point that I want to
7 bring up in Ms. Duckett's statement is her position that the
8 proposed use is contrary to the modal split goals set forth
9 in the sector plan.
10 A Yeah. Again --
11 Q And, actually, it may be helpful to first explain
12 what modal split means.
13 A Sure. Modal split, and I want to go back to
14 the --
15 MS. ROSENFELD: What page is this?
16 MR. GROSSMAN: Yes, what page are you referring to
17 in Ms. Duckett's piece, Exhibit 82?
18 MS. HARRIS: Page 3.
19 MR. GROSSMAN: Page 3 of Attachment A?
20 MS. HARRIS: Page 3 of Attachment A, thank you.
21 MR. GROSSMAN: Right.
22 THE WITNESS: Modal splits is defined in the
23 sector plan on page 71, and it's basically the percent of
24 trips via, you know, public transportation or it can either
25 be walking, biking or carpooling, any one of those forms

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1 that you do have shared trips during those peak hours.
2 In reference to, I want to go to her highlight
3 that -- on her page 3 on Attachment A, she quoted, you know,
4 basically the sector plan. You know, the sector plan on top
5 page of 7, I think we agree, is to establish a 30 percent
6 non-auto driver modal share. She also identified at the,
7 you know, correctly, correctly, at the bottom of page 71
8 that it is estimated to be 52 percent. We don't disagree
9 with that. This, again, is for those type of uses which are
10 mixed use when you have the new type of development within
11 the sector plan. This non-auto drive mode share goals, the
12 filling station will not impede this goal in the least,
13 whether it's approved or not approved.
14 MR. GROSSMAN: Let me see if I understand. Are
15 you saying that the non-auto driver mode share goals do not
16 apply to the, the C-2 area, or are you saying that even
17 including the C-2 area, these goals will be met?
18 THE WITNESS: I'm saying that, you know, that when
19 you do -- it's basically for the overall sector plan. The
20 overall sector plan wants to encourage transit, walking,
21 biking, all those items. People do come to the mall by
22 transit. They do come to the mall by buses. The point is,
23 is that the filling station will not undermine that specific
24 goal in the sector plan.
25 MR. GROSSMAN: Well, when you say will not

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1 undermine it, do you mean that they will still meet the 30
2 percent non-auto driver mode share goal or do you mean that
3 it will not encourage non-transit uses? What exactly do you
4 mean by that, because it seems to me, if you build a gas
5 station, it will -- and more people ride cars -- then there
6 will be a larger percentage of cars versus transit.
7 THE WITNESS: Sure. Whether the filling station
8 gets approved or not --
9 MR. GROSSMAN: Yes.
10 THE WITNESS: -- Westfield has the approvals for,
11 I'm going to say, without the filling station, approximately
12 180,000 square feet of retail, that Westfield plans to build
13 on the mall additional retail.
14 MR. GROSSMAN: I see. So what you're saying is
15 that --
16 THE WITNESS: So --
17 MR. GROSSMAN: -- that yes, the gas station will
18 attract cars but no more cars than would be attracted anyway
19 by that, by some similar use or other use which is already
20 by right in the Wheaton Plaza; is that what you're saying?
21 THE WITNESS: Right. And what I'm saying also is
22 those trips are already on the road, two-thirds of those
23 trips, and again, this is dealing with the overall goal for
24 the whole sector plan and that is the goal, and the filling
25 station will not undermine that goal.

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1 MR. GROSSMAN: Okay.
2 BY MS. HARRIS:
3 Q If this filling station is built, will more people
4 decide to drive?
5 A Not at all.
6 Q And if the filling station is not built, will less
7 people decide to drive?
8 A Will less people decide to drive? No, there will
9 not be less people to drive with Westfield's goal.
10 MR. SILVERMAN: Pardon?
11 THE WITNESS: Westfield -- sorry.
12 MR. SILVERMAN: I didn't hear your last, I'm
13 sorry, sir, I didn't hear your last comment.
14 THE WITNESS: With Westfield's goal of additional
15 development on the mall site.
16 MR. GROSSMAN: I think the point he's making is
17 that if it's not a gas station, it'll be some other use
18 which will have roughly equivalent amount of traffic that
19 they are permitted to do as a matter of right because
20 they're in the C-2 zone.
21 MR. SILVERMAN: Well, I would make a --
22 MR. GROSSMAN: That's what he's testifying.
23 MS. ROSENFELD: We'll get there.
24 MR. GROSSMAN: We know you may differ. That's
25 what he's testifying. All right. Let me ask, about how

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1 much longer do you think this witness's direct will go?
2 MS. HARRIS: About an hour, an hour and a half.
3 So I was going to -- my stomach is grumbling -- I was going
4 to suggest the same thing.
5 THE WITNESS: Could I have 10 minutes to make -- I
6 mean, I know I'm not allowed to talk. Could we just finish
7 Ms. Savage's --
8 BY MS. HARRIS:
9 Q Yes.
10 A -- and that's a good --
11 MS. HARRIS: And, Mr. Grossman, it may be logical
12 because we can finish with the sector plan discussion --
13 MR. GROSSMAN: That's fine.
14 MS. HARRIS: -- and then take a break. That's
15 probably another 15 minutes or so.
16 MR. GROSSMAN: That's fine with me. My wife was
17 kind enough to make my lunch today. I just want to make
18 sure that everybody here gets an opportunity in the
19 cafeteria to get something. So let's try to --
20 MR. ADELMAN: Did she make it for everybody?
21 MR. GROSSMAN: She's lovely but not that lovely.
22 All right. So let's try to quickly get through it if you
23 think that's a logical stopping point.
24 MS. HARRIS: Okay. Okay. I think that makes
25 sense.

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1 BY MS. HARRIS:
2 Q Okay. So now moving to Ms. Savage's submission,
3 which was Exhibit 80(h) --
4 A Yes.
5 Q -- in your opinion, will the proposed -- oh,
6 excuse me. And I have highlights of her testimony, too,
7 just because it will make it easier to follow, I believe.
8 A Okay.
9 Q If I can find it. And we'll be, Mr. Gang, we'll
10 focus on the highlights on Exhibit 80(h)?
11 A Okay.
12 Q In your opinion, will the proposed station
13 undercut the sector plan's objective that the Metro station
14 should be the focus of Wheaton's transportation
15 infrastructure and that easy and safe multi-modal access
16 should be provided to and from the station?
17 A Well, in reference to Ms. Savage's, you know,
18 statements regarding Wheaton and Metro being a focus of
19 their transportation infrastructure, we do agree. I mean,
20 that is one of the forms of transportation; as well as -- I
21 discussed before, there's other forms of transportation
22 which the sector plan discusses -- as well as, you know, it
23 talks about bicycle, which we agree; you know, walking is a
24 viable option. We agree with those items. Just want to
25 point out again, this section dealt with the mobility

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1 section of the sector plan, not with zoning or land use.
2 Q Thank you. And will the station impede transit,
3 bicycling, and walking from remaining viable, from -- will,
4 I'm sorry, will the station impede transit, biking, and
5 walking, which they want to promote as viable transportation
6 options?
7 A No, it will not.
8 Q How do the majority of Costco customers get to
9 Costco?
10 MR. GROSSMAN: Are you talking about Costco
11 warehouse or Costco gas?
12 MS. HARRIS: I'm sorry, Costco's warehouse
13 customers.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: Well, my wife is a member of Costco,
16 and with the amounts --
17 MR. GROSSMAN: Well, let's, let's --
18 THE WITNESS: I'm just going to tell you. I mean,
19 I want to say 100 percent. Close to 100 percent come by
20 car.
21 BY MS. HARRIS:
22 Q Thank you.
23 A Okay.
24 Q How is the development of the gas station
25 different than the recent rezoning on Outlot B, which was

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1 THE WITNESS: -- Avenue.
2 MR. GROSSMAN: -- to me, Ms. Harris?
3 MS. HARRIS: Well, I'm trying to -- you had asked
4 us to address Ms. Savage's statement --
5 MR. GROSSMAN: Yes.
6 MS. HARRIS: -- and it goes to would anyone
7 voluntarily choose to buy a home directly overlooking.
8 That, that developer, at least, is proceeding, is very well
9 aware of the gas station --
10 MR. GROSSMAN: Well, I don't know if --
11 MS. ROSENFELD: Objection, yes.
12 MR. GROSSMAN: -- the developer is well aware of
13 anything.
14 MS. ROSENFELD: Objection, speculative. We have
15 no idea --
16 MR. GROSSMAN: Right. Right, right.
17 MS. HARRIS: Okay.
18 MR. GROSSMAN: I understand, but --
19 MS. ROSENFELD: -- who's going to buy or what
20 they --
21 MR. GROSSMAN: Well, she's giving me her reasons,
22 but I --
23 MS. ROSENFELD: I understand.
24 MR. GROSSMAN: -- and I understand your basis.
25 MS. ROSENFELD: I appreciate, or I apologize for

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1 being so impatient.
2 MS. HARRIS: We'll move on.
3 MR. GROSSMAN: But, but I think --
4 MS. ROSENFELD: Speculative.
5 MR. GROSSMAN: -- the observation is correct. We
6 don't know what the developer knew or didn't know, and I'm
7 not sure that it would tend to prove anything if, if in fact
8 he did know that there was a proposal to put a gas station
9 there. So I don't know that I could base any finding on
10 that at all. So --
11 MS. HARRIS: Okay. We'll move on.
12 MR. GROSSMAN: -- moving along is a good idea.
13 MS. HARRIS: We will.
14 BY MS. HARRIS:
15 Q Ms. Savage focuses on, quote, smart growth and
16 transit-oriented development." To which districts is this
17 intended to apply?
18 A I'm sorry. Where are we at? Which paragraph?
19 Q We're at No. --
20 A I'm looking at the bottom of page 2.
21 Q I'll withdraw that question. I'll move on, and
22 I -- two, two other questions. One is, in your professional
23 opinion about -- what is your professional opinion about
24 locating the gas station within a half a mile of the Metro
25 station, which Ms. Savage refers to as the ped shed?

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1 A Sure. In --
2 MR. GROSSMAN: Refers to as the?
3 MS. HARRIS: Ped shed.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: Pedestrian shed --
6 MR. GROSSMAN: Yes.
7 THE WITNESS: -- is basically walking within a --
8 MR. GROSSMAN: Yes.
9 THE WITNESS: -- half a mile from, you know, Metro
10 to -- a half-a-mile walk from Metro to its use. The ped
11 shed in this, in this specific location is a mall. It's
12 parking, buildings, et cetera. It's not an urban mixed-use
13 community. So the ped shed, whether the filling station is
14 there or not, is mall, parking, service, would drive around,
15 around the mall area. So --
16 BY MS. HARRIS:
17 Q And if the gas station is not there, what may be
18 there?
19 A It's another pad site, potential pad site within
20 the C-2 zone. The ped shed has absolutely no implications
21 in reference to whether the filling station gets built there
22 or not.
23 Q Okay, thank you. And then, finally, do you agree
24 with the statement that if TOD applied successfully in
25 Wheaton, there's no need for additional gasoline sold

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1 because current residents will be using transit?
2 A Well, the answer is, I do not agree to that and
3 for the following reasons. I went through, you know,
4 extensive testimony about the CR zone.
5 MR. GROSSMAN: Yes.
6 THE WITNESS: One of the interesting things about
7 the total build out within Wheaton, if you calculated per
8 the zoning areas, et cetera, there's 27 million square feet
9 of additional FAR planned within the CR zone. So even if --
10 let's be very optimistic and let's assume there's a 50
11 percent modal split. That's 13 million square feet of FAR.
12 In this location, even within the CR zones, there is going
13 to be parking, parking, meaning cars, and by definition,
14 cars need, need gas. So will there be no additional need
15 for gas, the answer is no, regarding the build out of the
16 sector plan. Two is --
17 MS. ROSENFELD: Objection. Are you testifying
18 about need? Was --
19 THE WITNESS: I'm testifying --
20 MS. ROSENFELD: -- your testimony going to need?
21 THE WITNESS: I am testifying that if you have a
22 car, that you do need gas. I'm making that statement,
23 whether, you know, just, how should I say, personal
24 observation in life.
25 MR. GROSSMAN: I'm going to allow it for what it's

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1 worth. We all have our personal observations. He's not
2 saying it's part of his expertise as a land planner.
3 THE WITNESS: I will say, also, that it was
4 testified to by others that there's 100,000 trips going
5 through Wheaton on the three state highways. So even if TOD
6 is completely successful within this area, there are still
7 cars driving through this area. Three is there's 6,079
8 parking spaces within this, within, you know, within the
9 mall area. So just to say that there is no cars or no need
10 for gasoline just because there's TOD, I don't know how
11 that, how you would reach that conclusion.
12 MS. HARRIS: Thank you.
13 MR. GROSSMAN: Okay. Are you at your stopping
14 point?
15 MS. HARRIS: Yes.
16 MR. GROSSMAN: All right then, it's now almost 20
17 after 1:00. I know that the Grill is open at least until
18 2:00. So you'll have a shot at getting some food, and shall
19 we come back at 2 o'clock?
20 MS. HARRIS: Perfect.
21 MR. GROSSMAN: All right.
22 MS. CORDRY: 2:15? Can you make it 2:15? That's
23 going to be, since our questions and everything --
24 MR. GROSSMAN: I have a request for 2:15.
25 MS. HARRIS: I would like -- I know that Mr. Gang

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1 needs to leave by 4:15; so I'd prefer 2:00, if we could.
2 MR. GROSSMAN: Okay. Let's do 2:00. Let's do
3 2:00.
4 MS. HARRIS: Thank you.
5 MS. ROSENFELD: And are those plans coming in
6 today? Are the larger, Pat, Pat --
7 MR. GROSSMAN: Pat, are the big plans here yet?
8 MS. ROSENFELD: -- Pat, are the larger plans here
9 yet?
10 MR. GOECKE: Yes.
11 MS. HARRIS: Excuse me? Yes.
12 MS. ROSENFELD: Are the larger plans here?
13 MS. HARRIS: Yes.
14 MR. AGLIATA: Yes, they are here.
15 MR. GROSSMAN: Can you distribute them to them,
16 please, so they can look at them over lunch?
17 (Whereupon, at 1:21, a luncheon recess was taken.)
18 MR. GROSSMAN: We are back on the record. Just
19 before we broke for lunch, I was handed the full-size copies
20 of the revised special exception plan.
21 MS. HARRIS: Mr. Grossman, I would note that the
22 reason that we weren't able to distribute those today, as we
23 had intended, was because there's landscape plans where
24 copies were being made. So we're going to need to submit
25 that part tomorrow, but --

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1 MR. GROSSMAN: Okay.
2 MS. HARRIS: -- the basic information is all right
3 there.
4 MR. GROSSMAN: Okay. So this is -- make sure I
5 got all the pages here. Well, I have something called
6 Pedestrian Circulation Exhibit, Page 1 of 1, and I have a
7 C-A-R turning exhibit, page 1; a truck turning exhibit, page
8 1; and I have proposed special exception plan; a redline
9 overlay, page 1; and then proposed special exception plan,
10 Sheet 3. I don't seem to have Sheets 2.
11 MS. HARRIS: 1 and 2?
12 MR. GROSSMAN: Well, yes, I don't have the --
13 MS. HARRIS: They didn't change.
14 MR. GROSSMAN: Oh.
15 MS. HARRIS: But we could submit those.
16 MR. GROSSMAN: Well, I just want to make sure I
17 know what -- you did have three pages of the 11 by 17s.
18 MS. HARRIS: Right, because --
19 MR. AGLIATA: I apologize. That's my mistake.
20 MS. HARRIS: No. 1, Sheets 1 of 1 and 1 of 2 did
21 not change, and so we, we're only submitting things that
22 changed.
23 MR. GROSSMAN: Well --
24 MS. ROSENFELD: Mr. Grossman, can I suggest this:
25 Can we go through these one by one?

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1 MR. GROSSMAN: Yes, and we're going to --
2 MS. ROSENFELD: Pedestrian circulation exhibit, 1
3 of 1 --
4 MR. GROSSMAN: Well, let's -- hold on one second.
5 Let's jump back to the proposed special exception plan
6 first.
7 MS. ROSENFELD: Sure.
8 MR. GROSSMAN: So the cover sheet, which is
9 labeled 1, page 1 of 3, on the special exception plan,
10 Exhibit 148(a), it has a new version number, Version No. 7.
11 MS. HARRIS: Can we hold down the chatter in the
12 back?
13 MR. GROSSMAN: Oh, I didn't even -- yes. I'm
14 sorry.
15 MS. HARRIS: Thank you.
16 MR. GROSSMAN: Exhibit 148(a), which is page 1 of
17 the revised special exception plan, and that has, it's
18 demarked as Revised Version 7. Now, you don't seem to have
19 the same -- the full-size plan doesn't seem to have the same
20 pagination --
21 MS. HARRIS: No. What --
22 MR. GROSSMAN: -- so I'm a little confused.
23 MS. HARRIS: Let me explain.
24 MR. GROSSMAN: Yes.
25 MS. HARRIS: The 11 by 17s include 1 of 1, 2, 2,

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1 excuse me, 1 of 3, 2 of 3, and 3 of 3. On 1 of 3 and 2 of
2 3, the only change was that it noted, it had the number 7
3 and it said change --
4 MR. GROSSMAN: I see.
5 MS. HARRIS: -- the revision was 5/24, but nothing
6 on that actual sheet ever changed. So that's why on the
7 full-size sheets that we have with us right now we only have
8 3 of 3 --
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: -- however, I can certainly, for
11 completeness sake, make sure you --
12 MR. GROSSMAN: I think that would be a good idea.
13 MS. HARRIS: Okay. Okay.
14 MR. GROSSMAN: So let's, let's make sure that we
15 get pages 1 and 2 of the Version 7, the May 24, 2013,
16 full-size version of the proposed special exception plan,
17 and meanwhile, if I can find my exhibit page under all of
18 this paper, we'll, we'll mark this as an exhibit.
19 First of all, the revised proposed special
20 exception plan full-size will be Exhibit 152, and we'll call
21 this Revision 7, dated 5/24/13, and this is full-size, okay,
22 and 152(a) will be page 1, 152(b) will be page 2, which we
23 don't have yet. We don't have 1 and 2 of the full-size, and
24 we do have page 3 which will be (c). And so I will mark
25 that Exhibit 152(c), and then you can supplement --

