

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
:
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A hearing in the above-entitled matter was held on
July 31, 2013, commencing at 9:35 a.m. in the Rita Davidson
Memorial Hearing Room, 100 Maryland Avenue, Rockville,
Maryland.

Martin L. Grossman

Hearing Examiner

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A P P E A R A N C E S

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Thomas Flynn	--			
By Ms. Rosenfeld:		180		
By Mr. Silverman:		269		

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P R O C E E D I N G S

1

2 MR. GROSSMAN: I'll call the case. This is the

3 tenth day of a public hearing in the matter of Costco

4 Wholesale Corporation, Board of Appeals No. S-2863, OZAH No.

5 13-12, petition for a special exception pursuant to Zoning

6 Ordinance Section 59G-2.06 to allow petition to construct

7 and operate an automobile filling station, which would

8 include 16 pumps. The subject site is located at 11160

9 Veirs Mill Road, Silver Spring, Maryland. That's Lot N-631,

10 Wheaton Plaza, Parcel 10, also known as the Westfield

11 Wheaton Mall and is zoned C-2. That's general commercial.

12 The hearing was begun on April 26, 2013, and

13 resumed on May 1, May 6, May 23, June 4, June 17, June 19,

14 July 8 and July 30, 2013. It was noticed to resume again

15 today with the morning reserved for members of the public

16 who wish to be heard on this matter. If we cannot fit you

17 all in in the morning, then we'll continue on this afternoon

18 with that testimony.

19 The next session has been noticed for August 2,

20 that is Friday. That will be in the second floor OZAH Board

21 of Appeals hearing room in this building, the COB, the

22 Council Office Building, also at 9:30 a.m. This hearing is

23 being conducted on behalf of the Board of Appeals. My name

24 is Martin Grossman. I'm the Hearing Examiner, which means I

25 will take evidence and write a report and recommendation to

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1 the Board of Appeals, which will make the decision in this
2 case.
3 Will the parties identify themselves for the
4 record please?
5 MR. BRANN: I'm Erich Brann with Costco.
6 MS. HARRIS: Good morning. Pat Harris with Lerch,
7 Early & Brewer on behalf of Costco.
8 MR. GOECKE: Good morning, Mr. Grossman. Michael
9 Goecke for Costco.
10 MS. ROSENFELD: Michele Rosenfeld. Legal counsel
11 with Kensington Heights Civic Association.
12 MR. SILVERMAN: Larry Silverman. Good morning,
13 sir.
14 MR. ADELMAN: Mr. Grossman, Dr. Mark Adelman for
15 the Coalition.
16 MR. GROSSMAN: And I know we have a number of
17 people in the audience here who wish to testify and we will
18 begin that shortly. I would ask you all to sign in on the
19 sign-in sheet. Anybody who testifies in this proceeding
20 will receive a notice, a written notice when my report and
21 recommendation is issued. And the report itself will be on
22 our website pursuant to the zoning ordinance provision that
23 controls that.
24 All right. Let me explain a little bit about the
25 nature of the proceedings here before we begin taking

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1 testimony. First of all, this is run pretty much the way a
2 courtroom is run. Witnesses are all sworn in. They're
3 subject to cross-examination. There's a court reporter who
4 takes everything down and there's a verbatim transcript of
5 that, of these proceedings prepared. We follow rules of
6 evidence, although they're somewhat more relaxed as these
7 proceedings are somewhat more relaxed, but we do have a
8 combination of formalities and informalities.
9 Generally speaking, we're going to take people
10 today in the order in which they have signed in. If there
11 are any people who have some kind of scheduling problem or
12 other difficulty which requires that they be heard out of
13 order, we'll try to accommodate that as well.
14 I want to alert you to the fact that the Planning
15 Board record, as opposed to the Planning Board letter, is
16 not before me because the testimony there was not taken
17 under oath. It's not really testify in that sense. But I
18 do have the letter from the Planning Board and, of course, I
19 have a report from the technical staff of the Maryland-
20 National Capital Park and Planning Commission.
21 We're here today on application for a special
22 exception and let me explain a little bit about what that
23 is. A special exception is a bit of misnomer because it
24 sounds as if it's a variance. It's not. A variance is
25 something where the applicant requests to vary from what the

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1 statute requires. A special exception is really a
2 conditional use and which is what it's called in many
3 jurisdictions and what is suggested on the proposed zoning
4 rewrite in Montgomery County.
5 And what that means is that the applicant has to
6 demonstrate that it meets conditions that are specified in
7 the zoning ordinance, both general conditions that apply to
8 almost all special exceptions and specific ones that pertain
9 to this particular special exception. It's not, this kind
10 of proceeding is not a plebiscite. I'm not permitted to
11 count noses to see how many people favor one side or the
12 other. Rather, I have to follow the statutory requirements
13 which specify what has to be proven.
14 I also should note that the fact that a special
15 exception is permitted by the zoning ordinance means that
16 and under the statute specifies that if the only adverse
17 consequences from the special exception are inherent in the
18 nature of the special exception, then by statute neither the
19 Board of Appeals nor the Hearing Examiner may prohibit the,
20 or to deny the special exception. The exact language in
21 59G-1.2.1, quote, inherent adverse effects alone are not a
22 sufficient basis for denial of a special exception.
23 And even if there are non-inherent, adverse
24 effects in a special exception, there must be an analysis of
25 those non-inherent, adverse effects and any combination with

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1 inherent, adverse effects to determine whether or not it is
2 appropriate to grant the application in this case. And my
3 report will analyze what the evidence shows in terms of any
4 of these potential adverse effects.
5 It's very important for us to have community
6 participation, and I'm very happy that everybody has
7 appeared here to participate. It's very important in
8 determining whether or not there are adverse effects and the
9 nature of the adverse effects. It's also important in
10 determining whether there, if there is a special exception,
11 whether there are conditions which may be imposed to
12 alleviate those adverse effects. So we appreciate greatly
13 your coming down here.
14 Finally, this matter doesn't go to the Council.
15 This is decided, as I mentioned at the beginning, by the
16 Board of Appeals at a work session, but there's no new
17 evidence accepted by the Board of Appeals at the work
18 session. They decide the case based on the evidence as
19 compiled, as introduced and then compiled in my report and
20 recommendation. You can request oral argument before the
21 Board of Appeals at its worksession or within, I should say
22 you can request it within 10 days after I issue my report
23 and then the Board of Appeals may or may not grant that
24 request at its work session.
25 All right. Before we proceed to taking any

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1 witnesses, are there any other preliminary or procedural
2 matters? Ms. Harris?
3 MS. HARRIS: Do you have a sense of how many
4 people are signed up, only because as we discussed
5 yesterday, we need to give other witnesses an indication --
6 MR. GROSSMAN: Right.
7 MS. HARRIS: -- whether they should be here this
8 afternoon.
9 MR. GROSSMAN: Well, thus far, I received a sheet
10 with one, two, three, four, five, six, seven, eight names on
11 it. I -- staff is checking to see additional sign-ins.
12 UNIDENTIFIED SPEAKER: There's another sign-in.
13 MR. GROSSMAN: Okay. So we have so far 15
14 witnesses. --
15 MS. HARRIS: Okay. Thank you.
16 MR. GROSSMAN: -- who have signed in. Okay?
17 MR. ADELMAN: I have a procedural question. Can
18 we defer then until after individuals have testified?
19 MR. GROSSMAN: Certainly, if you wish. All right.
20 Anything else to take up as a preliminary matter?
21 Okay. All right. Then I'm going to call the
22 first person on the list here, Mr. Rich. All right. I'm
23 going to -- since, I guess, you have --
24 MR. RICH: Should I go over to -- where do you
25 need me to be?

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1 MS. ROSENFELD: Right here.
2 MR. GROSSMAN: Right over there if you can fit
3 through there. If not, we'll take you where you are.
4 MR. RICH: Well, I'm fine. Do I use this mike
5 here?
6 MR. GROSSMAN: Yes, that would be great. I'm not
7 sure that those mics are on now? Okay.
8 COURT REPORTER: Oh, they are.
9 MR. GROSSMAN: The reporter says the mics are on.
10 COURT REPORTER: Okay.
11 MR. GROSSMAN: Okay.
12 MR. RICH: All right. It's to the left?
13 MR. GROSSMAN: You broke it already.
14 MR. RICH: I just broke the building, yes.
15 COURT REPORTER: Actually, your mic is right there
16 laying flat on the stand.
17 MR. GROSSMAN: Oh, okay, yes, the flat.
18 COURT REPORT: You'll have to turn your body --
19 MR. GROSSMAN: You don't need those, there's a
20 flat --
21 MR. RICH: There's another mic?
22 MR. GROSSMAN: Yes, you can --
23 COURT REPORTER: That's --
24 MR. GROSSMAN: -- it's to your right.
25 COURT REPORTER: But that's --

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1 MR. GROSSMAN: That will --
2 MR. RICH: It will pick it up? Do I need to still
3 pick it up?
4 MR. GROSSMAN: I don't think you have to, no, you
5 don't have to --
6 MR. RICH: Okay.
7 MR. GROSSMAN: -- lift anything up.
8 MR. RICH: Okay. Do I need to be sworn-in or --
9 MR. GROSSMAN: Yes. I'm about to swear you in.
10 Can you raise your right hand please?
11 MR. RICH: Yes, sir.
12 (Witness sworn.)
13 MR. GROSSMAN: Okay. All right. Will you state
14 your full name please?
15 MR. RICH: Charles Michael Rich.
16 MR. GROSSMAN: All right. And what's your
17 address, sir?
18 MR. RICH: 902 North Belgrade Road, Silver Spring,
19 Maryland 20902.
20 MR. GROSSMAN: Okay. And do you have testimony
21 you wish to offer today?
22 MR. RICH: Yes, I do.
23 MR. GROSSMAN: You may proceed.
24 MR. RICH: Thank you. Good morning, Mr. Grossman.
25 My name is Charles Rich and I live close to the proposed

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1 Costco gas station in Wheaton. Thank you for the
2 opportunity to speak today. I am a strong supporter of the
3 proposed Wheaton Costco gas station. I volunteered some
4 time ago to testify on its behalf and I hope that the
5 special exception application is approved.
6 My family moved to the Wheaton area in 1958 when I
7 was 6 years old and I've been using a wheelchair since 1964.
8 I am a part-time broadcaster and substitute teacher, and I'm
9 unable to find affordable gasoline close to home. That's
10 because the low-priced gas and go station are also low-
11 staffed. It's not practical or safe for me to get my
12 wheelchair out of my van and pump my own gas there. In
13 order to get lower priced gasoline and someone to pump it
14 for me, I currently have to leave the County and drive to
15 the Costco in Beltsville or the Costco stations in Lanham,
16 Columbia or Arundel Mills.
17 As a disabled person who also has some breathing
18 issues of my own, I resent the repeated suggestion that the
19 station poses some sort of new threat to the Stephen Knolls
20 special education students. That school, like the swimming
21 pool and other neighbors of the mall, has already been
22 located for decades near a busy shopping center. It's a
23 large parking lot and substantial car traffic on that lot
24 and the adjoining major roads and intersections. There's
25 also a new apartment building coming up practically next

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1 door to Stephen Knolls School where the church used to be.
2 Adding a Costco gas station would help disabled
3 people and the environment more than hurt them. It doesn't
4 do any good right now when I and others drive nine miles or
5 more one way to a Costco where we can get our gas tanks
6 filled at a reasonable price. A Costco Wheaton gas station
7 will be a significant benefit to the community as it
8 directly and positively affects my ability and the ability
9 of others to get to a gas station that's affordable.
10 I don't think I'd support a new gas station in
11 Wheaton if it were replacing a park or a library, but the
12 proposed site for the Costco station is in the parking lot
13 of a busy regional shopping mall that's been around for more
14 than 50 years at a major intersection. My community needs
15 access to this type of gas station. I ask that you please
16 recommend approval for the Costco gas station in Wheaton.
17 Thank you for your time.
18 MR. GROSSMAN: Yes, sir.
19 Any cross-examination, Ms. Harris?
20 MS. HARRIS: No.
21 MR. GROSSMAN: All right. Ms. Rosenfeld? Mr.
22 Silverman? Dr. Adelman?
23 MR. GROSSMAN: Anybody else?
24 All right. Thank you very much --
25 MR. RICH: Thank you.

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1 MR. GROSSMAN: -- Mr. Rich. I appreciate your
2 coming down here and offering your testimony. All right.
3 The next person on the list is Tom Ward.
4 MS. WARD: It's Toni, T-O-N-I.
5 MR. GROSSMAN: Okay. Okay, I'm sorry, yes, that's
6 correct, Toni Ward.
7 MS. WARD: Yes.
8 MR. GROSSMAN: I'm sorry.
9 (Discussion off the record.)
10 MR. GROSSMAN: Okay.
11 MS. WARD: Good morning, Mr. Grossman.
12 MR. GROSSMAN: Good morning.
13 MS. WARD: I assembled from Costco. I'm et al.
14 MR. GROSSMAN: All right. Ms. Ward, I have to
15 swear you in.
16 MS. WARD: Oh, sorry.
17 MR. GROSSMAN: Would you raise your right hand
18 please?
19 (Witness sworn.)
20 MR. GROSSMAN: All right. You may proceed. State
21 your full name and address please for the record.
22 MS. WARD: Toni, T-O-N-I, Ward, W-A-R-D, 3701
23 Farragut Avenue, Kensington 20895.
24 MR. GROSSMAN: All right. And you have testimony
25 to offer today?

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1 MR. WARD: Yes.
2 MR. GROSSMAN: You may proceed.
3 MS. WARD: Thank you. Today I've come to ask that
4 you please approve the long-awaited plans for the Costco gas
5 station at Wheaton. I am the owner of a house in Kensington
6 Heights located a few blocks from the proposed gas station
7 and I live in the incorporated district of Kensington and
8 have lived there for approximately seven to eight years,
9 except for the years of military assignment.
10 Since the beginning of the approval process, I
11 followed the Costco gas station proposal and witnessed the
12 opposition to the gas station, as well as enormous support
13 from community members. The Kensington/Wheaton Master Plan
14 is in transition and as this area becomes even more
15 desirable as a place to live and work, it's the opportune
16 time to provide a quality, affordable gas station for the
17 community.
18 For several years I've planned trips to Frederick
19 when I need gas so I can shop at Costco and especially to
20 purchase gas. Now that Costco Wheaton is open and those of
21 us in the immediate area have changed our buying habits, I'm
22 frustrated at not being able to purchase gas when I shop at
23 Costco. Costco Wheaton is making a valuable contribution to
24 revitalization and it's obvious that more commerce and
25 affordable options are well on the way as well.

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1 It makes sense to offer those of us who find the
2 affordability of Costco highly desirable to also have the
3 convenience of a Costco gas station. There are already a
4 number of gas stations in the area, but Costco can offer
5 local community members cheaper gas located conveniently
6 where we shop. My experience with Costco over the years is
7 that their warehouses and gas stations are operated
8 efficiently and their business practices are superior to
9 many other retail businesses. Costco is a good corporate
10 partner for the Kensington Wheaton Community. In the review
11 of Costco's special exception application, I trust you will
12 keep in mind the value that Costco gas station will bring to
13 Kensington Wheaton as it becomes a significant factor in the
14 revitalization of this community. Thank you.
15 MR. GROSSMAN: All right. Thank you. Any cross-
16 examination questions?
17 Seeing no hands, thanks. Oh.
18 MS. ROSENFELD: Mr. Grossman, I just have one.
19 MR. GROSSMAN: Yes.
20 CROSS-EXAMINATION
21 BY MS. ROSENFELD:
22 Q Ms. Ward, Mr. Rich testified that he --
23 A I can barely hear you.
24 Q I'm sorry. Mr. Rich testified that he has some
25 health, respiratory issues, health issues. Do you as well?

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1 A Some, not to the extent that Mr. Rich does.
 2 Q Okay.
 3 A No, but some, yeah.
 4 Q Okay. Thank you. I have no more questions.
 5 MR. GROSSMAN: All right. Any other questions?
 6 All right. Thank you very much for taking the
 7 time to come down here and testify, Ms. Ward.
 8 All right. The next person on the list is Janet
 9 MacNab. Good morning, Ms. MacNab, would you raise your
 10 right hand please?
 11 (Witness sworn.)
 12 MR. GROSSMAN: All right. You may proceed. Would
 13 you state first your full name and address for the record
 14 please?
 15 MS. MACNAB: My name is Janet Delac MacNab. It's
 16 M-A-C-N-A-B. I live at 12435 Meadow Wood Drive, Silver
 17 Spring, Maryland 20904.
 18 MR. GROSSMAN: All right.
 19 MS. MACNAB: Thank you for the opportunity to
 20 speak to you today. I have lived in Montgomery County for
 21 over 40 years and I am a strong supporter of the proposed
 22 Wheaton Costco gas station. Since its opening, Costco store
 23 has had a positive impact on the revitalization of the
 24 Wheaton Mall by bringing in a larger customer base. Now
 25 when one visits the mall, the stores are bustling with

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1 customers. The entire complement of stores have benefited
 2 from the Costco addition.
 3 Whenever I intend to shop at Costco, I frequently
 4 visit the stores throughout the mall. However, I drive
 5 there since I have many packages that would be impossible
 6 for me to carry home. Even though it may be in the Master
 7 Plan to have a walking community, I personally do not find
 8 it conducive nor practical for the larger community to walk
 9 to the mall.
 10 Another reason for my support of the Costco gas
 11 station is that Costco offers gas that is affordable, of
 12 good quality and convenient for me. I don't have to leave
 13 the County to buy gas. This is important to me and to other
 14 retired folks living in the Wheaton area who are required to
 15 live on a fixed income.
 16 I support the Costco gas station in the Wheaton
 17 Mall. I request that you approve Costco's special exception
 18 request.
 19 MR. GROSSMAN: All right. Thank you. Any cross-
 20 examination questions?
 21 MS. ROSENFELD: The same question.
 22 CROSS-EXAMINATION
 23 BY MS. ROSENFELD:
 24 Q Do you have any respiratory-related health issues?
 25 A No, I do not.

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1 Q Thank you.
 2 MR. GROSSMAN: Anybody else?
 3 No? Thank you very much, Ms. MacNab. I
 4 appreciate your coming down here to share your views. All
 5 right. Next person on the list is, it looks like Licia
 6 Cardinale. First of all, did I pronounce your name
 7 correctly?
 8 MS. CARDINALE: Licia.
 9 MR. GROSSMAN: Licia?
 10 MS. CARDINALE: Yes.
 11 MR. GROSSMAN: Cardinale, is that correct?
 12 MS. CARDINALE: Yes.
 13 MR. GROSSMAN: Okay. All right. Would you state
 14 your full name and address please?
 15 MS. CARDINALE: Licia Cardinale, 3333 University
 16 Boulevard West, Kensington, Maryland 20895.
 17 MR. GROSSMAN: Would you raise your right hand
 18 please?
 19 (Witness sworn.)
 20 MR. GROSSMAN: All right. You may proceed.
 21 MS. CARDINALE: Good morning, Mr. Grossman.
 22 MR. GROSSMAN: Good morning.
 23 MS. CARDINALE: I am a Kensington Heights resident
 24 and a supporter of Costco's proposed Wheaton gas station. I
 25 am here to express my strong support for Costco's special

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1 exception application to place a much needed, safe gas
 2 station on the Westfield, Montgomery property.
 3 I am also respectfully asking that the Planning
 4 Board approve this special exception. I have supported
 5 Costco's attempts to bring a gas station to Wheaton Mall
 6 ever since there has been a dispute. Even so, it seems
 7 there's always a problem despite all attempts by Costco to
 8 respond and adjust whatever was asked of them. Please don't
 9 take my picture.
 10 Those of us who would like to have an opportunity
 11 to purchase needed gasoline at a cheaper rate without having
 12 to expend energy, gasoline in this case, by going to
 13 Greenbelt to purchase it are denied the advantage. While it
 14 is true that there are other gas stations in the area, none
 15 of them offer quality discount gas in a clean, well-run
 16 location in the same fashion as Costco. I cannot afford one
 17 of these newer cars which get 30 miles per gallon and must
 18 make do with my 26-year-old vehicle which is not as thrifty
 19 on gasoline as the newer models. It comes down to
 20 budgeting, what foods to buy, which medication is more
 21 important for me to purchase at the time and how often can I
 22 forget to take my medication without endangering my health.
 23 The naysayers will eventually fall in and take
 24 advantage of the convenience of the cheaper gasoline. I
 25 have confidence that the Costco gas station will be an

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1 excellent and much needed addition to our community. Again,
2 please approve Costco's special exception application for
3 the gas station at Wheaton Mall. Thank you.
4 MR. GROSSMAN: All right. I should say, alerted
5 by Ms. Cardinale's request not to be photographed, that
6 these proceedings are being filmed by an independent
7 organization. The Board of Appeals rules provide that such
8 videotaping should be permitted unless it's disruptive to
9 the proceedings. So the very beginning of this session, at
10 the first hearing, we indicated that based on that Board of
11 Appeals rule that such taping was permitted here. So any
12 witness should be aware of that.
13 Also, of course, even though we did reserve this
14 morning's session for testimony of public members who wish
15 to be heard, that can occur at other days too. Everybody --
16 these are all public sessions. Everybody is welcome to
17 attend any of the sessions and you can offer testimony at
18 these sessions without prior approval or prior submission as
19 long as you don't represent an organization per se. The
20 rules require certain things from organizations that are
21 being, that are offering testimony. But if you're just an
22 individual and wish to offer your opinion, of course, we
23 have -- because of the number of people involved in this
24 case and offering testimony and the number of organizations
25 involved, we do have to have an orderly process.

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1 So generally speaking, the applicant's case goes
2 first and then that's followed by Government witnesses if
3 there are any and then it's followed by opposition
4 witnesses. That's generally the way the proceedings take
5 place. We do make accommodations for members of the public
6 so that, to make this an inviting procedure to allow people
7 to testify in the most convenient manner that's possible.
8 But, in any event, you are welcome to attend any of these
9 hearings. You do not have to leave after you testify or
10 anything like that.
11 All right. Any cross-examination of Ms.
12 Cardinale?
13 All right. Thank -- yes, I'm sorry.
14 MS. ROSENFELD: No, I'm sorry. I was waiting to
15 see if Ms. Harris had any questions. The same question I
16 have asked before.
17 CROSS-EXAMINATION
18 BY MS. ROSENFELD:
19 Q Do you have any respiratory-related health issues?
20 A No.
21 Q Thank you.
22 MR. GROSSMAN: All right. Thank you very much,
23 Ms. Cardinale.
24 MS. CARDINALE: You're welcome.
25 MR. GROSSMAN: Okay. The next witness on the list

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1 is Katja Bullock. Ms. Bullock, would you state your full
2 name and address please?
3 MS. BULLOCK: Katja Bullock and I live in 3333
4 University Boulevard West, Kensington, Maryland.
5 MR. GROSSMAN: All right. Would you raise your
6 right hand please?
7 (Witness sworn.)
8 MR. GROSSMAN: All right. You may proceed.
9 MS. BULLOCK: Good morning, sir.
10 MR. GROSSMAN: Good morning.
11 MS. BULLOCK: I have been a Kensington resident
12 for the past 40 years and have lived in Kensington Heights
13 since 2000. Over the past two years I have participated in
14 many of the Costco hearings and have followed this process
15 very closely. And contrary to what some people would have
16 you believe, there are a lot of local residents who do
17 support Costco's proposed gas station indeed.
18 Unfortunately, I have found that some that are
19 really actually concerned about speaking out due to fear of
20 reprisals from a very small, but very aggressive group of
21 opponents right in our very neighborhood. I'm a proud
22 resident of Kensington Heights and I live less than a mile
23 from the proposed gas station. I urge you to support the
24 special exception application, S-2863.
25 At least twice every month I drive about 10 miles

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1 to purchase gas in Prince George's County. I take revenue
2 out of our County, put more miles on my car than necessary
3 and, therefore, I use more gas than I should. However, the
4 Beltsville Costco station is clean, the gas is significantly
5 cheaper and I know there's always an attendant on site
6 should I need for anything and I have used that attendant
7 many a time.
8 The thought of having the Costco gas station in my
9 backyard is very appealing to me and I look forward to the
10 day when I do not have to drive to Beltsville any longer. I
11 can do my shopping at the Costco store and fill up at the
12 same time. I believe that the opponents to this gas station
13 are making a lot of assumptions that are either not accurate
14 or based on irrelevant information. I look forward to the
15 day the gas station is finally approved.
16 For almost three years this community now has been
17 on edge about the approval process and it's a back and forth
18 and back and forth, and I feel that Costco has bent over
19 backwards for the community and to the County in asking and
20 answering all their questions. I hope that as you consider
21 this application, you will make your decision based on facts
22 presented that are relevant to this particular site and not
23 on fears that have no basis in reality and no relevance to
24 this particular site. And I thank you for your time.
25 MR. GROSSMAN: Thank you. Any cross-examination

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1 questions?