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1 MS. HARRIS: (a) and (b).
2 MR. GROSSMAN: -- that with (a) and (b), and it'll
3 be 152(a) and (b), pages 1 and 2. All right. Then we have
4 a redline overlay, which I take it to be explanatory of the
5 only changes that have been made in the special exception
6 plan. Is that correct?
7 (Exhibit Nos. 152 and
8 152(a-c) were marked for
9 identification.)
10 MS. HARRIS: Yes.
11 MR. GROSSMAN: Okay. So that'll be 1 --
12 MS. HARRIS: 53.
13 MR. GROSSMAN: We'll make it, yes, I just wanted
14 to make it --
15 MS. HARRIS: Oh.
16 MR. GROSSMAN: -- a (d) or make it 153.
17 MS. HARRIS: Oh.
18 MR. GROSSMAN: We'll make it 153, okay, redline,
19 and that's actually a redline of the third page, correct?
20 MS. HARRIS: Correct.
21 MR. GROSSMAN: So redline of page 3 on special
22 exception site plan, Revision 7. All right. Now we'll turn
23 to Pedestrian Circulation Exhibit 1, and we'll call it
24 Exhibit -- and is that only one sheet, by the way?
25 (Exhibit No. 153 was marked

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1 for identification.)
2 MS. HARRIS: Yes.
3 MR. GROSSMAN: That's only one sheet. So 154 will
4 be pedestrian circulation exhibit. Okay. And then we have
5 car turning exhibit, which is also one page. That'll be
6 Exhibit 155. And we have a truck turning exhibit, which
7 will be Exhibit 156. And have I covered everything?
8 (Exhibit Nos. 154-156 were
9 marked for identification.)
10 MS. HARRIS: You have.
11 MS. ROSENFELD: I'm sorry. What was 155? I'm
12 sorry.
13 MR. GROSSMAN: 155 was the car turning exhibit.
14 MS. ROSENFELD: Car turning, thank you. And I'm
15 sorry, the redline was 153?
16 MR. GROSSMAN: Yes, the redline is 153. And while
17 we're caught up in the thrill of marking new exhibits, I
18 recall the last time that the -- I was handed a copy of
19 Maryland Transportation Code, Annotated Section 22-402,
20 which dealt with idling, and I thought I had marked it an
21 exhibit but apparently I hadn't. So just for ease of
22 reference, I'm going to mark that. I had made a copy from
23 the Maryland Code, and we'll call that Exhibit 157 unless
24 somehow I marked it earlier, but I, I don't see it in the
25 record. 157 is copy of Maryland, it's actually Maryland

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1 Code, Transportation Article, Section 22-402, and the
2 specific reference having been to subsection (c)(3). Okay.
3 There we go.
4 (Exhibit No. 157 was marked
5 for identification.)
6 MS. ROSENFELD: And, Mr. Grossman, just, may I ask
7 a couple of questions about the redline overlay, Exhibit
8 153?
9 MR. GROSSMAN: Okay.
10 MS. ROSENFELD: The plan that we had been looking
11 at did not have a path and this one does, and it seems to me
12 this should be redlined.
13 MS. HARRIS: The redlined focused on the areas
14 within the special exception area, which is the reason
15 that's not redlined and because we had the separate
16 pedestrian circulation plan that showed the path.
17 MR. GROSSMAN: Okay.
18 MS. ROSENFELD: And the bollards, are they new?
19 They're within the special exception area.
20 MR. GROSSMAN: Where it says on the eastern side,
21 proposed removable bollards, they're not redlined.
22 MS. HARRIS: Well --
23 MS. ROSENFELD: I believe they are.
24 MS. HARRIS: It says proposed removable bollards
25 on the redline; no, it's not in red.

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1 MS. ROSENFELD: Then you have -- are those dots,
2 the proposed bollards?
3 MS. HARRIS: Yes.
4 MS. ROSENFELD: And going back to the path for a
5 minute, it's dimensioned differently from what had been
6 previously shown, is it not?
7 MS. HARRIS: Three feet?
8 MS. ROSENFELD: It's not just a reinsertion of the
9 three, March 26 plan, is it, the one that went to the Board?
10 This is --
11 MS. HARRIS: I can't answer that now. I'd need to
12 check.
13 MS. ROSENFELD: Is this different from the path
14 that was submitted to the Planning Board for review?
15 MS. HARRIS: Well, it's slightly different
16 because, as I noted, we have those turnaround areas that you
17 see, those little square notches.
18 MS. CORDRY: It's also different by the six versus
19 the three feet, correct?
20 MS. HARRIS: I need to go back and look at the
21 plan to answer that.
22 MS. ROSENFELD: I would ask that any of the
23 revisions be highlighted in red for the benefit of Planning
24 Board review so that they know what's been changed.
25 MR. GROSSMAN: It's not a terrible idea. So let's

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1 do that. Let's, let's do that, just highlight the changes
2 there, the bollards and the path, so they know what they're
3 looking at.
4 MS. HARRIS: So do you want a further revised
5 redline plan?
6 MR. GROSSMAN: I mean, I don't think we need it so
7 much here, but if we're going to -- if it's going to be
8 submitted to the technical staff, we ought to have a copy of
9 it.
10 MS. HARRIS: Oh, well, in fact, my cover letter to
11 technical staff identified all these things, so yes. So, I
12 mean, that's a good idea, and I'll go through and highlight
13 so that the other plan clearly identified --
14 MR. GROSSMAN: What I'm saying is that our record
15 ought to show, also, what went to technical staff. So I
16 guess we should have a corrected redline, just to make sure
17 that we don't have any confusion about what went to planning
18 staff and what was highlighted.
19 MS. HARRIS: Our original intent was, except that
20 we now produced them today, was to send to technical staff
21 and then copy you and everyone in the room --
22 MR. GROSSMAN: Right. Right.
23 MS. HARRIS: -- so everyone had the exact same
24 set.
25 MR. GROSSMAN: Right.

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1 MS. HARRIS: Okay.
2 MR. GROSSMAN: I understand, but I mean, the
3 best-laid plans of mice and men aft gone apley, as they say,
4 but I think it was much better that, that the other side had
5 copies of this so that they can --
6 MS. HARRIS: Yes, I understand.
7 MR. GROSSMAN: -- properly address or understand
8 any of the testimony. Okay. And so then -- and you'll send
9 out the notice tomorrow and the, and also send a copy of
10 what you've submitted here plus the modified redline --
11 MS. HARRIS: Yes.
12 MR. GROSSMAN: -- to technical staff.
13 MS. HARRIS: The one thing I would note is now
14 that we've distributed three copies --
15 MR. GROSSMAN: Yes.
16 MS. HARRIS: -- I'm not going to have enough new
17 redlines to distribute tomorrow as well.
18 MR. GROSSMAN: I'm not sure I understand what you
19 mean. You're not going to have enough --
20 MS. HARRIS: We need to make -- well, maybe we can
21 get that done today.
22 MR. GOECKE: We can do it.
23 MS. HARRIS: Okay. Okay. Never mind.
24 MR. GROSSMAN: Okay.
25 MR. GOECKE: I'm going to do that right now.

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1 MS. HARRIS: Okay.
2 MR. GROSSMAN: Okay. And also, with your cover to
3 the, to the technical staff, make sure that they also notify
4 the Planning Board so if the Planning Board wants to take a
5 look at it --
6 MS. HARRIS: Okay.
7 MR. GROSSMAN: -- that they can do so.
8 Ms. Sheard.
9 MS. SHEARD: A question for Pat. When she sends
10 the notice, the submission to the Planning Board to
11 everybody, is it going to have the list of the changes as
12 part of that?
13 MS. HARRIS: That was my plan.
14 MS. SHEARD: We don't need the drawing, but we
15 need --
16 MS. HARRIS: Yes. That was my plan.
17 MS. SHEARD: Thank you.
18 MS. ROSENFELD: Could legal counsel be copied on
19 the -- I'd like a copy of everything that goes to the
20 Planning Board.
21 MR. GROSSMAN: Absolutely.
22 MS. ROSENFELD: Okay.
23 MS. HARRIS: That was the intent.
24 MR. GROSSMAN: Yes.
25 MS. ROSENFELD: Okay.

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1 MR. GROSSMAN: As well as all of the other
2 organizational heads and Ms. Sheard.
3 MS. ROSENFELD: Okay, got it. Thank you.
4 MS. HARRIS: I'm sorry. So now I should add
5 Ms. Sheard to the list of three?
6 MR. GROSSMAN: Yes. Yes.
7 MS. SHEARD: You can just give it to Eleanor or --
8 MS. ROSENFELD: Yes.
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: That's what I've been doing. Okay.
11 MR. GROSSMAN: Okay.
12 MS. SHEARD: That's fine. Thank you.
13 MR. GROSSMAN: All right. So are we ready to
14 resume direct?
15 MS. HARRIS: We are with one preliminary matter,
16 and that is, Mr. Gang canceled his evening meeting
17 obligation given where we are --
18 MR. GROSSMAN: Okay.
19 MS. HARRIS: -- so we can get through Mr. Gang's
20 testimony. So --
21 MR. GROSSMAN: Okay, great.
22 MS. HARRIS: -- that should be beneficial. Thank
23 you.
24 MR. GROSSMAN: Thank you, Mr. Gang.
25 THE WITNESS: I've had so much fun this morning.

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1 If I had a choice --
2 MS. HARRIS: So, Mr. --
3 THE WITNESS: -- and I did have a choice.
4 MS. HARRIS: So depending on how long Mr. Gang
5 goes, Mr. Tucker may or may not be on this afternoon.
6 MR. GROSSMAN: Okay.
7 MS. HARRIS: Okay.
8 BY MS. HARRIS:
9 Q Mr. Gang, as part of your work, did you evaluate
10 what constitutes the general neighborhood?
11 A Yes, I did.
12 Q And what was involved in this evaluation?
13 A Well, what it involved first was actually going
14 and physically walking the site and looking at the
15 characteristics of the Westfield District and the Kensington
16 Heights neighborhood. What I started doing almost three
17 years ago -- it was, I think, in September 2010 -- I started
18 photographing and documenting the sites themselves to see,
19 you know, what those characteristics are, because part of
20 the definition of neighborhood are those physical and
21 psychological characteristics. I took a series of
22 photographs, and I think it's Exhibit 86(g).
23 Q It is.
24 MS. HARRIS: And what I'd like to do, this is
25 already in the record, but again --

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1 MR. GROSSMAN: Okay.
2 MS. HARRIS: -- just to facilitate people's
3 following of the testimony, we've made copies.
4 MR. GROSSMAN: All right. Thank you.
5 BY MS. HARRIS:
6 Q Mr. Gang, can you walk us through the photos?
7 A Sure. The photos are broken into, I would call
8 it, three sections. One is the Westfield District itself,
9 those, and I'll walk you through that. The second set of --
10 it's really one page -- the second photograph is the
11 existing forested buffer. And the last set of photographs
12 is Kensington Heights, what it looked like from Kensington
13 Heights into the Westfield District.
14 MR. GROSSMAN: Well, let me make sure that I am
15 correctly following here, and I also want to make sure
16 that -- you say this was Exhibit?
17 MS. HARRIS: 86(g) --
18 MR. GROSSMAN: 86, right.
19 MS. HARRIS: -- and there were a series of photos
20 that were submitted as 86(g).
21 MR. GROSSMAN: I'll move some of these plans over
22 to the side here so that I have a shot at -- okay. Okay.
23 Here's 86(f); so (g) can't be too far behind, I hope. No,
24 not there. Let me see if it got into a part -- was the
25 exhibit size this size --

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1 MS. HARRIS: It was --
2 MR. GROSSMAN: -- because I don't see --
3 MS. HARRIS: -- I think it was 11 by 17, but I
4 can't recall.
5 MR. GROSSMAN: Okay. Let's just, let me see how
6 it starts.
7 MS. HARRIS: And it's identified as the automobile
8 filling stations, but there were other photographs that were
9 presented, included as well.
10 MR. GROSSMAN: Photographs of automobile filling
11 stations located in Montgomery County, Washington, D.C., New
12 York City, Wheaton Mall Plaza, surrounding neighborhood,
13 adjacent property views, and Wheaton Sector Plan -- oh, it's
14 in Box 1. I should have known that. Here it is. Okay.
15 MS. HARRIS: So what we've done, and I'll -- to
16 the extent Mr. Gang is going to testify about anything in
17 that exhibit, we've made extra copies, because that is,
18 there's more under 86(g) than what will be, than what he
19 will be testifying to.
20 MR. GROSSMAN: Yes. And I guess what my staff did
21 was to label 86(g), then Circle 1, Circle 2, and so on,
22 throughout the, all, each of these.
23 MS. HARRIS: Oh, numbered one through 88.
24 MR. GROSSMAN: Yes, one through 88, that's
25 correct. So --

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1 MS. HARRIS: I have no way of knowing which one
2 of, which of one of 88 this is.
3 MR. GROSSMAN: Right, but I think for -- if, if
4 Mr. Gang is going to identify these photos for the record,
5 then we ought to use the exhibit numbering system that we
6 have in 86(g).
7 MS. HARRIS: Okay.
8 MR. GROSSMAN: So how do you want to proceed?
9 MS. HARRIS: I think I'll need to take a look at
10 that and identify which numbers --
11 MR. GROSSMAN: Are, are the ones you want to use.
12 MS. HARRIS: Are, these are, yes.
13 MR. GROSSMAN: Okay.
14 MS. HARRIS: So the packet that we just handed out
15 are Exhibits 10 through 16 of 88.
16 MR. GROSSMAN: Okay. So these are Exhibits
17 86(g) --
18 MS. HARRIS: But if I could, not to confuse the
19 matter more, but the way we stapled them is not in the order
20 that these are in.
21 MR. GROSSMAN: Okay.
22 MS. HARRIS: Would it be easier just to submit
23 this for the record and speak from these?
24 MR. GROSSMAN: I think, probably.
25 MS. HARRIS: I agree.

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1 MR. GROSSMAN: All right. But then you'll have a
2 lot of photos that haven't been identified in the record.
3 In other words, your 86(g) package of one through
4 80-whatever photos you don't have identified in the record.
5 So I guess that's potentially --
6 MS. HARRIS: I'm okay with that.
7 MR. GROSSMAN: Well, it's helpful. I mean, some
8 of these will be helpful to use in, you know, writing a
9 report.
10 MS. HARRIS: Yes.
11 MR. GROSSMAN: So -- and I don't recall whether
12 your electronic submission included electronic copies of
13 each one of these photographs.
14 MS. HARRIS: I think they did, but I --
15 MR. GROSSMAN: Okay. I just can't recall.
16 MS. HARRIS: Okay.
17 MR. GROSSMAN: But you could check that because,
18 potentially, some of them are going to be useful in report
19 writing.
20 MS. HARRIS: Right.
21 MR. GROSSMAN: What might not be a bad idea,
22 rather than taking hearing time to identify each and every
23 one of them, some of them are fairly obvious by their
24 labels, maybe you could get, you could go through them or
25 have Mr. Gang go through them and just make sure that they

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1 are identified, either by a caption or otherwise if they're
2 not captioned, and then -- and they can be identified by
3 number -- and just make a, submit a list with the
4 identification of them all and submit it to the opposition
5 so they have an opportunity to look it over. Then if they
6 have any objections to it -- indicate the dates when these
7 photographs were taken and who took them so we can
8 authenticate it in the way that we would, you know, off
9 record, and then it'll be part of the record.
10 Ms. Rosenfeld, do you, are you hearing this?
11 MS. ROSENFELD: I'm getting sort of bombarded.
12 MR. GROSSMAN: Okay.
13 MS. ROSENFELD: I apologize.
14 MR. GROSSMAN: Here's what I was suggesting:
15 Rather than taking the time in the hearing to go through
16 80-some-odd photographs for identification purposes, that
17 during the break between hearings, Ms. Harris can have these
18 photographs identified, to the extent that they are not
19 identified by captions, and indicate the date they were
20 taken and who took them --
21 MS. ROSENFELD: Sure.
22 MR. GROSSMAN: -- and if there's a question about
23 authenticity, then you can raise it. She'll send you a list
24 of the exhibits, 86(g), one through, how many did we say,
25 88 --

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1 MS. HARRIS: Eighty-eight.
2 MR. GROSSMAN: -- or whatever, and you can look
3 through the, all the photographs here, so then we'll be able
4 to use these later on. And then --
5 MS. ROSENFELD: Okay.
6 MR. GROSSMAN: -- when we have our next hearing
7 date, she can submit the list, and if you have any
8 objections to any or challenges to authenticity on any of
9 them, you can raise it and then we can proceed in that
10 fashion.
11 MS. ROSENFELD: That would be fine.
12 MR. GROSSMAN: Okay.
13 MS. CORDRY: Will it end up being sort of a
14 cross-reference that 86(g)(1) will be top left, 86 --
15 MR. GROSSMAN: No. They don't, those, those, I
16 don't think they'll --
17 MS. CORDRY: Okay. It won't, we won't have
18 anything like that.
19 MR. GROSSMAN: -- I don't think these hold all the
20 photographs. They're only a certain number.
21 MS. CORDRY: Okay. All right.
22 MR. GROSSMAN: This is a --
23 MS. CORDRY: That's fine.
24 MR. GROSSMAN: -- fairly thick --
25 MS. CORDRY: Okay.

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1 MR. GROSSMAN: -- thing of them. So they're in
2 the, they're in the, Carton 1.
3 MS. CORDRY: Got it.
4 MS. HARRIS: Okay. So then --
5 MR. GROSSMAN: All right. So then we'll put these
6 aside, Part 1, and we'll, we'll look to the ones you
7 selected out. We're going to give them a new exhibit
8 number. And these are all -- the copies that you've handed
9 out are in the same order for everybody?
10 MS. HARRIS: Yes.
11 MR. GROSSMAN: Okay. So we'll call this, assuming
12 I can find my now buried exhibit list, here it is, 158 and
13 photos. Now, I take it that all of the photos that are
14 included in 158 are also included in 86(g)?
15 MS. HARRIS: That is correct.
16 MR. GROSSMAN: But not all, the reverse is not
17 true?
18 MS. HARRIS: Correct.
19 MR. GROSSMAN: Okay, or the converse or the
20 contrapositive or it was one of those. Okay, photos. Are
21 these all of the site and the area?
22 MS. HARRIS: All site photos --
23 MR. GROSSMAN: Okay.
24 MS. HARRIS: -- well, site and area.
25 MR. GROSSMAN: Okay, photos of site and area.