2 MS. ROSENFELD: The same question.

3 CROSS-EXAMINATION

4 BY MS. ROSENFELD:

5 Q Do you have any respiratory, health issues?

6 A Not any longer since I've stopped smoking. I used

7 to have emphysema and I don't.

8 Q Thank you.

9 A It is getting better.

10 Q Thank you.

11 A Thank you.

12 MR. GROSSMAN: Any other questions? Thank you

13 very much, Ms. Bullock. Okay. Next person on the list is

14 James McNerney, is that --

15 MR. MCNERNEY: McNerney.

16 MR. GROSSMAN: Okay, sir.

17 MR. MCNERNEY: Good morning.

18 MR. GROSSMAN: Good morning, sir. Would you state

19 your full name and address please?

20 MR. MCNERNEY: My name is James McNerney. I live

21 at 1401 Blair Mill Road, Silver Spring 20910.

22 MR. GROSSMAN: All right, sir, would you raise

23 your right hand?

24 (Witness sworn.)

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

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1 MR. MCNERNEY: I'm here today, the driver of not a

2 26-year-old car, but a car that has a large gas tank and is

3 a good customer of any gas station. Having spent a number

4 of years working in Texas, I got to put lots of miles on a

5 vehicle on a regular basis. So I am very cognizant of the

6 cost of filling up a gas tank.

7 The Costco applicant here has done one thing

8 already. It has shown that it can help revitalize the

9 existing law that's been in the subdivision's neighborhood

10 for 50 plus years. I have a problem with people who have

11 concerns about this gas station and the store being in the

12 mall when, in fact, they've lived next door to the mall for

13 all this time.

14 The Kensington/Wheaton Master Plan that's in the

15 works is a very good document as it appears. The concepts

16 are good and the concept of going to a more walkable

17 environment is good as we're seeing over in White Flint, as

18 we see here in Rockville Town Center and other places. The

19 problem is that it's aspirational and sadly unless we go

20 whole hog and spend significant money and change people's

21 concepts, we're not going to get rid of an automobile center

22 economy. So we need gas stations.

23 And one thing that this gas station would do as

24 I've seen in places where I have either seen a Costco gas

25 station or a Sam's gas station or a BJ's gas station come up

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1 is they drive down the prices in the local gas stations

2 because they have to compete and that would be a benefit for

3 everybody whether they have a Costco membership or not

4 because while I'm not on a fixed income, other people are

5 and being able to hit a better gas price point is a positive

6 for them.

7 I have no boat. I have no dog in this fight. I

8 am not here on behalf of anybody, except myself, but I would

9 support and ask the Council, the Board to support a finding

10 that the special exception should be granted.

11 MR. GROSSMAN: All right, sir. Thank you. Any

12 cross-examination questions?

13 CROSS-EXAMINATION

14 BY MS. ROSENFELD:

15 Q I do. The same, several questions actually.

16 First, do you have any respiratory related health issues?

17 A No.

18 Q Do you currently shop at the Beltsville gas

19 station?

20 A I was shopping at the Beltsville gas station, yes.

21 Q And do you work for Costco in any capacity?

22 A No.

23 Q Thank you.

24 MR. GROSSMAN: Any other questions of this

25 witness?

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1 All right. Thank you very much, sir. I

2 appreciate your taking the time to come down here and share

3 your views. Okay. Next person on the list is, looks like

4 Boris Lander. All right. Would you state your full name

5 and address for the record please.

6 MR. LANDER: Boris Lander and my address is 3640

7 Martin's Dairy Circle, Olney, Maryland 20832.

8 MR. GROSSMAN: Would you raise your right hand

9 please?

10 (Witness sworn.)

11 MR. GROSSMAN: You may proceed.

12 MR. LANDER: I am here today in my role as chief

13 operating officer of Luis Group. We're in Montgomery

14 County, a small business.

15 MR. GROSSMAN: I'm sorry, chief operating officer

16 of what?

17 MR. LANDER: Luis Group, L-U-I-S. We're a

18 Montgomery County small business that owns and operates a

19 number of Dunkin Donuts, including the store located on

20 Georgia Avenue in Wheaton, less than one mile from the

21 proposed gas station. I am also a Montgomery County

22 resident living just up Georgia Avenue in Olney.

23 Because we are members of the Wheaton business

24 community, we have great interest in any efforts to increase

25 the area's vitality and economy. That is why I'm here today

1 speaking in support of Costco's special exception
2 application to build a new gas station adjacent to their new
3 store. The proposed gas station is compatible with our
4 area, particularly given the fact that the station will be
5 located well within the confines of Westfield Wheaton. The
6 stations' location on mall property makes perfect sense
7 given the regional parcentured nature of Westfield Wheaton.

8 There are a number of benefits to the proposed gas
9 station. It will bring more shoppers to Wheaton as many
10 Costco members currently travel outside of the County to
11 purchase quality discount gas. Since there's no other
12 similar option for discount gas in Wheaton, we need to keep
13 those shoppers in our County where their purchases benefit
14 local stores and hope to employ local workers.

15 More shoppers will help to revitalize Westfield
16 Wheaton and the surrounding merchants who would all benefit
17 from increased retail activity. For these reasons, I
18 respectfully request that you approve Special Exception S-
19 2863. Thank you for your consideration.

20 MR. GROSSMAN: All right. Thank you. Any cross-
21 examination questions?

22 MS. ROSENFELD: No, sir.

23 MR. GROSSMAN: Thank you very much, sir. All
24 right. Next person on the list is Barbara Gottlieb. Ms.
25 Gottlieb, would you state your full name and address for the

1 record please?

2 MS. GOTTLIEB: I'm Barbara Gottlieb, G-O-T-T-L-I-
3 E-B. I live at 105 Robin Road, Silver Spring, Maryland
4 20901.

5 MR. GROSSMAN: Would you raise your right hand
6 please?

7 (Witness sworn.)

8 MR. GROSSMAN: You may proceed.

9 MS. GOTTLIEB: Thank you. Good morning.

10 MR. GROSSMAN: Good morning.

11 MS. GOTTLIEB: Thank you for the opportunity to be
12 here today and to testify about the proposed Costco gas
13 station. I'm testifying as an individual. I'm a resident
14 of Four Corners in Silver Spring and I also grew up in
15 Kensington even before the mall which we then knew as
16 Wheaton Plaza was built. When I was a student a Newport
17 Junior High School, now Newport Middle School, and Einstein
18 High, that Wheaton Plaza was where, plaza was where we went
19 to be cool and hang out.

20 My parents still live in the same little house
21 where I grew up less than two miles from the mall, now known
22 as Westfield Wheaton Mall. My parents, my husband, my
23 daughter and I shop at the Target there, we buy bread at
24 Panera, we go to the movies at the Montgomery Royal Theater.
25 So we're local residents and customers of the mall. By the

1 way, I buy my reasonably priced gasoline in Veirs Mill Road
2 right around the corner from Wheaton Plaza.

3 Those are my personal reasons for being here
4 today. In addition, in my professional life I work at
5 Physicians for Special Responsibility, which is a national
6 organization of physicians and other health professionals.
7 And much of the work that I do there addresses air pollution
8 and toxic substances. I'm drawing heavily on what I have
9 learned, the expertise that I have acquired in that job
10 today. I am not speaking as a representative of that
11 organization. In fact, I have taken a vacation day to be
12 here today.

13 But I would like to talk about the dangerous
14 health impacts of gasoline combustion and the severe impacts
15 that the proposed Costco mega gas station would inflict on
16 my family, my friends and my neighbors in the
17 Wheaton/Kensington area. Air pollutants from gasoline
18 combustion inflict grave harm on the basic organ systems of
19 the body, the ones in the respiratory system most obviously,
20 but also on the heart and cardiovascular system. Pollutants
21 from gasoline cause and worsen asthma. They worsen COPD,
22 chronic obstructive pulmonary disease, which is the fourth
23 leading cause of death in the United States. They increase
24 the numbers of heart attacks in cancer cases. They cause
25 death from respiratory and cardiovascular causes, including

1 strokes and they increase mortality in children and infants.
2 These harms are well-documented in the scientific
3 literature. Some of them are footnoted in my testimony and
4 I'll be happy to give you a paper copy with those clippings.

5 MR. GROSSMAN: All right.

6 MS. GOTTLIEB: More vehicles in large quantities
7 of both gaseous and particulate pollution, including carbon
8 monoxide, nitrogen oxides and air toxics and volatile
9 organic compounds such as benzene, tolamine and gibadine and
10 formaldehyde. The transportation sector is responsible for
11 61 percent of carbon monoxide emissions, nearly 51 percent
12 of nitrogen oxide emissions in nearly 30 percent of volatile
13 organic compounds. Not only that, but it is gasoline-
14 powered cars and my trucks, not diesel powered trucks, that
15 are the major contributors to these emissions. And that's
16 important because these dangerous pollutants would be
17 emitted by the very vehicles that would be lining up to fill
18 their tanks at the proposed mega gas station at Wheaton
19 Plaza.

20 Many of us who shop there stand to suffer
21 significant harm from the air pollution from a gas station.
22 Children face special risks from air pollution because their
23 lungs continue to grow and develop throughout childhood and
24 into adolescence I think because they are more active
25 outdoors than adults. According to the policy statement of

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1 the American Academy of Pediatrics recognizing the health
2 hazards of outdoor air pollution, a child's developing lung
3 is, quote, highly susceptible to damage, closed quote, from
4 air pollution. That does place the children at Stephen
5 Knolls School at risk.

6 Older adults also face a greater burden from air
7 pollution and as you probably know it's not uncommon for
8 seniors to go to the mall for socialization and to walk
9 around to get exercise. As the body ages, it's less able to
10 defend against the effects of air pollution.

11 In addition to those two groups, people with pre-
12 existing conditions such as asthma, heart, obstructive
13 pulmonary disease, cardiovascular disease and diabetes all
14 face a greater burden from traffic-related air pollution.

15 To look at just one of those, 25.9 million Americans already
16 have asthma, including 7.1 million children. So the
17 pollutants from gasoline add to the burden that they face
18 every day. In fact, a 2010 review by the Health Effects
19 Institute, looking at existing research, concluded that
20 traffic-related pollution may actually cause the onset of
21 new cases in children. That's to say not just the
22 exacerbation of existing cases, but actual new cases of
23 asthma caused by tailpipe pollution.

24 I'd like to look briefly at some of the specific
25 pollutants that come from gasoline and their health effects.

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1 As I mentioned, these include carbon monoxide, nitrogen
2 oxides and volatile organic compounds. I'll look at these
3 briefly individually, look at the additional pollutants they
4 form when they combine and in conclusion mention some of the
5 effects of cumulative and synergistic effects.

6 So starting with carbon monoxide, carbon monoxide
7 is a deadly colorless, odorless gas. As I think most of us
8 know it's poisonous. We've all heard of carbon monoxide
9 poisoning. It's produced by, among other sources, the
10 internal combustion engines of cars and has long been
11 recognized as one of the major pollutants in gasoline
12 tailpipe emissions. Motor vehicles remain the dominant
13 source of carbon monoxide in the air.

14 What carbon monoxide exposure does is that it
15 causes harmful effects to the cardiovascular system, in
16 particular, resulting in increased hospital admissions and
17 emergency department visits for systemic heart disease,
18 that's, systemic heart disease is when the blood flow to the
19 heart is reduced caused by a blockage in the coronary
20 arteries. It contributes to heart attacks and congestive
21 heart failure where the pump, the heart can't pump enough
22 blood to meet the body's needs.

23 Gasoline also contains a number of air toxins.
24 Air toxics is not just a general term, it's a specific list
25 of 187 air pollutants that the EPA has identified as known

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1 or suspected to cause cancer and other serious health
2 effects. By serious health effects they mean such things as
3 reproductive effects or birth defects. The air toxics
4 associated with gasoline are typically volatile, organic
5 compounds. As the name suggests, these are organic chemical
6 compounds whose composition makes it possible for them to
7 evaporate under normal, indoor, atmospheric conditions of
8 temperature and pressure.

9 The volatile, organic compounds from cars come
10 from two sources. So they come from the tailpipe after
11 gasoline is burned. They also enter the atmosphere as the
12 evaporative emissions from gasoline, especially when cars
13 are fueling. So this is particularly relevant to our
14 discussion of a proposed gas station.

15 And it's worrisome because benzene, which is one
16 of the major, I beg your pardon, it's the major component of
17 evaporative emissions from gasoline is a known human
18 carcinogen. It's been widely studied, although primary in
19 workplace exposures, where it has been shown to cause
20 leukemia. It also causes non-cancer health effects
21 including blood disorders and immunal toxicity. Immunal
22 toxicity are the adverse effects on the functioning of the
23 immune system that results from the exposure to chemical
24 substances.

25 And benzene is not the only carcinogen that we're

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1 exposed to from gasoline. One, threbutadine is another
2 that's also traffic generated. It's also known to cause
3 leukemia and possible reproductive and developmental
4 impacts. Formaldehyde is another, another known carcinogen,
5 also a cause of leukemia and an irritant to eye, nose and
6 throat tissues. There are more.

7 I'll talk about nitrogen oxides next. There are a
8 family of pollutants that include nitric oxide and nitrogen
9 dioxide. The whole family of nitrogen oxides are doubly
10 harmful to human health because they cause harm directly in
11 and of themselves. They also combine in the air to form two
12 other extremely harmful pollutants, ozone and particulate
13 matter.

14 I'll talk first about their direct harm. The U.S.
15 Environmental Protection Agency, the EPA, has determined
16 that short-term nitrogen dioxide exposure is likely to cause
17 respiratory harm, including airway inflammation and
18 respiratory diseases in children. The term respiratory
19 diseases means things like asthma attacks, increased
20 sensibility to allergens and difficulty breathing, all of
21 which can result in missed days of school and work,
22 emergency room visits and hospitalizations. It's a
23 terrifying experience for a child not to be able to breathe
24 and it can in some cases be life-threatening.

25 Long-term nitrogen dioxide exposure may

1 permanently stunt the growth of the lungs which may be a
2 risk factor for lung disease later in life. What these
3 facts mean is that children who go to school near a gas
4 station, like the children at Stephen Knolls, may be placed
5 at risk for debilitating lung disease when they grow up.
6 You know, Stephen Knolls School provides a special education
7 to children who suffer mild to severe cognitive deficits and
8 multiple disabilities. The last thing we need to inflict on
9 these kids is a debilitating lung disease.

10 Adults also suffer respiratory effects from
11 nitrogen dioxide. Nitrogen dioxide may pose a special
12 hazard to drivers as it is commonly concentrated inside
13 vehicles. This, I think, is another concern for the people
14 in the cars waiting for their turn to fill up at the pump.
15 There's evidence of cardiovascular effects from exposure to
16 nitrogen dioxide, a strong association with cardio-pulmonary
17 mortality, as the doctors put it. For the rest of us that
18 means death.

19 An association is not a cause. Because so much of
20 the exposure to nitrogen dioxide studied in the research
21 comes by people who are on and near roadways, researchers
22 have not yet been able to sort out whether the nitrogen
23 dioxide is the primary agent causing these health problems
24 or if the agent is some other part of traffic pollution.
25 But since construction of the proposed gas station would

1 subject all of us to all of the pollutants emitted by
2 gasoline combustion, the distinction becomes irrelevant in
3 practical terms. Whether nitrogen dioxide is the causative
4 agent or simply a marker, the pollutants from gasoline
5 combustion are still inflicting serious and long-term damage
6 to children's lungs and adult's hearts.

7 Now I've talked briefly about carbon monoxide,
8 volatile organic compounds and nitrogen oxides. All of them
9 are emitted by gasoline. All of them cause serious harm to
10 human health in and of themselves.

11 Unfortunately for us, these substances also react
12 with each other in the presence of heat and sunlight to form
13 ozone. Ozone is an extremely dangerous pollutant that is
14 already widespread across the United States. The EPA issues
15 warnings on its website about the dangers from ozone and I
16 quote, ozone in the air we breathe can harm our health, even
17 relatively low levels of ozone can cause health effects.
18 Breathing ozone can worsen bronchitis, emphysema and
19 asthma. Low-level ozone can also reduce lung function and
20 inflame the linings of the lungs. Repeated exposure may
21 permanently scar lung tissue. End of quote.

22 In addition to that, the EPA's most recent review
23 of the current research on ozone pollution which was
24 released in February 2013, this year, indicates actually
25 greater dangers from ozone. The EPA engaged in a panel of

1 expert scientists, the Clean Air Scientific Advisory
2 Committee, to help them assess the evidence, in particular,
3 research published between 2006 and 2012, so the most recent
4 research available to them, and it concluded that ozone
5 pollution poses multiple, serious threats to health. It
6 causes respiratory harm such as worsened asthma, worsened
7 COPD. It is likely to cause early death from both short-
8 term and long-term exposure. And if I could underline that,
9 I think that's very significant. Early death or premature
10 death doesn't just mean death that happens a few days
11 earlier than it might have otherwise. It means deaths that
12 would not have happened or might not have happened for years
13 and years if not for this exposure.

14 It is likely to cause cardiovascular harm. It may
15 cause harm to the central nervous system. It may cause
16 reproductive and developmental harm. In other words, the
17 dangers are really severe. I mean we've all heard about
18 what goes on. How many of us knew that ozone exposure may
19 increase the risk of premature death? And this is a
20 pollutant that already exists in Montgomery County. In
21 fact, we're a non-containment area for ozone, meaning that
22 the average levels in the County already exceed the levels
23 that the EPA considers safe.

24 Further, many of us are particularly vulnerable to
25 ozone. According to the EPA again, and I quote again,

1 people with lung disease, children, older adults, and people
2 who are active outdoors may be particularly sensitive to
3 ozone. Children are at greatest risk from exposure to ozone
4 because their lungs are still developing and they are more
5 likely to be active outdoors when ozone levels are high
6 which increases their exposure. Children are also more
7 likely than adults to have asthma, closed quote. That's why
8 as a citizen I oppose the construction of a gas station that
9 by emitting the precursors to ozone, the nitrogen oxides,
10 the volatile organic compounds and carbon monoxide would put
11 at risk our breathing, our hearts, our children and our
12 neighbors.

13 The final pollutant I'm going to talk about is
14 particulate matter. Particulate matter is not actually a
15 single substance, but rather a complex combination of solids
16 and aerosols from multiple substances that get suspended in
17 the air. When cars burn gasoline, their tailpipes emit
18 solid particles, as well as tiny droplets of airborne
19 sulfuric acid and these mix together to form these complex
20 particles, a mixture of sulfur dioxide, nitrogen oxides,
21 carbon, acids, metals and VOC's, a lot of the usual suspects
22 that come from cars and cause us harm.

23 Researchers categorize these particles according
24 to their size. Small particles are less than 10 microns in
25 diameter and known as PM10. Fine particulate matter consist

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1 of particles 2.5 microns in diameter or smaller called
2 PM2.5. By comparison, a human hair is about 70 microns in
3 diameter. So we're talking about things that, a tiny
4 fraction of the diameter of the human hair.

5 Because of their small size, these particles can
6 stay suspended in the atmosphere for days or weeks and it
7 can be transported across nearby neighborhoods or even
8 hundreds of miles. Wherever they go, once inhaled, fine
9 particulate matter penetrates deep into the lungs despite
10 the body's defense mechanisms. It then can cross from the
11 lungs into the bloodstream.

12 There particular matter exposure can provoke the
13 development of inflammation on the cellular level, which is
14 an immunological response by the body. In the lungs, this
15 inflammation can cause, can lead to exacerbations of COPD,
16 congestive obstructive pulmonary disease, and similarly when
17 particulate matter reaches the heart, it can provoke
18 inflammation of the cardiac system which is a root cause of
19 cardiac disease, including heart attack and stroke. In
20 other words, the results are extremely dangerous, even
21 fatal. Breathing high levels of particulate pollution on a
22 regular basis can shorten life by one to three years. As
23 with the other pollutants I was referring to earlier,
24 particulate pollution doesn't just make people die a few
25 days earlier than they might have. These are deaths that

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1 would not have occurred if there were clean air.

2 The EPA's Clean Air Scientific Advisory Committee
3 assessed the current research on particle pollution in 2009
4 and concluded that particle pollution causes early death
5 from both short-term and long-term exposure, causes in the
6 cardiovascular system heart attacks, strokes, heart disease,
7 congestive heart failure, is likely to cause harm to the
8 respiratory system, may cause cancer and may cause
9 reproductive and developmental harm.

10 Particulate matter has been linked by many studies
11 to death from respiratory and cardiovascular causes,
12 including stroke. I'd like to talk a little bit, just say
13 one thing in particular about stroke. A number of studies
14 have shown a correlation between particulate matter and
15 stroke, even though a relatively small proportion of all the
16 strokes in the U.S. appear to be caused by or related to
17 ambient PM concentrations. However, 800,000 people in the
18 U.S. have a stroke each year, which means that even a small
19 increase in risk causes a health impact of great importance.

20 Researchers generally study air pollutants one at
21 a time so that they can draw conclusions about what
22 substances harm us and how. This is a reasonable way to
23 conduct research, but it doesn't reflect the way our bodies
24 get exposed to and react to toxins from gasoline. In real
25 life we're likely to be exposed to all of the pollutants in

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1 gasoline simultaneously. Scientists are just beginning to
2 study this cumulative exposure and the synergistic effects
3 that a mixture of dangerous substances may have.

4 One study on infant deaths and air pollution in
5 Southern California reported increases in the risk of infant
6 death from respiratory causes, including sudden infant
7 death, or SIDS, when there were increases in the
8 concentration of three tailpipe pollutants, carbon monoxide,
9 particulate matter PM10 and nitrogen dioxide.

10 In a study of the residents of Helsinki, Finland,
11 asthma and COPD emergency room visits increased on those
12 days when there were increases in PM2.5, the coarser air
13 particles, and gaseous pollutants. So as serious as the
14 health effects are that I have been referring to, there is
15 reasonable grounds for suspecting that they are just part of
16 the full picture of the harms being done to our health.

17 Another concern are the cumulative effects of air
18 pollution. The toxins that we would be exposed to from
19 breathing, from the proposed Costco gas station would not be
20 acting alone. They would act on top of the already polluted
21 air we already breathe. This would intensify the threats to
22 our health that we already face. For that reason, the
23 comments that we heard earlier today that the people who
24 live near the mall or the children at Stephen Knolls are
25 already exposed to air pollution and apparently ought not to

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1 be concerned about further air pollution, those arguments
2 are misguided and misleading.

3 If Costco were to build a 16 pump gas station at
4 Wheaton Westfield Mall, it would greatly increase air
5 pollution in three ways. One, from the dangerous emissions
6 from the cars idling their engines while they wait in line
7 for their turn at the pump and with 16 pumps that's a lot of
8 cars. It would increase congestion in the parking lot.
9 Yes, the gas station would be built on a parking lot. That
10 gas station on most weekends when I go to Wheaton Plaza or
11 Westfield Mall are pretty full. There are slow-moving and
12 idling cars cruising for a parking space. They are emitting
13 these pollutants also.

14 And then, finally, it would introduce the
15 evaporative emissions from air toxics from the gasoline that
16 is pumped. And as I mentioned earlier, those are the air
17 toxins, including benzene and other carcinogens.

18 The health risks associated with this scenario are
19 serious and even life-threatening. They endanger the people
20 living near the proposed gas station, the students at
21 Wheaton Knolls, Stephen Knolls School and they would worsen
22 the air breathed by the thousands of people who shop at
23 Wheaton Westfield Mall. Some of those people, as I've
24 indicated, face a greater risk than others because they are
25 more susceptible to the damaging effects of air, traffic-

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1 related air pollution, the elderly, children and people with
2 pre-existing conditions, including asthma, chronic
3 obstructive pulmonary disease, cardiovascular disease and
4 diabetes. Taken together, that's a lot of the people who
5 shop at Wheaton Westfield Mall.
6 I think these facts are based on reality. I think
7 they have great relevance for the people of Kensington,
8 Wheaton and nearby Silver Spring. Certainly, the cost of
9 gasoline are a factor that all of us do want to take into
10 account, but there are also costs related to the increased
11 illnesses, medical treatment and premature deaths that
12 result from these air pollutants. So I submit that it would
13 be a severe threat to health and to the quality of life to
14 permit this gas station to be constructed and I strongly
15 encourage you to deny Costco's special exception application
16 S-2863. We'll all breathe easier if you do. Thank you.
17 MR. GROSSMAN: All right. Cross-examination
18 questions?
19 MR. GOECKE: Yes, please.
20 MR. GROSSMAN: Mr. Goecke.
21 CROSS-EXAMINATION
22 BY MR. GOECKE:
23 Q Ms. Gottlieb, you work for the Physicians for
24 Social Responsibility?
25 A That's right.

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1 Q But you're not a doctor?
2 A I'm not a doctor.
3 Q Okay. Are you a medical care provider at all?
4 A No, I'm not.
5 Q Okay. I'm reading your bio, it's right here.
6 Would it be fair to characterize your role as a community
7 activist?
8 A No, I'm an educator and an organizer.
9 Q Okay. You organize?
10 A Physicians and other health professionals of who
11 are members across the country.
12 Q Okay. And your college degree is in French
13 literature?
14 A French language and literature, yes.
15 Q That's fine.
16 A Clearly has nothing to do with what I've learned
17 on the job. However, if I may elaborate just a little bit?
18 I have been at Physicians for Social Responsibility for
19 about four and a half years. I work with physicians. I
20 have both edited and co-authored reports with physicians,
21 including a report on air pollutants. So that I did not
22 learn from my French degree.
23 Q Okay. And you're not here speaking today on
24 behalf of your organization at all?
25 A No, I'm not.

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1 Q Okay. And why is that?
2 A Because we don't work in the local area. We're a
3 national organization and I, if I work locally, it's only
4 where we have chapters. We have a chapter in Baltimore with
5 whom I work, but we don't have a chapter in this area.
6 Q And so for the Physicians for Social
7 Responsibility, you haven't focused on the Westfield Wheaton
8 Mall site at all?
9 A That's exactly right.
10 Q And you haven't done any studies on Wheaton
11 Westfield Mall?
12 A Certainly not the kind of studies that would
13 indicate, for example, how these pollutants would be
14 transported through the air or what degree of setback would
15 be, are not held.
16 Q Okay. And so your concerns about the toxins from
17 gas stations are more of a general concern?
18 A Yes, that's fair to say.
19 Q You did testify that you drive a car?
20 A I don't think I testified that, but I on occasion
21 drive a car. I walk to the Metro and then take the Metro to
22 work. So I drive a car on occasions.
23 Q Okay. Oh, I thought you said that you purchased,
24 recently purchased gas around the corner.
25 A I beg your pardon, you're right. That's really

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1 our family that does. It would be more likely to be my
2 husband. I do, however, drive the car sometimes on the
3 weekend.
4 Q Okay. And so you do use gas stations on occasion?
5 A Right, especially that one that I mentioned on
6 Veirs Mill Road.
7 Q Right. And do you think it's dangerous for you to
8 use that gas station?
9 A I think that breathing polluted air is dangerous
10 for all of us. At the same time, we are a car-dependent
11 society and we do have to breathe the air that's afforded
12 us. However, I think concentrations of pollutants are a
13 serious concern and location of those concentrated, high
14 concentrations near a school, near a shopping center, near a
15 pool in your neighborhood are concerns.
16 Q So, I'm sorry, you think it is dangerous for you
17 to use the gas station or not?
18 A Do I think it -- I'm not quite clear if I get your
19 question. Is it more dangerous for me to use that gas
20 station than it would be for me to use the Costco 16-pump
21 station? No.
22 Q Well, we'll get to that in a moment.
23 A Okay.
24 Q For any gas station that you go to, do you think
25 it's harmful to your health?

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1 A Oh, probably, yes. Yes.
2 Q But you still go there?
3 A When I need to buy gas, yes, I do.
4 Q And have you ever had a health, an adverse health
5 reaction when you're getting gas?
6 A If I may take a slight detour in answering your
7 question?
8 Q Please, I'd prefer that you just answer the
9 question.
10 MR. GROSSMAN: Just answer the question.
11 MS. GOTTLIEB: Have I had COPD? No. It takes
12 many years to develop. Have I had a stroke or heart
13 disease? No, they take many years to develop. Do I have
14 asthma? Fortunately, no. So I have not been aware of any
15 of these severe impacts on my health, but you could not
16 necessarily notice them while you were at a gas station. It
17 would take years to develop.
18 BY MR. GOECKE:
19 Q So is it fair to say your concern is more about
20 the cumulative effect of your exposure to toxins over the
21 course of your life?
22 A Cumulative? Yes. I think that the cumulative
23 effect is something that I am very concerned about. Over
24 the course of my life is perhaps a longer time frame than it
25 is necessarily relevant.

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1 Q Okay. Do you wear any protective gear when you go
2 to the gas station?
3 A No, do you?
4 MR. GROSSMAN: He's asking the questions.
5 THE WITNESS: Oh, I beg your pardon. No, I don't.
6 BY MR. GOECKE:
7 Q I do not, no.
8 A No, neither do I.
9 Q And you raised an interesting point a moment ago
10 where you said you think the Costco station will be more, or
11 you sort of intimated that there might be a difference with
12 the Costco station with other gas stations that you go to.
13 Do you think the Costco station would be more dangerous or
14 more potentially harmful than other gas stations?
15 A I think that if the variance is granted and 16
16 pumps are installed, then it would be more dangerous than
17 gas stations where I go where there are probably four to six
18 pumps.
19 MR. GROSSMAN: It's not a variance, it's a special
20 exception.
21 MS. GOTTLIEB: Oh, I beg your pardon.
22 MR. GROSSMAN: They're different.
23 MS. GOTTLIEB: You said that earlier.
24 MR. GROSSMAN: Different animal, right?
25 MS. GOTTLIEB: That's right. The special

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1 exception application. In short, if the gas station is
2 built with 16 pumps, then it would be, yes, it would emit
3 more, more evaporative emissions than one with a fewer
4 number of pumps and would in all likelihood attract a larger
5 number of cars. So for both of those reasons, yes, it
6 would.
7 BY MR. GOECKE:
8 Q Okay. So in other words, the dose, the
9 concentration of the carcinogens matter?
10 A Yes, concentration of air pollutants matters.
11 Q The higher concentration, the more likely it's
12 going to be able to, there's going to be adverse health
13 effects?
14 A Yes.
15 Q Okay. And so if the concentrations are not at a
16 level that could cause adverse health effects, then there's
17 no, there's no concern?
18 A No. I think that the statement that you just made
19 doesn't sound right to me in the sense that concentration
20 matters are already living in polluted air, so there's
21 already some air pollutants. So if, if you increase the
22 concentration only by a certain amount, there's still room
23 for concern because you know, frankly, we -- there's room
24 for, there's reason for concern now as the EPA statements
25 about ozone, for example, made clear.

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1 Q So you would prefer that no new gas stations be
2 built?
3 A I think I would prefer that we all, you know,
4 manage the transition to non-fossil based fuels and we all
5 had electric cars or solar-paneled, powered cars. I'm not
6 sure that's immediately -- that's definitely not immediately
7 available to us. In the short run, in order to keep our
8 society running, we are fairly heavily reliant on cars.
9 Q I don't think you've answered my question. Would
10 you support a new gas station anywhere?
11 A I'm not advocating for new gas stations anywhere.
12 If a gas station needs to be built, perhaps it needs to be
13 built. I think the smaller the better. I think the farther
14 from homes, schools and recreation areas the better.
15 Q So small gas stations are okay?
16 A No, I didn't say okay. I think I'm trying to say
17 preferable or perhaps less dangerous.
18 Q Okay. Okay. Are you -- do you know what an arid
19 permeator is?
20 A I do know what an arid permeator is.
21 Q Have you read --
22 MR. GROSSMAN: You said you do or you do not?
23 MS. GOTTLIEB: Do not.
24 MR. GROSSMAN: Okay.
25 BY MR. GOECKE:

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1 Q Are you aware of any of the technology that Costco
2 uses in constructing its gas stations?
3 A No.
4 Q If I were to tell you that Costco uses technology
5 to reduce the emissions from its gas stations, would that
6 have any influence on your opinion here today?
7 A I would say that that sounds laudable. I don't
8 know what technologies other gas stations use to reduce
9 their emissions. All such technologies are laudable. The
10 fact that cars now emit fewer pollutants than they used to
11 is also laudable and does not solve the problem.
12 Q But you agree that if Costco can implement
13 technology that, whether other gas stations use it or don't,
14 if they can reduce emissions, that's a good thing?
15 A That's a good thing.
16 Q And if they get it to a level that's low enough,
17 it could really protect people's health, even in your
18 opinion?
19 A Well, not only am I not a physician, I'm also not
20 an engineer, so I don't know quite what technologies could
21 get things low enough --
22 Q Okay.
23 A -- so I'm not sure I could answer your question.
24 Q Okay. Would you ever support the Costco gas
25 station? In other words, let me rephrase that question.

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1 MS. ROSENFELD: Relevance. Relevance.
2 BY MR. GOECKE:
3 Q If -- I'll restate it, ma'am. If you were to
4 learn that Costco could implement technologies to severely
5 reduce the emissions from the gas station, would that change
6 your mind about opposing it.
7 A Well, it certainly sounds good on paper. I guess,
8 you know, I would want to know how much is it reducing these
9 emissions and, you know, what does, who is determining what
10 is low enough.
11 Q Did you attend a hearing before the Park and
12 Planning staff on this special exception request?
13 A No, I didn't.
14 MR. GROSSMAN: Before the Park and Planning --
15 MR. GOECKE: I'm sorry.
16 MR. GROSSMAN: -- the Planning Board you mean?
17 MR. GOECKE: The Planning Board.
18 MR. GROSSMAN: Okay.
19 MS. GOTTLIEB: No.
20 BY MR. GOECKE:
21 Q Okay. Are you aware that the Planning Board found
22 that there was no health, adverse health impact on the
23 proposed special exception?
24 A I didn't attend that hearing and I'm not aware of
25 either of their findings or who testified or who didn't

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1 testify.
2 MR. GROSSMAN: Yes, I'm not exactly sure that
3 that's, that's precisely what they said, but I'd have to go
4 back and look at the letters. I just, I want to make sure
5 that we're not mis-characterizing what they said. Do you
6 have a copy of their letter handy?
7 MR. GOECKE: We're looking for that.
8 MS. ROSENFELD: And, Mr. Grossman, to the extent
9 that she wasn't present at the Planning Board discussions
10 and is not familiar with their findings, I'm really not sure
11 what the relevance of her views on that might be to the
12 extent she's even familiar with them.
13 MR. GROSSMAN: Well, I don't know. I don't think
14 it's an objectionable question if it didn't mis-state the
15 premise. I have a copy here. There is a sentence on page
16 2, the last paragraph, Commissioners Dreyfuss, Presley and
17 Anderson disagreed with staff's determination that the
18 applicant had not provided enough evidence to demonstrate
19 there would be no adverse health impacts. There were
20 various views expressed. I think the best thing to do is
21 not to characterize the findings of the Planning Board in
22 the question.
23 MR. GOECKE: Okay.
24 MR. GROSSMAN: Let's restate your question.
25 MR. GOECKE: Yes, I'll go back.

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1 BY MR. GOECKE:
2 Q Have you read any of the reports presented by
3 Costco's experts, Mr. David Sullivan, in this matter?
4 A No, I haven't.
5 Q Are you aware that Costco's expert, Mr. David
6 Sullivan, concluded that there would be no emissions from
7 the gas station that would exceed the EPA's national ambient
8 air quality standards?
9 A I'm not familiar with the specifics of his
10 findings, although I have heard that there was a
11 mathematical or miscalculation in his findings that rather
12 recast the, their accuracy.
13 Q Okay. Okay. You said earlier that you relied on
14 several studies to support your testimony here today?
15 A Uh-huh.
16 Q Do you have a list of those?
17 A I have them as footnotes. I could perhaps make a
18 copy of this and provide it to you.
19 Q That would be great.
20 A I can read them to you now if you prefer.
21 Q This is footnotes to your written testimony?
22 A Yes, do you need to have them?
23 Q Do you have --
24 A I guess they'll be on the record. Is that not the
25 case?

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1 MR. GROSSMAN: Did you want to leave a copy with
2 us as part of the record?
3 MS. GOTTLIEB: Yes, most definitely.
4 MR. GROSSMAN: Okay. Well, why don't we mark a
5 copy of Exhibit 217 and is that a copy of your entire
6 testimony, plus the footnotes?
7 MS. GOTTLIEB: I have a few off the cuff remarks.
8 They are indicated in pen in one copy. I was going to give
9 you a clean copy, but I'd be happy to give you either or
10 both.
11 MR. GROSSMAN: No, that's fine. A clean copy is
12 fine.
13 MS. GOTTLIEB: Okay.
14 MR. GROSSMAN: All right.
15 MS. GOTTLIEB: May I give it to you now?
16 MR. GROSSMAN: Yes. All right. So let's mark
17 this as Exhibit 217 and then --
18 MS. GOTTLIEB: If it would be helpful, I would be
19 happy to indicate at least what some of my sources were.
20 MR. GROSSMAN: Hold on one second. Testimony is,
21 No. 217 is testimony of Barbara Gottlieb --
22 (Exhibit No. 217 was marked for
23 identification.)
24 MS. HARRIS: Do you have an extra copy?
25 MS. GOTTLIEB: I guess you could have the marked-

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1 up copy.
2 MR. GROSSMAN: -- with footnotes. All right. You
3 may proceed with your cross-examination.
4 MR. GOECKE: Thanks, Mr. Grossman.
5 BY MR. GOECKE:
6 Q Ms. Gottlieb, turning back to your work at the
7 Physicians for Social Responsibility, you said you've been
8 there for a little over four years?
9 A About four and a half.
10 Q Okay. And what did you do before that?
11 A Before that I worked at the American Bar
12 Association.
13 Q At the American Bar Association?
14 A Yes.
15 Q And what did you do there?
16 A I was engaged in a precedential issue called the
17 Role of Justice Project.
18 Q Did that involve issues with carcinogens, toxins
19 and all?
20 A No.
21 Q Okay. So you got involved in environmental issues
22 when you joined this organization?
23 A I got involved with these environmental issues,
24 yes, when I joined this organization.
25 Q And tell us exactly what it is that you do at the

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1 Physicians for Social Responsibility?
2 A I'm the director of their program for environment
3 and health. We work with doctors, nurses, other health
4 professionals and public health professionals across the
5 country to educate them about issues related to energy,
6 climate change and toxics, and help them to bring what we
7 call a health voice to the public and to bear and public
8 policy discussions and debates on those issues that I
9 referred to.
10 Q Oh. And what's your role in organizing these --
11 are they seminars or are they classes or meetings? How
12 would you characterize them?
13 A Since we work through a network of chapters, as
14 well as working with individual physician members and other
15 health professional members across the country, it varies
16 substantially. Where we have chapters, it's often the
17 chapters that hold the public events or the forums or the
18 presentations, also grand rounds at hospitals and activities
19 like that.
20 Q Okay.
21 A My role is more to resource those activities.
22 That is to say I and members, other members of our staff and
23 our Board of Directors write materials, identify materials,
24 present, turn written materials into Powerpoints and other
25 such presentations so that they are useful to our members

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1 and accessible for the public.
2 Q Have you ever written any materials that would be
3 relevant to today's proceeding?
4 A I'm a co-author of a report called Coal's Assault
5 on Human Health. The primary --
6 MR. GROSSMAN: Coal what?
7 MS. GOTTLIEB: Coal's Assault on Human Health.
8 It's a report published by Physicians for Social
9 Responsibility in 2009. It's available on our website,
10 www.psr.org. The lead author there is a doctor, a
11 neurologist by the name of Alan Lockwood and I was the
12 fourth author on that report.
13 MR. GROSSMAN: And I take it that's, coal there is
14 C-O-A-L, right?
15 MS. GOTTLIEB: Yes, exactly.
16 MR. GROSSMAN: The reason I say that is there is a
17 witness, a Dr. Cole, who will be a witness --
18 MS. GOTTLIEB: Oh.
19 MR. GROSSMAN: -- in this case and I want to make
20 sure that we made that distinction.
21 MS. GOTTLIEB: I hope not. I have also, I'm a co-
22 author of a report on the health impacts of coal ash and a
23 report, author, sole author of a white paper on coal ash and
24 hexavalent permeate.
25 BY MR. GOECKE:

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1 Q And how are those -- so those materials are
2 relevant to this proceeding how? How are they relevant to
3 this proceeding?
4 A Perhaps, I beg your pardon. So perhaps the two in
5 regard to coal ash are not -- the Coal's Assault on Human
6 Health report looks largely at the air pollutants from coal
7 combustion. Many of the pollutants from coal combustion are
8 the same substances as those that I referred to in my report
9 today, things like nitrous oxides, those highly organic
10 compounds, ozone particulate matter and so it was in the
11 course of researching, writing and editing that report, co-
12 writing and co-editing that report that I learned a great
13 deal about these substances. And, of course, that's -- I
14 guess it's personal relevance to me of more perhaps direct
15 import of answering your question is that it's looking at
16 the same substances and their effects, their deleterious
17 effects on the major organ systems of the body.
18 Q And it's looking at the effect of the substances
19 on a grand scale?
20 A Yes.
21 Q All right.
22 A Well, I beg your pardon. The report, reports on a
23 grand scale, many of the sources that we use are articles
24 that appear in peer-reviewed medical journals and often
25 those reports look much more closely or much more narrowly

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1 at say a particular substance in a particular location or
2 the impact on a given population, whether it be within a
3 hospital or within an age group or something like that.
4 Q But do you focus on a specific coal mine for
5 example?
6 A Oh, no, no, no. It's industry-wide so to speak.
7 Q Industry-wide? So not site specific?
8 A Not site specific.
9 Q And coal, not gas, right?
10 A Exactly.
11 Q And you haven't done any studies or research on
12 this specific site?
13 A No, I have not done any research on this site.
14 Q And you have not read Mr. Sullivan's report?
15 A Right.
16 Q Okay.
17 MR. GOECKE: No further questions.
18 MR. GROSSMAN: Any other cross-examination
19 questions?
20 MS. ROSENFELD: Yes, thank you.
21 MR. GROSSMAN: Ms. Rosenfeld.
22 BY MS. ROSENFELD:
23 Q The publication that you helped co-author, I
24 understand, is Coal's Assault on Human Health, is that
25 correct?

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1 A That's right.
2 Q And you said that included an analysis of the same
3 types of pollutants that would be at issue here?
4 A Any analysis of the health effects of the same
5 pollutants, yes.
6 Q Of the same pollutants? And those were NOX and
7 BOC's and ozone and particulate matters, is that correct?
8 A I think I'm missing one. If you'll give me just a
9 second. Let me just look and see. You got, you said
10 particulate matter, right?
11 Q Yes, I did.
12 MR. GROSSMAN: Yes.
13 MS. GOTTLIEB: All right. Uh-huh. Right, as well,
14 of course, as the multi-exposure, the multi-pollution
15 exposures.
16 BY MS. GROSSMAN:
17 Q And in preparing, in the course of your
18 professional work, do you read articles and journals and
19 health-related materials to educate yourself --
20 A Yes, I do.
21 Q -- about these issues?
22 A Yes, I do.
23 Q And did you do that in the course of preparing and
24 co-authoring this publication?
25 A Yes.

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1 Q And the others as well I presume?
2 A Yes, yes, they were all, they were all heavily
3 reliant on peer-reviewed journal, medical journal articles.
4 Q One question that Mr. Goecke asked you related to
5 your opinion about the gas station if Costco would, quote,
6 severely limit, end quote, gas emissions. To the extent
7 that Costco may be able to limit emissions from the fuel
8 tanks themselves, I think there's little that they can do to
9 reduce emissions from the vehicles that arrive at the gas
10 station.
11 MR. GROSSMAN: Well, you're offering her testimony
12 now. Let's keep the question to a question.
13 MS. ROSENFELD: Well, I mean, I need to frame the
14 question. He --
15 MR. GROSSMAN: But you're offering, you're
16 offering testimony as part of your question. Try to frame
17 it without offering testimony.
18 MS. ROSENFELD: Well, Ms., but Mr. Goecke's
19 premise was that Costco would, quote, severely limit gas
20 emissions. That's --
21 MR. GROSSMAN: Well, his question was, but go
22 ahead. Frame your question.
23 BY MS. ROSENFELD:
24 Q To the extent that emissions from vehicles would
25 remain unchanged regardless of who might operate the gas

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1 station, whether it's Costco or Free State or Shell, would
2 that mitigate your concerns at all about the gas station?
3 A If I'm understanding your question correctly,
4 you're asking whether I would still be concerned about the
5 emissions that came from the cars that arrived at the gas
6 station?
7 Q That's correct.
8 A Yes, I would. Yes, they would still be --
9 Q Would you be --
10 A -- it would still be emitting the tailpipe
11 emissions. If a gas station manager is able to reduce the
12 amount of say leakage when gas is pumped, that's to the
13 good. I think that's what those little plastic things
14 are --
15 MR. GROSSMAN: Those annoying little rubber
16 things?
17 MS. GOTTLIEB: Those little, rubber, yes, the
18 little, annoying rubber things as they're technically
19 called, I think, are designed to reduce the evaporative
20 emissions. But, yes, in answer to your question, I'm sorry,
21 that was a perhaps roundabout, yes, the part of the problem
22 is when the car is going to arrive at the gas station.
23 BY MS. ROSENFELD:
24 Q So whether a 16 pump gas station were operated by
25 Costco or Shell or Exxon, your concerns about the vehicular

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1 emissions would remain the same, is that correct?
2 A Right.
3 Q Okay. One of the -- Mr. Sullivan, who provided
4 the environmental report, did testify about NOX emissions
5 and in his testimony yesterday, once he made a correction.
6 The testimony was that the NOX levels within the mall parcel
7 itself would exceed EPA standards.
8 MR. GROSSMAN: That's a mis-characterization of --
9 MR. GOECKE: That's not what he testified.
10 MR. GROSSMAN: -- his testimony.
11 MS. ROSENFELD: I'm not sure that it is.
12 MR. GROSSMAN: And it's a complicated testimony
13 because it involves different, involves rural versus --
14 MS. ROSENFELD: That's correct.
15 MR. GROSSMAN: -- versus --
16 MS. ROSENFELD: That's correct.
17 MR. GROSSMAN: -- urban environments. So I think
18 that you can't -- let's not characterize his testimony as
19 what he concluded. I think that summary mis-characterizes
20 his testimony. So you're going to have to try to phrase it
21 in a different way.
22 BY MS. ROSENFELD:
23 Q To the -- whatever baseline of NOX might exist at
24 the mall parcel, let's assume a fixed number, let's assume a
25 number of 10, a level of 10 NOX within the parcel --

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1 A Okay.
2 Q -- if the gas station were to increase that level,
3 in your opinion would it increase the health risks to the
4 people who are present at the mall parcel?
5 MR. GOECKE: Objection. I don't think she has any
6 basis to testify about health effects.
7 MR. GROSSMAN: I, nobody objected before to her
8 testimony which included a great deal of what you consider,
9 you know, under all the circumstances expert opinion kinds
10 of testimony. Nobody objected in the course of it. So I'm
11 going to let her answer that question with the caveat that I
12 understand this is somebody who is testifying essentially as
13 a lay witness that has not been qualified or accepted as an
14 expert in this area and I'm going to accept that question
15 and her testimony with that in mind and give it appropriate
16 weight given that consideration.
17 MS. GOTTLIEB: Thank you. As a lay witness and as
18 a local citizen, I will defer to the U.S. Environmental
19 Protection Agency which has determined that short-term
20 nitrogen dioxide exposure is likely to cause respiratory
21 harm, including airway inflammation and respiratory distress
22 in children and that long-term nitrogen dioxide exposure may
23 permanently stunt the growth of lungs. Maybe I'll stop
24 there.
25 BY MS. ROSENFELD:

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1 Q Thank you. And do you -- does the EPA talk about
2 short-term exposure? What type of short-term exposure do
3 they monitor?
4 A Oh, I don't know that, I'm sorry to say. Well, do
5 you mean, well, do they monitor or does this --
6 Q Or do they regulate?
7 A Well, they don't regulate. They -- I mean I think
8 your question may be what term is short-term --
9 Q That's correct.
10 A -- and that they didn't, I don't know the answer
11 to that question.
12 Q You expressed concern about short-term health
13 exposure of the students at the school. How about visitors
14 to the mall?
15 A So, yes, as I said especially, for example, the
16 elderly who may come not only to shop, but also to meet
17 friends and socialize and so on, they're also exposed to the
18 air.
19 Q Okay. And people who are waiting in vehicle
20 queues to purchase gasoline?
21 A Oh, that's my, most definitely a concern --
22 Q And --
23 A -- because not only are they present, but they're
24 sitting in their cars in the area of greatest concentration.
25 Q And people who are waiting near the gas pumps as

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1 their tanks are being filled?
2 A Likewise.
3 Q Okay. And the people who are walking through the
4 parking lot either to shop at the mall or who return to
5 their vehicles to load their groceries or their children or
6 their infants into their vehicles?
7 A They would also be breathing contaminated air and
8 I would also be concerned for them.
9 Q Are you aware that there is an asthma and allergy
10 center at the mall, on the mall parcel?
11 A No, I was not aware of that.
12 Q In your opinion would that population be at
13 greater risk to pollutant exposure that, than the general
14 population?
15 A From what I've read of scientific literature and
16 the EPA, it's not my opinion, it's these findings that
17 people with asthma are more vulnerable and that some of
18 these pollutants can worsen allergy sensitivity.
19 MS. ROSENFELD: One moment please, Mr. Grossman.
20 MR. GROSSMAN: Sure.
21 (Discussion off the record.)
22 BY MS. ROSENFELD:
23 Q I believe you testified that you and your family
24 frequent Panera Bread?
25 A Yeah.