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1 Okay. So now let's proceed as you will. Do you want to
2 identify who took the photos and when they were taken?
3 (Exhibit No. 158 was marked
4 for identification.)
5 MS. HARRIS: Yes.
6 BY MS. HARRIS:
7 Q Mr. Gang, can you please, did you take the photos
8 that are, that we just identified as Exhibit 158?
9 A Every single one.
10 Q And as you go through them, can you identify when
11 -- well, I would note that the dates that they were taken
12 are on the bottom right-hand corner of each sheet --
13 MR. GROSSMAN: Okay.
14 BY MS. HARRIS:
15 Q -- but maybe when you go through each sheet, you
16 can note when the photos were taken.
17 MR. GROSSMAN: Okay. So those dates that you have
18 on the bottom right-hand corner indicate when those photos
19 were taken, is that correct?
20 THE WITNESS: That is correct.
21 MR. GROSSMAN: And do all of these photographs
22 depicted in -- and there are numerous photographs -- in
23 Exhibit 158, do they all accurately depict the scene as when
24 you took them?
25 THE WITNESS: Yes, they do.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: As I mentioned, before we started
3 going through these and naming them, is the photographs are
4 broken into three parts right now.
5 MR. GROSSMAN: Yes.
6 THE WITNESS: Photographs 1 through 3, which I
7 shot this year, was basically -- again, the purpose of these
8 photographs was to review the definition of neighborhood.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: That's the purpose of these
11 photographs.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: So this year, which I thought was
14 the most appropriate, you know, the latest portion of what
15 the Westfield District is, shot, you know, a whole series of
16 photographs. Basically, what I did was, quite honestly I
17 walked, I mean, I parked my car and I basically walked
18 around the site in a clockwise, clockwise rotation --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- walked through the middle of the
21 site. And, you know, I think what is obvious by these
22 photographs, or at least in my mind, is, you know, these are
23 general characteristics of the mall. You know, it basically
24 has parking; it has buildings; it has pad sites. Also, on
25 the first page, in the lower left-hand corner, it has the

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1 WMATA parking garage, the 976 parking garage right on Veirs
2 Mill Road; and, again, just wanted to show that the mall has
3 its own very distinct character.
4 MR. GROSSMAN: I mean, the problem with this is,
5 without, once again, having him go through each photograph
6 and identify what it is -- I mean, maybe this will be
7 resolved by the fact that you're going to submit the list
8 and these photos are included in that list of ones and
9 you'll identify what each one is.
10 THE WITNESS: I'll be happy to go through that
11 briefly.
12 MR. GROSSMAN: All right. Do you want to zip
13 through that?
14 THE WITNESS: Yeah.
15 MR. GROSSMAN: Well, I mean, the problem is, then,
16 then we have nothing to -- I'd have to write on each photo
17 to identify what you're talking about and mark them off as
18 separate numbered exhibits.
19 THE WITNESS: I would go from upper left, you
20 know, left to right and just go down the sheet and --
21 MR. GROSSMAN: All right.
22 BY MS. HARRIS:
23 Q I think it may be --
24 A Or whatever you'd like to do.
25 Q -- more efficient if we do it later.

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1 MR. GROSSMAN: Okay. All right.
2 MS. HARRIS: But just so I understand what
3 Mr. Grossman's --
4 MR. GROSSMAN: I just want to make sure that we
5 have exhibits that we can identify properly in the record.
6 MS. HARRIS: Okay.
7 MR. GROSSMAN: I mean, you know, for example,
8 what, what specifically does the one in the upper left-hand
9 corner depict other than a car and a building --
10 THE WITNESS: Sure. Well, that's --
11 MR. GROSSMAN: -- and that's, and so we want to
12 make sure that they are properly identified in the record.
13 MS. HARRIS: Okay. We will do that and submit the
14 list as directed.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: And, again, the summary of these
17 photos is that, as depicted in the sector plan, the
18 Westfield District is very distinct in its character in
19 relationship to the other districts in Wheaton and that's
20 what the purpose of these photographs are without going
21 photograph by photograph; that if you were to take
22 photographs of the other districts in Wheaton, they would,
23 this -- Westfield is completely different and distinct.
24 MR. GROSSMAN: Okay. But how does that, how does
25 that in your mind limit the definition of the neighborhood

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1 to the confines of Wheaton Plaza?
2 THE WITNESS: Sure. I'm going to answer.
3 Ms. Harris asked me what was my process to go through the
4 definition of neighborhood.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: So I think once I go through the
7 whole process, then you can say, yeah, Mr. Gang, you're
8 right or, you know what, I don't quite agree with you;
9 however --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: All right? So I thought it'd make
12 sense to go through the whole process --
13 MR. GROSSMAN: Okay.
14 THE WITNESS: -- and then I'll get to your --
15 MR. GROSSMAN: Fair enough.
16 THE WITNESS: -- to your questions.
17 MR. GROSSMAN: Go at it, Ms. Harris.
18 THE WITNESS: All right. So, again, it was
19 identifying those aspects of the sector plan. Sector plan
20 says Westfield District. Here are the, here are the
21 characteristics of the Westfield Districts, District. The
22 fourth photograph which was shot was when I first started
23 walking around the site -- yes.
24 BY MS. HARRIS:
25 Q When you say fourth photograph, do you mean the

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1 fourth page?
2 A The fourth sheet.
3 MR. GROSSMAN: Okay.
4 BY MS. HARRIS:
5 Q Thank you.
6 A I'm sorry, the fourth page, thank you, was --
7 MS. ROSENFELD: Wait, wait, wait. Could you hold
8 up which one you're looking at?
9 THE WITNESS: I'm sorry. Ask again.
10 MR. GROSSMAN: Summer photos --
11 THE WITNESS: Yeah, summer photos.
12 MR. GROSSMAN: -- September 20, 2010.
13 THE WITNESS: September 20, 2010, and that's when
14 I first started walking around the site and understanding
15 what the site was. And one of the challenges of shooting a
16 forested buffer, quite frankly, is it's all wooded, it's all
17 forested. And I think, as Ms. Harris asked me, one of the
18 questions was, when I went out there this past Saturday to
19 walk with the Coalition for Smart Growth, I went afterwards
20 out to this area and walked it again, and generally, over
21 time, generally, especially in this area, vegetation usually
22 gets thicker, and it was just so much more fuller within
23 these areas where the photographs were shot than when I
24 first started in September of 2010. To be fair about it --
25 which is why the next two set of photographs are -- is, you

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1 know, it's forested six months out of the year.
2 MR. GROSSMAN: Right.
3 THE WITNESS: The other six months it is not. The
4 leaves are generally down within the Washington, D.C., area,
5 and what I did two years ago -- this is March 2011 -- before
6 any of the vegetation came out, this is now showing the
7 characteristics from Kensington Heights of what it looks
8 like from Kensington Heights up through, you know, the
9 vegetative buffers to the mall. This is, this is shot --
10 MR. GROSSMAN: When you say this, which photos are
11 you looking at now?
12 THE WITNESS: Generally, all the photographs in
13 reference to -- this was shot along McComas Drive --
14 MR. GROSSMAN: Which page?
15 THE WITNESS: I'm sorry, the last two pages where
16 it says 1 of 2 and 2 of 2.
17 MR. GROSSMAN: Okay. All right. So those are the
18 site photos, winter, 3/17/2011, pages 1 and 2.
19 THE WITNESS: Right. And it also was shot along
20 Coronado Place, you know, looking upward. And what was
21 evident, even by these photographs, which was testified to,
22 is, one is the separation between the ring road and the
23 existing residential --
24 MR. GROSSMAN: Where is the ring road?
25 THE WITNESS: Oh, which is -- good question --

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1 MS. ROSENFELD: Mr. Grossman, it's already labeled
2 86(g), that exhibit.
3 MR. GROSSMAN: This -- well, 86(g)(1) is the 11 by
4 17 view of this.
5 MS. ROSENFELD: Oh, I see. Okay.
6 MR. GROSSMAN: This exhibit is, I'm, this is a
7 full-size version, and he's just marked on it.
8 MS. ROSENFELD: Okay. So should we cross out the
9 86(g)?
10 MR. GROSSMAN: Oh, I didn't realize it --
11 THE WITNESS: I did.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: I'll cross it out.
14 MR. GROSSMAN: Yes.
15 THE WITNESS: Yes, I did cross it out.
16 MR. GROSSMAN: Okay. So --
17 THE WITNESS: And I want --
18 MR. GROSSMAN: -- and this is, this is, and you're
19 just going to indicate there --
20 THE WITNESS: I will put here --
21 MR. GROSSMAN: -- indicate --
22 THE WITNESS: -- Legend.
23 MR. GROSSMAN: Right.
24 THE WITNESS: That's the technical. I don't know
25 about that. Shall I put a red line around, you know, what I

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1 identified, or is it self-explanatory? It's this plus that.
2 MR. GROSSMAN: Yes, I think it's -- they're not a
3 very different color. It would be great -- one's purple and
4 one's pink it looks like, but if you got a different color
5 marker to make staff, that would be --
6 THE WITNESS: Well, let me, I did bring some
7 colors.
8 MR. GROSSMAN: Okay. That would be good.
9 THE WITNESS: You never know.
10 MR. GROSSMAN: I'll just say staff versus Gang
11 definition of the neighborhood. You can use the, well,
12 whatever color you think --
13 THE WITNESS: Well, let's see.
14 MR. GROSSMAN: -- is going to show up here.
15 THE WITNESS: It is hard.
16 MR. GROSSMAN: Try the yellow.
17 THE WITNESS: Let's try the yellow, see if that'll
18 show. That was the only color.
19 MR. GROSSMAN: All right. How about a black --
20 THE WITNESS: What I was going to suggest --
21 MR. GROSSMAN: -- do you have a black marker?
22 THE WITNESS: No, I do not. I do not.
23 MR. GROSSMAN: All right. Well, then use the
24 color you've done.
25 MS. ROSENFELD: If he colors it in? Will it show

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1 it, show up yellow if he highlights the interior?
2 MR. GROSSMAN: He tried yellow. He said it
3 didn't --
4 THE WITNESS: No, it did not. What I was going to
5 suggest, if it's all right with you, is I will keep this
6 color and what I will do is put Xs. So it's the dash line,
7 these arrows, it's the solid line, and I've put Xs along the
8 whole thing to be consistent.
9 MR. GROSSMAN: Hold on. Just make --
10 THE WITNESS: No, Xs, like little Xs, like you
11 identify like a property line, like where a fence line is.
12 MR. GROSSMAN: All right. Use, yes, use that on
13 staff's to the extent --
14 THE WITNESS: That's what I'm saying, for staff's.
15 MR. GROSSMAN: Okay. Just put little Xs on
16 there --
17 THE WITNESS: Okay.
18 MR. GROSSMAN: -- and then you can indicate that
19 that's the staff --
20 THE WITNESS: Correct.
21 MR. GROSSMAN: -- extension.
22 THE WITNESS: On staff's. Okay.
23 MR. GROSSMAN: All right.
24 THE WITNESS: So the legend is the X.
25 MR. GROSSMAN: And are you finished with

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1 explaining why you've defined the neighborhood the way you
2 have?
3 THE WITNESS: Yeah, and the other -- well, just in
4 conclusion --
5 MR. GROSSMAN: Yes.
6 THE WITNESS: -- is, is the reason I feel that the
7 Westfield District is as I delineated, it has a physical and
8 psychological boundaries that are the differences.
9 MR. GROSSMAN: Okay.
10 MS. DUCKETT: Can you put that back up?
11 THE WITNESS: I am. I will. I just want to --
12 MR. GROSSMAN: He will. He's writing. All right.
13 Now, in terms of land use planning, aren't neighborhoods for
14 special exception purposes generally defined as the area
15 which will be most affected by the proposed special
16 exception?
17 THE WITNESS: The answer to your -- fair enough,
18 that's a fair question. No matter what definition you
19 decide to think the neighborhood, the special exception
20 would have absolutely no impact on the residential community
21 to the south.
22 MR. GROSSMAN: Well, answer my question first. In
23 land use, isn't the general neighborhood defined as the area
24 in which would be most affected by the special exception?
25 THE WITNESS: The answer to your question is yes.

1 MR. GROSSMAN: Okay. And there is a contention
2 here that that area to the south and west, that residential
3 area is going to be potentially affected, I don't know about
4 visibility but that's one question, but by odors, by air
5 pollution potentially. If that is at least an argument to
6 be made that they will be affected potentially by this,
7 would not the staff's definition of general neighborhood be
8 more accurate for land planning purposes?

9 THE WITNESS: The way they defined it, I mean, I
10 could not figure out how they came to that conclusion.

11 MR. GROSSMAN: Well, presumably it's what they
12 said, which would be the area most affected. I have to look
13 back at their exact language as to how they did it, but
14 that's the way traditionally it's been done. That is, we
15 look to the area that potentially is most affected by the,
16 by the special exception. Let's see,

17 "Staff has defined the neighborhood to
18 include all properties that may be impacted by
19 traffic, noise, glare, vibrations, or fumes
20 associated with the proposed use."

21 So that's, they specifically say, that's why they, they
22 extended it beyond the mall.

23 THE WITNESS: Would you like to go through each
24 one of those? And, again, this is outside my realm of
25 expertise; however --

1 MR. GROSSMAN: Why is it outside your realm of --
2 I'm not talking about --

3 THE WITNESS: Well, let's talk about fumes, for,
4 or let's talk about traffic. We'll go through each one of
5 those things.

6 MR. GROSSMAN: No, but first, let's -- let's first
7 deal with the general proposition. I think you agree with
8 me the general proposition is that the neighborhood should
9 be defined by the area that is most potentially affected by
10 the special exception.

11 THE WITNESS: Most potentially, the neighborhood
12 which is most potentially impacted. That is --

13 MR. GROSSMAN: Right.

14 THE WITNESS: -- that is the Westfield District,
15 is most, is the most, potentially most impacted by, you
16 know, the definition, which we went through. There is no
17 traffic. There is no glare. There is no vibrations. There
18 is no odors. Most, most impacted -- Kensington Heights, you
19 know, is not mostly impacted by that definition.

20 MR. GROSSMAN: And if, if their -- they've
21 submitted some expert testimony which will be followed by
22 the experts testifying, subject to cross-examination, but
23 they make the argument, at least, that fumes will be, and
24 odors, will be potentially impacting them, the people
25 that --

1 THE WITNESS: Right, and as I said, that if you
2 decide to not agree with my definition of neighborhood, the
3 conclusion of the special exception, of going through all
4 the findings, the definition of whatever you decide will not
5 impact that final conclusion.

6 MR. GROSSMAN: Well, all right, that's a step
7 further than I -- your reasoning, that whichever definition
8 of neighborhood you use, your conclusions will be the same?

9 THE WITNESS: That is correct.

10 MR. GROSSMAN: Okay, but let's just deal with the
11 question. I have to, first I have to define the
12 neighborhood, and so I'm presented here with two different
13 potential definitions: one, yours, which includes the mall
14 area itself only, and the other, which includes residences
15 immediately adjacent to the mall, fundamentally, to the
16 south and the west.

17 THE WITNESS: Right.

18 MR. GROSSMAN: And so your assertion is you didn't
19 include them because you don't think they're going to be
20 impacted but you don't have the expertise to know whether or
21 not they are going to be impacted by some of the items that
22 would be potentially impactful if in fact they are impacted.

23 THE WITNESS: Right. I'm relying on our
24 experts --

25 MR. GROSSMAN: Okay.

1 THE WITNESS: -- regarding those items, and
2 again --

3 MR. GROSSMAN: But you would agree, though, that
4 if, if in fact there is a potential impact to those people
5 adjacent to it, the residences that may be as close, and
6 when I ask you about that, as 124 feet away, which is less
7 than half a football field, that that would be, that they
8 should be included in the definition of neighborhood,
9 wouldn't you agree?

10 THE WITNESS: Well, they would be, they -- as
11 you've mentioned, whatever those potential impacts are, this
12 special exception needs to address them. Whether they're
13 part of the neighborhood definition or not they need to be
14 addressed.

15 MR. GROSSMAN: Well, sir, but try to stick with my
16 question, and that is, I'm -- first I have to try to define
17 the neighborhood. That's what I'm required to do. And I
18 just want to, I want to try to get the best definition of
19 neighborhood for this that I can, and so I'm trying to
20 understand from you why you excluded them. You're saying,
21 well, based on what your expert said, you don't think this
22 neighborhood will be impacted, and there's going to be a
23 controversy in the testimony on this point.

24 THE WITNESS: And all I'm saying is --

25 MR. GROSSMAN: Wouldn't you, as a land planner,

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1 want to include them as the potentially most affected
2 residents in the area?
3 THE WITNESS: Again, I looked at it, was, and
4 having been out to the site on numerous times --
5 MR. GROSSMAN: Right.
6 THE WITNESS: -- and I just, I mean, I just did
7 not see the relationship between those two communities.
8 Again, once you have this eight-foot high wall up, there
9 will even be a bigger separation. You got the physical
10 buffer. You got the vegetative areas. You don't have any
11 connections between the two, you know, from roads, you know,
12 walking, except a few --
13 MR. GROSSMAN: I'm not saying you don't have an
14 argument, and --
15 THE WITNESS: I'm just trying to figure out --
16 MR. GROSSMAN: -- physical barriers certainly are
17 a part of what has to be considered in terms of evaluating a
18 neighborhood. Sometimes a physical barrier is such that you
19 do in fact stop at that physical barrier because beyond that
20 it's not reasonably foreseeable that the neighborhood is
21 going to be more impacted than elsewhere, sometimes not.
22 This case has potential arguments in either direction.
23 All right. I'm not going to press it any further.
24 I just wanted to get your, press your views on that, and I
25 think I understand your views, and then we can go on.