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1 Q And is that located near the gas station itself?
2 A Yeah, it is. It's on that kind of --
3 Q Or the proposed location?
4 A -- wing, it's, so the wing, the wing near Costco.
5 Q And would you be concerned about exposure while
6 you're frequenting that particular establishment?
7 A Well, I mean sure.
8 Q And so is your concern about this gas station in
9 part because of its location, its proximity to where you
10 would frequent and not to every gas station in the
11 Kensington area?
12 A I'm sorry, could you -- I don't quite understand
13 the question.
14 Q Your concern is in part based on the fact that you
15 personally would be affected by potential pollutant
16 exposure --
17 A Oh.
18 Q -- from this gas station --
19 A Oh, well, me personally --
20 Q -- because of where you frequent?
21 A -- my husband, my daughter, my parents, my
22 neighbors, my friends. It's personal and a little bit wider
23 than personal.
24 Q Okay. Thank you.
25 MR. GROSSMAN: All right. Any other questions?

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1 Mr. Silverman?
2 MR. SILVERMAN: Yes.
3 BY MR. SILVERMAN:
4 Q Good morning, Ms. Gottlieb.
5 A Good morning.
6 Q So at Physicians for Social Responsibility, do you
7 help physicians participate in public decision-making
8 processes?
9 A At times I do.
10 Q To testify before the institutions like the Zoning
11 Board and so forth?
12 A They may testify before Zoning Boards. They may
13 testify at EPA hearings. It varies.
14 Q And do physicians have -- why do they need you?
15 Do they have a difficult time getting their health views
16 across to public agencies and to citizens generally?
17 MR. GROSSMAN: I'm not -- where is that question
18 going? How is that going to offer any evidence that's
19 helpful here?
20 MR. SILVERMAN: Well, I think it's helpful to, you
21 know, how do -- I'm trying to explore how you bring very
22 highly, technical, medical knowledge to bear in a, in a
23 public decision-making process like this one where you have
24 members of the public have every right to speak and accord
25 it great weight. I just want to see how people -- I want to

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1 understand how people understand or don't understand medical
2 concerns that --
3 MR. GROSSMAN: I'll give you that leeway, but I
4 think it's far afield of really what's before me.
5 MR. SILVERMAN: All right. Well, I'll try to be
6 brief.
7 MR. GROSSMAN: Okay.
8 MS. GOTTLIEB: Well, so one of my functions at PSR
9 is to be a translator, if you will, of technical information
10 and so, for example, when I testify here and I say
11 congestive heart failure, I'll tell people what that means
12 because you don't know it until you learn it. I think that
13 physicians do tend to speak in highly technical terms and to
14 underestimate or to over-estimate the extent to which people
15 understand what they're saying or what the terms that they
16 use really imply about health.
17 MR. SILVERMAN: All right.
18 MR. GROSSMAN: Okay.
19 MR. SILVERMAN: Thank you very much.
20 MR. GROSSMAN: All right then. I think that
21 completes the cross-examination. Thank you very much and
22 for sharing your views with us.
23 MR. GOECKE: Do we not have the opportunity to
24 follow-up based on those questions?
25 MR. GROSSMAN: No.

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1 MR. GOECKE: Okay.
2 MR. GROSSMAN: She's not, it's not a redirect.
3 She's not --
4 MR. GOECKE: Sure.
5 MR. GROSSMAN: -- called by you and everybody has
6 had an, everybody has had an opportunity for cross-
7 examination
8 MR. GOECKE: Thank you.
9 MS. GOTTLIEB: And I'm done?
10 MR. GROSSMAN: You are done. Thank you. All
11 right. The next person on the list is Gary Spizler.
12 Spizier, I'm not sure. How is that pronounced, sir?
13 MR. SPIZLER: Spizler.
14 MR. GROSSMAN: Spizler? Oh, it's an L. I'm
15 sorry.
16 MR. SPIZLER: That's okay.
17 MR. GROSSMAN: In my defense, the L had a dot on
18 top of it on my list.
19 MR. SPIZLER: My name has been mispronounced my
20 entire life.
21 MR. GROSSMAN: Okay, sir, would you state your
22 full name and address for the record please?
23 MR. SPIZLER: My name is Gary Spizler. I live at
24 1714 Republic Road, Silver Spring, Maryland 20902.
25 MR. GROSSMAN: All right. Mr. Spizler, would you

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1 raise your right hand please?
2 (Witness sworn.)
3 MR. GROSSMAN: You may proceed, sir.
4 MR. SPIZLER: Thank you. Good morning.
5 MR. GROSSMAN: Good morning.
6 MR. SPIZLER: I've lived in the Wheaton area for
7 35 years and I reside within walking distance of the
8 proposed Costco gas station. I'm here today in support of
9 the gas station.
10 I believe that the gas station is very needed in
11 our community. I've been traveling out to Beltsville for
12 years because the Costco there has a gas station and, by the
13 way, when I go to that gas station, when there's a line, I
14 shut my engine off until it's time to move up so I'm not
15 burning more fossil fuels waiting for the gasoline pump to
16 become available.
17 I would rather not have to travel outside the
18 County to access quality discounted gasoline. Well, now
19 that Costco has opened in Wheaton, I've been going to that
20 location more often, I would say almost every other day, but
21 I find it inconvenient that there is no gas station at the
22 Wheaton Costco. A quality, discounted gas station such as
23 Costco's proposal is a great opportunity for the community.
24 While people visit Costco to shop and to get their household
25 items or groceries, they can also get quality, discounted

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1 gasoline as well. These days everyone is trying to save and
2 this gas station will have a positive impact on our
3 community, allowing people to have the option to buy their
4 affordable gas if they would like without having to travel
5 further distances, burning more fossil fuels in the process.
6 For many years I have supported Costco as a whole.
7 Their company is known for their quality. I believe the
8 proposed gas station will serve as quality as well. The
9 community needs responsible businesses like Costco and a gas
10 station there will serve our community well. Thank you.
11 MR. GROSSMAN: Thank you, sir. Any cross-
12 examination questions?
13 MS. ROSENFELD: The same two questions.
14 CROSS-EXAMINATION
15 BY MS. ROSENFELD:
16 Q Do you have any respiratory issues?
17 A No, I don't.
18 Q Any personal? Okay.
19 A Am I allowed to ask why we keep getting the same
20 question?
21 MR. GROSSMAN: Why do we keep on getting that same
22 question, counsel?
23 MS. ROSENFELD: I -- that's my question to ask.
24 MR. GROSSMAN: It's her question to ask. That's
25 her preferred answer. All right. Thank you, sir.

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1 MS. ADELMAN: Pardon, Mr. Grossman.
2 MR. GROSSMAN: Yes.
3 MS. ADELMAN: This witness had asked if he's free
4 to leave, so I'm just wondering if we could (indiscernible).
5 MR. GROSSMAN: Okay. And what's your name, sir?
6 MR. MARSINGILL: Ralph Marsingill.
7 MR. GROSSMAN: Oh, I see. All right. Yes, sir,
8 come on forward please if you would?
9 MR. MARSINGILL: Thank you.
10 MR. GROSSMAN: All right. Mr. Marsingill, would
11 you state your full name and address please for the record?
12 MR. MARSINGILL: Good morning, Mr. Grossman. I'm
13 thankful that you're having me speak here this morning and
14 my name is Ralph Marsingill. I live at 2017 Glenallen
15 Avenue in Wheaton, Glenmont area.
16 MR. GROSSMAN: All right. Would you raise your
17 right hand please?
18 MR. MARSINGILL: Yes.
19 (Witness sworn.)
20 MR. GROSSMAN: All right. Then you may proceed.
21 MR. MARSINGILL: Thank you. And, again, good
22 morning. Thank you for allowing me to speak. My name is
23 Ralph Marsingill. I'm excited to hear the other Costco gas
24 station is proposed at the new warehouse in Wheaton. I live
25 just a few miles away from Costco, so this would be very

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1 beneficial to me. I know Costco will be a good community
2 partner for us in Wheaton. I've already shopped at the new
3 Costco warehouse several times. Shopping at Costco is ideal
4 for my family and dime. Any chance to save on groceries,
5 household goods or gas is a huge bonus for us, especially
6 and able to do it so close to our home.

7 I strongly ask that a new gas station be approved
8 for the Costco in Wheaton. I understand that we have many
9 gas stations in the area, but none of them compare to a
10 quality gas station like Costco. As a resident who lives
11 close, it would serve as a convenience to be able to shop in
12 my neighborhood Costco and fill up my tank at the gas
13 station. What I like so much about the other Costco
14 locations outside the County is that it has both the
15 warehouse and the gas station and that's why I've taken the
16 time to travel outside the County to get my gas.

17 I feel very passionate about the quality of their
18 gas. Having one stop would be great in Wheaton. My family
19 and I can get what we need at the Costco and buy gas at the
20 same time, while at convenience. Despite the vocal
21 opposition to the gas station, many community members like
22 me do support this gas station. Again, I do support the
23 proposed gas station and I do find that there is a great
24 need. We have waited for almost three years for this
25 proposal to be approved. I hope the approval process will

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1 come to an end soon with a positive outcome, a new gas
2 station at Costco. Thank you for your time and your
3 consideration today.

4 MR. GROSSMAN: Thank you, sir. Any cross-
5 examination questions?

6 MS. ROSENFELD: The same question.

7 CROSS-EXAMINATION

8 BY MS. ROSENFELD:

9 Q Do you have any respiratory health issues?

10 A No.

11 MR. GROSSMAN: All right. Thank you very much,
12 sir.

13 MR. MARSINGILL: Thank you.

14 MR. GROSSMAN: Sure. All right. The next person
15 on our list is, looks like Carmen, or Kamran Youssefieh.

16 MR. YOUSSEFIEH: Kamran Youssefieh.

17 MR. GROSSMAN: Okay.

18 MR. YOUSSEFIEH: Pretty close, though.

19 MR. GROSSMAN: Would you state your full name and
20 address please?

21 MR. YOUSSEFIEH: Sure. It's Kamran Youssefieh and
22 it's 9510 Georgia Avenue, Silver Spring, Maryland.

23 MR. GROSSMAN: Okay. And spelled Y-O-U-S-S-E-F-I-
24 E-H?

25 MR. YOUSSEFIEH: Yes.

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1 MR. GROSSMAN: All right. Would you raise your
2 right hand please?

3 (Witness sworn.)

4 MR. GROSSMAN: You may proceed.

5 MR. YOUSSEFIEH: First of all, I apologize. I
6 don't have a prepared statement. I heard, learned about
7 this recently and I wanted to show up and I currently own
8 several service stations in Montgomery County, the closest
9 one being on Georgia Avenue. So I wanted to bring up a few
10 points that I keep hearing people here talk about. One
11 person came and was discussing how he has to drive way out
12 of the way because he wanted a handicap accessible service
13 station to go to to get help.

14 I've been in this business for 22 years and before
15 I bought my station I used to work at the station. And I've
16 never known any handicap person to come to any of our
17 stations, whether I worked there or I owned it, where they
18 don't get help. My friends provide help. My competitors
19 provide help. Everybody provides help when somebody pulls
20 up and my own stores, they don't even have to get out of the
21 car. This gentleman talked about how he got out of the car
22 and get help. They just pull up and our cashiers are
23 trained to know. They go out there and help without even
24 being asked. I'm sorry, I'm just looking at my notes I was
25 taking as everybody was talking.

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1 MR. GROSSMAN: Take your time.

2 MR. YOUSSEFIEH: About pricing, people talk about
3 how they're driving 10 miles, 20 miles out of their way to
4 get cheaper prices on gas. I'd challenge them to calculate
5 how much it's costing them just in the fuel, how much
6 they're saving versus how much they're spending to get out
7 there to save that money. It makes -- it's illogical.

8 Sorry, but -- they're talking about convenience. The
9 convenience of going to Costco, yes, I'm a Costco shopper, I
10 go to Costco probably more than most people do, A, for my
11 businesses, B, for my large family at home. So I'm a
12 frequent shopper at Costco myself. And I've gone to some
13 that do have fuel and some that do not have fuel. The ones
14 that do have fuel, there's always, always a line. So,
15 please, talk about convenience, you're going to be waiting
16 15, 20, 25 minutes in line just to get, save 10 cents a
17 gallon on gas where you can go ahead and support your local
18 businesses that are locally there, that are there to help
19 you. You can go into any gas station in your area, excuse
20 me. If you need help, you need air for your tires, any kind
21 of support you need, they'll provide. You don't get that at
22 Costco.

23 You're going to be waiting in line for 20 minutes,
24 you're going to get your gas, save about 10 cents a gallon.
25 In a 10-gallon tank, that's a dollar you're going to be

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1 saving after spending 25 minutes of your time. Is it worth
2 it? I hardly think so.

3 Talking about having, and then having that Costco
4 along there, I think, if I'm not mistaken, there are one,
5 two, three stations across the street from where this Costco
6 will be and I would venture to say one or two of them would
7 probably end up closing their doors. So what's that --
8 that's going to take away from employees that are working
9 there, they are going to lose their jobs. You're going to
10 have an eyesore in the neighborhood because they're going to
11 be boarded up until if and when something happens with those
12 service stations. So it is -- it does make a little bit of
13 impact and I'm not talking about the environmental stuff,
14 but just the fact, the image, it will make an impact on the
15 neighborhood because that will happen. You will have closed
16 stations. You will have boarded up stations. You will have
17 people that lose their jobs if this does go and get approved
18 and open up.

19 I think that's about it for my notes. So I'm not
20 sure if you have questions.

21 MR. GROSSMAN: Cross-examination questions?

22 MR. GOECKE: Yes. Thank you.

23 CROSS-EXAMINATION

24 BY MR. GOECKE:

25 Q At your -- how many gas stations do you own?

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1 A I own 19 of them.

2 Q And where are they located?

3 A Four of them are in Montgomery County and the
4 other ones spread over different counties.

5 Q Do you have the same policies at each gas station
6 or --

7 A Exact same policy as far as helping out with
8 the -- in general or are you talking about specifically?

9 Q I was going to -- in general, yes.

10 A Of course, for the most part, yes, sir.

11 Q And then you were going to say specifically in
12 terms of helping people?

13 A Of course.

14 Q And how many attendants do you have at a station
15 at a time?

16 A Usually two and if there is -- we have some
17 stations where we have one attendant on duty. Even though
18 if they have one, even though by law they are not required
19 to come out and help, but we have them trained. Even if one
20 person is working, it takes them a minute to come out there
21 and put the nozzle in the car and help the customer and then
22 go back inside. They're not going very far from the store
23 to the pumps. So even one person working is working,
24 they're still helping the customers that are coming in.

25 Q So if there's one person, that person is located

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1 inside at the cash register?

2 A Inside the store, yes, sir.

3 Q Okay. And do you ever have an attendant out at
4 the gas, at the pumps?

5 A We have two stations where we have them at the
6 pumps, yes. Actually, the closest one being to this Costco,
7 we have one person at the pump providing full service to the
8 customers that come up. That's the Shell station on Georgia
9 Avenue, 9510 Georgia Avenue. There's somebody out there at
10 all times. I'm sorry, I want to say until 5:00 p.m. Then
11 after that we're on one person where that one person still
12 comes out and helps but, yes.

13 Q So from when until 5:00 p.m.?

14 A He starts, I believe, at 7:00 a.m. until 5:00 p.m.

15 Q So you have two attendants there from 7:00 until
16 5:00?

17 A We have different people, but one person
18 specifically outside helping customers and cleaning and
19 helping the customers, yes.

20 Q Do you have an eye washing station at your gas
21 station?

22 A I'm sorry?

23 Q An eye washing station?

24 A Yes, only one -- not every one of them, but I
25 think a few of them. Not every one, yes.

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1 Q So you said you own, I'm sorry, 19 stations?

2 A 19.

3 Q And you said, so a few of them have eye washing
4 stations?

5 A Yeah, probably about half, I would say half of
6 them.

7 Q Okay. What training do you give your attendants
8 for a spill clean-up?

9 A What is required by law. We have them come out
10 and we have stations set up with the padding and the
11 absorbent and you clean them up. We usually don't have --
12 the overflow that you might get is miniscule. I mean if
13 there's a big over drop, obviously, they call 9-1-1 and get
14 the fire department involved, but as far as something small,
15 you know, we have the absorbents and we have the chemicals
16 to clean up.

17 Q I believe you testified that you think that if the
18 Costco station opens, it will cost some other gas stations
19 to go out of business, is that correct?

20 A More than likely, yes.

21 Q And why is that?

22 A Because what everybody in here is thinking that,
23 oh, they're, we're going to be saving 10 cents a gallon, so
24 instead of supporting the stations that are there already,
25 they're going to go to the Costco and just save that 10

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1 cents per gallon so the other stations that are close, the
2 ones that are really close to it and, again, the two or
3 three which I have no ownership in, but the ones that are on
4 the same street, more than likely they're going to have,
5 negatively impacted for the loss of volume.
6 Q So you think people may prefer to go to the Costco
7 gas station instead of your gas station or other competitor
8 gas stations?
9 A Sure. Yes. Can I continue now?
10 Q Sure.
11 A In my, this is a personal opinion obviously, but
12 it becomes -- it's a misconception where, again, going back
13 to the theory of, okay, Costco is not going to be half the
14 price of the guy across the street. It's probably going to
15 be, depending, five cents or 10 cents lower than the person
16 across the street over the average of the year. It doesn't
17 happen, you know, there's going to be times it would be
18 more, sometimes it's less. So the average customer is going
19 to be saving about 10 cents, five to 10 cents per gallon.
20 If you multiply that out, it's not a huge amount of savings.
21 So they are going to be supporting it for that reason, but
22 not calculating the amount of gas they're burning by waiting
23 in line for 20 to 25 minutes to get that gas and not
24 calculating the fact that by going to Costco to save that
25 gas and going inside the store when Costco is adding or

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1 putting it in to get the customers inside the doors. So
2 they're going to be spending more money than if they just go
3 get their gas and go home as opposed to going and getting
4 gas and buying hundreds of things they don't need in large
5 quantity packages, which is what, why Costco wants the gas
6 over there in the first place.
7 You're not in the gas business. You guys are in
8 the toilet paper and milk business, but you want the gas to
9 get people to buy the toilet paper and milk. So --
10 Q If your competitors are selling gas at a cheaper
11 price than you, would that cause you to adjust your price?
12 A Sure, yes, of course. It's competitive out there.
13 Of course, of course.
14 Q So if Costco is selling gas at a cheaper price
15 than you, it could cause you to lower your price?
16 A Probably not because Costco will probably sell to
17 the point where, they will sell it at cost, where, because
18 they don't need that gas money, whereas we can't sell car
19 fuel at cost because we've got to pay the, all the overhead
20 that we have to pay for. So we're not going to be able,
21 going down to match the Costco, no. It's financial suicide.
22 Q So you lower the price when other competitors have
23 lower prices --
24 A Yes, because we all --
25 Q -- but when Costco, excuse me --

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1 A Sorry.
2 Q -- but when Costco has a cheaper price, you don't
3 think you're going to lower your prices?
4 A Again, no, because my competitor lowers their
5 price, maybe the fuel is coming, the price is fairly similar
6 when we purchase our fuel, market goes down, so we know the
7 market has gone down, competition goes down, so everything
8 else goes down about the same amount because the prices are
9 within the same, pretty close, tight parameters, whereas
10 Costco's is not because Costco is buying independent gas.
11 They're buying the lowest ranked price that's out there
12 rather than, you know, when you own a Shell station or Exxon
13 station, you're getting out of the habit, you're getting the
14 brand behind it.
15 Q Do you work for Costco?
16 A Of course not.
17 Q Do you know where they buy their gas?
18 A No, but I'm assuming -- there are other
19 refineries.
20 Q You're assuming at what they set all their prices
21 at?
22 A But --
23 Q You don't know what they pay for gas?
24 A No, of course not.
25 Q And you don't know the difference between what

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1 they pay for gas and what they sell it for?
2 A I'm sorry?
3 Q You don't know the difference between what they
4 pay for gas and what they sell it for?
5 A No, of course not.
6 Q You're making assumptions?
7 A That's an assumption, yes, sure, but it's an
8 educated assumption and, like I said, I've been in this
9 business for over 20 years. I, my family is in this
10 business, my partners are in this -- we are all in this
11 business, so we -- and I belong to every association out
12 there when it comes to this business. So it's a pretty
13 reasonable assumption.
14 Q Does your family work for Costco?
15 A No, nobody in my family works for Costco.
16 Q So these are all assumptions?
17 A Again, yes.
18 Q Okay. And if I hear you correctly, you wouldn't
19 lower your price if Costco was in the neighborhood with much
20 cheaper prices because you couldn't compete with their
21 prices?
22 A Yes.
23 Q Thanks.
24 A Yes.
25 MR. GROSSMAN: Any other -- one second, sir. Any

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1 other cross-examination questions?
2 MS. ROSENFELD: Yes.
3 BY MS. ROSENFELD:
4 Q Your testimony that other gas stations might close
5 if Costco opens its doors, is that in part because you don't
6 really need another gas station in Kensington? Is there
7 ample supply to provide gas to all the customers that shop
8 in Kensington?
9 A Absolutely. We have so much more room for growth.
10 It is a, none of our, I don't think out of our 19 stations,
11 I don't think we have any station that meet capacity of what
12 they can sell, not a single one of them.
13 Q So if more people actually showed up at your gas
14 stations in the Kensington and Montgomery County
15 locations --
16 A We can still support it.
17 Q -- you could easily provide gasoline to them --
18 A Absolutely.
19 Q -- is that --
20 A Absolutely.
21 Q -- is that correct?
22 A Absolutely.
23 Q And is it your understanding that the other local
24 gas stations as well have excess capacity?
25 A I don't know of any that don't.

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1 Q Okay. And in terms of pricing, you say you have
2 19 other stations. Do you charge the same price for a
3 gallon of gas at each of your gas stations?
4 A Well, of course not.
5 Q And how do you decide what you're going to be
6 charging Kensington versus what you might charge in another
7 county?
8 A Well, A, it's by brand. Each brand has their own
9 pricing that is supplied to the dealers and, number two, is
10 by the competitive market. We might have a Exxon station in
11 Frederick that's selling the gas a lot cheaper than the
12 Exxon station that we have in Olney as an example.
13 Q So, for example, the markets would vary at
14 different rates?
15 A Absolutely.
16 Q So in Frederick, generally speaking, could be less
17 expensive than Montgomery County?
18 A Yes.
19 Q And Beltsville, for example, could be less
20 expensive than Wheaton would be?
21 A Anywhere, sure.
22 Q And so would it be your expectation that if Costco
23 opens its gas station in Wheaton that it would charge the
24 same prices that it charges in Beltsville?
25 A No, that wouldn't be my expectation, no.