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1 MS. HARRIS: Thank you.
2 BY MS. HARRIS:
3 Q Let's move on to the zoning ordinance. Have you
4 reviewed the Montgomery County Zoning Ordinance in
5 connection with the special exception?
6 A Yes, I have.
7 Q And what are the relevant sections of the zoning
8 ordinance?
9 A Sure. There's three relevant sections. One is
10 59-C-4.350, the C-2 zone, which discusses the purpose and
11 development standards. The second is 59-G-1.21, which are
12 the general special exceptions for evaluations; there are
13 nine findings, including letters and numbers. And the last
14 one is specifically dealing with additional requirements for
15 automobile filling stations in which there are 10 specific
16 findings.
17 Q And is that 59-G-2.06?
18 A G-2.06, thank you.
19 Q Thank you. In regard to the C-2 zone, what is the
20 purpose statement provided for in Section 59-C-4.45, and
21 does the special exception meet that stated purpose?
22 A Sure. The purpose is to provide locations for
23 general commercial uses representing various types of retail
24 trades, business, and services for a regional or local area,
25 and yes, the proposed special exception use furthers this

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1 purpose.
2 Q And what are the development standards of the C-2
3 zone?
4 A The development standards are in 59-C-4.35. The
5 development standards in that section deal with setbacks,
6 open space, FAR, site coverage, the normal standards for,
7 for development standards, and Mr. Duke testified to the
8 compliance of those development standards.
9 Q And what are the permitted uses in the C-2 zone?
10 A Well, there are 84 permitted uses in the C-2 zone
11 and 30 special exception uses, and an automobile filling
12 station is one of the permitted special exception uses
13 within a permitted use in the C-2 zone.
14 Q I'm now going to focus on the general special
15 exception provisions, 59-G-1.21, and based on your knowledge
16 of the zoning ordinance, your familiarity with the project,
17 and your professional expertise, I'd like you to answer the
18 following questions. First, did you review the standard of
19 review which applies to the evaluation of special exception?
20 A Yes, I did.
21 Q And what is it?
22 A The standard of review is found under 59-G-1.21,
23 and in the opening paragraph, it basically, it talks about
24 inherent adverse effects and non-inherent adverse effects,
25 and those are the operational and physical characteristics

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1 of the special exception.
2 Q And did you prepare a list of inherent effects for
3 the proposed special exception?
4 A Yes, I did.
5 MR. GROSSMAN: That's actually 59-G-1.2.1.
6 THE WITNESS: Correct, sorry, yes.
7 MR. GROSSMAN: Yes. There's a second section that
8 sounds like that, but it's actually 59-G-1.21, but that
9 inherent/non-inherent section is 1.2.1.
10 THE WITNESS: Yes. Thank you.
11 MS. HARRIS: Okay, thank you.
12 MR. GROSSMAN: Certainly.
13 BY MS. HARRIS:
14 Q How did you prepare this list?
15 A Sure. How did I prepare this list? Well, I
16 reviewed the zoning ordinance to see if there was a specific
17 list for automobile filling stations, and the answer is
18 there is no list. So what I did, what I did next was I
19 looked at some past special exception cases that were, in
20 which there is a report, to look at, to see if there was a
21 consistent list of those inherent adverse effects, and what
22 I came up -- what I discovered was there wasn't any. Every
23 one had a completely different list. Then what I did was I
24 prepared a little chart, looked at what each one was, each
25 case, looked at their numbers, and I said, you know, gas

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1 stations, let's see what I would consider what, you know,
2 inherent adverse effects were and I came up with my list.
3 MR. GROSSMAN: I can't believe I was inconsistent
4 in any previous --
5 THE WITNESS: You were not, but there were a lot
6 of other --
7 MR. GROSSMAN: Hearings, other hearings.
8 THE WITNESS: And it varied. I mean, it varied
9 between seven and 11 lists of items.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: All right. So --
12 BY MS. HARRIS:
13 Q Can you please review your list? Identify what
14 was on your list.
15 A What was on my list was physical presence of any
16 structures including canopies and sales area or kiosk,
17 traffic normally associated with gas stations, fumes
18 associated with vehicles patronizing the gas station,
19 on-site queuing of vehicles of the fueling station, noise
20 from outdoor activities and deliveries, lighting necessary
21 for safety of customers and employees, signage indicating
22 name of station and product prices, impervious surfaces
23 necessary for safe and efficient on-site vehicular movement,
24 underground fuel storage tanks, potential environmental
25 impact from spillage of oils and other automotive fluids,

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1 fuel pumps, issues associated with access to the filling
2 station.
3 Q And have you reviewed the list that staff
4 prepared?
5 A Yes, I did.
6 Q Are there any differences, and if so, can you
7 please identify them?
8 A Yeah. Matter of fact, it was very, very similar.
9 The ones they had were slight differences. They did not
10 have impervious surfaces necessary for safe and efficient
11 on-site vehicular movement, and the -- and they didn't have
12 issues associated with access to the fueling station. They
13 did have longer hours of operation than normal retail uses
14 or/and hours of operation. So those were the slight
15 differences between --
16 Q And based on your knowledge of the hours of
17 operation for this station, is the longer hours of operation
18 an inherent characteristic to this project?
19 A No. It's just the opposite. I mean, most filling
20 stations -- I think, you might have heard testimony to --
21 are basically 18 to 24 hours of operation. This one is
22 generally less than 18 hours. On Monday through Friday it's
23 like from 6:00 to 9:30, and on Saturdays and Sundays it
24 closes at 7:00. So it is less than what normal filling
25 stations are.

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1 MR. GROSSMAN: Can you run through your list one
2 more time, please, starting with No. 1?
3 THE WITNESS: Sure. Number 1 is physical presence
4 of any structures including canopy and sales area or kiosk.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: The second one is traffic normally
7 associated with a gas station. Staff had, staff had both of
8 these also.
9 MR. GROSSMAN: All right.
10 THE WITNESS: Staff also, and we also had fumes
11 associated with vehiculars patronizing the gas station.
12 Staff and I also have on-site queuing of vehicles,
13 vehiculars of the fuel station.
14 MR. GROSSMAN: On-site queuing of vehicles what?
15 THE WITNESS: For the fueling station.
16 MR. GROSSMAN: And 5?
17 THE WITNESS: Number 5 was noise from outdoor
18 activities and deliveries, we both had. We both had
19 lighting necessary for safety of customers and employees.
20 MR. GROSSMAN: Yes.
21 THE WITNESS: We both had signage indicating name
22 of station and product types. I had impervious surfaces
23 necessary for safe and efficient on-site vehicular movement.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: We both had underground fuel storage

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1 tanks.
2 MR. GROSSMAN: Yes.
3 THE WITNESS: We both had potential environmental
4 impact from spillage of oils and other automotive fluids.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: We both had fuel pumps.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: I had issues associated with access
9 to the filling station site.
10 MR. GROSSMAN: You think that's an inherent
11 characteristic of --
12 THE WITNESS: The answer to your question is, what
13 I did was reviewed past cases and looked at those items and
14 that was, must have -- it was used once before.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: And the last one which they had
17 which we did not have was longer hours of operation than
18 normal retail uses or/and hours of operation.
19 MR. GROSSMAN: Okay.
20 BY MS. HARRIS:
21 Q And as you noted, with respect to the last one,
22 hours of operation, what's your opinion about that?
23 A As I said, you know, Costco's hours are way less
24 than normal filling stations.
25 Q Okay. Have you also evaluated the non-inherent

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1 effects of the proposed gas station?
2 A Yes, I have.
3 Q And how do your non-inherent -- how does your list
4 compare to staff's list?
5 A Why don't I just say that we will agree to staff's
6 list except for -- they had six items.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: One of them they combined with that
9 item. So why don't we say five and a half we agree to and
10 the other half we don't, and I'll tell you why.
11 BY MS. HARRIS:
12 Q Can you identify those six?
13 A Yeah, I'd be happy to.
14 Q Please.
15 A One is sales to Costco members only. The second
16 one which they had was location of, along a private road
17 near houses. The third was size, volume of gasoline sold,
18 number of pumps.
19 MR. GROSSMAN: Hold on.
20 THE WITNESS: Sorry.
21 MR. GROSSMAN: What was No. 3?
22 THE WITNESS: Size, volume of gasoline sold,
23 number of pumps.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: Fourth was queues and traffic volume

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1 along the southern road.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: Fifth was type of gasoline sold,
4 regular and unleaded only, and sixth was payment by debit or
5 credit card.
6 MR. GROSSMAN: And which part of which one do you
7 disagree with?
8 THE WITNESS: The near houses, location, you know,
9 along a private road quite honestly is a non-inherent
10 effect, being along a private road but near houses, and you
11 know, later on I will go through numerous examples of which
12 houses are a lot closer to filling stations without buffers,
13 without a forested buffer than this case.
14 MR. GROSSMAN: Okay.
15 BY MS. HARRIS:
16 Q Can you then speak to whether these cause an
17 adverse effect?
18 A None of them do, and to go through it, quite
19 obviously, sales to Costco members only is not a
20 non-inherent adverse effect. The type of gasoline, two
21 types of gasoline is probably a positive. That also is,
22 doesn't have any effect. Type of payment by credit card or
23 debit card also doesn't have an effect, a negative effect.
24 Q When you say have an effect, do you mean --
25 A A negative effect.

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1 Q -- have an adverse effect?
2 A Yeah, adverse, negative.
3 Q Okay. Yes.
4 A Now, the other three, to go one by one, location
5 along a private road, I think we heard testimony from
6 Mr. Guckert how the location of this specific filling
7 station is far superior than normal filling stations along
8 public roads. The reason for that is most public roads you
9 have a number of access points, usually at a corner of a
10 street; cars come in from numerous locations; you know,
11 people pump, I mean, people are parked in opposite
12 directions; there is no specific location for the filling
13 truck, compared to this situation which it's very easy to go
14 one way in, everybody knows which way they're going, but
15 location of this specific filling station is in the remotest
16 point of the mall in which there is the least amount of
17 traffic, as testified by, by Mr. Guckert.
18 The second point -- and they put this all together
19 in one sentence -- near houses, you are right in reference
20 to the corrections in the land use report: some of those
21 distances are not correct. However, what has been testified
22 to in reference to, to those distances is the nearest -- the
23 filling station itself to the southern property line is 258
24 feet. That is the structure itself, and the near, the
25 structure to --

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1 MR. GROSSMAN: All right. So filling station to
2 southern property line of the nearest residence, you're
3 saying?
4 THE WITNESS: Yes, along the southern property
5 line.
6 MR. GROSSMAN: How long is it?
7 THE WITNESS: Right angles from the filling
8 station, right angles to the southern property line is 258
9 feet.
10 BY MS. HARRIS:
11 Q Now, just to be clear, when you say filling
12 station, and perhaps -- what do you mean by that? And maybe
13 we should refer --
14 A The filling station is the center, is the, is from
15 the structure where the pumps are to the southern property
16 line.
17 MR. GROSSMAN: Okay. And what about to the west?
18 THE WITNESS: To the west, it's 379 feet. And the
19 other reason, you know, I don't consider this as a negative
20 non-inherent effect is later on in the testimony you have
21 numerous examples. I'm going to talk about single-family
22 homes in the same general characteristic of locations
23 related to this filling station. Even though I covered a
24 whole gamut of where filling stations are, we're going to do
25 it, just specifically talk about those examples, and this

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1 far exceeds those, those distances.
2 MR. GROSSMAN: All right. But I'm going to get
3 back to that in a second. I just want to make sure that I
4 have all the distances down. Some stats were already, also
5 given about property line, I mean --
6 THE WITNESS: Yes.
7 MR. GROSSMAN: -- the site, the special exception
8 site line to the nearest property line. What are those
9 distances?
10 THE WITNESS: One eighteen from the special
11 exception to the, let's call it the southern or southeast
12 property line.
13 MR. GROSSMAN: All right. Hold on. Special
14 exception, site line to southern property line.
15 THE WITNESS: And 338, 331 feet to the western
16 property line. The other thing I'd like to point out is --
17 and this is a little bit later on -- is within a 400-foot
18 cone of where the actual filling station there is, there is
19 presently only eight houses within that cone. Within 200
20 feet -- and I'll get into this in a little bit more detail
21 -- there was nothing within 200 feet. Yes.
22 BY MS. HARRIS:
23 Q Was it 200 feet or was it 400 feet?
24 A I did -- we did 200 feet first. It was zero. I
25 mean --

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1 Q Okay.
2 A -- 200 feet just got us to basically where the
3 ring road is. Within 400 feet, there's only eight
4 residences.
5 Q Okay.
6 A So that's why --
7 MR. GROSSMAN: That's 400 feet, 400 feet to, from
8 the site line or from the filling station structure?
9 THE WITNESS: The center of the filling station
10 structure.
11 MR. GROSSMAN: Okay.
12 MS. ROSENFELD: And if I could clarify, which
13 structure is that? I mean, there is more than one.
14 THE WITNESS: It's where the, I should say, the
15 17-foot-6 canopy is for the gas pumps.
16 MR. GROSSMAN: Let me ask you this: One of the
17 claims here by the opposition is that there's going to be
18 substantial queuing of cars here because that's what
19 Costco's practice is; they queue them up and they have this
20 systemic way of putting people through, but that requires
21 that cars be queued and that there is a significant amount
22 of engine running, idling at that time, producing fumes.
23 You didn't list that as a non-inherent -- well, maybe it is
24 listed as non-inherent, queues and traffic.
25 THE WITNESS: I did, queues and traffic volume

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1 along the southern road.
2 MR. GROSSMAN: Okay. You also list on-site
3 queuing of vehicles as No. 4 as an inherent characteristic.
4 So there's a, there is a tension between those two, it seems
5 to me. Is that -- in this case, because of the unusual way
6 that Costco queues its cars, would you agree that that's in
7 the non-inherent pile?
8 THE WITNESS: Yeah, I think in this case it's a
9 little bit different from the others. As I mentioned, that,
10 how should I say, list was in every, every case prior to
11 that.
12 MR. GROSSMAN: Right.
13 THE WITNESS: So it, I mean, it's a non-inherent
14 effect, queuing the cars.
15 MR. GROSSMAN: Right.
16 THE WITNESS: In this case, because of the size,
17 because of the number of cars, it's also a potential
18 non-inherent effect.
19 MR. GROSSMAN: Okay. So then really wouldn't we
20 be talking, since the queuing of the cars and their fumes is
21 an issue here as a non-inherent adverse effect, wouldn't we
22 be talking about -- the distance that's most significant is
23 the distance to that southern property line from the
24 southern site line, site plan line, because there are going
25 to be cars queued all along there. It's not just the

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1 structure of the pumps that's the problem, maybe not even
2 the main problem given the devices that are used to collect
3 fumes at the pump, but there is an issue claimed by the
4 opponents here that the queued cars are going to produce a
5 lot of fumes. So if they prove to be correct that they're
6 going to, that that's the case, wouldn't we really, the main
7 distance we're talking about is that, that distance from the
8 southern site plan line to the nearest residence property
9 line?
10 THE WITNESS: Maybe, and the only reason I say
11 maybe is, you know, we're jumping ahead. Ultimately my
12 testimony was going to be a summary of everybody else's
13 testimony, and for whatever reason, because of everybody's
14 schedule, I'm here first.
15 MR. GROSSMAN: Yes.
16 THE WITNESS: So a lot of my conclusions were
17 going to be based upon -- that's why you saw me sitting
18 here, was basically listening to what everybody had to say.
19 Mr. Sullivan is going to be testifying specifically to that.
20 So maybe I can't specifically make that specific land use
21 finding, even though I've heard Mr. Sullivan, read
22 Mr. Sullivan's report and I do believe that there are no
23 adverse effects. So, yes, I mean, you need to hear
24 Mr. Sullivan's testimony to come back to my conclusion to
25 say there is none.

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1 MR. GROSSMAN: But if I were to conclude after
2 hearing all the testimony that there are some potentially
3 significant adverse impacts from queuing cars, then I'd have
4 to look -- the critical distance I'd be interested in would
5 be this distance of, I'm sorry, I got the wrong way, 118
6 feet, wouldn't I, for the --
7 THE WITNESS: Yes.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: You can look at that, but however,
10 at the same time, is those, you know, what happens within
11 that 118 feet. It's not like it's an open-ended, you
12 know --
13 MR. GROSSMAN: Certainly.
14 THE WITNESS: -- use. I mean, you got, again, you
15 got the buffers, you got the walls, you got the separation
16 in grade. So 118 feet isn't like it's a horizontal
17 distance. There are things happening within that point.
18 Again, I think what we've heard --
19 MR. GROSSMAN: Certainly. I'm not, I'm not -- I
20 haven't heard the testimony from either --
21 THE WITNESS: I know.
22 MR. GROSSMAN: -- side yet on the fumes. I just
23 know that I've read the stuff that's been filed --
24 THE WITNESS: Right.
25 MR. GROSSMAN: -- so I have an idea of what's the

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1 claim.
2 THE WITNESS: Right, and again, I think what
3 you've heard is the time of peak queues. If it does occur
4 at all, it is a couple of minutes on a peak Saturday or
5 Sunday. This is not like a continuous 40 to 50 cars lined
6 up. Normally it's one car in for the vast majority of time,
7 maybe another car behind it. Mr. Dan Greckson, Dan --
8 MR. GOECKE: Golan.
9 THE WITNESS: Excuse me?
10 MR. GOECKE: Golan.
11 THE WITNESS: Golan, thank you. He testified last
12 week in reference to how fast the queues go. So it isn't a
13 total picture in reference to the queues. Again, this is
14 not like they're all lined up 24 hours a day, you know,
15 seven days a week. It is a limited time, and again, I think
16 when Mr. Sullivan testifies, you know, he'll get into the
17 very specifics.
18 BY MS. HARRIS:
19 Q Let me follow up on that line of thinking, and I
20 don't know that you know this question, but on Exhibit --
21 could you identify on Exhibit 119(c), based on an average
22 queue of two, where that line would be?
23 A On this plan?
24 Q Yes.
25 A Assuming this is where the cars are --

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1 Q Right.
2 A -- two more cars would be approximately, you know,
3 I want to call it this location, which is approximately 40
4 feet from -- you know, let's assume a car is 20 feet --
5 would be 40 feet from the edge of the canopy of the filling
6 station.
7 Q So if one were to evaluate the distance of the
8 special exception activity to the closest residential
9 property line, is it your view that that point that you just
10 identified may be a reasonable line?
11 A Yeah. I would deduct 40 feet from, from that
12 distance.
13 Q Thank you. Okay. You also identified as one of
14 the other non-inherent effects, and we touched on this, was
15 the size in terms of volume of gas sold and number of pumps.
16 Can you elaborate on that?
17 A Yeah. My understanding is it is -- volume of gas
18 does not equate to a negative impact, is my understanding
19 from the experts.
20 MR. SILVERMAN: I'm going to object to that. I
21 haven't heard those experts.
22 MR. GROSSMAN: Well, there was something filed by
23 Mr. Sullivan, I believe it was, that had almost exactly that
24 statement in it --
25 MR. SILVERMAN: Yes, I know.