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1 Q What would your expectation be?
2 A I think they're going to come in there and in the
3 beginning go even lower than what they would charge in
4 Beltsville to attract all the customers in the area and,
5 again, the goal, object, I think -- again, as I he stated, I
6 don't work for Costco, but their objective would be to --
7 they would have no problems shutting down the stations
8 around them. You know, you talk about Frederick's prices,
9 if I'm not mistaken, there are two that have been and there
10 still are two closed gas stations where Costco is, but that
11 were near where Costco is that closed down after Costco and
12 they're still closed because they just cannot, nobody is
13 going to go and open the stations up, so they're still
14 boarded up. I think you can still go see them.
15 Q So if I'm -- if I piece this out a little bit,
16 it's your opinion that there's a very real potential that
17 some gas stations will close because they won't be able to
18 compete financially --
19 A Absolutely.
20 Q -- with the price of gasoline? But it's also your
21 expectation that Costco will not necessarily charge the same
22 rates it's charging in Beltsville because gasoline generally
23 is less expensive in Beltsville, is that --
24 A No, because Costco is, their source is one place
25 if I'm not mistaken. Again, I don't know the inside of

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1 Costco's business, but they set their own purchase price.
2 They are buying it all from one place that's all Costco gas
3 whereas with Beltsville and with, and our level, we're all
4 purchasing different pricing at different, different brands,
5 whereas Costco would never be doing that.
6 Q Do you know if Costco charges the same price in
7 Beltsville, for example, that it does in Frederick?
8 A I don't know.
9 Q Okay.
10 A I don't know at all their price. But one thing I
11 can point out is to the gentleman to your right, is as the
12 dealers, including myself, we, when we sell that gas, of
13 course, we have to make a profit on it because with the
14 credit card fees that we have and the rents and the payroll
15 and all the other expenses, whereas with Costco they don't
16 need to do that. Costco can sell it at -- they can't sell
17 it at low cost, which is against the law in Maryland, but
18 they have to sell it at their -- they can sell it at their
19 cost. They don't have to make a penny of profit on that gas
20 because their objective is to get people inside that big box
21 store and also sell their memberships which is \$100 per
22 person. It's a pretty nice thing.
23 Q Thank you.
24 MS. ROSENFELD: I have no further questions.
25 MR. GROSSMAN: Any questions from the Costco

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1 Coalition?
2 MR. SILVERMAN: Yes.
3 BY MR. SILVERMAN:
4 Q Good morning, sir. You used the word RAC price,
5 that's R-A-C, is that right?
6 A R-A-C-K.
7 Q R-A-C-K? What's that mean?
8 A It doesn't -- I don't think it stands for
9 anything. Rack price is the price that is from the refiners
10 that is, it's a published price to the people in the
11 industry and then from there it is where the margin is added
12 onto it.
13 Q So it's like the wholesale price?
14 A The wholesale price, that's a good way to put it.
15 Q You have Shell stations.
16 A Sure.
17 Q Do you -- I notice that some of the food stores
18 are hooking up with some Shell stations. Are you engaged
19 with some of the food stores for discount gas?
20 A Food stores?
21 Q Like Safeway or Giant?
22 A We have, yeah, all the Shells, most, all Shell
23 stations rather are involved with Giant, yes. And Exxon is
24 with Safeway and Shell is with Giant, yes.
25 Q So the people who are members of the Giant have

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1 their Giant cards, they pay the same price as another
2 customer?
3 A No, they save money for every \$100 they spend. I
4 believe it's 10 cents per gallon savings. So it adds up and
5 you can have customers coming up to \$1 per gallon because of
6 the Giant program, or customers up to a \$1 off a gallon on
7 Safeway because, at Exxon because of the Safeway program.
8 Q So do you, your -- has there been an increase in
9 the number of people using their supermarket cards?
10 A Absolutely, yes.
11 Q Could you characterize it?
12 A It should be about 20 percent of our volume to,
13 because of the program with the Giant and the Safeway.
14 Q You talked about closing gas stations and I, what
15 are some of the problems in closing a gas station?
16 A I don't understand the question.
17 Q Well, I think you indicated that some closed gas
18 stations are eyesores and remain that way for a long time.
19 A Sure. They get boarded up and then once they get
20 boarded up, that's definitely an eyesore if you're driving
21 down the road and you see what once used to be a big,
22 colorful, bright gas station as a like dark and boarded up,
23 sure. It's an eyesore.
24 Q And the people who are closing under those
25 circumstances are financially stressed?

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1 A Yes, they're losing their livelihood. I mean --
2 Q And do they typically, gas stations which close
3 because of competitive pressures, do they typically remove
4 their underground storage tanks and do environmental
5 remediation or --
6 A Eventually all that would have to happen, yes.
7 Q But do the station owners necessarily do it or do
8 they have the resources to do it?
9 A The -- it depends on who owns the land, the
10 landlord is doing it as some, you know, we own some of our
11 own stations and we lease some of our stations. The ones
12 that we own, we would have to do it and the ones that we
13 lease, then the property owners will have to do it, yes,
14 excuse me, would have to do it.
15 Q Have you ever had the experience of
16 decommissioning a station?
17 A Thank God, no.
18 Q Thank you, sir.
19 MR. GROSSMAN: Well, Ms. Adelman, wait a second.
20 We have a gentleman in a green shirt who has raised his hand
21 before. Did you have additional questions, sir?
22 MR. LEVY: Yes, sir, I have questions for this
23 gentleman.
24 MR. GROSSMAN: All right. I'll tell you what, Mr.
25 Silverman, would you let him have your seat at counsel table

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1 and come forward if you would, sir, and would you identify
2 yourself for the record?
3 MR. LEVY: Sure. My name is Barry Levy.
4 MR. GROSSMAN: Okay.
5 MR. LEVY: I'm a citizen. I live near the new
6 Costco and I have some questions.
7 MR. GROSSMAN: All right. Go ahead. What are
8 your questions?
9 BY MR. LEVY:
10 Q Number one, what prices are you selling regular
11 and high test at yesterday?
12 A At the station on Georgia Avenue?
13 Q Yes, sure, on Georgia Avenue.
14 A They are there, I mean --
15 Q Sure, Georgia Avenue.
16 A -- I don't have the exact off the top of my head,
17 but --
18 Q Good clarification. Approximately.
19 A If not mistaken, we're at 3.73 per gallon, I
20 believe, if I'm not mistaken.
21 Q 3.73? Is that the high test or regular?
22 A That's regular.
23 Q And high test?
24 A I don't recall off the top -- I have 19 stations.
25 I don't --

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1 Q Well, normally what's your spread between regular
2 and high test?
3 A It would be about, if that's 3.73, probably 4, but
4 yesterday was Tuesday, so 20 cents off per gallon, it would
5 have been 3.99 probably because it's, Tuesdays we give 20
6 cents off per gallon on Supreme high test.
7 Q Okay. And how many of your stations are branded
8 and how many are independent?
9 A We have one, two, three, four, I believe there's
10 either four or five unbranded. The rest are all branded.
11 Q Okay. So on the unbranded stations, you're buying
12 gas at the, in the wholesale market, the same as Costco,
13 although they may be buying in higher volumes, so maybe they
14 get discounts?
15 A No, they're buying it a lot cheaper. There's a
16 lot of aggregate, did I say the word, aggregates that go
17 into purchasing these fuels.
18 Q Well, volume matters.
19 A They buy, they buy futures. When the price is
20 going down, they go and buy --
21 Q Okay.
22 A -- 20 some loads at a time and pay for it in cash
23 and get the cash discount and --
24 Q Okay. Well --
25 MR. GROSSMAN: Hold on one second. There's an

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1 objection.
2 MR. GOECKE: If I may object, he's already
3 testified he doesn't know if Costco buys gas at --
4 MR. GROSSMAN: That's true.
5 MR. LEVY: Fair enough.
6 MR. GOECKE: -- and he's making assumptions.
7 MR. GROSSMAN: I think that's a fair --
8 MR. LEVY: Fair enough.
9 MR. GROSSMAN: A fair comment.
10 MR. LEVY: They're buying, well, you're both
11 buying in the wholesale market?
12 MR. GROSSMAN: Mr., hold on.
13 MR. LEVY: And you may be getting better
14 pricing --
15 MR. GROSSMAN: Hold on, Mr. Levy, one second.
16 MR. LEVY: That's fine.
17 MR. SILVERMAN: Can I just comment on the
18 objection before --
19 MR. GROSSMAN: Go ahead, you may comment on the
20 objection.
21 MR. SILVERMAN: I mean the man is a professional
22 in the fuel business. Do you think that professionals in
23 the fuel business don't know in some way what their
24 competitors are doing, don't have some good educated
25 judgments about that?

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1 MR. GROSSMAN: Well, when he heard the objection,
2 he agreed to the objection. He doesn't really know how
3 Costco buys their gasoline. That was his own comment on it.
4 So I think we can leave it at that. That was his comment.
5 MR. SILVERMAN: All right. Okay. That's fine.
6 BY MR. LEVY:
7 Q Do you have respiratory problems?
8 A No.
9 MR. LEVY: Okay. All right. I will come back to
10 the issue of gas pricing when I testify.
11 MR. GROSSMAN: That's fine.
12 MR. LEVY: Thanks very much.
13 MR. GROSSMAN: Thank you.
14 MR. SILVERMAN: And thank you, sir.
15 MR. GROSSMAN: All right. We have -- one second,
16 sir. Ms. Adelman, what did you -- did you have additional
17 questions?
18 MS. ADELMAN: Yes.
19 MR. GROSSMAN: All right. Well, but your, the
20 Coalition has already asked its questions. I can't have an
21 organization, more than one person from an organization
22 doing cross-examination. So, but this gentleman here in the
23 white shirt, did you have some additional questions?
24 MR. HOROWITZ: It's not a question. I was just
25 wondering if I could testify next? I have an appointment

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1 downtown.
2 MR. GROSSMAN: And what's your name, sir?
3 MR. HOROWITZ: Kenneth Horowitz.
4 MR. GROSSMAN: Okay. Yes, you're on the list. I
5 will -- we are going to, we were going to take a break right
6 after this gentleman's testimony. What time do you have to
7 leave?
8 MR. HOROWITZ: I have to be downtown at about
9 1:00.
10 MR. GROSSMAN: Okay. Well, we'll have time to get
11 you. Don't worry. All right. I think we've exhausted then
12 the cross-examination questions. Thank you very much, sir.
13 THE WITNESS: Sure. Okay.
14 MR. GROSSMAN: All right. You said you have to
15 get downtown by --
16 MR. HOROWITZ: 1 o'clock.
17 MR. GROSSMAN: -- 1 o'clock? What I think then we
18 can, we can still take people in order. What time would you
19 have to leave here by?
20 MR. HOROWITZ: 10 to or something.
21 MR. GROSSMAN: 10 to 12:00 you say?
22 MR. HOROWITZ: Yes, I still have to go home, so --
23 MR. GROSSMAN: Okay. All right. All right.
24 Let's take you now then before our break and we'll do that.
25 Okay. So Mr. Horowitz.

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1 (Discussion off the record.)
2 MR. GROSSMAN: And our first witness after the
3 break will be Ms. Sheard. Okay. Would you state your full
4 name please, sir?
5 MR. HOROWITZ: Yes, Kenneth Simon Horowitz, 11500
6 Daffodil Lane, Silver Spring, Maryland 20902.
7 MR. GROSSMAN: All right. Would you raise your
8 right hand please?
9 (Witness sworn.)
10 MR. GROSSMAN: All right. You may proceed.
11 MR. HOROWITZ: Thank you, Mr. Grossman, for
12 allowing me to testify and express my support for the Costco
13 gas station in Wheaton. I've been a Costco supporter since
14 the beginning of this process and strongly believe that
15 Costco's application should be approved. I support Costco
16 for several reasons, but would like to focus on two major
17 points. First, I find it difficult to understand the
18 Planning Board reasoning that a gas station would not fit in
19 with the transit-oriented plans for development in Wheaton.
20 There is a new, 18-story Safeway apartment building about to
21 be completed just a few blocks away from the mall with a
22 built-in garage. Also, the Westfield Wheaton Mall has
23 always been a regional shopping destination for this area.
24 While some people may take Metro and public
25 transportation, the mall is a driving destination. People

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1 who shop at Costco, for example, would have trouble walking
2 home with large bags, would most likely need to drive there.
3 To say that we can't have a gas station at the mall because
4 we want to encourage people to use public transportation
5 ignores the inherent nature of the mall and, frankly, all
6 the cars that will fill the surrounding parking lot.
7 Also, most important, I believe the gas station
8 will be of great benefit to the community and the County in
9 general. I've been a Costco member for more years than I
10 can count. After the Wheaton Costco opened, but before my
11 son graduated from the University of Maryland, my wife and I
12 shopped regularly at the Beltsville warehouse specifically
13 because of the gas station. Although, admittedly, we now
14 shop regularly at the Wheaton Costco because it's only five
15 minutes from the house, I am pretty sure that people in
16 White Oak or other locations nearer to Prince George's
17 County would still prefer the Beltsville store due to the
18 extra benefit of the cheaper gas.
19 Wouldn't it make more sense to keep Montgomery
20 County shoppers in the County? The presence of more
21 shoppers benefits the local economy, brings more business to
22 our other local merchants and provides a much needed use to
23 Wheaton. As an aside, but I didn't have prepared, I
24 prepared this testimony a week ago and since then, last
25 night my son had to go back to University of Maryland to

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1 close up his apartment. And since he was going to
2 University of Maryland, we told him since you're going
3 there, go to the Costco in Beltsville, shop there and get
4 gas.
5 I agree wholeheartedly with the person before me
6 who said that it's not worth it to drive to Beltsville just
7 to get gas. The idea is we go to Beltsville to go to the
8 Costco and shop and get gas at the same time. Also, I'd
9 like to say that I found the prices to be more like 20 cents
10 cheaper and, third, even when the lines at the Beltsville
11 Costco were extremely long, they seem to stretch almost out
12 of the parking lot, I've never waited more than five or 10
13 minutes. It's been very efficient there. Thank you for
14 listening to me.
15 MR. GROSSMAN: You're welcome, sir. Any cross-
16 examination questions?
17 (No audible response.)
18 MR. GROSSMAN: Seeing none, thank you, sir.
19 THE WITNESS: Thank you.
20 MR. GROSSMAN: I hope you make your appointment.
21 All right. Then why don't we take a mid-morning break here?
22 It's just before, it's about, I mean 22 minutes to 12:00.
23 Come back at about a quarter to 12:00. We're in recess.
24 (Whereupon, at 11:39 a.m., a brief recess was
25 taken.)

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1 MR. GROSSMAN: Let's take our seats please. All
2 right. Are we all ready to resume the festivities here?
3 Okay. Then our next witness was Ms. Sheard. Welcome, Ms.
4 Sheard. Would you please state your full name and address
5 for the record?
6 MS. SHEARD: My name is Virginia Alden (phonetic
7 sp.) Sheard and I live at 3303 Geiger Avenue, Kensington,
8 Maryland. Sheard is spelled S-H-E-A-R-D.
9 MR. GROSSMAN: All right. Would you raise your
10 right hand please?
11 (Witness sworn.)
12 MR. GROSSMAN: You may proceed.
13 MS. SHEARD: Thank you. Let's see. I live in the
14 Kensington View Community which is across University
15 Boulevard from the Westfield Mall which is the subject site
16 and the Kensington Heights community. My community is
17 Kensington View and I have participated for many years on
18 our Land Use and Zoning Committee which has had many
19 discussions about special exceptions in general and special
20 exceptions specifically through our community. We monitor
21 several of those uses in our Kensington View community and
22 have opposed most of those recently proposed. We rarely
23 support new special exception applications because of the
24 impact on the residential integrity of our community.
25 I have several concerns about this application and

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1 will likely have other comments when the testimony is
2 completed in October. But as of now, my comments are as
3 follows. First and foremost, I challenge the definition
4 proposed of the general neighborhood as being seven minutes
5 drive time from the site. 59G-2.2.1, standards of
6 evaluation, clearly states that the reviewing body must
7 consider the effects of the views on nearby properties and
8 the general neighborhood. It is written in plain English
9 and cannot be interpreted to include properties a mile or
10 more from the site.

11 59G-1.214 requires that the use be in harmony with
12 the general character of the neighborhood, including the
13 intensity and character of neighborhood, of activity and
14 traffic and parking conditions. This too implies that the
15 use be evaluated in direct relation to a physical site.

16 Another concern I have is about what happens if the special
17 exception is granted? We are being asked to accept as
18 statements of fact a voluminous body of material about EPA
19 standards, air quality protocols, interpretations of data
20 pretended with incomprehensible and inconsistent metrics and
21 comparisons with other sites that are totally dissimilar
22 from the proposed site.

23 This information has not established compelling
24 reasons about what the community gains from a mega station,
25 only reinforce the concept that the primary beneficiaries

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1 will be the 25 percent of Costco customers who will have
2 access to cheaper gas. Data on air particles, fumes,
3 traffic patterns, noise, pedestrian safety and other
4 elements are presented as fact, but are really subjective
5 conclusions based on dated national studies and policies,
6 deductions for more global rather than site-specific data
7 sets, modeling and challenges reasonable people to
8 understand its relevance or generalities that cannot be
9 applied logically to this application.

10 Many days of expert testimony have not provided
11 specific or compelling facts about what will happen at this
12 specific site in the near, middle and long-term future when
13 considered as cumulative effects added onto what already
14 existed at this location. Monitoring and data collection
15 done at the mall at its current level of activity cannot
16 accurately illustrate the density of activity or physical or
17 chemical impact of this proposed use at this site five,
18 seven, 15 years in the future as new retail uses are added
19 and other projected gross changes occur at the mall.

20 What recourse would be available to the community
21 if these presented facts are wrong? What happens in 2018 or
22 beyond if the cumulative fumes from this site added to the
23 existing air quality elements of the mall, the delivery
24 trucks, queued autos, days of orange or red air quality
25 warnings or climate change result in health issues in nearby

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1 residences? What if the loss of the 100 or of about
2 approximately 100 parking spaces at the mega station site
3 creates aggravating parking shortages for users, whoever
4 parks at the mall? Will the County suspend gas sales, put
5 quotas on fuel delivery trucks, et cetera? What would be
6 the recourse?

7 Currently, many special exceptions are granted
8 with specific operating conditions that must be maintained
9 over the life cycle of the use. Conditions may specify a
10 setback, a vegetative barrier or the height and density of a
11 fence to provide a physical barrier between the proposed use
12 and the existing, bordering properties. A public benefit of
13 this process is that the conditions are measurable and
14 enforceable.

15 And if the conditions are not maintained, there's
16 a remedy. Inspections can be required, compliance mandated
17 and if conditions are not maintained, sanctions can be
18 imposed from monetary fines to suspension of activity. This
19 provides some measure of protection for the public and the
20 immediate neighborhood because quantifiable metrics were
21 evaluated at the time of review.

22 How will the County remediate adverse effects that
23 develop in the future if the station is built? We have only
24 projected modeling and subjective, not quantifiable data,
25 about what to expect. We don't really know what will happen

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1 if a mega station pumping 13 million gallons of gas annually
2 is operating at this site embedded well into an auto centric
3 shopping mall with challenging traffic access and increasing
4 pedestrian activity.

5 Parking has always been an issue at the mall for
6 many years and is likely to get considerably worse in the
7 future as the retailer mix in the mall is upgraded and
8 expanded. A new store is coming next to Dick's Sporting
9 Goods. These new customers will join the existing customer
10 base to seek parking convenient to their shopping target and
11 will be competing for spaces already in tight supply on
12 heavy shopping days.

13 Traffic exiting the pumping area or the proposed
14 pumping area will need to merge with the exit out of the
15 general parking lot. As the number of patrons at the mall
16 increases, shoppers aiming for the same parking spaces will
17 become more competitive. What level of convenience to the
18 general public should be allowed or could be mitigated if
19 the mega station is not approved and those approximately 100
20 spaces are maintained for the shoppers of the mall in
21 general?

22 The sparsely used parking lot on the other side of
23 the warehouse where the Sears outlet is now has been
24 suggested as additional parking to compensate for the loss
25 of parking on the proposed gas station site. However,

1 Westfield has testified that a different retailer is being
2 courted for this site and the likely new customer base will
3 use a good part of the current vacant lot. It has also been
4 suggested that the lot could be used for idling fuel trucks
5 if necessary, although available parking spaces may not be
6 as plentiful in the future as they are now and that's if
7 there was a back-up at the fuel dispensing trucks.

8 All of the public parking on the mall is
9 competitive, not assigned to any specific retailer, and
10 patrons tend to park in the most convenient spaces to their
11 shopping target. We have had little success in gathering
12 actual numbers of parking spaces from Westfield, including
13 the parking allotment specified in leasing arrangements.
14 Empty spaces in the lots on the Giant side of the ring road
15 would not necessarily be desired by Costco warehouse
16 shoppers, Dick's, or Joann's customers as that's the new
17 store.

18 As the Westfield retail mix changes, it is
19 reasonable to assume that the customer base will increase
20 what data is available to assess parking needs in the
21 future, not just what's on the ground now. Section 59G-
22 1.215 requires that the use and occupancy detrimental to the
23 use, peaceful enjoyment, economic value or development of
24 surrounding properties or the general neighborhood at the
25 subject site, implying that the neighborhood is a

1 measurable, bounded area where such determinations can be
2 objectively evaluated. A broad swath of the County's seven
3 minutes driving time from the site does not, clearly does
4 not satisfy this criteria.

5 Sections 59G-1.217 and 8 require that the use will
6 not affect health, safety, security, morals or general
7 welfare of residents, visitors and workers in the area of
8 the subject site. Parking issues and traffic circulation
9 will affect residents, visitors and workers.

10 The Lucky Store special exception decision
11 concluded that a needs analysis should start in the local
12 area, not the customer base, and I think that's what we're
13 faced with in this situation. The local area is the mall
14 and the public roads and access malls, access roads into the
15 mall, University and Veirs Mill turn lanes. The short
16 access lanes and limited entrances into the mall are part of
17 this equation, not the customers who live two miles from the
18 site whose needs are important in the fact-finding process.

19 Need has not yet been fully discussed, but some
20 statements by the applicant cause concern. Documents have
21 stated that 35 to 40 percent of the current Beltsville gas
22 station gas sales will shift to the Wheaton location. Will
23 data show this? Another statement suggests that the demand
24 for gasoline will increase from now to 2040. This is in
25 direct conflict with public policy and national trends.

1 Montgomery County is increasingly encouraging a
2 decreased reliance on the auto and increased use of public
3 transit, bikes and walking, particularly in high-density
4 transit areas such as Wheaton. Expert testimony has said
5 that the low cost per gallon advantage to Costco members is
6 one of the three primary reasons to establish the need.

7 This is somewhat discretionable because per gallon discounts
8 are readily available at Giant and Safeway card users and
9 can range from 10 cents up to a dollar per gallon or more.

10 Additionally, recent data provided by the Planning
11 Department stated that 20 percent of the households in
12 Wheaton do not own a car compared to only four percent of
13 the households county-wide. And in Wheaton, 40 percent of
14 the residents in multi-family units do not own a car, four
15 times the rate of the County level. Online shopping is
16 rapidly expanding, even for big box stores. What weight
17 should be given to the buyer behavior changes in evaluating
18 this application?

19 Section 59G-1.24 states that there must be a
20 finding from a preponderance of the evidence of record that
21 a need exists for the proposed use to serve the population
22 in the general neighborhood. New demographics suggest that
23 this cannot be clearly demonstrated in the Wheaton area.
24 This is the wrong site for a mega gas station for these many
25 reasons. It's a matter of scale as much as a matter of the

1 details. Some of my concerns may be reduced as this case
2 proceeds and I will likely have additional comments at the
3 conclusion of the hearing.

4 MR. GROSSMAN: All right. Well, cross-
5 examination?

6 MR. GOECKE: Yes. Thank you, Mr. Grossman.

7 CROSS-EXAMINATION

8 BY MR. GOECKE:

9 Q Ms. Sheard, you said that your organization
10 typically does not support special exceptions, is that
11 correct?

12 A Right.

13 Q What have you supported?

14 A Opposition to special exceptions. To embed a
15 seven story apartment two blocks into a residential
16 neighborhood.

17 Q I'm sorry?

18 A To embed a seven story rental apartment house two
19 blocks into a residential neighborhood.

20 Q You were in favor of that?

21 A No, of course not. I said we opposed it and this
22 is one that we opposed.

23 Q Okay.

24 A Converting three residential lots into a parking
25 lot for a car dealer.

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1 Q No, I'm sorry.
2 MR. GROSSMAN: Well, I think he's asking which
3 ones have you, has your organization supported.
4 MS. SHEARD: We don't. I can't think of any that
5 we have supported as a special exception.
6 BY MR. GOECKE:
7 Q Okay. So when you said you rarely support them,
8 what you meant is you never support them?
9 A I don't know for sure. I may have in the past. I
10 don't recall any that I have.
11 Q How long ago do you --
12 A Or the, or association.
13 Q And tell me the name of your association again?
14 A The Kensington View Civic Association.
15 Q Okay. And how long have you been a member of the
16 Kensington View --
17 A Since the 1990's.
18 Q You've been with the Kensington View Civic
19 Association since the 1990's?
20 A Yes, when we opposed the seven story apartment.
21 Q And so for about 20 years?
22 A Do the math.
23 Q Well, which year in the 1990's, if you remember?
24 A '91? I think '91.
25 Q So about 22 years?

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1 A Sounds reasonable.
2 Q And in that time you can't recall ever supporting
3 a special exception?
4 A No, most of my activity has been on the opposition
5 site.
6 Q I believe you.
7 MR. GROSSMAN: Ms. Sheard, are you testifying, did
8 you testify just now on behalf of --
9 MS. SHEARD: No.
10 MR. GROSSMAN: -- of Kensington View?
11 MS. SHEARD: I'm an individual.
12 MR. GROSSMAN: As an individual?
13 MS. SHEARD: Yes.
14 MR. GROSSMAN: That's what I thought. Okay.
15 MS. SHEARD: Eleanor Duckett is the representative
16 of the Kensington View Civic Association.
17 MR. GROSSMAN: I understood that, I just wanted to
18 make sure.
19 MS. SHEARD: No. All these are my personal
20 opinions.
21 MR. GROSSMAN: Yes.
22 BY MR. GOECKE:
23 Q Okay. And just a few more questions. You think
24 the general neighborhood should be defined as what exactly
25 A Those definable areas that are impacted by the use

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1 and the activity, the density of activity associated with
2 the use which would mean the traffic coming into it, the
3 views, the fumes, the noise, the whatever.
4 Q And you agree that that should include people who
5 are at the mall, right?
6 A That are part of the --
7 Q In that part --
8 A They would be impacted. They would be impacted by
9 the use, yes.
10 Q And so the folks who are shopping at the mall
11 would be part of the general neighborhood?
12 A Yes.
13 Q Okay. Including --
14 A Only part of it, but not only the general
15 neighborhood.
16 Q Sure. Sure. But the Costco shoppers then would
17 be part of the general neighborhood?
18 A The mall shoppers in general, which would
19 include --
20 Q So --
21 A -- Costco, Dick's and whoever else.
22 Q Okay. And so if we're looking at what the needs
23 of the general neighborhood would be, we're going to have to
24 look at the needs of those Costco shoppers, correct?
25 A Right. But Costco has stated that only 25 percent

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1 of the Costco members or customers, I think, would be
2 purchasing gas, will be gas purchasers.
3 Q Did you attend --
4 A I think it was 25 percent.
5 Q Did you attend yesterday's hearing?
6 A Yes.
7 Q And where you there when Mr. Flynn testified that
8 he anticipated about 4.4 million gallons of gasoline, if I'm
9 stating this correctly, would be purchased by Costco
10 shoppers?
11 A I have it in my notes and I disagree with it.
12 Q You disagree --
13 A I disagree with his --
14 Q -- about -- in what way?
15 A I don't see any -- he didn't give any foundation
16 for that.
17 Q And what's your foundation for disagreement,
18 ma'am?
19 A Personal opinion.
20 Q Thank you.
21 MR. GROSSMAN: Additional cross-examination of
22 this witness?
23 MS. ROSENFELD: No, thank you.
24 MR. GROSSMAN: All right. Ms. Sheard, your
25 testimony suggests that a significant concern about parking

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1 and I, there was earlier testimony in the case that the
2 garage immediately to the east of the Costco warehouse --
3 MS. SHEARD: Right.
4 MR. GROSSMAN: -- had not been fully used.
5 MS. SHEARD: Right.
6 MR. GROSSMAN: Do you think that if, in fact, if
7 the Board of Appeals were to elect or approve this special
8 exception that a condition which would somehow encourage
9 people to use that garage rather than the parking lot to the
10 west might be helpful in alleviating that concern?
11 MS. SHEARD: I would have to look at the numbers.
12 What are there, a thousand, how many spaces on the parking
13 deck for Costco?
14 MR. BRANN: For Costco?
15 MS. SHEARD: Well, the three, the --
16 MR. BRANN: Three decks contain roughly a thousand
17 spaces.
18 MS. SHEARD: Right, the old Hecht Company. What?
19 There's about a thousand?
20 MR. GROSSMAN: All right. This is Mr. Brann, I'm
21 sorry, responding.
22 MR. BRANN: The deck contains about a thousand
23 spaces.
24 MS. SHEARD: Yeah. You know, that's only 1,000
25 spaces and there are many more customers coming to the mall

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1 in the near, in the mid-term.
2 MR. GROSSMAN: All right.
3 MS. SHEARD: We have a thousand more housing units
4 coming to Wheaton. These people will be mall customers.
5 MR. GROSSMAN: There was --
6 MS. SHEARD: I don't know that you can put a
7 condition that would solve the problem.
8 MR. GROSSMAN: Right. I don't know if it would
9 solve any problems. The question is whether or not --
10 MS. SHEARD: Alleviate it.
11 MR. GROSSMAN: -- it would help ameliorate the
12 problem that you raised in the testimony, the, because there
13 was testimony earlier in the case and I think you were
14 probably present during that the garage at this point from
15 my observations of the people --
16 MS. SHEARD: Right.
17 MR. GROSSMAN: -- who testified was not
18 well-used --
19 MS. SHEARD: That's true.
20 MR. GROSSMAN: -- certainly compared to the
21 parking lot.
22 MS. SHEARD: That's true.
23 MR. GROSSMAN: And I want, and I raised the
24 question for the participants here whether or not there is
25 some methodology that Costco could use that would encourage

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1 people whether it's posting a sign about convenience of the
2 attached garage or some other kind of incentive. So you
3 might consider that when we reach the stage at the end in
4 terms of the sides proposing conditions that they would like
5 to see if, in fact, the Board of Appeals were to grant the
6 special exception.
7 MS. SHEARD: I think, I think it depends on who
8 owns that property and was any public money invested in the
9 building of it. I know the Macy's parking lot on the other
10 side of the mall, there was a grant of 4 or \$6 million to
11 build it to Westfield and there's a condition associated
12 with that that a high percentage of those spots must be made
13 available to the public for the next 20, well, 2018? 2018.
14 So there are conditions --
15 MR. GROSSMAN: Right. I wasn't suggesting
16 restricting the use of the garage to Costco or anything like
17 that. I was just saying that there might be, if in fact the
18 testimony is correct that was earlier presented, that the
19 garage was under-used and that it is very convenient to the
20 Costco warehouse whether or not something could be, some
21 condition could be imposed --
22 MS. SHEARD: Right. I think in --
23 MR. GROSSMAN: -- which --
24 MS. SHEARD: -- the interim it might, but I think
25 what we're talking about, you know, the life cycle of this

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1 is more than 20 years out.
2 MR. GROSSMAN: Right.
3 MS. SHEARD: And we're talking about changing, I
4 think they're currently changing now and in three years,
5 five years, seven years the density of activity around the
6 whole mall and the whole Wheaton area will be changed. And
7 I don't know. Unless you have a very accurate layout that
8 identifies by number exact, all the spots and including the
9 deck, you know, each level of the deck and the ring road on
10 all of these places, you can never get data, you know,
11 quantifiable data that you can assess to make a
12 determination about --
13 MR. GROSSMAN: And I don't know that we can get,
14 we're not going to be able to make any predictions with
15 certainty. The best we can do is --
16 MS. SHEARD: Well --
17 MR. GROSSMAN: -- go by the evidence that is
18 presented.
19 MS. SHEARD: But the evidence, you know, if you
20 have numbers and you can assign, you can separate areas of
21 the mall, you know, Giant is over there. So that subtracts
22 a certain number of parking spaces. The north building
23 where the old Circuit City was --
24 MR. GROSSMAN: Right.
25 MS. SHEARD: -- the theaters, there's a whole

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1 number of parking spaces. So when you take the total number
2 of parking spaces available on the mall and you subtract
3 these places that are unlikely to be desired by Costco
4 shoppers, then you get a more reduced number and you can
5 look at what the competition is for those spaces. And I
6 think that's the real problem is we've got to have that type
7 of information.

8 MR. GROSSMAN: All right. Okay. Any further
9 questions as a result of my questions? Mr. Silverman?

10 MR. SILVERMAN: As a result of your questions, no.

11 MR. GROSSMAN: All right then.

12 MS. SHEARD: Thank you.

13 MR. GROSSMAN: Thank you very much, Ms. Sheard.
14 All right. Next person on our list was, it looks like Linda
15 or Lindy Johnston.

16 MS. JOHNSTON: Yes. It's Linda.

17 MR. GROSSMAN: Linda? Okay, Ms. Johnston.

18 MS. JOHNSTON: Good morning, Mr. Grossman.

19 MR. GROSSMAN: Good morning. Hold on one second.
20 Mr. Levy, I see you raised your hand.

21 MR. LEVY: Yes. I'm on a special diet. I'm going
22 to need to go home for lunch. Do you think I can testify
23 before lunch?

24 MR. GROSSMAN: You'd be the next one up then. But
25 are you on the list? I don't see your name on the list.

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1 Did you sign --

2 MR. LEVY: The sign-up was over there.

3 MR. GROSSMAN: -- another list?

4 MR. LEVY: I'll bring it over to you.

5 MR. GROSSMAN: All right. Ms. Johnston, would you
6 state your full name and address please for the record?

7 MS. JOHNSTON: Linda C. Johnston, 2717 Arcola
8 Avenue, Wheaton, Maryland 20902.

9 MR. GROSSMAN: Would you raise your right hand
10 please?

11 MS. JOHNSTON: Yes, sir.
12 (Witness sworn.)

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

14 MS. JOHNSTON: By the way, there is a sign that
15 says more Costco parking in the garage, okay, just to
16 clarify that.

17 MR. GROSSMAN: Okay. I was thinking of a sign
18 perhaps in the Costco warehouse that might alert people to
19 the fact that, or maybe some other incentive that there was,
20 there was ample, free parking in the garage or something
21 that might help balance out --

22 MS. JOHNSTON: Yeah.

23 MR. GROSSMAN: -- the parking situation that Ms.
24 Sheard just testified about.

25 MS. JOHNSTON: Okay. Good morning. My name is

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1 Linda Johnston. I'm very happy to be here to speak in
2 support of Costco's application to open a gas station at
3 Wheaton Mall. I'm not an environmental person or a zoning
4 expert, but as a senior citizen, someone who is living off
5 off fixed income and Social Security benefits, I speak from
6 personal experience when I say there is definitely a need
7 for affordable gas in this community. I currently have to
8 drive a lot for doctor's appointments. My orthopedist lives
9 in or works out of Annapolis and job interviews. I have
10 been out of work for over a year and I'm trying to find a
11 job some -- I'm out looking for jobs and I need to make sure
12 that I'm not spending too much money on gas.

13 So because of my fixed income, oh, because of my
14 fixed income. And let me say it's offensive to me when
15 people sit up here and say, well, you'll only save a dollar.
16 For someone on fixed income, Social Security, a dollar means
17 a great deal. It could mean whether or not you get your
18 medication, whether or not you can pay a bill and so forth.
19 So it means a great deal to us.

20 Well, I have shopped at the new Costco warehouse
21 in Wheaton. I still travel to Beltsville Costco when I need
22 to fill up my tank. Even though I have a seven year old
23 Prius which gets great mileage, it's simply too expensive to
24 fill up my tank anywhere but at Beltsville. I'd save a lot
25 of time and money if I had access to a Costco gas station

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1 that's less than two miles from my home.

2 This past Friday I had to drive to Beltsville to
3 get gas and then I returned to shop at Westfield Wheaton
4 Plaza. I had to pick up a couple of items there. So it's,
5 you know, it was time consuming even though I saved only a
6 dollar.

7 I also believe Costco's gas station fits in well
8 with the mall and the surrounding community. Wheaton is a
9 busy and bustling area surrounded by lots of businesses,
10 including other gas stations. And in the last two or three
11 years Wheaton has been growing leaps and bounds. The entire
12 east side of Georgia Avenue is now high, or high-rise
13 apartment buildings. Adding one more gas station will not
14 hurt the community or the mall. In fact, it will probably
15 help. And for the gentleman who was worried about this
16 Shell station not getting customers, many a times I've had
17 to wait behind people trying to pull into that Shell station
18 to get gas. It blocks traffic both on Blue Ridge and on
19 Georgia with people stopping.

20 In fact, it will probably help if we have the
21 Costco gas station. Like me, many people drive to the mall
22 all ready to shop at Costco or to visit other stores. So in
23 my opinion after filling our cars with groceries and other
24 things that we need, it just makes sense to be able to fill
25 up our cars with gas there at the mall.

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1 I thank you for giving me the opportunity to speak
2 today about my support for Costco and the need for Costco's
3 gas station. And for me it would be a real blessing if the
4 special exception were granted. Thank you.
5 MR. GROSSMAN: Thank you. Hold on one second.
6 MS. JOHNSTON: Uh-huh.
7 MR. GROSSMAN: Any cross-examination questions?
8 CROSS-EXAMINATION
9 BY MS. ROSENFELD:
10 Q The same question.
11 A Yes, I do.
12 Q Thank you very much.
13 A Asthma and allergies. Is that it?
14 MR. GROSSMAN: All right.
15 MR. SILVERMAN: Can I --
16 MR. JOHNSTON: Yes, sir?
17 MR. GROSSMAN: Anything else?
18 MR. SILVERMAN: Yes.
19 BY MR. SILVERMAN:
20 Q With regard to the parking, when you shop at the
21 Costco in Wheaton, what's your experience with getting out
22 of your car and going to the store with the traffic?
23 A Well, I have handicapped plates because I've blown
24 out my knees and I can't walk that great distance and those
25 are difficult to get. I think there are only about eight or

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1 10 slots and I think a lot of people park there and use the
2 blue tag when they don't really need it.
3 Q So you find sometimes you can't get to the
4 handicapped parking?
5 A Correct. I wish they had more slots for
6 handicapped.
7 Q And what's your experience with, in connection
8 with the traffic in the parking lot as you walk from a non-
9 handicapped space to the store?
10 A I haven't had any problems with it. To me it
11 looks the same as it did, you know, a few years ago.
12 MR. GROSSMAN: Okay. Thank you, Ms. Johnston.
13 MS. JOHNSTON: Thank you.
14 MR. GROSSMAN: Appreciate your coming down and
15 sharing your views. All right. Mr. Levy.
16 MR. LEVY: Thank you.
17 MR. GROSSMAN: Would you please sit down and state
18 your full name and address for the record?
19 MR. LEVY: Yes, sir. My name is Barry Levy. I
20 live at 3800 Wexford Drive, Kensington, Maryland. It's
21 about one mile from the mall.
22 MR. GROSSMAN: All right. I apologize for
23 mispronouncing your name.
24 MR. LEVY: Not a problem.
25 MR. GROSSMAN: I'll try to do better in the

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1 future.
2 MR. LEVY: Most of the people who spell it my way
3 pronounce it that way.
4 MR. GROSSMAN: All right, sir.
5 MR. LEVY: It's understandable.
6 MR. GROSSMAN: Would you raise your right hand
7 please?
8 (Witness sworn.)
9 MR. GROSSMAN: You may proceed.
10 MR. LEVY: Okay. I'm a trained economist and I'm
11 currently working as s realtor. I'm a senior citizen, but I
12 can't afford to live on a fixed income, so I'm still
13 working. And I have to do a lot of driving because I'm a
14 realtor. I serve Montgomery County, D.C., even Baltimore.
15 And so it's not very difficult for me if I'm all the way
16 back from Baltimore, if I need gas, I go to the Beltsville
17 Costco, which I did yesterday and I shop there and I bought
18 gas there and the lines were short and the parking was
19 plentiful.
20 I did -- and as a trained economist, I'm an
21 observer of market behavior and I have observed that near
22 Costco you can actually find competing stations with lower
23 regular prices.
24 MR. GROSSMAN: Lower than what?
25 MR. LEVY: Lower than Costco.

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1 MR. GROSSMAN: Okay.
2 MR. LEVY: I mean a penny, but something and it's
3 kind of amazing, but in Laurel you can find it. However,
4 when I bought gas at Costco yesterday and I bought regular,
5 it was about 30 cents less than the, what the other
6 gentleman was selling his gas for. So that's not a dollar.
7 And I, I mean I bought a lot -- I bought 10 gallons. I have
8 a Prius also because I can't really afford to pay a lot of
9 money for gas. So I saved \$3, you know, for sure.
10 Now if I had been driving my wife's car, which is
11 more of a guzzler and uses high test, even the, the general
12 gas stations charge, I think, 30 and 40 cents above their
13 low test prices for high test and Costco is more like 15 or
14 20, so it's spread. It gets truly enormous. It's often 50
15 cents for a spread of high test. So a huge savings there.
16 What's made our country great is many things, but
17 one of them is competition. And what this gentleman was
18 doing, the gas station gentleman who is very charming, is
19 trying to reduce competition for himself. Stations that are
20 near Costco do have to lower their prices. Probably what
21 happens is the zoning takes that into account. So the gas
22 companies, the major oil companies charge less for premium
23 for being their brand gas which are located next to a
24 Costco. But still they're still at a disadvantage because
25 of the fact that Costco doesn't have to make a profit, maybe

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1 they do, maybe they don't. They're not saying, but we know
2 they're not taking a loss because that would be illegal. We
3 know that they wouldn't do that.
4 I do support there being a gas station there with
5 caveats. It would be a convenience for me and it would be a
6 benefit to the County to have the gas station there and to
7 encourage people like me to shop at that Costco rather than
8 the Beltsville Costco because that would be more tax revenue
9 to the County.
10 However, I was also very impressed by the
11 testimony of Mrs. Sheard about parking issues. I have
12 shopped on days when I didn't need gas at that Costco and
13 parking is a problem there already without the gas station.
14 So I would suggest that the gas station be approved with the
15 caveat that Costco has to monitor their parking situation
16 and be prepared to increase parking somehow if necessary.
17 You don't want the parking problem to become a problem and
18 if you take away 100 spaces, that's really a problem right
19 now. Already it's a problem.
20 So, yes, there's ways of doing it. They could
21 double-deck the parking lot. I don't know who pays for it,
22 whether it's Costco or Westfield, but the point is there
23 needs to be enough parking. And I may not agree with
24 everything Mrs. Sheard said. I certainly don't agree with
25 everything she said, but probably was the best witness of

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1 the day and that was, I think, the point that I totally buy
2 into that there is a parking problem that needs to be
3 addressed. But as long as they're willing to address the
4 parking problem, I think the gas station is a good idea.
5 Thank you very much. Any questions?
6 MR. GROSSMAN: Cross-examination?
7 MS. ROSENFELD: Just the usual from me.
8 MR. GROSSMAN: Well, first of all --
9 MR. LEVY: I get first shot.
10 CROSS-EXAMINATION
11 BY MR. GOECKE:
12 Q When you say there's a parking problem at the
13 mall, the proposed gas station site, what do you mean by
14 that?
15 A Well, it's hard to park close to the, close to the
16 store and if you don't park in the first three rows, you
17 don't have an aisle to get your shopping cart through.
18 You've got to go all the way around with your cart. That's
19 unlike, unlike Beltsville where they do have aisle, shopping
20 cart aisles that go all the way back into the parking lot.
21 And even all the way back in the parking lot can be
22 difficult to find a parking spot. It can be -- there are
23 times when you can't find a parking spot anyplace, you have
24 to wait for a parking spot. That's a parking problem. It's
25 not a parking problem where they'll benefit from losing 100

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1 spaces and bringing more traffic into the, into that lot.
2 So I think the gas station is a great idea, but you've got
3 to do something about the parking.
4 MR. GROSSMAN: Have you ever tried to park in the
5 garage immediately to the east of the warehouse?
6 MR. LEVY: No.
7 MR. GROSSMAN: Any particular reason or did you --
8 MR. LEVY: Not very aware of it.
9 MR. GROSSMAN: Okay.
10 MR. LEVY: You know, maybe I'll have to become
11 more aware of it but, you know, maybe, maybe the solution is
12 simply telling people with many signs, park over here.
13 MR. GROSSMAN: Right.
14 MR. LEVY: Maybe that's an adequate solution. I'm
15 not prepared to say. Hopefully, hopefully people who
16 understand parking better than I do can address that
17 question, but I think the question needs to be addressed.
18 MR. GROSSMAN: There was earlier testimony in this
19 case, and it was not today, another day, that it was
20 significantly underused, that the garage was --
21 MR. LEVY: I think that was said today also.
22 MR. GROSSMAN: Okay.
23 MR. LEVY: Yes.
24 MR. GROSSMAN: All right.
25 MR. GOECKE: Thank you. No further questions.

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1 MR. LEVY: I have allergies.
2 MR. GROSSMAN: I think he anticipated your
3 question. He beat you to the punch there, Ms. Rosenfeld.
4 MS. ROSENFELD: We're saving time. Thank you very
5 much.
6 MR. GROSSMAN: Anything else?
7 MR. SILVERMAN: Yes.
8 BY MR. SILVERMAN:
9 Q Could you just describe your pedestrian
10 experiences at the Westfield Mall?
11 A My pedestrian experiences?
12 Q Walking from your car to the shopping?
13 A Yes.
14 Q You alluded to it. I wonder if you could just
15 elaborate on it?
16 A Well, basically the shopping cart aisles that
17 cross through, but only goes about three rows. So if you
18 have to park past the third row, which is almost always, the
19 place tends to be fairly crowded, you've got a real problem
20 getting your shopping cart to your car. And, of course,
21 solving that problem by say taking out maybe three or four
22 spaces and extend that three or four spaces which aggravates
23 the parking problem. But that, you know, that should be
24 addressed.
25 Q Have you maybe given some thought to how the cars

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1 in the proposed gas station would exit the gas station?
2 A Nope.
3 Q Okay.
4 MR. GROSSMAN: Mr. Scharman, do you have a
5 questions of this witness?
6 MR. SCHARMAN: Yes, I do.
7 MR. GROSSMAN: Do you want to come forward?
8 Perhaps, why don't you vacate your space? Thank you. Just
9 so the record knows who is doing the questioning, identify
10 yourself for the record, Mr. Scharman.
11 MR. SCHARMAN: Thank you, Your Honor. Clifford
12 Scharman on behalf of myself.
13 BY MR. SCHARMAN:
14 Q Mr. Levy, do you recall during the break that we
15 had a little conversation, short?
16 A Yeah.
17 Q Do you recall telling me that somebody called you
18 to tell you to be here at 9:30 this morning?
19 A Yes.
20 Q Do you recall who that person was?
21 A It was someone from Costco.
22 Q Okay. But you don't know the person's name?
23 A I don't recall the person's name.
24 Q Was that the first time that you had spoken with
25 that person?

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1 A No, I think they called once before.
2 Q Also during that conversation do you remember
3 asking me whether I was in favor of Costco or Nimby and do
4 you recall my answer?
5 A I do recall asking you and I think you, your
6 answer was in the positive sense that you were Nimby.
7 Q Are you sure that's what I said?
8 A No.
9 Q Did I not, can I try to refresh your recollection?
10 A Please.
11 Q Did I not say that I was neither and that I was
12 speaking on behalf of myself?
13 A I, sorry, I don't recall.
14 MR. SCHARMAN: That's all.
15 MR. GROSSMAN: All right. I'm going to, given the
16 nature of those questions, I'm going to allow it, are there
17 any other additional cross-examination questions of this
18 witness?
19 No? All right. Would, when you received the call
20 alerting you to, from Costco, was there, first of all, do
21 you know how Costco received your name to call you?
22 MR. LEVY: I don't remember.
23 MR. GROSSMAN: Okay.
24 MR. LEVY: I don't recall.
25 MR. GROSSMAN: And was there any benefit offered

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1 to you from --
2 MR. LEVY: No, absolutely not.
3 MR. GROSSMAN: Okay.
4 MR. LEVY: Just the benefit of having a gas
5 station I think.
6 MR. GROSSMAN: Okay. All right. Thank you very
7 much, sir.
8 MR. LEVY: You're welcome. Thank you so much.
9 MR. GROSSMAN: All right. I see that Ellen Levy
10 is also on the list. Did you wish to testify, Ms. Levy?
11 MS. LEVY: I guess if I can briefly.
12 MR. GROSSMAN: Yes, ma'am. Can you state your
13 full name and address for the record please:
14 MS. LEVY: Yes. Ellen Levy, 3800 Wexford Drive,
15 Kensington, 20895.
16 MR. GROSSMAN: Would you raise your right hand
17 please?
18 (Witness sworn.)
19 MR. GROSSMAN: All right.
20 MS. LEVY: I have just a few things to add. I
21 believe that it was I who got an e-mail from Costco because
22 I'm on their e-mail list at some point in time with a
23 questionnaire did I support the gas station and might I be
24 willing to attend and I checked yes. So I did get a follow-
25 up call and I probably told Barry about that which is how we

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1 got a follow-up call.
2 MR. GROSSMAN: All right.
3 MS. LEVY: I'm simply wanted to make a comment,
4 just some very simple observations. Yes, we do shop at the
5 Costco in Beltsville and have gotten gas there and it seems
6 to me that in going to and from that store we have passed a
7 number of open, viable, functioning gas stations all around
8 it. I did not see a whole Baltimore Avenue being an avenue
9 of dead gas stations. I did not see it as being an avenue
10 of shuttered gas stations. And where we live, which is
11 quite near where Connecticut and University split off, there
12 are a number of I'd say probably four, possibly five gas
13 stations that are open, functioning and presumably competing
14 with one another and I go to the cheapest one.
15 And I don't see the advent of another competitor
16 as being instantaneous death to the competing vendors in
17 that community. I certainly can see some benefits to the
18 community as well as to myself. Yes, I drive the gas
19 guzzler and when I fill it up with high test, it's probably
20 a five or \$6 difference. And we are seniors and the money
21 does matter and I'm in favor of healthy competition. I'm in
22 favor of healthy air quality and it does seem to me that one
23 of the things that we should all be aware of is that the
24 times, they are a changing, technology is changing. We
25 certainly are seeing more on the news today. Ford has come

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1 up with trucks that are going to operate on natural gas, not
2 on gasoline.
3 So we, when we project too far into the future, we
4 may be making errors of assumptions also. So a -- we have
5 to be as balanced as we can in the median range, which is
6 about as far as I think we can all kind of reasonably figure
7 out because the technologies of transportation are going to
8 be changing also and what kind of fuel we're going to use
9 and how economically we will use it will change.
10 MR. GROSSMAN: All right. Cross-examination?
11 MS. ROSENFELD: My usual question.
12 CROSS-EXAMINATION
13 BY MS. ROSENFELD:
14 Q Do you have any respiratory-related health issues?
15 A No, I don't.
16 MR. GROSSMAN: All right.
17 MS. LEVY: Thank you.
18 MR. GROSSMAN: Thank you very much, Ms. Levy.
19 Okay. I think that the last person on the list here is Mr.
20 Scharman. Uh-oh, he's come armed. Mr. Scharman, would you
21 once again state your full name and address for the record
22 please?
23 MR. SCHARMAN: Clifford Scharman, 3707 Dupont
24 Avenue, Kensington, Maryland.
25 MR. GROSSMAN: Would you raise your right hand

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1 please?
2 (Witness sworn.)
3 MR. GROSSMAN: All right. You may proceed.
4 MR. SCHARMAN: Thank you for that, sir. I guess
5 first a little bit of background. I'm a resident of
6 Kensington for 25 years. We live approximately 1.1 miles
7 from the service road, ring road of Wheaton Plaza. We have
8 gone to a variety of town council meetings, including the
9 one Ms. Harris and Mr. Brann presented and persuasively the
10 need for Costco and also for a gas station. And as a result
11 of that presentation, the town of Kensington decided neither
12 to oppose or support the proposed development of Costco.
13 I also, for the sake of disclosure, was a Board
14 member of the Kenmont community pool for approximately 12
15 years. And when I said that I'm speaking on behalf of
16 myself, that's all I'm doing. I neither support nor oppose
17 the gas station. If the gas station can fulfill the
18 requirements of the special exception, it should be granted.
19 If they can't, it should be denied.
20 That being said, I notice that Mr. Guckert's
21 analysis of traffic was limited to from Lexington north on
22 the University Boulevard corridor and I believe that he
23 testified that was because that was the area of, identified
24 by an MNCPPC as being most directly affected by the
25 development.