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1 MR. GROSSMAN: -- that volume of gasoline pumped
2 does not equate to the -- whether it's correct or not will,
3 will stand the test of time when he testifies.
4 THE WITNESS: And, again, all I'm testifying to
5 is, is those experts who know about that, and my role is,
6 from a land use perspective, is to answer that. And I'm not
7 an expert in all these things. I'm relying on the experts
8 of others.
9 MR. GROSSMAN: Right. He didn't -- whether or not
10 Mr. Sullivan is correct, if I'm remembering correctly it was
11 his statement, that is another question. He's just fairly
12 characterizing that statement.
13 MR. SILVERMAN: I did not hear it. In that
14 exchange I did not hear any land use expertise. I just
15 heard --
16 MR. GROSSMAN: No, no, I'm not --
17 MR. SILVERMAN: -- a summary of someone else's
18 potential testimony.
19 MR. GROSSMAN: No, I don't, I don't think that --
20 well, I don't know about the whole exchange. I'm just
21 saying that, that he was asked a question, and he said it
22 was his understanding from reading Mr. Sullivan, I guess, or
23 from another expert. That was his understanding. I don't
24 think that -- it doesn't come in for the purpose of proving
25 that it's true, okay? It's just --

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1 THE WITNESS: Right.
2 MR. GROSSMAN: -- his understanding of it.
3 MR. SILVERMAN: Okay.
4 THE WITNESS: And can I just say, in regarding the
5 queues, the Planning Board, if this was recommended, had
6 three conditions dealing with the queues --
7 MR. GROSSMAN: Yes.
8 THE WITNESS: -- and those three conditions was
9 dealing with the fueling truck, that, you know, Condition
10 No. 1 was that the fueling truck had to have its engine shut
11 off during the fueling of the pumps.
12 MR. GROSSMAN: Right.
13 THE WITNESS: They also had a condition dealing
14 with signage. They wanted clear and understanding signage
15 of how to get to the fueling station and once people left.
16 MR. GROSSMAN: Right.
17 THE WITNESS: And the third one was if the cars
18 exceeded a certain, you know, volume for the queuing, that
19 Costco would have an additional member out there on the
20 site, directing traffic --
21 MR. GROSSMAN: Right.
22 THE WITNESS: -- besides the one member who's
23 there during the whole duration of when the filling station
24 is open. So the Planning Board --
25 MR. GROSSMAN: Right. All of those were, all of

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1 those were agreed to by Mr. Brann when he testified.
2 THE WITNESS: Right, but I just want to let you
3 know, so also those were addressed as potential conditions
4 on how to address those.
5 MR. GROSSMAN: Okay. Next question.
6 BY MS. HARRIS:
7 Q Just one more comment in terms of volumes. The
8 fact that the gas station doesn't provide any other services
9 besides pumping gas, does that, does that have another
10 effect on, in terms of --
11 A Well, again, it's a vast improvement over what
12 other filling stations have. Most filling stations have,
13 you know, I would call it, something to buy milk or, you
14 know, whatever, fast food or like a 7-Eleven. Then a lot of
15 times they have service stations. They got gas, I mean,
16 they got wash, car washes --
17 MR. GROSSMAN: Car washes, yes.
18 THE WITNESS: -- they got places to vacuum, all
19 things that make noise and have other non-inherent effects
20 compared to this filling station, which is basically just
21 selling gasoline.
22 BY MS. HARRIS:
23 Q Okay, thank you. Now, moving on to the general
24 conditions, 59-G-1.21(a)(1), is a proposed automobile
25 filling station permitted in the C-2 zone?

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1 A Yes, it is permitted.
2 Q Do you want a moment to get your zoning ordinance?
3 A Yeah, I just want to get those portions of the
4 zoning ordinance. Okay.
5 Q And does the --
6 A I've got them.
7 Q Okay. Does the special exception comply with
8 Section (a)(2), which provides that the use must comply with
9 all the standard and requirements set forth in 59-G-2?
10 A Yes, it does.
11 Q We'll get into G-2 momentarily. (A)(3), is the
12 special exception consistent with the Wheaton Sector Plan?
13 A And I think I went very detailed at the specific
14 location. The answer is yes.
15 Q And will the special exception be in harmony with
16 the general character of the neighborhood?
17 A The answer is yes. In this specific finding, they
18 define harmony by population, density, design, scale, and
19 bulk of any proposed new structures, intensity and character
20 of activity, traffic, parking conditions, and other similar
21 uses. So in reference to the general character of the
22 neighborhood, the answer is yes.
23 The neighborhood, you know, is generally, I'm
24 going to call it, the mall. And by the way, absence of
25 impacts means I think it is in harmony, you know, one,

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1 regarding the population, as I briefly discussed, is the
2 mall has a completely different set of hours and it has
3 limited hours and the filling station is within those
4 confines. The filling station is a pad site use and those
5 are, have been normally associated with some of the uses
6 within the Westfield District. Regarding the general
7 neighborhood, also, is the inclusion of the buffer area, the
8 separation, the landscaping, the walls. We got the topo.
9 The separation of uses is another form of harmony, and the
10 proposed filling station is, you know, very small in
11 relationship to the rest of the mall. So, yes, it is in
12 complete harmony.
13 Q And assuming for a moment that the general
14 neighborhood is as staff defined it, would that change the
15 testimony you've just provided?
16 A None whatsoever because, again, we're dealing with
17 traffic, parking condition, you know, the uses within the
18 area, and none of those, you know, the population, the
19 density, the density of the neighborhood does not change
20 regarding that; so it would not change that answer.
21 Q Okay. And in terms of harmony, does it also go to
22 the design scale and bulk of the proposed building?
23 A Yes. I mean, as I testified to, is, is the scale
24 of the building is only 17 foot 6, the height of the
25 building. It's a minimal structure compared to the rest of

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1 the mall, and so the answer is yes.

2 Q In terms of the hours of operation of the gas
3 station, the lighting, the level of activity, the square
4 footage, in your opinion, it fits under the umbrella of
5 existing activities on the mall site?

6 A It is within the umbrellas regarding those hours
7 for, you know, those uses within the mall itself.

8 Q Subsection (a)(5), will the special exception be
9 detrimental to the use, peaceful enjoyment, or development
10 of the surrounding properties or general neighborhood? And,
11 again, in answering this question, I want you to assume that
12 the general neighborhood is as staff defined it.

13 A Sure. Well, one is I can't answer regarding
14 economic value. Someone will come address that. Regarding
15 the detrimental use, the answer is no. Again, as
16 Mr. Agliata, sorry, testified to, is his economic value for
17 the property is the continuation of the mall, and then as he
18 mentioned, the filling station will have absolutely no
19 effect, you know, regarding the mall. Again, as I've
20 mentioned before, you got the buffer area separating the
21 two, you know, the existing residential uses and the filling
22 station itself. You got the enhanced buffer, and it will
23 not impede on the mixed-use development in reference to the
24 rest of the sector plan. So, no, it will not detrimental
25 the use any else, you know, elsewhere, any elsewhere in the

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1 zone.

2 Q Will the special exception cause any objectionable
3 vibrations or physical activities? This is subsection
4 (a)(6).

5 A Yeah, again, you're going to hear from other
6 experts specifically addressing that. From what I have
7 read, the answer is no, it will not have any negative
8 effects.

9 Q And subsection (a)(7), will this special
10 exception, when evaluated in conjunction with existing and
11 approved special exceptions in any neighboring one-family
12 residential area, increase the number, intensity, or scope
13 of special exception uses sufficiently to affect the area
14 adversely or alter the predominantly residential nature of
15 the area?

16 A Well, subsection (7) deals with special exceptions
17 in residential, one-family residential areas. We are not in
18 a one-family residential area.

19 MR. GROSSMAN: Actually, it says in any
20 neighboring one-family residential area. That's what it
21 says.

22 THE WITNESS: Okay. Well, technically, we're not
23 neighboring. I mean, our special exception area is within
24 the C-2 zone. You know, we're not, we're not, you know,
25 abutting a residential area. There's a separation of 120

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1 feet, but even if the answer is yes --

2 BY MS. HARRIS:

3 Q Even if what answer is yes?

4 A That we, you know, that we are, as Mr. Grossman
5 mentioned, we are --

6 Q Neighboring?

7 A Yeah, conjunction with a neighboring one-family
8 area, there are -- the answer to it would be no. We're
9 within the C-2 zone. Staff, and we agree, there are six
10 special exceptions within their defined special, you know,
11 their defined neighborhoods, and none of those special
12 exceptions would be impacted if this filling station was
13 approved.

14 MR. GROSSMAN: I don't think the question is
15 whether the other special exceptions would be impacted. The
16 question is whether the number of special exceptions would
17 impact the neighboring residential neighborhood. That's the
18 real issue.

19 THE WITNESS: Sure. I raised, do they alter the
20 nature of the area, and the question is, is no, it will not
21 alter the nature of the area.

22 BY MS. HARRIS:

23 Q And then subsection (a)(8), will the special
24 exception adversely affect the health, safety, security,
25 morals, or general welfare of the residents, visitors, or

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1 workers in the area irrespective of any adverse effects the
2 use might have if established elsewhere in the zone?

3 A Sure. Well, the filling station doesn't have any
4 security, moral or, you know, negative impacts, you know,
5 regarding the general welfare of visitors or workers to the
6 area. So it does not have any negative land use areas, and
7 it will be -- you'll hear additional testimony from our
8 environmental and health experts regarding to the specifics
9 regarding health issues.

10 Q Thank you. And then the last question deals with
11 APF, but I believe Mr. Grossman addressed that this morning.
12 So we'll move on to subsection --

13 MR. GROSSMAN: Well, I raised the, I raised the
14 question. I didn't -- my question is, given the language of
15 subsection (9), whether or not the Board or the Hearing
16 Examiner has the jurisdiction to make a specific adequate
17 public facilities finding. So you --

18 MS. HARRIS: And I would note --

19 MR. GROSSMAN: -- I don't want you to, I don't
20 want to mislead you into thinking that --

21 MS. HARRIS: No, I --

22 MR. GROSSMAN: -- that's a decided issue. I
23 just --

24 MS. HARRIS: Thank you. And we won't assume that,
25 and other experts will address that to the extent they

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1 haven't already.
2 MR. GROSSMAN: Okay.
3 BY MS. HARRIS:
4 Q The general provisions of the special, of the
5 zoning ordinance also requires compliance with the specific
6 findings that regulate filling stations. Did you review the
7 specific section of the zoning ordinance pertaining to the
8 automobile filling stations?
9 A Yes, under G-2.06.
10 Q Okay. Now I want to walk through those
11 subsections. Subsection (a)(1), will the special exception
12 constitute a nuisance because of noise, fumes, odors, or
13 physical activity in the location proposed?
14 A Well, I can't answer the noise and odors. Our
15 environmental expert will address those. Regarding the
16 physical activity, the answer is no. Again, we have the
17 transition between, you know, Kensington Heights. We got
18 the buffer. The access to the filling station is far
19 superior than any other filling station. So the answer is
20 no, it will not constitute a nuisance.
21 MR. GROSSMAN: You know, before you go on to 2.06,
22 I noticed you skipped over the general requirements of
23 59-G-1.23. I didn't know if that was done advisably or --
24 MR. SILVERMAN: Could you read that, general
25 requirements of?

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1 MR. GROSSMAN: 59-G-1.23, and it has numerous
2 subparts.
3 MS. HARRIS: Well, I would note that G-1.23(a) is
4 not applicable because we are specifically governed by
5 Section 2, G-2.
6 MR. GROSSMAN: Yes.
7 MS. HARRIS: The parking requirements, Mr. Guckert
8 spoke to that and Mr. Duke did.
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: Three, Minimum frontage, Mr. Duke
11 testified to that, and then unfortunately, I'm missing the
12 rest of that section.
13 MR. GROSSMAN: Oh, well, (d) is,
14 "Forest conservation. If a special exception
15 is subject to Chapter 22A, the Board must consider
16 the preliminary forest conservation plan required
17 by that chapter when approving the special
18 exception application and must not approve a
19 special exception that conflicts with the
20 preliminary forest conservation plan."
21 MS. HARRIS: And Mr. Duke testified to that.
22 MR. GROSSMAN: All right. (E) is water quality
23 plan when you're in a special protection area which you are
24 not.
25 MS. HARRIS: Correct.

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1 MR. GROSSMAN: But I just thought I'd --
2 MS. HARRIS: Thank you. Thank you.
3 MR. GROSSMAN: -- I just want to make sure you're
4 not missing any one of the -- however (f) is Signs. They
5 have to, signs have to be consistent with Article 59-F, as
6 in Frank.
7 MS. HARRIS: And our architect testified to that.
8 MR. GROSSMAN: I don't remember, to tell you the
9 truth. It's possible.
10 MS. HARRIS: There was three.
11 MR. GROSSMAN: But I will go over the transcripts
12 at some point. (G) Building compatibility in residential
13 zones, you're not in a residential zone. (H) is lighting.
14 The title is Lighting in residential zones, but the rest of
15 it says,
16 "All outdoor lighting must be located,
17 shielded, landscaped, or otherwise buffered so
18 that no direct light shines into an adjacent
19 residential property,"
20 and then it gives lighting standards. And this is a matter
21 of statutory construction. Usually, the title to a
22 provision is not what governs; it's the provision itself.
23 So you might contemplate whether or not you need some
24 testimony on that point.
25 MS. HARRIS: And, in fact, our architect did

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1 testify to that --
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: -- and there was a photometric in the
4 record that shows that at the lot line we are at zero foot
5 counts.
6 MR. GROSSMAN: Okay. And 59-G-1.24 is, of course,
7 Neighborhood need, and I'm sure you'll have a witness who
8 will address that.
9 MS. HARRIS: We will. Mr. Tom Flynn will address
10 that.
11 MR. GROSSMAN: Okay.
12 MS. HARRIS: Thank you.
13 MR. GROSSMAN: All right. Going back to, you were
14 on 59-G-2.06(a) --
15 MS. HARRIS: (A)(2).
16 MR. GROSSMAN: -- had you -- you completed (1)?
17 MS. HARRIS: Yes.
18 MR. GROSSMAN: Okay.
19 BY MS. HARRIS:
20 Q And (a)(2) is a traffic hazard or a traffic
21 nuisance.
22 A Yeah, and it breaks it down to two parts.
23 Mr. Guckert testified to the, you know, the initial, I'll
24 call it, findings revealing traffic hazards and traffic
25 nuisance in quite detail. The last has an or to it and

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1 location near a vehicular or pedestrian entrance or crossing
2 to a public or private school, park, playground, or hospital
3 or other public uses or public assembly. So, as Mr. Guckert
4 testified, there is no traffic in close relationship to
5 these uses. This is not a land use issue; it deals with
6 transportation. There are no inherent adverse impacts by
7 the location of this filling station regarding these
8 location items.

9 Q Thank you. And then Section (a)(3), will the
10 special exception adversely affect or retard the logical
11 development of the general neighborhood or the industrial or
12 commercial zone in which the station is proposed,
13 considering service required, population, character,
14 density, and number of similar uses?

15 A Again, no. The filling station is within the C-2
16 zone. The logical development, as, as the Westfield, you
17 know, member testified to, says the filling station will
18 have no adverse effect within the commercial area itself.
19 The residential area, which is completely separated, will
20 have absolutely no, no impact, again, whether we accept my
21 definition or staff's, staff's definition. So the answer
22 is, is it will not adversely impact.

23 Q So if, in fact, the special exception is approved
24 and built, the logical development of the residential
25 neighborhood to the south and west of the site will not be

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1 affected?

2 A None whatsoever.

3 Q Moving on to Section (a)(3) -- oh, I'm sorry.
4 (B)(1) requires that the special exception to be 300 feet
5 from any lot line of any public or private school or park,
6 playground, daycare center, or any outdoor use categorized
7 as a cultural, entertainment and recreational use. Does the
8 special exception comply with this?

9 A Yes, it does, and Mr. Duke testified to the
10 specific setbacks regarding where Stephen, you know, the
11 Stephen Knolls School and the existing swim center is.

12 Q And Section (b)(2) requires that when a use abuts
13 a residential zone and is not effectively screened by
14 natural terrain features, the use shall be screened by a
15 solid wall, not less than five feet in height, and
16 plantings. Does the special exception comply with this?

17 A It does comply, even though, again, we're
18 technically not abutting a residential zone. Again --

19 Q Can you explain that point a little bit further?
20 Why do you say we're not technically abutting a residential
21 zone?

22 A Because the special exception area is inside the
23 ring road. There's the ring road, then the buffer zone, and
24 again, everything is zoned C-2. I mean, it's -- but even if
25 we did, the setback requirements far exceeds those. I mean,

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1 the C-2 zone, the special exception, we need to adhere to
2 the adjoining R-60 setbacks, which is 25 feet. Even to the
3 special exception line, if we, if that's the line, we
4 greatly exceed that. We got the eight-foot wall, we got
5 the, you know, the landscape buffer, and again, this talks
6 about which is not effectively screened. We already have an
7 effective screen, and again, Westfield has, has mentioned
8 that they will build an eight-foot wall to even enhance this
9 even further.

10 MR. GROSSMAN: Right. And you've defined the term
11 abutting and say you're not abutting because you're actually
12 within the C-2 zone and there's, so -- whereas the C-2 zone
13 may abut a residential area, your use, the use does not abut
14 it. The other paragraph we had talked about before, I
15 think, said adjacent to. Now, adjacent is different than
16 abutting. So you can be adjacent without being abutting.

17 THE WITNESS: Fair enough.

18 MR. GROSSMAN: Okay.

19 BY MS. HARRIS:

20 Q You mentioned the eight-foot wall. What was the
21 purpose of the eight-foot wall?

22 A Sure. Again, Westfield's representatives walked
23 with the citizens around the periphery of the site, and
24 during that walk, there was a suggestion of building a wall
25 high enough that would screen the proposed filling station

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1 from those viewsheds of the existing residential houses.

2 Q And did you independently verify whether in fact
3 the eight-foot wall did that?

4 A Yeah. Mr. Willard actually commenced with that
5 analysis, and what he did was, on, this is Exhibit --

6 Q It's right there.

7 A I know, but what exhibit is this?

8 MR. AGLIATA: 86(i).

9 THE WITNESS: Sure. What Mr. Willard on 86(i)
10 did, was he identified specific viewsheds from where, what
11 potential houses might see the filling station. On this
12 exhibit -- and Mr. Willard, quite obviously, will go into a
13 little bit more detail -- he identified what the site line
14 would be or the height of the person standing on the second
15 floor, looking at the filling station. So he basically gave
16 us what those elevations are, and I think they're labeled on
17 one of the plans he has submitted. We looked at also, just
18 to verify, the topography to make sure they did make sense,
19 did not verify exactly what it was, but it did seem
20 reasonable from what he came up with.