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1 I asked the town of Kensington for a report that
2 was generated by the State Highway Administration in July of
3 2010 and updated in July of 2012 which provided an analysis
4 of the traffic going on various roads including Connecticut
5 Avenue all the way to Chevy Chase circle, but most
6 importantly the intersections immediately south of where Mr.
7 Guckert's analysis was which would be the St. Paul, I'm
8 sorry, the Plyers Mill and Connecticut intersection and the
9 Knowles Avenue and Connecticut intersection. And I would
10 like to submit that for the record and I believe that I did
11 send it by way of e-mail on Sunday.
12 MR. GROSSMAN: And I think it's addressed to all
13 the parties that you were referring to.
14 MR. SCHARMAN: Yes. And I do have copies.
15 MR. GROSSMAN: And I appreciate your courtesy in
16 doing so.
17 MR. SCHARMAN: If I can find them.
18 MR. GROSSMAN: Thank you. Now I'm going to
19 mark -- there are actually two documents that you forwarded
20 by e-mail.
21 MS. HARRIS: It says, exactly, they're e-mailed
22 on --
23 MR. GROSSMAN: It was an earlier --
24 MR. SCHARMAN: There was an earlier document from
25 2002, I believe it was.

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1 MR. GROSSMAN: Right. But right now you're just,
2 well, we'll mark this one Exhibit 218, which is the July 12,
3 2010 State Highway Administration letter to Mr. Sanford
4 Daly, town manager of Kensington, town of Kensington. So
5 let me just -- town letter from SHA to town manager of
6 Kensington and the clerk can characterize this letter. It
7 is, well, it says about regarding traffic operations within
8 the town of Kensington.
9 (Exhibit No. 218 was marked for
10 identification.)
11 MR. GROSSMAN: Okay. The one sentence that I
12 would, or two sentences I would like to highlight on the
13 first page of the letter --
14 MR. SCHARMAN: Yes.
15 MR. GROSSMAN: -- it is our understanding that two
16 or more preempts, and this is my comment, preempts meaning
17 preemption of the traffic signal at Plyers Mill and
18 Connecticut Avenue, within a single peak period will cause
19 the entire system to fail until it can recover during the
20 off-peak. Also traffic from MD-547, which I believe is,
21 like it or not say what I, yes, turning onto MD-185 creates
22 a major queuing problem in this corridor.
23 Then on the various numerical studies, the -- let
24 me see if I understand what this means.
25 MR. SCHARMAN: Okay.

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1 MR. GROSSMAN: All right. It says the preemption
2 signal phase is given 30 seconds of green time for the
3 emergency equipment to exit. Now is this study in
4 connection with operation of emergency equipment or what are
5 we talking about?
6 MR. SCHARMAN: I believe that this is a study of
7 the traffic impact of what is happening throughout the town
8 of Kensington, but in that reference they're talking about
9 delays along Maryland 185, which is Connecticut Avenue,
10 caused by the firehouse preemption at the signal of
11 Connecticut Avenue and Plyers Mill Road.
12 MR. GROSSMAN: And that would be when, in fact,
13 there's an emergency requiring fire trucks to leave or
14 return?
15 MR. SCHARMAN: Correct.
16 MR. GROSSMAN: Okay. All right. And what was the
17 other thing on, other sentence to highlight on?
18 MR. SCHARMAN: That was the major sentence on
19 that --
20 MR. GROSSMAN: Okay.
21 MR. SCHARMAN: -- report. And then on the traffic
22 volume summary, and I'm looking, there are numbers of them,
23 but the very first page which has on the, underlined,
24 revised 12/11/2012 --
25 MR. GROSSMAN: All right. Hold on a second. Let

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1 me just find that.
2 MR. SCHARMAN: It's the one-page study as opposed
3 to the --
4 MR. GROSSMAN: Actually my copy has a blank page.
5 Maybe that's the, well, can you take a look at the copy that
6 I've marked for the record and see if it has that in there?
7 MS. SCHARMAN: Sure. And, of course, it's not.
8 It was marked copied and I --
9 MR. GROSSMAN: How about the other -- do the rest
10 of you folks, does your copy have the first page following
11 the report? Is it blank or does it have something on it
12 following the letter?
13 MS. HARRIS: The one that we received via e-mail
14 has something on it. The one that was just handed out does
15 not.
16 MR. GROSSMAN: Okay.
17 MR. SCHARMAN: Then I apologize to everybody for
18 not copying correctly.
19 MR. GROSSMAN: Is there anything, well, I guess we
20 ought to take a look and see if there's anything else in
21 here that's missing on there. I have, then following that,
22 that first page that's blank on mine, there were four larger
23 11 by 17 pages attached. They all have something on it. Is
24 there anything else that was, that you intend to submit in
25 addition to the four 11 by 17 pages or is that, what are the

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1 exhibits?
2 MR. SCHARMAN: There was one final page.
3 MR. GROSSMAN: Oh, oh, I see it. I'm sorry. Yes,
4 I also have that, one final eight and a half by 11 page.
5 Okay. So --
6 MR. ADELMAN: You say four 11 by 17?
7 MR. GROSSMAN: Yes, I have one, two, three, four.
8 MR. ADELMAN: It looks like I've only got four,
9 one --
10 MR. GROSSMAN: We didn't want to give you an even
11 playing field, Dr. Adelman.
12 MR. ADELMAN: I just have a --
13 MR. GROSSMAN: Okay. So, okay, so the only thing
14 is that missing page and you can supply that or we can make
15 a copy of your page afterwards to include it in the exhibit.
16 MR. SCHARMAN: In fact, I have a, one of these doo
17 hickies with --
18 MR. GROSSMAN: Oh, was this sitting in the -- I
19 can't recall -- was the missing page in what you e-mailed to
20 us?
21 MR. SCHARMAN: Yes. All right. Then I can get it
22 from there. And the only numbers that I wanted to bring to
23 the court's attention is the Connecticut Avenue between
24 Plyers Mill Road and University Boulevard which in the 2011
25 survey was 56,251 and then when you go, I guess that would

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1 be north, to the University Boulevard just east of
2 Connecticut, which is where the split is --
3 MR. GROSSMAN: Yes.
4 MR. SCHARMAN: -- which is where I think Mr.
5 Guckert's study stops --
6 MR. GROSSMAN: Right.
7 MR. SCHARMAN: There are 21,112 cars that are
8 going on University Boulevard that I assume are going
9 towards the mall at that point.
10 MR. GROSSMAN: Okay. They're going to the
11 southbound at that point?
12 MR. SCHARMAN: They're going northbound --
13 MR. GROSSMAN: Northbound?
14 MR. SCHARMAN: -- towards, from Kensington
15 towards --
16 MR. GROSSMAN: Okay.
17 MR. SCHARMAN: -- the mall --
18 MR. GROSSMAN: All right.
19 MR. SCHARMAN: -- on University Boulevard. So,
20 obviously, the vast majority of the cars that are traveling
21 through Kensington are going on Connecticut, are splitting
22 off on Connecticut Avenue whereas approximately 40 plus
23 percent or 40 minus percent are going up University
24 Boulevard.
25 MR. GROSSMAN: Okay.

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1 MR. SCHARMAN: Obviously a gas station could have,
2 and I say this, could have the effect of encouraging some of
3 those cars that are going to Connecticut Avenue to go onto
4 University Boulevard and go up to the mall for a p.m. fill-
5 up. So that's that report.
6 The second report that I asked the town for was a
7 January 2003 State Highway Administration report and I'd
8 like to have this marked.
9 MR. GROSSMAN: Okay. And that will be Exhibit
10 219, and that's January 21, 2003, letter from the State
11 Highway Administration to the then mayor, town of
12 Kensington. And that's relating to the request for a
13 roundabout at Maryland 192 and Plyers Mill Road, as well
14 as across Phillips.
15 (Exhibit No. 219 was marked for
16 identification.)
17 MR. GROSSMAN: All right, sir.
18 MR. SCHARMAN: On this report, and I'm trying to
19 find it, I refer to page 8.
20 MR. GROSSMAN: Okay. Page?
21 MR. SCHARMAN: Eight.
22 MR. GROSSMAN: Eight? Okay.
23 MR. SCHARMAN: And this rate at various
24 intersections at Connecticut and Plyers Mill at the a.m.
25 peak hour and the p.m. peak hour, and in the a.m. it is

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1 rated, that intersection which is Plyers Mill and
2 Connecticut --
3 MR. GROSSMAN: Right.
4 MR. SCHARMAN: -- is rated at G and in the p.m.
5 peak hour it is rated at F.
6 MR. GROSSMAN: I see that.
7 MR. SCHARMAN: And if we look at the first
8 exhibit, we, it appears that the car volume has increased
9 from the year 2002 to the year 2011.
10 MR. GROSSMAN: Do we know if there are any other
11 changes that were made in that area since that time?
12 MR. SCHARMAN: To my knowledge, there was an extra
13 right-hand lane turn, again, at the request of, or as, at
14 the request of Mr., or suggestion of Mr. Guckert when
15 Safeway was approved.
16 MR. GROSSMAN: All right. But my concern would be
17 the same that was, I guess, raised by Mr. Guckert when you
18 cross-examined him many moons ago about the age of this
19 study and what has been in place in the interim, that's, and
20 whether or not that still represents the condition at the
21 intersection.
22 MR. SCHARMAN: Well, from personal observation,
23 that's all I can say.
24 MR. GROSSMAN: Right.
25 MR. SCHARMAN: I know that in the afternoon p.m.,

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1 traffic can back up on Connecticut Avenue to Washington
2 Street, which is -- and further even to sometimes almost to
3 Saul Avenue. I know that the traffic on Knowles Avenue in
4 the afternoon can back up as far as Beach Drive. And I know
5 that the traffic on Cedar Lane can also back up to about
6 Washington Street or whatever pool area that is, community
7 pool. I don't know what the intersection is.
8 On the Plyers Mill side, the back up can go beyond
9 Nash Place which is the first intersection beyond
10 Metropolitan.
11 MR. GROSSMAN: Right.
12 MR. SCHARMAN: So, if anything, I consider the
13 traffic has grown worse in the intervening seven years --
14 MR. GROSSMAN: All right.
15 MR. SCHARMAN: -- or eight years, but I have no
16 objective evidence to support that.
17 MR. GROSSMAN: And what about the question whether
18 or not, what contribution, if any, would the proposed gas
19 station make to an increased level of traffic at that
20 particular intersection?
21 MR. SCHARMAN: I would be speculating, but I would
22 speculate that, well, I shouldn't say that. I think Mr.
23 Guckert testified that there would be seven or so gasoline
24 trucks going through per day to fill Costco, if I remember
25 his testimony, and that the peak amount of usage would be in

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1 the afternoon rush hour so that I would suspect that even
2 one gas tanker going through on Connecticut Avenue corridor
3 at that time would exacerbate, even if it's only a miniscule
4 amount, the traffic that's going through and I would also
5 suspect that at least a few cars, if not many cars, would go
6 for gasoline in the afternoon on their way home either to
7 Olney or to Aspen Hill or wherever they're going home if
8 they find the advantage of savings sufficient to stand in
9 line for that period of time.
10 MR. GROSSMAN: Right. I guess the question would
11 be how many, or actually the impact of the intersections in
12 question here as opposed to many others and what times they
13 would be impacting them. So that's --
14 MR. SCHARMAN: That's beyond my, I would just be
15 speculating as to that.
16 MR. GROSSMAN: Right.
17 MR. SCHARMAN: The next thing which I did not
18 distribute because I found this out last night on the
19 Internet is an MSDS sheet for gasoline and this one happens
20 to be produced by Amaretto Hess.
21 MR. GROSSMAN: Okay. So this is, we'll make this
22 Exhibit 220.
23 (Exhibit No. 220 was marked for
24 identification.)
25 MR. GROSSMAN: And that is, let's see, what

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1 exactly is this? A material safety data sheet from Hess.
2 Is that --
3 MR. SCHARMAN: That's what this is and --
4 MR. GROSSMAN: Okay.
5 MR. SCHARMAN: -- it's my understanding that both
6 OSHA and to less or to a different extent EPA require MSDS
7 sheets for hazardous substances. And the ones, the OSHA
8 requirement is directed towards the safety of employees.
9 And this particular one contains all of the substances, the
10 component substances of gasoline, all grades. I don't know
11 the difference between the different material safety data
12 sheets other than Hess must produce one for Hess gasoline as
13 it is made and hypothetically BP must produce one for BP's
14 ingredient gasoline.
15 The reason that I bring this to your attention is
16 that on page 15 it talks about regulatory information and it
17 also, on page --
18 MR. GROSSMAN: But I only have nine pages.
19 MR. SCHARMAN: Not 15-page, page 6 of 9 --
20 MR. GROSSMAN: Okay.
21 MR. SCHARMAN: -- it talks about some
22 toxilogical --
23 MR. GROSSMAN: Toxilogical properties?
24 MR. SCHARMAN: Right.
25 MR. GROSSMAN: Yes.

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1 MR. SCHARMAN: And on page 6 it, page 4, No. 6, it
2 talks about spill contingency or emergency plans. And on
3 page 7, No. 15, it talks about SARA Section 311, which I'll
4 get into in a second.
5 MR. GROSSMAN: I mean it talks -- okay, which
6 number is it?
7 MR. SCHARMAN: It's number, page 7 --
8 MR. GROSSMAN: And which --
9 MR. SCHARMAN: -- No. 15.
10 MR. GROSSMAN: It talks about what?
11 MR. SCHARMAN: SARA and CERCLA, which are the --
12 MR. GROSSMAN: I'm not seeing SARA.
13 MR. SCHARMAN: There is the third one down under
14 No. 15, it's CERCLA Section 104.
15 MR. GROSSMAN: Oh, I see. I see.
16 MR. SCHARMAN: And SARA Section 304.
17 MR. GROSSMAN: Okay. I see.
18 MR. SCHARMAN: And --
19 MR. GOECKE: I'm not sure if he's getting there,
20 Mr. Grossman, but I'm just a little confused about the
21 relevancy of this document.
22 MR. SCHARMAN: Well, the relevancy is that there
23 is going to be, in a moment I'm going to testify about a
24 meet and greet in which Ms. Harris suggested that I talk to
25 someone at Costco, and I can't remember the name of the

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1 person who was in charge of, I'm going to assume safety of
2 some kind, who told me that Costco did not intend or did not
3 have any kind of emergency response plan and was not
4 required to have any kind of emergency response plan but,
5 rather, they were reliant upon the Westfield Shopping
6 Center's emergency response plan.
7 And I am going to suggest that because of the
8 component chemicals in gasoline, which this is, are
9 demonstrated by this MSDS in its generic form, there is a
10 requirement under the Emergency Planning and Community Right
11 to Know Act that requires gasoline stations with 75,000
12 gallons of under storage gasoline to become involved with an
13 emergency response plan.
14 MR. GOECKE: I guess a couple of points there.
15 I'm not sure if Mr. Scharman was present the day Mr.
16 Hurlocker testified about Costco's emergency plans?
17 MR. GROSSMAN: I don't recall.
18 MR. GROSSMAN: I was not.
19 MR. GOECKE: Okay. And so there's already been
20 testimony on this point and hearsay conversation he may have
21 had from this unknown person I would say it's not reliable
22 and it constitutes effective hearsay that we should not
23 permit in this proceeding. In addition, this, no one
24 disputes that gasoline has toxic chemicals and carcinogens
25 in it. This document from Hess from September 25, 2007, is

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1 not related to Costco. It contains, each company has their
2 own additives that they put in gasoline so gasoline varies
3 from station to station and company to company. So, again,
4 I'm just not, I just don't see the relevance of this
5 document pertaining to his hearsay conversation.
6 MR. GROSSMAN: Well, his conversation could be
7 vague for a couple of different reasons, but one would be
8 the reason why he's here presenting this document, not
9 necessarily if the truth of the hearsay statement that was
10 said to him that Costco does not have an emergency response
11 plan but, rather, for the reason why he's here presenting
12 this. So to that extent that statement does come in even
13 though it is -- in other words, it would not be hearsay if
14 it's not offered for the truth of the statement. He --
15 MR. GOECKE: The document?
16 MR. GROSSMAN: No. The statement that was said to
17 him by a Costco, alleged Costco person that Costco does not
18 have an emergency response plan. Whether or not -- I take
19 it that was part of your objection, that you're objecting to
20 that as hearsay? And I'm saying that it's not being
21 admitted for the truth of that assertion --
22 MR. GOECKE: Right.
23 MR. GROSSMAN: -- because there -- and there's
24 certainly better evidence as to what their plans are from
25 Mr. Hurlocker and so on but, rather, for the reason why he's

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1 presenting this document from Hess. And now you've got an
2 objection to the document itself from Hess?
3 MR. GOECKE: I, it seems like this document is
4 being submitted for the truth of the matter contained in the
5 document.
6 MR. GROSSMAN: Right.
7 MR. GOECKE: And --
8 MR. GROSSMAN: I would agree that it is being
9 submitted for the truth of the matter, but let's leave for
10 the time being to the parties now, having just seen it now.
11 Rather than my excluding it, I'll give you an opportunity to
12 respond if there's something in this document that's not
13 accurate. We do allow hearsay in these administrative
14 proceedings --
15 MR. GOECKE: I understand.
16 MR. GROSSMAN: -- as you know. And the questions
17 of reliability and whether or not there's an available
18 witness for cross-examination and other considerations I've
19 outlined before go into that question. It's, it would seem
20 that something of this sort, that is Exhibit 220, has an
21 inherent reliability to it. And, but I would certainly give
22 you the opportunity to look it over and if I'm incorrect
23 about that, I will reserve that judgment. For the time
24 being I would say it would be admissible for the purpose of
25 outlining Hess's material safety data sheet.

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1 MR. GOECKE: That's fine. I'm willing to proceed.
2 MR. GROSSMAN: Okay. Okay.
3 MR. SCHARMAN: Thank you.
4 MR. GOECKE: But then, I guess, the second point
5 is if his testimony is here to be that Costco should have an
6 emergency response plan in place, there's not even testimony
7 on that.
8 MR. GROSSMAN: And I realize that the problem of
9 having a hearing that goes over so many days is that not
10 everybody in the community is going to be present for every
11 piece of the testimony.
12 MR. GOECKE: Sure.
13 MR. GROSSMAN: So I'll hear what Mr. Scharman has
14 to say.
15 MR. GOECKE: Thank you.
16 MR. SILVERMAN: And, of course, recollection has
17 failed, but I don't recall Mr. Hurlocker talking about the
18 MDS's and their compliance with them, but that may be my
19 memory.
20 MR. GROSSMAN: No, I -- as far as MSDS, I would
21 agree with you. I don't recall that particular aspect. He
22 did talk at great length as to what personnel are trained to
23 do at, and what their instructions are for handling
24 emergency and how emergencies are defined in terms of spills
25 and how they're very conservative in their definition of

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1 what a spill is compared to what the state requirements are
2 and so on. But -- which does not say that this should not
3 be admitted for the purpose of, you know, what it serves,
4 the educational purpose it serves.
5 MR. SILVERMAN: Yes, but for what it's worth, I,
6 Mr. Goecke can confirm that the, which is what I believe,
7 that Costco's MSDS for gasoline is the same as Hess's and
8 every other regular gasoline station. I would hope it is and
9 you can get a copy at any gas station if they're in
10 compliance, complying with the law. Just, it's a standard
11 document.
12 MR. GROSSMAN: I don't know if there's anything, I
13 mean he hasn't had a chance to look at the exhibit.
14 MR. SCHARMAN: Right.
15 MR. GROSSMAN: It's just being supplied to him, so
16 I'm certainly going to give him the opportunity if there's a
17 problem with what is contained therein, that he has the
18 opportunity to look it over and have their experts look it
19 over and say that. But right now I don't have a basis for
20 excluding it it seems to me. All right, Mr. Scharman.
21 MR. SCHARMAN: Thank you, Your Honor. The next
22 document, likely the last document, I only received
23 yesterday from Internet research.
24 MR. GROSSMAN: All right.
25 MR. SCHARMAN: And this is from EPA's website

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1 regarding emergency planning and community Right to Know
2 Act requirements --
3 MR. GROSSMAN: Okay.
4 MR. SCHARMAN: -- summary of the statute which I
5 believe is --
6 MR. GROSSMAN: 42 USC 116, et seq.?
7 MR. SCHARMAN: Yes.
8 MR. GROSSMAN: All right. We'll mark this as
9 Exhibit 221.
10 (Exhibit No. 221 was marked for
11 identification.)
12 MR. SCHARMAN: And this is just generically saying
13 or outlining in summary format the requirements of the, in
14 Emergency Planning Community Right to Know Act and the next
15 document which I'm going to propose is the document that
16 suggests that Costco gas station falls within this.
17 MR. GROSSMAN: All right. This will be Exhibit
18 222, which is EPCRA frequent questions.
19 (Exhibit No. 221 was marked for
20 identification.)
21 MR. SILVERMAN: Did you have an exhibit number on
22 the material data safety sheet too?
23 MR. GROSSMAN: On the material data sheet? Yes.
24 That was Exhibit 200. And that's sections 311 and 312.
25 (Discussion off the record.)

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1 MR. SCHARMAN: In the frequent questions, Section
2 311 through 12, I'd like to suggest that the very last
3 question is the one that should be focused upon and,
4 unfortunately, I don't know how to copy just one question.
5 I have to copy the whole thing.
6 MR. GROSSMAN: All right.
7 MR. SCHARMAN: And this one suggests that gas
8 stations that store 75,000 gallons of gasoline underground
9 must report on the total gasoline or diesel fuel at the
10 facility, including any of it that is not stored, blah,
11 blah.
12 MR. GROSSMAN: By the way, we always, one of the
13 conditions if a special exception is granted, one of the
14 conditions that's always included is a condition that the
15 petitioner follow all applicable Federal, state and local
16 regulations, laws and regulations. So to the extent that
17 these are applicable, they would be a requirement of any
18 special exception if it's granted.
19 MR. SCHARMAN: Then I will move on unless somebody
20 wants to cross-examine me on that.
21 MR. GROSSMAN: Well, I haven't had a chance to
22 read this and I wasn't familiar with this statutory scheme,
23 but to the extent it is applicable it would be, it would be
24 required to be followed by the petitioner if a special
25 exception is granted.

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1 MR. SCHARMAN: Thank you. And the only reason I
2 brought it up was because of the hearsay conversation I had
3 way back when --
4 MR. GROSSMAN: I understand.
5 MR. SCHARMAN: -- which may have already been
6 corrected within the course of the last three years.
7 MR. GROSSMAN: Right. I'm not sure they called it
8 an emergency action plan. They did have a great deal of
9 testimony about what their requirements are in terms of
10 handling various conditions which, some of which you can
11 characterize as an emergency, but they also, well, less than
12 emergency spill control and so on.
13 MR. SCHARMAN: I think I may have been absent that
14 day.
15 MR. GROSSMAN: Well --
16 MR. SCHARMAN: The only two other thoughts or
17 comments anecdotal that I have is I know that there was
18 testimony by Mr. Guckert about how the volume of traffic
19 that's in the mall increases during the holiday season. My
20 personal experience is that it increases pre-Costco
21 significantly and to the point of, well, to the point that I
22 don't drive through Wheaton on the weekend north. But,
23 rather, if I went to Wheaton Plaza, I would park on the side
24 street which I believe is, well, it's the circle next to the
25 swimming pool.