21 What we did do was we said this is great in plan
22 view. Technology allows us to look at things
23 three-dimensionally, and what we did come up with -- and
24 this is part of the record, also, as 86(g) -- there was a
25 series of those houses which we wanted to verify that the

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1 view from the second-floor rooms would not be visible of the
2 filling station.
3 MR. GROSSMAN: Yes, I saw that in 86(g). Let's
4 make, let's identify which number 86(g) --
5 THE WITNESS: And I'll --
6 MS. HARRIS: And actually, again, Mr. Grossman, if
7 it makes it easier, I have copies and then we can key it to
8 that packet --
9 MR. GROSSMAN: Yes.
10 MS. HARRIS: -- but they are in that packet.
11 MR. GROSSMAN: Yes. No, I saw them in the packet.
12 I just want them, since they've been raised, we might as
13 well -- here they are. Looks like it's 86(g), Circle 6.
14 THE WITNESS: And there's three sheets.
15 MR. GROSSMAN: Yes, 7 and 8.
16 THE WITNESS: And we identified six of the houses
17 which needed to be verified. Some of the houses were behind
18 other houses or they were so far downhill we knew -- when we
19 looked on in the computer, there was no, how should I say,
20 you weren't going to see, see the filling station
21 regardless. So --
22 BY MS. HARRIS:
23 Q So on plan, on Exhibit 86 can you identify, 86(i),
24 can you identify which houses are reflected on that plan?
25 A Yeah, and what we did was we specifically

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1 identified the street addresses --
2 MR. GROSSMAN: Yes.
3 THE WITNESS: -- on the upper left-hand corner. I
4 mean, want me to go through the plan?
5 BY MS. HARRIS:
6 Q Well, let me -- why don't I identify these, and
7 you tell me if they're reflected on there. They're the
8 highlighted ones on the plan. Is one of them 10827
9 Littleford Lane?
10 A Yes, it is.
11 Q And then the second one, 10813 Melvin Grove Court?
12 A Yes.
13 Q 10817 Melvin Grove?
14 A Yes.
15 Q And 10812 Melvin Grove?
16 A Yes.
17 Q And then 2810 and 2811 Peregoy?
18 A Yes.
19 Q Okay. And those are the highlighted items of
20 properties that are reflected on 86(i)?
21 A Yes, they are.
22 MR. GROSSMAN: And these exhibits, 86(g), 6
23 through 8, purport to show a comparison between without the
24 wall and with the proposed wall.
25 THE WITNESS: Right. And topography was

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1 definitely considered, which is the darker green, evergreen
2 color at the bottom. It also shows, I mean, you can tell
3 that even between Views 3 and View 4, the difference
4 between, you know, what the different grades are. The --
5 MR. GROSSMAN: And if these views are correct,
6 then with the wall, at least in these locations, you would
7 not see the structures of the proposed gas station?
8 THE WITNESS: That is correct.
9 MR. GROSSMAN: Okay.
10 BY MS. HARRIS:
11 Q And, Mr. Gang, did this 3-D modeling exercise take
12 into account the existing landscaping?
13 A No. We took out -- we wanted to be as pure as
14 possible, no landscaping, no here's the preferred view, you
15 know, by the way, here's this, granted, take it to your
16 benefit. It was as clean and as simple, you know, for us to
17 look and to evaluate.
18 Q Thank you.
19 A The other thing I want to mention on Views 3 and
20 4, the, I want to call it, the, the tan color, that is the
21 existing screen wall which, which buffers the loading area
22 for the Costco warehouse.
23 MR. GROSSMAN: All right.
24 BY MS. HARRIS:
25 Q Thank you. Okay. Moving on, 2.06(b)(10) -- and I

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1 would just note that we've gone from (b)(2) to (b)(10)
2 because other experts have addressed (b)(3) through (9).
3 MR. GROSSMAN: Okay. Am I done with 86(g)?
4 MS. HARRIS: Yes.
5 THE WITNESS: No.
6 MS. HARRIS: Oh.
7 THE WITNESS: We're going to go through the
8 photographs to the existing site.
9 MS. HARRIS: Oh, I'm sorry, we won't -- no, I'm
10 sorry, sorry.
11 MR. GROSSMAN: Take that back.
12 THE WITNESS: I wish you could but that's the fun
13 part.
14 BY MS. HARRIS:
15 Q All right. We'll get to that in one moment.
16 A Save the best for last.
17 MR. GROSSMAN: So, I'm sorry, which ones did you
18 skip?
19 MS. HARRIS: (B)(3) through (b)(9).
20 MR. GROSSMAN: Okay.
21 BY MS. HARRIS:
22 Q So (b)(10), is the site located within the Rural
23 Village Overlay Zone?
24 A I don't -- the answer is no.
25 Q Thank you. Does the zoning ordinance require the

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1 station to be set back a specified distance from residential
2 properties?
3 A The answer is yes.
4 Q Okay. Can you please explain that?
5 A Yeah. I think, I think, again, there's three
6 setbacks in this specific location. One is, as I mentioned,
7 the setback if you're adjoining a residential zone and,
8 again, being the most conservative, abutting the R-60 zone
9 in which there's a 25-foot setback. There's also a setback
10 for the pumps to the nearest property line, being 10 feet.
11 You also got the zoning text amendment setback of, you know,
12 300 feet from those uses which are listed in that text
13 amendment, and we exceed that 300 feet.
14 Q Okay. Just a moment. In Section 59-G-2.06(b)(1),
15 and back up for a moment, do you have any opinion about that
16 provision as it relates to the relationship between gas
17 stations and residential zones?
18 A Well, the way this specifically reads it doesn't
19 specifically talk about residential zones. It talks about
20 specific land uses, meaning that it doesn't say anything
21 that this 300-foot setback applies to a residential lot
22 line.
23 Q I'm sorry. I meant (b)(2), my apologies.
24 MR. GROSSMAN: I'm sorry. So what are we looking
25 at now?

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1 THE WITNESS: I'm sorry.
2 BY MS. HARRIS:
3 Q Go to Section (b)(2). I wanted, my question was
4 whether the provisions -- do you have any comment about
5 (b)(2) as it relates to the relationship between gas
6 stations and residential zones?
7 A It says when such use -- well, could you rephrase
8 that in a -- sorry.
9 Q No. You know what? I'll just move on. Let me
10 move on.
11 MR. GROSSMAN: Okay.
12 BY MS. HARRIS:
13 Q We've covered the distances, but I wanted to know,
14 when you measured the 400-foot radius from the center of the
15 special exception site from the canopy, how, from -- how
16 many houses are within that area?
17 A I think I mentioned eight.
18 Q Eight, okay. Is this station going to be closer
19 to residences than any other station in Montgomery County?
20 MR. SILVERMAN: Objection.
21 MR. GROSSMAN: And what's the basis for your
22 objection?
23 MR. SILVERMAN: There's no relevance. If the
24 standard here is can we keep making the same mistakes, you
25 know, then the result is, the result is given. But I,

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1 according to what the planning people have informed me --
2 and I haven't heard otherwise -- there has never been an
3 investigation of gas stations of the sort that we're
4 engaging in here. And as just, if you just travel through
5 the county and even hear some of the testimony of the
6 citizens who are in favor of the Costco station, because
7 they hate the stations they live near, it's quite clear that
8 we have not done a good job. And the fact that we've made
9 mistakes other where or that Woodmoor is 400 feet from
10 residences and there's never been an air pollution
11 investigation, how is that relevant to whether this is
12 healthy or not?
13 MR. GROSSMAN: Well, you proffered a lot of
14 information that at this point is not in the record, as part
15 of your objection. But in any event, presumably, the basis
16 for an attempt to admit evidence on this point goes to the
17 question of inherent/non-inherent, and so I will permit it
18 for whatever weight is appropriate.
19 MR. SILVERMAN: Thank you.
20 MR. GROSSMAN: So the objection is overruled.
21 MS. HARRIS: Thank you. I can't recall if he
22 answered the question.
23 MR. GROSSMAN: No.
24 MS. HARRIS: Okay.
25 MR. GROSSMAN: Do you want to pose it again?

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1 BY MS. HARRIS:
2 Q So the question was, is the station going to be
3 closer to residences than any other station in Montgomery
4 County?
5 A Any other, the answer is, I'm not 100 percent
6 sure. However, on a general findings of relationships,
7 yeah, where a filling station is in, I'll call it, in the
8 suburban location of Montgomery County, this exceeds most
9 gas stations, the number of residences within a 400-foot,
10 you know, location.
11 Q And I want to walk -- go ahead.
12 MR. GROSSMAN: I'm not sure I understood that
13 answer exactly. So you -- take another stab at that one.
14 MS. HARRIS: Okay.
15 BY MS. HARRIS:
16 Q How does the proximity of this proposed filling
17 station to residences relate to other existing filling
18 stations to residences?
19 A Generally, the location is far greater than most
20 filling stations in Montgomery County.
21 MR. GROSSMAN: You mean the separation between --
22 THE WITNESS: The separation between --
23 MR. GROSSMAN: -- this proposed station and the
24 existing residences is greater than generally exist in the
25 county?

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1 THE WITNESS: The number of residences within, you
2 know, that distance --
3 MR. GROSSMAN: Within the 400 --
4 THE WITNESS: -- generally is greater. Are there
5 examples in which that might be closer, I mean, or less?
6 The answer is yes, and I even showed an example, but this is
7 generally -- you know, the historic district in Darnestown I
8 think there was one -- but generally, the number of houses
9 in relationship to the filling station, there are a lot more
10 houses within a 400-foot radius than what is, what we're
11 proposing or what is being proposed here.
12 BY MS. HARRIS:
13 Q I want to clarify what you just said. You said
14 there are a lot, there are a lot more houses within a
15 400-foot radius than is shown here.
16 A That is correct, here meaning this particular
17 site.
18 Q So you noted how many are within a 400-foot radius
19 here?
20 A Eight. Eight.
21 Q So you have examples of other stations, 400-foot
22 radiuses around other existing stations where the number is
23 greater than eight?
24 A The number of houses, yes.
25 Q Okay, thank you. And do you have examples of

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1 these?
2 A Yes, I do, and they've been submitted into the
3 record.
4 MR. GROSSMAN: What about the closest residence?
5 You've given a metric of number of houses within 400 feet.
6 I'm not sure where that metric comes from. Is that, is that
7 some kind of a standard that is used in measuring impact on
8 residences or --
9 THE WITNESS: No. I mean, well, when we first
10 started looking at this, we started looking at things in a
11 global picture of where filling stations are because we were
12 challenged in reference to, you know, filling stations, you
13 know, do not occur near Metro stations, they're not TOD,
14 they're, you know. And what I discovered when I was
15 investigating filling stations, they occur almost in every
16 situation, you know, regarding land uses.
17 In reference to your question, there isn't, there
18 was no magic for 200, 400. Two hundred and 400 feet is
19 almost, it's a scale that most planners use. When we first
20 started looking at 200 feet, there were no houses. So I
21 said, you know what, let's look at 400 feet, and it's a
22 general scale. Matter of fact, we can even look at these
23 and go out further. There is no -- it was more of a general
24 guide for discussion and to identify with.
25 BY MS. HARRIS:

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1 Q And when you said there were no under 200 feet,
2 did you mean there were no houses within 200 feet of the
3 subject?
4 A That is correct.
5 Q And so that was one of the reasons that you
6 increased the distance from 200 feet?
7 A We increased it to 400 feet.
8 Q Okay. What I'd like to do, and this is the last
9 reference to 86(i) --
10 MR. GROSSMAN: (G)?
11 MS. HARRIS: (G), sorry.
12 BY MS. HARRIS:
13 Q Is go through some of those, and again, what we
14 did for purposes of this whole thing is made copies of them
15 to hand out.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: Could I ask a small favor?
18 BY MS. HARRIS:
19 Q Yes.
20 A May I go powder my nose?
21 Q Certainly. Well, I can't answer this.
22 THE COURT: All right. Yes. It's five to 4:00.
23 Why don't we come back at 4 o'clock.
24 MS. HARRIS: Thank you.
25 THE WITNESS: Thank you.

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1 (Whereupon, a brief recess was taken.)
2 MR. GROSSMAN: All right. We're back on the
3 record again. Yes.
4 MS. SAVAGE: Mr. Grossman --
5 MR. GROSSMAN: Yes.
6 MS. SAVAGE: -- Donna Savage.
7 MR. GROSSMAN: Yes.
8 MS. SAVAGE: I was under the impression, until you
9 announced it, that Mr. Gang was going to be finished at 4:15
10 today. So I have other plans, and I'm very much involved in
11 the whole sector plan --
12 MR. GROSSMAN: Yes.
13 MS. SAVAGE: -- analysis. So I don't know what to
14 say. I have -- I want to be here for his testimony. So I
15 don't know quite how to deal with it.
16 MR. GROSSMAN: Well, first of all --
17 MS. SAVAGE: I mean, he's not going to be finished
18 today anyway, I don't think.
19 MR. GROSSMAN: How far are we from finishing the
20 direct?
21 MS. HARRIS: We are very close to the conclusion
22 of his testimony.
23 MR. GROSSMAN: His direct.
24 MS. HARRIS: His direct, but the problem --
25 MR. GROSSMAN: All right.

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1 MS. HARRIS: -- one issue was, once he notified me
2 that he canceled his evening event --
3 MR. GROSSMAN: Yes.
4 MS. HARRIS: -- I told Mr. Tucker that Mr. Gang
5 was going to go through to the close, and so we don't have
6 Mr. Tucker here.
7 MS. ROSENFELD: Well, and I was expecting to be
8 someplace else by 5:30, and I certainly will not be done
9 with cross-examination in that amount of time.
10 MR. SILVERMAN: It seems to me we've all been good
11 here. If we left a little early, it wouldn't be untoward.
12 MR. GROSSMAN: Well, let's --
13 MS. ROSENFELD: I candidly didn't think
14 Mr. Tucker's testimony was going to take a very long time.
15 MS. SAVAGE: Mr. Tucker?
16 MR. GROSSMAN: Yes.
17 MS. HARRIS: My concern is -- and I hate to bring
18 this up now, and I don't expect us to address it now -- but
19 I'm not so sure that the hearing dates that we have are
20 going to be sufficient. So I hate when we start not
21 maximizing the amount of time we have on any day.
22 MS. ROSENFELD: Well, we're not the ones who
23 released Mr. Tucker.
24 MR. GOECKE: Well, we did announce this earlier
25 today, and no one objected to it at that time.

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1 MR. GROSSMAN: That's true. I mean, if -- nobody
2 objected when he announced it that he would be here longer.
3 So --
4 MS. ROSENFELD: Well, they mentioned it, then
5 started right into the testimony.
6 MS. HARRIS: I mean, that's true. If they had --
7 at 2 o'clock, when we mentioned it, they could have said no,
8 that's not going to work for us. Then I wouldn't have --
9 MR. GOECKE: Released Mr. Tucker.
10 MS. HARRIS: -- told Mr. Tucker to go. It was
11 only after announcing it.
12 MR. GROSSMAN: All right. Well, let's proceed now
13 with the, finishing the direct, and then we'll figure out
14 where we go from there.
15 BY MS. HARRIS:
16 Q Okay. So we were, I had --
17 MR. GROSSMAN: We're back on the record.
18 BY MS. HARRIS:
19 Q Do you have specific examples of stations that are
20 closer to residential uses?
21 A Yes.
22 MS. HARRIS: And, Mr. Grossman, what I'd like to
23 do -- and I'm referring now to 86(g), is distribute copies
24 of various photos that are in the record as part of 86(g).
25 MR. GROSSMAN: Okay.

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1 MS. HARRIS: So that's where we had left off.
2 MR. SILVERMAN: I renew the objection.
3 MR. GROSSMAN: I know you have an objection on,
4 essentially, a relevance --
5 MR. SILVERMAN: Right.
6 MR. GROSSMAN: -- objection, and so we'll give it
7 the weight it deserves after we hear the whole case.
8 BY MS. HARRIS:
9 Q Okay. Mr. Gang, if you could, I'd like you to
10 walk through these exhibits and explain why you chose these
11 and what the relevance is.
12 A Sure. Well, in the record there's approximately
13 50 examples. The reason we chose these were they were most
14 compatible to, yeah, as close as could be to the proposed
15 filling station in relationship to existing, existing
16 residential communities.
17 Q When you say compatible, do you mean comparable?
18 A Comparable.
19 Q Okay, thank you. And so what -- the first sheet,
20 which says Proposed Costco Gas Station, can you explain what
21 the relevance of that is?
22 A Sure. The relevance is this basically sets the
23 compatible comparisons for the other photographs. It shows
24 where the filling station is. You can see where the
25 vegetative buffers are. You can see where the existing

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1 houses are. And, again, it gives you a sense of scale of
2 where those houses are in relationship to the filling
3 station and those other uses surrounding it.
4 Q Okay. And proceeding on.
5 A Sure. The other ones -- and again, you know,
6 you'll have Nos. 1 through 50-plus -- are different
7 examples, basically, you know, down county and in the
8 surrounding areas. The first one is the filling station at
9 University Boulevard and Colesville Road, and it shows that
10 there are approximately eight single-family houses within
11 that, you know, within that cone.
12 MR. GROSSMAN: Within which cone? Two hundred --
13 THE WITNESS: Within the 400-foot buffer.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: And most of them are on one side of
16 the road, similar, you know, similar to what we have now,
17 and the retail use is on the other side. The second one --
18 BY MS. HARRIS:
19 Q As we flip through these --
20 A Want to go through --
21 Q Okay. Just a moment. As we flip through them, I
22 think what is most important, if you could just identify the
23 location and indicate how many houses are within that
24 400-foot buffer.
25 A Sure, and the only other, and I want to -- right,

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1 except for two I want --
2 Q Okay.
3 A -- to get into a little more detail. Number 29 is
4 at University Boulevard. There are 17 houses within that
5 400 cone, plus an existing multifamily building, which I was
6 not able to identify how many, you know, units were in
7 there.
8 MR. GROSSMAN: So let me go back for a second to
9 Site 28 at --
10 THE WITNESS: Twenty-nine.
11 MR. GROSSMAN: No, to Site 28, Montgomery Blair.
12 THE WITNESS: Yes.
13 MR. GROSSMAN: You said there were eight in that
14 case?
15 THE WITNESS: Eleven.
16 MR. GROSSMAN: Oh, 11 --
17 THE WITNESS: Yes.
18 MR. GROSSMAN: -- on No. 28?
19 THE WITNESS: Yes.
20 MR. GROSSMAN: All right. So I'm just going to
21 write in there 11 houses, and then on Site 29 there were how
22 many?
23 THE WITNESS: Seventeen, plus a multifamily
24 building.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: Thirty, there are 43.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: Thirty-six -- this is off of
4 University Boulevard -- there are 19. The plan is on the
5 next page. The reason I included the photograph, which I
6 think you were kind of questioning in reference to houses
7 which are in close proximity to the filling station, and I
8 just want to -- you know, this is off of University
9 Boulevard. You can basically see on the right-hand side --
10 this is normally, this is what's approvable in a 25-foot
11 setback, 50-foot right-of-way -- the fence, which is normal,
12 which is what is, which is to standard, and you can see the
13 trash in the back. You can see the, you can see the
14 signage, the minimum landscaping. So --
15 MR. GROSSMAN: How many are within 200 feet in
16 this one?
17 THE WITNESS: Within 200 feet, and I want to
18 count, five.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Six.
21 MS. ROSENFELD: And excuse me. I just want to
22 clarify, that is Site 36 that you're talking about?
23 THE WITNESS: Yes.
24 MR. GROSSMAN: Yes.
25 MS. ROSENFELD: And where, where -- oh, I see.

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1 Okay.
2 THE WITNESS: I did the photograph to present a
3 point in reference to how close houses are to filling
4 stations --
5 MR. GROSSMAN: Okay.
6 THE WITNESS: -- down county. Forty-three, there
7 are 20. This was the old Wheaton lumberyard site which was
8 built after the filling stations were in place, and those
9 are all the Shell, not the Exxon, off of University. Number
10 44 and 45 is the stations at Montgomery Mall; there are 32
11 houses within 400 feet. Forty-seven, there's 29.
12 Forty-eight and 49, which is Veirs Mill Road, you know,
13 inside the sector plan, there are 14. And the last one is
14 18, and again, these houses were built after the gas
15 station, and as you can see on the next three photographs,
16 are how close those single-family houses are to the pump
17 stations and what is normally, you know, what is the
18 standard for fencing along --
19 MR. GROSSMAN: On Site 51 you say there are 18 --
20 THE WITNESS: Fifty-one, you can see, you know,
21 basically --
22 MR. GROSSMAN: -- 18 houses?
23 THE WITNESS: Yeah. Eighteen did I say? Yes, I
24 did, and you can see, you know, basically from the second
25 floor, looking right into, to the filling station and all

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1 those other uses associated with it.
2 BY MS. HARRIS:
3 Q And with respect to Site 51 --
4 MR. ADELMAN: Mr. Grossman, could I object to
5 this?
6 MR. GROSSMAN: Certainly.
7 MR. ADELMAN: None of these pictures is comparable
8 in any way to the first page. It depends, of course, on how
9 you define comparable, but if you simply look at the first
10 page -- and I'm assuming that these are all the same
11 scale -- the first page shows a gas station nestled in close
12 proximity to a community with almost no major road visible
13 anywhere in that vicinity. There is no information. As all
14 the others show some houses near a gas station crisscrossed
15 by major roads, there's no information about when the gas
16 station was built versus when the community or the houses
17 were built, before or after.
18 MR. GROSSMAN: Well, actually, he has given some
19 information, at least on one. He said the houses were built
20 after it, but --
21 THE WITNESS: In a couple --
22 MR. ADELMAN: A couple.
23 THE WITNESS: -- where they were built after.
24 MR. ADELMAN: But that's --
25 MR. GROSSMAN: But yes, your objection is noted.

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1 Once again, that's a relevancy objection, and I'm going to
2 receive the information and give it the weight that it
3 deserves in the context of the, of the comparison you're
4 complaining about --
5 MR. ADELMAN: Yes. Thank you very much.
6 MR. GROSSMAN: -- that is that you may have an
7 apples and oranges situation, not only from the question of
8 whether or not it's near roadways, which I'm not sure is as
9 significant as the question of whether this type of gas
10 station, functioning the way it's proposed to function, is
11 comparable. But I think it does bear on the issue of, of
12 inherent/non-inherent; so I think it's legitimately
13 admissible.
14 Let's give this set of photos its own little
15 identification as Exhibit, okay, 160, and we'll say
16 comparison of proposed Costco station -- these are all in
17 Montgomery County?
18 THE WITNESS: Yes.
19 MR. GROSSMAN: With other Montgomery County gas
20 stations in terms of number of single-family residences
21 within a 400-foot radius. Does that fairly describe what
22 this document does?
23 (Exhibit No. 160 was marked
24 for identification.)
25 THE WITNESS: Yes, it does.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: And I also have a key plan for where
3 specifically, part of the record, where these stations are
4 located --
5 MR. GROSSMAN: Okay.
6 THE WITNESS: -- on the plan.
7 MS. ADELMAN: Mr. Grossman, may I make a request,
8 please?
9 MR. GROSSMAN: Ms. Adelman.
10 MS. ADELMAN: If counsel is going to continue to
11 have these handouts, that there be sufficient number for
12 those of us who are participating in this hearing, because
13 we're -- four of us are sharing and three of us are sharing
14 back here.
15 MR. GROSSMAN: Yes, let's try to do that. I mean,
16 it is, it is actually part of an exhibit that's in the
17 record, but I think that in terms of the way we all function
18 here, the best thing to do would be to have enough to handle
19 at least each of the organizational opponents here, okay?
20 MS. HARRIS: Okay.
21 MR. GOECKE: Well, we passed out --
22 MS. HARRIS: Yes. I mean, we've been passing out
23 five or -- at least five each time.
24 MS. ADELMAN: I haven't gotten any.
25 MS. CORDRY: We got three here.

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1 MR. GROSSMAN: I think Mr. Silverman is hogging
2 them all.
3 MS. CORDRY: I mean, we got three, had three
4 handouts on this one, I believe.
5 MR. GROSSMAN: We'll all pick on Mr. Silverman.
6 MS. ROSENFELD: Yes, we're sharing up here.
7 MS. HARRIS: We'll do what we can in the future,
8 but we thought --
9 MR. GROSSMAN: Pick on the lawyers. That's --
10 MS. HARRIS: -- we were being generous, but we can
11 be more generous.
12 MR. GROSSMAN: All right, thank you. I think
13 you've been very respectful of --
14 MS. HARRIS: Thank you.
15 MR. GROSSMAN: Okay.
16 BY MS. HARRIS:
17 Q Mr. Gang, if you know the answer, how many pumps
18 are at that station which is identified as Site 51? Do you
19 know that?
20 A The answer is, off the top of my head, no, but I
21 do have in that case, I do have the number.
22 Q Okay. Can you find it quickly?
23 A The answer to your question is no. Can --
24 Q Okay.
25 A -- I find it? Yes, but quickly, I would assume

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1 within 10 seconds --
2 Q Okay. That's okay then. Do you know whether that
3 station sells diesel gas?
4 A Yes, it does.
5 Q Okay. In evaluating the sites that you just, that
6 we just reviewed, what were your conclusions?
7 A My conclusions is, is that the majority of the
8 filling stations, houses are far closer than what, you know,
9 what is the relationship of the filling station, the closest
10 house is closer to the filling station than the, is closer
11 -- let's go back again.
12 MR. GROSSMAN: Let me stop you for a second.
13 Based on what you've testified, I don't think you can make
14 that statement. You've -- not what you produced here. You
15 can't say the majority of and the majority of gas stations.
16 Are you talking about majority in the county?
17 THE WITNESS: No. The examples which I showed --
18 MR. GROSSMAN: Of the examples you showed --
19 THE WITNESS: Correct, the, there are, there are
20 houses closer to filling stations than the proposed filling
21 station under review.
22 BY MS. HARRIS:
23 Q Would you say that it's a reasonable statement
24 that locating gas stations proximate to residential uses is
25 commonplace in Montgomery County?

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1 A Yes. I mean, you do see many of those examples
2 around Montgomery County.
3 MR. GROSSMAN: I mean, commonplace is a tough word
4 to --
5 THE WITNESS: I know. I agree.
6 MR. GROSSMAN: -- to factor in because I don't
7 know if he studied every gas station in the county. So I
8 don't know whether commonplace in this, in this situation
9 means you do find it in a number of places or it means that
10 it's most of the places or -- I really don't know. Do you
11 have some figures on that that you want to put in, or is it
12 just --
13 BY MS. HARRIS:
14 Q In your review of Montgomery County sites, would
15 you say there's --
16 MR. GROSSMAN: Well, I don't want him to, I don't
17 want him to waffle it up here.
18 MS. HARRIS: Okay.
19 MR. GROSSMAN: I want to know -- if he studied all
20 of them and he can, and he can say, then he can say; but if
21 he hasn't, let's not have him speculate.
22 BY MS. HARRIS:
23 Q Do you know from the, all of the examples that are
24 in the record -- and I know we didn't walk through all of
25 them -- but all of the Montgomery County sites that are in

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1 the record, do all of them have more than eight houses
2 within a 400-foot radius?
3 MR. GROSSMAN: You mean --
4 MS. ROSENFELD: Objection. I have no idea what --
5 MR. GROSSMAN: Yes. I'm not sure that that's
6 going to prove anything. The ones that were in the
7 record --
8 MS. HARRIS: No? Oh, I thought that's what you
9 were --
10 MS. ROSENFELD: -- what she's talking about.
11 MR. GROSSMAN: -- are ones you selected to put in
12 the record. So --
13 MR. SILVERMAN: Right.
14 MR. GROSSMAN: -- it's not going to, that's not
15 going to be meaningful to me. What may be meaningful is the
16 fact that yes, we know this more than once from what you
17 produced in Exhibit 160, there are more than four houses
18 within 400 feet of, of gas stations in the county, and you
19 have any number of instances. Unless you had a statistical
20 study which says you've looked at every station, here's the
21 comparison, I don't think it's helpful to speculate on --
22 THE WITNESS: But I did look at many, many
23 examples, and I could have done -- I mean, again, when I
24 first started doing this, it, it started looking at filling
25 stations in relationship to other uses, meaning that I

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1 started -- when you look at the numbers, they started
2 looking at them in urban areas, are filling stations in
3 urban areas, and then I started working outward,
4 relationship to how they compare to residential. The ones
5 which I investigated -- and I didn't put every one into the
6 record -- the far, far majority of them --
7 MR. GROSSMAN: Yes, did you look at every station
8 in the county?
9 THE WITNESS: I didn't say every one --
10 MR. GROSSMAN: No. I was asking --
11 THE WITNESS: -- the majority of them. Almost,
12 you know, I looked at so many of them --
13 MR. GROSSMAN: Mr. Gang, did you look --
14 THE WITNESS: The answer is no, did I look at
15 every one, sorry.
16 MR. GROSSMAN: Okay. So the simple answer is I'm
17 not going to have you extrapolate here and say what all of
18 them show based on, or speculate on what a majority is,
19 because you looked at a limited number of them, whatever
20 that limit is.
21 So I take the evidence for what it is, that there
22 are these other stations which you've shown, subject to
23 cross-examination and contrary proof, that there are other
24 stations that have residences within 400 feet and many of
25 them more than four --

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1 MS. HARRIS: Thank you.
2 MR. GROSSMAN: -- because it shows what it shows.
3 Okay.
4 BY MS. HARRIS:
5 Q Based on your testimony and in your professional
6 opinion, does the proposed special exception satisfy all of
7 the applicable code requirements?
8 A Yes, it does.
9 Q And did you consider whether the proposed special
10 exception is compatible?
11 A Yes, I did.
12 Q And what did you, recognizing that the whole issue
13 of compatibility is above and beyond the zoning ordinance
14 requirements, what did you conclude regarding compatibility?
15 A Sure. There are no adverse, no adverse impacts.
16 It's an incremental density to, to the mall itself. It's
17 consistent with the existing zoning, and it's compatible
18 with the by right land uses surrounding the station. The
19 use exceeds all the setbacks in the C-2 zone, including the
20 zoning text amendment between the residential and commercial
21 uses.
22 Q And does the use exceed the separation
23 requirements pursuant to the zoning text amendment?
24 A Yes, it does.
25 Q And so in your opinion, is the use compatible with

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1 the lone-standing commercial operation of the mall and the
2 general neighborhood as defined by staff?
3 A Yes, it is.
4 Q Thank you.
5 MS. HARRIS: No further questions.
6 MR. GROSSMAN: Okay. Now, Ms. Savage --
7 MS. SAVAGE: Yes.
8 MR. GROSSMAN: -- do you -- how late can you stay?
9 MS. SAVAGE: Well, I'm already a little late, but
10 I can probably stay until 4:30, 4:40, something like that.
11 MR. GROSSMAN: All right. Let's, then let's begin
12 the cross-examination and at least go until then, and then
13 we'll quit 20 minutes early. How's that?
14 MS. SAVAGE: Thank you.
15 MR. GROSSMAN: Who wishes to begin?
16 MS. ROSENFELD: Michele Rosenfeld for Kensington
17 Heights will be happy to begin.
18 MR. GROSSMAN: Thank you, Ms. Rosenfeld,
19 appreciate it.
20 CROSS-EXAMINATION
21 BY MS. ROSENFELD:
22 Q Mr. Gang, your land use report, it's already in
23 the record as Exhibit 10, I believe.
24 MR. GROSSMAN: Yes.
25 BY MS. ROSENFELD:

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1 Q When you prepared that report, could you identify
2 the site plan exhibit in the record that was the basis for
3 that report? Which site plan layout were you actually
4 evaluating at the time?
5 A At the time, it's the one which is in the record
6 right now.
7 MR. GROSSMAN: Well, there are, we have many in
8 the record.
9 BY MS. ROSENFELD:
10 Q There's a number in the record. I need an
11 exhibit.
12 A Sure.
13 MS. HARRIS: I'm sorry, Andy. What are you
14 looking for?
15 THE WITNESS: I'm sorry, the land use report has
16 the two exhibits. It's dated November 2nd, 2012.
17 MR. GROSSMAN: Okay.
18 BY MS. ROSENFELD:
19 Q And the exhibit number?
20 A And the name of the plan, I'm just saying, it's
21 called Attachment B.
22 Q Yes.
23 A And it shows the filling station and the
24 surrounding area. It shows the 300-foot dimension to the
25 pool area.

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1 Q Attachment B, your Exhibit 10. And in the record
2 what is the exhibit number of Attachment B?
3 A Do you know which --
4 MS. HARRIS: What was the question?
5 THE WITNESS: What's the exhibit number for that
6 specific exhibit?
7 MR. GROSSMAN: The plan was in November of 2012,
8 which I guess would have been the first plan you filed --
9 MS. HARRIS: Right, it was.
10 MR. GROSSMAN: -- which was 54 maybe. Let's see.
11 Wait a minute.
12 MS. HARRIS: 4(b).
13 MR. GROSSMAN: 4?
14 MS. ROSENFELD: 4(b).
15 MS. HARRIS: (B).
16 MR. GROSSMAN: Okay.
17 MS. ROSENFELD: Thank you.
18 MR. GROSSMAN: Okay.
19 MS. ROSENFELD: And may I approach?
20 MR. GROSSMAN: Certainly.
21 BY MS. ROSENFELD:
22 Q Mr. Gang, I wanted to show you what's been marked
23 today as Exhibit No. 152(c), proposed special exception
24 plan, and ask you to take a look at that. Have you, do you
25 recognize this plan?

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1 A Do I recognize it? Yes.
2 Q You do. And what is the revision date on that
3 plan, please?
4 A I did not prepare this plan. So, I mean, I'd be
5 happy to -- I can read you the plan. It's March 24th, 2013,
6 I'm sorry, May 24th, 2013.
7 Q And have you seen this plan before today?
8 A This plan? No, I have not.
9 Q Okay. All right. And so your testimony today
10 didn't address any of the revisions that might have been
11 made since your report was prepared, is that correct?
12 A That is correct.
13 Q Okay. Did your report incorporate any revisions,
14 any intervening revisions from the Exhibit 4(b) that was
15 originally filed?
16 A No, it did not.
17 Q Okay, thank you. And were you consulted on any of
18 the changes that have been made to the most recent plan?
19 A I was advised of the changes.
20 Q You were advised. And if I read your résumé
21 correctly, you've been an architect for approximately 35
22 years, is that --
23 A That is correct.
24 Q Okay. And --
25 A By the way, and you probably forgot how old I am.

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1 That's okay.
2 Q And it appears you've testified many times in
3 cases as an expert witness before boards of appeals and
4 planning commissions --
5 A Yes, I have.
6 Q -- over that time. Ballpark, do you have any
7 sense for how many cases?
8 MR. GROSSMAN: Well, how is that relevant now that
9 we've finished the voir dire and he's been accepted as an
10 expert without any questions?
11 MS. ROSENFELD: Well, I'll just get directly to
12 the next question.
13 BY MS. ROSENFELD:
14 Q How many gas station cases have you worked on in
15 your professional capacity during those 35 years?
16 A This is my first one.
17 Q First one, okay.
18 MR. GROSSMAN: Isn't that more appropriately a
19 voir dire question? Once his expertise is determined and
20 accepted -- but wouldn't that question go to the level of
21 his expertise, what should be evaluated?
22 MS. ROSENFELD: My line of questioning isn't going
23 toward the expertise but how many gas stations he's familiar
24 with that are located within the parking lot of a mall, and
25 if this is the only gas station he worked on --

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1 MR. GROSSMAN: Well, I'm going to let you ask the
2 questions. I just think it's really, it goes to his
3 expertise or the weight to be given his testimony, which is
4 -- that is, the extent of his expertise in dealing with
5 these issues. So it's really a voir dire issue, but go
6 ahead.
7 MS. ROSENFELD: Well, I proffer that it really has
8 a different purpose, and that is, to determine whether or
9 not a gas station located in the parking lot of a mall was,
10 in fact, a unique characteristic of this --
11 MR. GROSSMAN: Okay. I see.
12 MS. ROSENFELD: -- of this project.
13 MR. GROSSMAN: Then go right ahead.
14 BY MS. ROSENFELD:
15 Q If this is your first one, I'm assuming this is
16 the only one you've ever dealt with where the gas station is
17 located within the parking lot of a mall, is that correct?
18 A That I dealt with as an expert witness?
19 Q Yes, that's correct.
20 A The answer is yes.
21 Q Have you ever dealt with one as a non-expert
22 witness?
23 A As a non-expert witness, the answer is no.
24 Q And you testified just a few moments ago that you
25 had looked at many gas stations located within Montgomery

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1 County, is that correct?
2 A That is correct.
3 Q And do you have a ballpark figure as to how many
4 you reviewed?
5 A I would estimate, approximately 30.
6 Q Okay. And how many of those gas stations were
7 located within the parking lot of a regional mall?
8 A Well, the one example is, is No., which is located
9 within a mall, are the, is, is Sites 44 and 45. Matter of
10 fact, there aren't many malls in Montgomery County, but this
11 is Democracy Mall, and there are two filling stations which
12 have access to a parking lot in the southwest corner of the
13 mall.
14 Q And would that be Westfield Montgomery Mall?
15 A Yes, it would be.
16 Q And do you know if these gas stations are located
17 within the boundaries of the mall itself?
18 A I do not.
19 Q Do you have to go through a mall parking lot to
20 access either or both of those gas stations?
21 A Do you have to? No.
22 Q They both have direct access from either Democracy
23 Boulevard or Westlake Drive, is that correct?
24 A That is correct.
25 Q And do you know if it is possible to access either

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1 or both of those gas stations directly from the parking lot
2 of Westfield Montgomery Mall?
3 A As I -- the answer is I don't remember.
4 Q Okay. And aside from the sites located at Sites
5 44 and 45, did you encounter any other gas stations that
6 were located in proximity to or within -- I'm going to
7 strike that entire question.
8 Did you find any other, any gas station locations
9 that were located within the parking area of a regional
10 mall?
11 A No.
12 Q And if I recall the other -- there are other
13 photographs in the record of other gas stations located in
14 other jurisdictions as part of Exhibit 86, as I recall. Did
15 you prepare those exhibits?
16 A Yes, I did.
17 Q And could you please detail for me what
18 jurisdictions they came from?
19 A Sure. They were Washington, D.C. We looked at
20 some in Arlington County. I'm not sure if it got into the
21 record, we also looked at Tysons Corner, and I think there
22 was one in Prince George's County.
23 Q Were there any in New York?
24 A Yes, thank you, New York City.
25 Q In your review of gas stations in Washington,

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1 D.C., did you look at the zoning standards in Washington?
2 A No, I did not.
3 Q Did you look at the zoning standards in Arlington
4 County?
5 A No, I did not.
6 Q Did you look at the zoning standards in Tysons
7 Corner?
8 A For that one, Tysons just went through a sector
9 plan; so I'm familiar with it. Did I look specifically, you
10 know, whether that gas station conforms? I want to say, no,
11 I did not.
12 Q And the one in Prince George's County?
13 A I did the master plan; so I'm very familiar with
14 that. So the answer is yes.
15 Q And was that a special exception or a by right gas
16 station?
17 A By right.
18 Q And in New York City, did you look at the zoning
19 standards in New York City?
20 A No, I did not.
21 Q So it's fair to say that you cannot establish for
22 the record whether or not the zoning standards for any of
23 those gas stations are the ones that would be applicable to
24 the Costco in Wheaton?
25 MR. GOECKE: Objection. It's not relevant and it

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1 wasn't the purpose -- they weren't offered to show that they
2 were in compliance with zoning ordinances in other
3 jurisdictions. They were used to show the proximity of the
4 filling station to residential properties.
5 MR. GROSSMAN: Overruled. I --
6 MS. ROSENFELD: Well, I would suggest, I would
7 suggest it's highly relevant.
8 MR. GROSSMAN: You won already. Overruled. I
9 think it's --
10 MS. ROSENFELD: Thank you.
11 MR. GROSSMAN: -- I think it's arguably
12 relevant --
13 MS. ROSENFELD: All right, thank you.
14 MR. GROSSMAN: -- based on the fact that you
15 introduced it as part of your exhibits.
16 BY MS. ROSENFELD:
17 Q In looking still at Exhibit No. 160, can you tell
18 me if the scale of these photographs, the scale of the
19 photograph on the top sheet with the proposed Costco gas
20 station is the same scale as the following sites? I'll make
21 it an all-inclusive question.
22 A You mean are they graphically all the same?
23 Q Are they graphically all photographed at the same
24 scale?
25 A There's a few -- they all show the 200-foot/400

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1 feet. Are they all exactly the same graphics? No, there
2 are a few which are different.
3 Q Okay. And could you show me which ones are
4 different and how?
5 A Yeah. I think the ones which are different are 44
6 and 45, 47, 48, and 49.
7 MR. GROSSMAN: But does that make a difference,
8 counsel, if in fact that the concentric circles show the
9 radii are accurate, based on whatever the scale is?
10 MS. ROSENFELD: They will be in a minute.
11 BY MS. ROSENFELD:
12 Q Could I have those numbers again, please, 44, 47?
13 A Sure. They are 44 and 45 --
14 Q Yes.
15 A -- 47 --
16 Q Yes.
17 A -- 48 and 49.
18 Q And those are the same scale or different, a
19 different scale?
20 A They're a different scale.
21 Q Okay.
22 MR. GROSSMAN: But I presume that the concentric
23 circles that show the radii, at least, are accurate; that
24 is, when you say 400 feet in radius, that's an accurate
25 depiction, right?

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1 THE WITNESS: It shows 400 feet from the --
2 MR. GROSSMAN: Okay.
3 THE WITNESS: -- center of the canopy of the
4 station.
5 MR. GROSSMAN: I mean, Ms. Rosenfeld, does it
6 really matter if the scale is the same if they are actually
7 accurately showing the radius?
8 BY MS. ROSENFELD:
9 Q Well, my question is this: If I were to take the
10 special exception boundary from the first sheet and cut this
11 out and superimpose it over Site 28, for example, if it is
12 at the same scale, then in theory it would show me
13 accurately the size of this special exception facility
14 compared with the size of the gas station that you have
15 shown on Site 28, is that correct?
16 A That would be correct.
17 Q And so would it be physically possible to place
18 the proposed Costco gas station over the location of the gas
19 station shown at Site 28 and conform with zoning standards,
20 leaving those buildings in place?
21 A I'm sorry. Could you ask your question again?
22 Q If I were to superimpose the Costco gas station
23 over the gas station shown on Site 28, it in fact would
24 cover most of these buildings within the 200-foot circle, am
25 I correct?

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1 A It would be larger than the filling station which
2 is there right now. So the answer is yes.
3 Q And do you know if any of these uses would impose
4 the 300-foot requirement of the zoning text amendment?
5 A Would any of these uses? Well --
6 Q The surrounding uses.
7 A -- the answer is, I think No. 29, if you want to
8 go through it, and that's one of the reasons we showed it,
9 because of, you know, where the school -- I'm sorry. In
10 reference to that, the answer is no. And by the way, I
11 don't know how many gallons each of these stations sells.
12 So I can't answer specifically whether it applies, but what
13 I can say is there's a school in close proximity to 29. I
14 can say on, there's another one, I can say on No. 47 there's
15 a swimming pool within 300 feet, so -- out of the specific
16 examples talked about today.
17 Q So, in fact, while these -- do you know if any of
18 these gas stations pumps more than 3.6 million gallons?
19 A I said I don't know.
20 Q You don't. You don't know, okay.
21 A I don't know. This is -- sorry.
22 Q But if we were --
23 MR. GROSSMAN: All right. Let me stop you there,
24 Ms. Rosenfeld, because we're abutting this 20 to 5:00 time.
25 I just want to clear up one thing before you depart, and

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1 that is, in answer to the very early questions Ms. Rosenfeld
2 asked, you said that you, your testimony did not apply to
3 the plans as changed, if I understood you correctly, as
4 modified, as indicated in the most recent, most recently
5 filed special exception plans. Did I understand that
6 correctly?
7 THE WITNESS: My, I thought the question was
8 asked, was my land use report based upon -- what was the
9 date my land use report was based upon.
10 MR. GROSSMAN: That was the first question, but
11 later on she asked you whether or not your testimony took
12 into account the changes that had been made in the updated
13 plan that was filed today.
14 THE WITNESS: Oh, well, I will change my answer.
15 Yeah, my testimony has been based, always has been based
16 upon the latest information to date.
17 MR. GROSSMAN: Okay.
18 BY MS. ROSENFELD:
19 Q But you also --
20 A My issue, my testimony has been based regarding
21 land use, land use issues. So, for example, the filling
22 station itself has not changed, the location of the entry
23 into the filling station, the surrounding neighborhood has
24 not changed. So those, those items specifically dealing
25 with land use issues, the proposed revisions which have been

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1 ongoing has not, I don't think has changed my testimony or,
2 you know, what was written.
3 MR. GROSSMAN: Okay.
4 MS. ROSENFELD: Well, Mr. Grossman, on that note
5 then --
6 MR. GROSSMAN: I'm going to let you pick up on
7 that thread later, you know, when you come back. I thought
8 I'd clarify that because I wasn't sure whether the witness
9 was talking -- I think your question was about whether his
10 current testimony covered the changes --
11 MS. ROSENFELD: It was.
12 MR. GROSSMAN: -- and I think he heard it, from
13 what he's saying now, as still asking about whether his
14 original land use plan was based on or took into account the
15 changes. That's what he's saying he meant and that's why I
16 wanted to clarify that before everybody went home, if that
17 was his testimony, so that you can, when you continue your
18 cross-examination, address that.
19 MS. ROSENFELD: Well, let me --
20 BY MS. ROSENFELD:
21 Q Your current land, the land use report and Exhibit
22 10 is based on the original special exception layout filed
23 at Exhibit 4(b), is that correct?
24 A There are corrections. I know there were, I
25 should say, like you've mentioned, dimensional changes

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1 within the land use report. I know that there were changes.
2 I know, like, for example, someone pointed out the number of
3 entrances got reversed between University Boulevard and
4 Veirs Mill Road. I do have, you know, later on, I do have a
5 copy of what those corrections needed to be and whether it
6 -- it probably entailed what has transpired in the last few
7 months. So the land use report is not 100 percent accurate
8 in reference to where we are today.
9 Q And you said that you relied on Mr. Guckert's
10 testimony. Do you know if Mr. Guckert's analysis took into
11 account the changes that will be, that were submitted into
12 the record today?
13 A I can't talk for Mr. Guckert.
14 Q And Mr. Duke's testimony will be updated, I
15 understand, and Mr. Sullivan's reports to date, I assume,
16 are based on the special exhibits that have already been
17 filed in the record, or his were --
18 MR. GROSSMAN: I don't know if there will be any
19 changes in those or not. I mean, maybe the nature of his
20 testimony won't change. I don't know. I mean, I just
21 thought that we ought to have some clarity on that point
22 because it surprised me as it --
23 MS. ROSENFELD: Yes.
24 MR. GROSSMAN: -- probably surprised you. So --
25 MS. ROSENFELD: That's very helpful, yes. Thank

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1 you.

2 MR. GROSSMAN: And, and Ms. Harris. So I think

3 that he was hearing you to be asking whether or not his land

4 use report, Exhibit 10, was based on the older information,

5 and he was trying to forthrightly answer yes when you were

6 asking whether his testimony here was based on the prior

7 conditions. So, in any event, that's his testimony now.

8 When he comes back for cross-examination, you'll be free to

9 press forward on the point.

10 MS. ROSENFELD: Okay, thank you.

11 MR. GROSSMAN: Okay. I would let you go on now

12 except that one of the members of the opposition has asked

13 me not to, and so --

14 MS. ROSENFELD: And --

15 MR. GROSSMAN: -- I'm going to respect that over

16 15 minutes. Yes. So, Ms. Savage, we're not going to go any

17 further with this witness.

18 MS. SAVAGE: Okay.

19 MR. GROSSMAN: We may have some procedural

20 things --

21 MS. SAVAGE: Okay.

22 MR. GROSSMAN: -- to discuss, but thank you very

23 much.

24 MS. SAVAGE: Thank you.

25 MS. ROSENFELD: And, Mr. Grossman, just as a

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1 matter of course -- and I don't know if this needs to be on

2 the record -- but I just sort of assumed that typically 5

3 o'clock was about when you made a judgment call --

4 MR. GROSSMAN: That's true. We --

5 MS. ROSENFELD: -- but it's, am I --

6 MR. GROSSMAN: Yes, 5 o'clock is general closing

7 time, but if something needs to be completed and everybody

8 is willing and the court reporter can stay, we'll go beyond

9 5 o'clock.

10 MS. ROSENFELD: All right.

11 MR. GROSSMAN: We've gone to very late sometimes,

12 but I mean, in a case like this where we have multiple

13 hearing dates, it doesn't seem to make sense to go too far

14 beyond the 5 o'clock, you know, unless it's important to

15 finish your witness and so on. Here it's not going to

16 happen today. Ms. Harris.

17 MS. HARRIS: I have a procedural issue once we're

18 done with --

19 MR. GROSSMAN: Yes. I think we're done with

20 Mr. Gang until the next time.

21 MS. HARRIS: Okay. You had asked for a legal memo

22 on whatever, 20 questions we're going to address. We have

23 that.

24 MR. GROSSMAN: Right.

25 MS. HARRIS: We can distribute it.

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1 MR. GROSSMAN: Yes.

2 MS. HARRIS: We're expecting opponents', as well,

3 today.

4 MS. ROSENFELD: And it's on my desk at home.

5 MR. GROSSMAN: All right.

6 MS. ROSENFELD: So I will submit that tomorrow, my

7 apologies.

8 MR. GROSSMAN: Okay. That's fine.

9 MS. HARRIS: And then we'll submit the Word

10 version for you tomorrow.

11 MR. GROSSMAN: Okay. Mr. Gang, can you rejoin us

12 on the 17th of June? That's our next hearing date.

13 THE WITNESS: I'd be really honored to.

14 MR. GROSSMAN: All right. So will Mr. Gang be the

15 first witness then?

16 MS. HARRIS: Yes, that's fine.

17 MR. GROSSMAN: Okay. All right. Does that suit

18 everybody?

19 MS. CORDRY: Yes.

20 MS. ROSENFELD: Yes, thank you.

21 MS. ADELMAN: Thank you.

22 THE WITNESS: The 17th is a Monday.

23 MS. SAVAGE: Correct.

24 MR. GROSSMAN: Now you're pressing me beyond the

25 scope of my --

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1 MR. GOECKE: It is. It is.

2 THE WITNESS: I just want to make sure everybody

3 else is available.

4 MR. ADELMAN: That is correct.

5 MR. GROSSMAN: Yes, Monday it is.

6 MS. HARRIS: Do you want to enter -- and I'm

7 looking for the original for your copy -- but do you want to

8 enter that into the record?

9 MR. GROSSMAN: The response?

10 MS. HARRIS: The legal memo, yes.

11 MR. GROSSMAN: Sure. I got to find that, the

12 elusive exhibit list. There it is. All right. So this

13 will be, Exhibit 161 will be applicant's response,

14 applicant's response to the 20 questions posed by the

15 Hearing Examiner.

16 All right. Is there anything else that we need to

17 consider procedurally before the next session, June 17th?

18 (Exhibit No. 161 was marked

19 for identification.)

20 MR. SILVERMAN: Just --

21 MR. GROSSMAN: Mr. Silverman.

22 MR. SILVERMAN: -- I have, I had mentioned in the

23 past the reports of the attorney for the County Council and

24 for the Fed Committee as being relevant, the legislative

25 history, and I have reproduced them, but I was wondering if

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1 it would be all right if I, between now and then, submitted
2 the Internet connection and then at the hearing brought in
3 the actual printed out text? So I just don't want to print
4 out a lot of them because Mr. -- I have one here, which --
5 MR. GROSSMAN: Which attorney are you talking
6 about?
7 MR. SILVERMAN: Mr. Zyontz.
8 MR. GROSSMAN: Okay.
9 MR. SILVERMAN: Yes.
10 MR. GROSSMAN: And so you want to produce Jeff
11 Zyontz's memo to the Council on the point?
12 MR. SILVERMAN: Yes. Yes. He actually had two
13 memos. One was to the Fed Committee, which essentially was
14 the committee report which you indicated, you know, it would
15 be admissible, and --
16 MR. GROSSMAN: Right.
17 MR. SILVERMAN: -- and then one, a very similar
18 one to, to the full Council. One was July --
19 MR. GROSSMAN: Well, as an opinion -- what I said
20 initially was the opinion of the Council which accompanied
21 their actual zoning text amendment was admissible as
22 legislative history.
23 MR. SILVERMAN: Well, there is a statement in
24 advance of, maybe I'll -- I found three documents were
25 relevant. There's a statement that, it's like a preamble to

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1 the, to the actual legislation, and then there's the two
2 Council memos.
3 MR. GROSSMAN: All right. Well, why don't you
4 submit whatever the things are that you have, and then we
5 can decide whether or not, after hearing any objections
6 there may be, decide whether or not they are appropriately
7 before me in terms of legislative history.
8 MR. SILVERMAN: And my question was very, was more
9 limited than that. I just want to know if it's all right
10 with Ms. Harris if I just sent her a Web site, and then I'll
11 hand in one copy to --
12 MR. GROSSMAN: She doesn't object to -- I don't
13 object. It's up to you guys. I mean, I don't --
14 MR. SILVERMAN: I just don't want to copy all of
15 this.
16 MS. HARRIS: Well, I would note that --
17 MR. GROSSMAN: Right.
18 MS. HARRIS: -- the last time we had this
19 discussion I never received the link to the last thing. So
20 I'm a little concerned about that, that process.
21 MR. GROSSMAN: What about the missing link?
22 MR. SILVERMAN: I'll get it right off to her.
23 MS. ROSENFELD: You're looking at him.
24 MS. HARRIS: Do you recall what it was?
25 MR. SILVERMAN: Yes, I do.

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1 MR. GROSSMAN: I didn't say that. All right.
2 Anything else that we need to --
3 MS. HARRIS: We have the truck turning, the
4 diagram that Ms. Rosenfeld requested --
5 MS. ROSENFELD: Oh, terrific.
6 MS. HARRIS: -- the, and we got --
7 MR. GROSSMAN: Oh, an additional truck turning
8 one?
9 MS. HARRIS: Yes. That was just a delivery that
10 occurred during the day. So we can --
11 MR. GROSSMAN: Okay. So let's put that in, too,
12 so they'll have that. That'll be Exhibit 162, and this is
13 -- well, we already had a truck turn exhibit. Is this a
14 different --
15 MS. HARRIS: This is the truck turning exhibit to
16 the warehouse.
17 MR. GROSSMAN: Okay. So, okay, so Exhibit 162 --
18 MS. ROSENFELD: And does this reflect the changes
19 of the latest plan?
20 MR. GOECKE: Yes.
21 MR. GROSSMAN: -- truck turn exhibit near
22 warehouse. All right. Anything else? Hearing no sounds,
23 seeing no hands --
24 (Exhibit No. 162 was marked
25 for identification.)

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1 MS. CORDRY: Let me just ask one quick question.
2 MR. GROSSMAN: Yes.
3 MS. CORDRY: On this truck turning exhibit --
4 MR. GROSSMAN: I didn't act fast enough, did I?
5 MS. CORDRY: It's just a very, just quick
6 clarification.
7 MR. GROSSMAN: No problem.
8 MS. CORDRY: Do these truck turning exhibits, are
9 they, do they show -- is this with the pedestrian path on
10 here now? I think I'm seeing it. Okay. There's a bump-out
11 there. All right. And then --
12 MR. AGLIATA: Yes, it is.
13 MS. CORDRY: Okay. And there's two sets of sort
14 of T marks.
15 MR. AGLIATA: Yeah. That's because it's based off
16 of the -- they used the redline plan. It's the T marks that
17 are further away from the curb.
18 MS. CORDRY: Okay. So the T marks that are
19 further are marking with the three-foot pedestrian path?
20 MR. AGLIATA: Correct.
21 MS. CORDRY: Okay, got it. See, very simple.
22 MR. GROSSMAN: That was good, good clarification.
23 Okay. Anything else then?
24 (No audible response.)
25 MR. GROSSMAN: All right. Then we are adjourned

1 until June 17, Monday, at this same location.
2 MR. GOECKE: Thank you.
3 MR. GROSSMAN: Thank you.
4 MS. ROSENFELD: Thank you.
5 (Whereupon, at 4:53, the hearing was adjourned.)
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C E R T I F I C A T E

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

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

By:

Wendy Campos, Transcriber

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