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1 MR. GROSSMAN: Okay.
2 MR. SCHARMAN: That's where I would park because
3 it's too difficult to get in and they have crossing guards,
4 et cetera, but the traffic backs up onto University
5 Boulevard considerably pre-Costco.
6 MR. GROSSMAN: Okay.
7 MR. SCHARMAN: And I can only imagine that post-
8 Costco, plus gas station, more. And other than that, I have
9 no more to offer.
10 MR. GROSSMAN: That's it? Cross-examination?
11 MR. GOECKE: We have no questions.
12 MR. GROSSMAN: Ms. Rosenfeld?
13 MS. ROSENFELD: No.
14 MR. SILVERMAN: Just for clarification.
15 CROSS-EXAMINATION
16 BY MR. SILVERMAN:
17 Q Mr. Scharman, are you finding fault with Mr.
18 Guckert's analysis of traffic?
19 MR. GROSSMAN: I'm sorry, I didn't hear that.
20 MR. SILVERMAN: Are you finding fault?
21 MR. GROSSMAN: Oh, finding fault.
22 MR. SCHARMAN: I'm not qualified to testify that
23 he has fault. I do, I am qualified to introduce another
24 exhibit which indicates that he came to the same conclusion
25 that he did in this case, that he did and used the same

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1 words that he did in the Safeway conclusion on his study of
2 Safeway when it was brought in. And --
3 MR. GROSSMAN: A study of Safeway, I'm not sure I
4 know what you're talking about.
5 MR. SCHARMAN: Okay. In 2002 or 2003, Safeway in
6 Kensington was remodeled and went from 22,000 to 40
7 something thousand feet. And Mr. Guckert prepared the
8 traffic analysis of the additional traffic that would be
9 generated by the remodeling and he or his group did. I
10 don't know if he personally did. And his study concluded
11 that there would be, quote, no adverse impact on surrounding
12 area of roadway system. So from the extent that those are
13 the exact words he used in this case --
14 MR. GROSSMAN: Right.
15 MR. SCHARMAN: -- his summary, there might be some
16 conjecture that that's what he, his goal is to establish
17 that result. But the other concern I had, perhaps, with the
18 way Mr. Guckert did his study was he did it before,
19 originally before Costco was open and I believe he did it
20 during a weekday as opposed to a weekend.
21 MR. GROSSMAN: And it was supplemented later on in
22 the case with the study during the weekend.
23 MR. SCHARMAN: Okay. So then that -- and I assume
24 it was done after Costco was open, so --
25 MR. GROSSMAN: Yes.

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1 MR. SCHARMAN: So that would be my only --
2 MR. GROSSMAN: Okay.
3 MR. ADELMAN: I just wanted to point that the
4 supplementary study was in no way comparable to the original
5 TIA. So the subsequent study that Mr. Guckert did was a
6 separate and distinct package of numbers and analysis that
7 were in no way comparable to the traffic impact analysis.
8 MR. GROSSMAN: I don't know about the word
9 comparable, but in any event you made your comment. All
10 right. Anything further of this witness? Okay. Okay. Mr.
11 Silverman?
12 BY MR. SILVERMAN:
13 Q You mentioned parking at the Wheaton Mall. Do you
14 have, can you describe your experience as parking at Costco
15 there and also walking to the mall?
16 A My experience parking at Costco is that when
17 Costco first opened it was, of course, very, very, very
18 difficult to park and that was because it was a brand new
19 store. My experience now more recently is that during the
20 week it's not so difficult to park during the weekdays. On
21 the weekends, parking in the area immediately adjacent to
22 Costco is quite difficult. There are quite a few people,
23 pedestrians walking not necessarily on the crosswalks, but
24 throughout the parking area, making turns difficult. And
25 it's not my position to recommend to the director to do a

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1 site visit, but I think that the only experience you can
2 have is if you experience it.
3 MR. GROSSMAN: Okay. All right. Thank you very
4 much.
5 MR. SCHARMAN: Thank you.
6 MR. GROSSMAN: I appreciate your testimony and
7 your participation other times when you're here. All right.
8 I do -- there's nobody else on the list. Is there anybody
9 else here who, from the community that wishes to be heard
10 today?
11 Seeing no hands, why don't we break for lunch?
12 It's almost 1:15. We'll come back at 2 o'clock, all right?
13 And I guess we'll resume with cross-examination of Mr. Flynn
14 who is here. Thank you.
15 MR. SCHARMAN: Your Honor, do you need this?
16 (Whereupon, at 1:12 p.m., a luncheon recess was
17 taken.)
18 MR. GROSSMAN: All right. Are we all ready to
19 resume? Do we have a preliminary matter or should we have
20 Mr. Flynn take the stand?
21 MS. ROSENFELD: Just a quick question on the
22 timing of the plans. I know that how we proceeded on Friday
23 is going to depend on whether or not there's plans today.
24 Do you know the status?
25 MS. HARRIS: They're supposed to be here within a

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1 half an hour, however, while the plans are going to be here,
2 now we have a problem that it doesn't look like Dan Duke is
3 going to be available on Friday. He may have -- best case
4 scenario is he'll have an hour or an hour and a half window
5 because he has two other commitments on Friday. Mark
6 Willard is available and Mark Willard believes he, the
7 landscape architect, he believes he can get his plans
8 distributed at some point tomorrow. But I realize that's
9 not a lot of time, so I leave that to the opponents whether
10 that's sufficient or not to then put Mark on the stand on
11 Friday.
12 UNIDENTIFIED SPEAKER: He's basically going to
13 talk about the plants and the trees and the little birds and
14 things like that, I believe.
15 MR. BRANN: Strictly plants.
16 UNIDENTIFIED SPEAKER: Plants.
17 MS. ROSENFELD: No birds.
18 UNIDENTIFIED SPEAKER: No birds and no bees,
19 right, but --
20 MS. ROSENFELD: Well, is he going to testify to
21 the wall?
22 UNIDENTIFIED SPEAKER: Excuse me?
23 MS. ROSENFELD: Does he testify about the wall?
24 UNIDENTIFIED SPEAKER: The wall?
25 MS. HARRIS: No. Well --

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1 MR. GOECKE: The green screen part.
2 MS. ROSENFELD: The green screen?
3 MS. HARRIS: Yes, the --
4 MR. GOECKE: Yes.
5 MS. HARRIS: -- with respect to the plantings,
6 correct.
7 UNIDENTIFIED SPEAKER: As to the way they would
8 grow on each side?
9 MS. HARRIS: Yes.
10 MS. ROSENFELD: Does he testify about the
11 dimensions of the wall or the construction of the wall?
12 MS. HARRIS: That was Gina and then there's been a
13 mild revision to that that Dan Duke was going to testify to.
14 MS. ROSENFELD: Well, I thought Gina testified
15 that she really couldn't speak to the construction of the
16 wall because that was up to Mr. Weinhart (phonetic sp.).
17 MS. HARRIS: I believe she explained how the wall
18 was being constructed.
19 MR. GROSSMAN: She did to some extent. I mean
20 suni-tubes and, yes, she did have some discussion of that
21 for sure.
22 MS. ROSENFELD: And is it Dan Duke who testified
23 about where the wall was located?
24 MR. BRANN: Dan will testify to the fact that
25 where the wall was located. He's the civil engineer.

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1 That's his job to place things like that on the site.
2 MS. ROSENFELD: Okay.
3 MR. BRANN: As to the construction of the wall,
4 it's, Gina went through that, our architect went through
5 that. It's very simple. There's not much to it, so I'm not
6 sure what else we need to provide.
7 MR. GROSSMAN: Dig a hole, put a suni-tube and
8 lower the --
9 MR. BRANN: And that the panels be lowered into
10 the columns, that's correct. It's very simple construction.
11 MR. GROSSMAN: The question was raised, I can't
12 remember whether it was Ms. Cordry or Ms. Savage who raised
13 it about what the height, or maybe it was one of the other
14 people, Ms. Duckett, the height of the wall, the space
15 between the ground level and the wall, that there was an
16 allegation that there was some difference between -- okay,
17 between the ground level --
18 MR. BRANN: Correct.
19 MR. GROSSMAN: -- which is what Ms. -- what's
20 Gina's last name?
21 MR. BRANN: Gina Volpicelli.
22 MR. GROSSMAN: Volpicelli testified which she said
23 it was very close to the ground and the diagrams which may
24 have shown it at a greater distance off the ground. I think
25 that was the assertion.

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1 MR. BRANN: He would say --
2 MR. ADELMAN: There's also the question of how
3 much infringement on McDonald's buffer would be required
4 when when the wall was in the record.
5 MR. GROSSMAN: Right, it wasn't. Certainly that
6 was a question also. Dan can testify, Mr. Duke can testify
7 to that.
8 MS. HARRIS: It was six inches.
9 MS. ROSENFELD: Mr. Grossman, can I just --
10 MR. GROSSMAN: Six inches is --
11 MR. BRANN: That would be a maximum. I mean it's
12 a rigid panel that is horizontal length and it will just
13 vary depending on the ground, but it would be a maximum of
14 six inches I would say. It will vary because the ground is
15 not exactly level underneath it.
16 MR. ADELMAN: But if someone is being fair, it's a
17 question of how much infringement on the forest buffer that
18 occurs while the construction is going on. It's not a
19 question of -- it's not a question of percentage.
20 MS. HARRIS: We're answering two different
21 questions.
22 MR. GROSSMAN: No, yes, we're talking about two
23 different things. One was the distance between the ground
24 and the level of the panel. And the expert had testified
25 that it was almost ground level and apparently, according to

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1 your wife, it was six inches on the diagram and Mr. Brann is
2 saying that it actually varies, the most it will be six
3 inches depending on how the ground varies because the panel
4 was, is a set, rigid panel.
5 MR. BRANN: And I believe Ms. Volpicelli testified
6 to the fact that the only infringement would be the tailings
7 that come out when they auger the holes. Because of the
8 type of construction, almost all of it will be done from the
9 ring road.
10 MR. GROSSMAN: Almost all of it will be done what?
11 MR. BRANN: From the ring road itself.
12 MR. GROSSMAN: From the ring road? All right.
13 MS. ROSENFELD: Mr. Grossman, as far as Mr.
14 Willard's testimony on Friday, Dan Sheveiko, who has been
15 very involved in the forest buffer and planting and tree
16 issues, I'd like to consult with him. With his concurrence,
17 I think we would be okay moving forward on Friday, but I
18 would -- he's not here right now. He was here earlier
19 today. And I just would like to consult with him first.
20 MR. GROSSMAN: Perhaps consult with him if you can
21 this afternoon and then e-mail Ms. Harris so she can have as
22 much warning as possible this evening. So maybe we can work
23 around Mr. Duke's schedule. Maybe his additional testimony
24 won't take very long. What do you think in terms of Mr.
25 Duke's additional --

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1 MS. ROSENFELD: I need to see to see the plans
2 before I can answer that. I wouldn't think --
3 MR. GROSSMAN: Don't you have any imagination?
4 MS. CORDRY: I can imagine a lot of things. It
5 could be at that spot in the wall.
6 MS. ROSENFELD: It seems to me that the changes
7 are fairly circumscribed. Do I think I have him on the
8 stand for a day? No, I don't, but I would like to see the
9 plans before I can address that.
10 MS. HARRIS: The direct testimony is likely to
11 take 30 minutes, 40 minutes maximum. But, again, he only
12 has an hour and a half or two hour maximum window. So a lot
13 of it is going to be dependent upon the cross-examination.
14 MR. GROSSMAN: All right. Well, maybe you folks
15 can also discuss that as soon as you all have more
16 information, including plans, et cetera, later on this
17 afternoon or whatever, as much time in advance as you can
18 with respect to everybody else's needs.
19 MS. HARRIS: Even under best case scenario, even
20 if we can put on Dan, it depends on how far we get this
21 afternoon. But even if we can put on Dan and Mark Willard
22 and finish with Mr. Cronin, I don't believe that's going to
23 take a whole day tomorrow.
24 MR. GROSSMAN: You mean Friday?
25 MS. HARRIS: Friday, sorry, yes.

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1 MR. GROSSMAN: Well, what do you propose as a
2 result of that?
3 MS. HARRIS: Well, we could either do a partial
4 day or the opponents can start their side. I mean,
5 unfortunately, Dr. Chase is out of town and we need to
6 submit additional information before we can put Mr. Sullivan
7 back. So we're coming to the end of our case.
8 MR. GROSSMAN: Right. Anybody else have any ideas
9 as to what they want to do about it? If, does part day
10 sound --
11 MS. ROSENFELD: Well, it's 2:30 now and we still
12 need to cross-examine Mr. Flynn and then we would have, if
13 we get through three witnesses in a day, that would be a
14 record in this case. I agree with Ms. Harris. I think it
15 would be terrific if we could finish those three witnesses
16 and I don't see any reason why we would not. But I'm not
17 prepared to start Kensington Heights's case until Costco's
18 case-in-chief is concluded.
19 I do have one other procedural issue. Yesterday
20 when Mr. Sullivan was on the stand, he said that he had
21 provided background information for the urban monitorings
22 that he had, modeling that he had done. Dr. Cole has gone
23 through the submissions and either it's not in there or he
24 can't identify it. And what I wanted to ask, Ms. Harris, do
25 you object to Dr. Cole just calling Mr. Sullivan directly to

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1 coordinate on that information?
2 MS. HARRIS: Fine. I think the --
3 MS. ROSENFELD: That would be okay?
4 MS. HARRIS: -- they've always made him available.
5 MS. ROSENFELD: Okay. All right. Thank you.
6 MR. GROSSMAN: Okay. And Mr. Sheveiko is here, so
7 you can ask him the question.
8 MS. ROSENFELD: Okay. Would you like me just to
9 ask him?
10 MR. GROSSMAN: Sure.
11 (Discussion off the record.)
12 MS. ROSENFELD: Okay, Mr. Grossman, we would be
13 amenable to bringing Mr. Willard in on Friday and Mr.
14 Sheveiko is unavailable in the afternoon, if it would be
15 possible to have him available in the morning. Do you know
16 if that's a possibility?
17 MS. HARRIS: Let me check with his schedule. I
18 don't think that would be --
19 MS. ROSENFELD: Okay. Except that the window --
20 MR. GROSSMAN: You don't think that would be a
21 problem or don't think that --
22 MS. HARRIS: That would not be a problem --
23 MR. GROSSMAN: Okay.
24 MS. HARRIS: -- except for the fact that Dan
25 Duke's availability is only between 1:00 and, 1:00 and 2:30.

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1 MR. GROSSMAN: Okay.
2 MS. ROSENFELD: Yes, but Mr. Sheveiko can't be
3 here in the afternoon.
4 MS. HARRIS: Okay.
5 MS. ROSENFELD: So --
6 MS. HARRIS: Then that should work. Okay.
7 MR. GROSSMAN: Okay. Yes, that should work.
8 Okay.
9 MS. ROSENFELD: That was easy.
10 MR. GROSSMAN: It's a plan. Nothing to it. All
11 right. So, Mr. Flynn, welcome back.
12 MR. FLYNN: Thank you.
13 MR. ADELMAN: Sorry, we have one more procedural
14 question.
15 MR. GROSSMAN: All right.
16 MR. ADELMAN: I've been trying to get clarity on
17 the question of parking spaces and naturally the procedural
18 question is which set of numbers are we using? I have an
19 exhibit, you can pass it around.
20 MR. GROSSMAN: Is this a multiple choice
21 procedural question?
22 MR. ADELMAN: I hope not. I hope it's a simple
23 answer because I just wanted a number to use in my
24 testimony.
25 MR. GROSSMAN: All right.

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1 MR. ADELMAN: You might have gotten that from an
2 applicant, it was the day I testified to before and I
3 believe that approximately those numbers were 390 for the
4 parking lot and 390 for the parking garage. I could be off
5 by 10 percent. The flier that you were just handed was
6 distributed by Costco staff to patrons of the mall and the
7 numbers there don't match the numbers and I believe that was
8 mentioned at this table. So my procedural question is which
9 set of numbers are we using?
10 MR. GROSSMAN: Well, I'm not sure that's a
11 procedural question --
12 MR. ADELMAN: Okay.
13 MR. GROSSMAN: -- and that's actually more a
14 substantive question and usually when there's a conflict in
15 the evidence, you are at, you're enabled to point that out
16 and raise whatever issues you want about that if that's the
17 case.
18 Now do you wish me to mark this as an exhibit?
19 MR. ADELMAN: Well, only if you feel it's
20 appropriate, Mr. Grossman.
21 MR. BRANN: Mr. Grossman.
22 MR. GROSSMAN: Yes?
23 MR. BRANN: This is actually a flyer that's being
24 handed out at the warehouse to help people find the parking
25 deck.

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1 MR. GROSSMAN: Right.
2 MR. BRANN: So this is something that we're doing
3 internally to get people to park in the parking deck. The
4 numbers are rough, but they're fairly close. The parking
5 deck, all three decks of the parking deck comprise about
6 1,000 spaces and there are, it's, I don't know the exact
7 number on the surface lot that is in our preferred area. I
8 believe it's around 457. So they've rounded numbers up
9 obviously. But I'll check those numbers and on Friday I'll
10 have exact numbers for you.
11 MR. GROSSMAN: Okay. Well, let's mark this as
12 Exhibit 223.
13 (Exhibit No. 223 was marked for
14 identification.)
15 MR. GROSSMAN: And we'll say Costco parking flyer
16 issued, by the way that was Mr. Brann who made those
17 comments who is still under oath, parking flyer issued to
18 encourage customers to park in garage to east of the
19 warehouse. And as I understand it from the earlier
20 statements, there isn't any contractual amount of parking
21 and you indicated, Mr. Brann, but the number of parking
22 spaces I guess can be counted. Are they going to be re-
23 striped in some way or are they already re-striped to
24 accommodate the Costco warehouse size of parking space and
25 all that?

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1 MR. BRANN: We re-striped the second level of the
2 parking deck to 10-foot wide spaces.
3 MR. GROSSMAN: All right.
4 MR. BRANN: And the area that we consider our
5 preferred area, which is our parking area is spaced, is
6 striped at 10-foot wide spaces also.
7 MR. GROSSMAN: Okay. So somebody can count up
8 those 10-foot wide --
9 MR. BRANN: Oh, absolutely.
10 MR. GROSSMAN: -- spaces and give us a definitive
11 answer? Okay.
12 MR. ADELMAN: So I understand that if I have any
13 comment to make about the apparent discrepancy actually in
14 part of my testimony?
15 MR. GROSSMAN: Well, you can certainly comment on,
16 in your testimony. You can comment if there's a conflict in
17 the evidence provided by the other side on any point. You
18 can comment on in terms of a legal argument as well, okay?
19 And if you have a factual difference in terms of your own
20 observations, you can provide that in terms of your
21 testimony. Okay. I guess that handles all our preliminary
22 matters, so we'll turn back to Mr. Flynn. You're still
23 under oath, Mr. Flynn, and I believe we're ready for cross-
24 examination and --
25 MR. FLYNN: Mr. Grossman --

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1 MR. GROSSMAN: Yes, sir?
2 MR. FLYNN: -- may I ask a question? I would like
3 to correct something I said yesterday that I mis-stated and
4 to clarify one other thing. It's very brief.
5 MR. GROSSMAN: Go ahead, sir.
6 MR. FLYNN: The correction is yesterday we were
7 talking about, I was talking about how people who reside in
8 this seven minute, this area --
9 MR. GROSSMAN: Yes.
10 MR. FLYNN: -- general neighborhood travel a long
11 ways to work on average. I said that they traveled an
12 average of 30 minutes. I was wrong. I checked last night
13 and they travel an average of 37 minutes.
14 MR. GROSSMAN: Okay.
15 MR. FLYNN: I want to make sure that correction is
16 understood. And, secondly, I would like to clarify the
17 issue about the alternative of the bonus programs,
18 specifically the one that Giant offers to reduce the cost of
19 gasoline. I said that I didn't think it was as effective as
20 actually pricing gasoline lower for various reasons. I
21 checked again last night and I found that Giant doesn't
22 allow the reduction, these bonus points, for the sale of
23 medicines in the pharmacy, milk, lottery tickets and
24 cigarettes. So they exclude a portion of average sales from
25 that bonus. Secondly --

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1 MR. GROSSMAN: They exclude milk?
2 MR. FLYNN: Milk.
3 MR. GROSSMAN: Really?
4 MR. FLYNN: I don't know why.
5 MR. GROSSMAN: All right.
6 MS. ROSENFELD: I'm sorry, what was that list
7 again? Milk, lottery tickets, pharmaceuticals and --
8 MS. HARRIS: Cigarettes.
9 MS. ROSENFELD: Okay, cigarettes.
10 MR. FLYNN: Cigarettes.
11 MR. GROSSMAN: Maybe there's some obscure Federal
12 law that prohibits them from giving some kind of a bonus for
13 milk, who knows?
14 MR. FLYNN: Excuse me. It excludes alcoholic
15 beverages, tobacco products, pharmacy items, gift cards,
16 milk and Metro passes.
17 MR. GROSSMAN: All right.
18 MR. FLYNN: The other aspect of this I wanted to
19 mention is the fact that according to Giant's website, there
20 are no gas stations in the general neighborhood that
21 participate in this program.
22 MR. GROSSMAN: Well, when you talk about the
23 general neighborhood, are you talking about your seven
24 minute radius general neighborhood?
25 MR. FLYNN: Yes, sir. Yes, sir.

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1 MR. GROSSMAN: Okay. All right.
2 MR. SILVERMAN: I would exclude that. That's
3 hearsay. I mean he's, you have a witness who has visited
4 gas stations.
5 MS. CORDRY: Well, you've also, yes, you've also
6 had to --
7 MR. GROSSMAN: Hold on. Hold on. One at a time.
8 MR. SILVERMAN: Yes. And --
9 MR. GROSSMAN: Mr. Silverman.
10 MR. SILVERMAN: And one doesn't know anything, how
11 current that website is. We don't have a, we don't have a
12 citation to it at this point and I think it's inappropriate
13 as hearsay. I don't think it's a reliable statement.
14 MS. CORDRY: In terms of reliability, I would say,
15 number one, we had a gas station owner in the area testify
16 that he takes the, and personally I can testify that I have
17 redeemed points there. So I think it's whatever the Giant
18 website does or doesn't say, it's quite clear that there is
19 a gas station in that area. Actually there's two of them
20 because there are two different Shells that I have taken the
21 points to, so I don't know what Giant's website says, but
22 it's --
23 MR. GROSSMAN: It's the old shell game, right?
24 MS. CORDRY: Yes, the older shell game works just
25 fine. I have redeemed points at that Shell from Giant

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1 personally, so both Shells.
2 MR. GROSSMAN: All right.
3 MR. CORDY: So, you know, I think --
4 MR. GROSSMAN: What I would say, it's clearly, to
5 the extent that you're offering this website information to
6 prove the truth of what is asserted on the website, it is
7 clearly hearsay and I would say that given the commentary
8 here and the fact that I'm not even sure that it has any
9 great, if any, relevance to me as to whether or not there
10 are any Shell stations that participate in the program in
11 the general neighborhood, but it is arguably relevant in
12 terms of the need analysis. But I will say that absent
13 further evidence on the point, I'm going to exclude the
14 website information and supplement the information if you
15 feel it's relevant on this particular point, communicated to
16 the other side as well and let them submit their response.
17 We already heard and anticipated testimony from Ms. Cordry
18 refuting that. So it doesn't seem to me to affect the
19 reliability. All right.
20 So with those additions to your testimony, we're
21 ready for cross-examination. Who wishes to proceed with the
22 cross-examination? Ms. Rosenfeld?
23 MS. ROSENFELD: I will. Thank you.
24 MR. GROSSMAN: You're welcome.
25 MS. ROSENFELD: Yes.

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1 CROSS-EXAMINATION
2 BY MS. ROSENFELD:
3 Q Good afternoon, Mr. Flynn.
4 A Good afternoon.
5 Q I would like to start with some specific questions
6 about some of the existing stations and I believe you said
7 you had counted all of the stations in your, in the general
8 neighborhood, is that how you describe it?
9 A Yes.
10 Q And do you agree that there's four stations at the
11 Four Corners intersection, a BP, two Shells and an Oceanic
12 gas station?
13 A The Four Corners intersection? I know that there
14 are, let's see, four stations there, at least four. Not all
15 of them were included in my general neighborhood. That's
16 because they physically fell outside that neighborhood.
17 Q And how close are these four gas stations to each
18 other? Are they --
19 A Well, there's, of course, University Boulevard at
20 that point is three lanes in each direction separated by a
21 median in which there are stores. The Shell station on
22 University is, excuse me, on Colesville is probably a
23 quarter of a mile from the corner of the Four Corners, the
24 northwest corner of the Four Corners intersection. Other
25 stations might be a little less than that.

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1 Q And I believe you said you determined the
2 boundaries of your general neighborhood based on drive time,
3 is that correct, seven minutes?
4 A Yes, I did.
5 Q And would that quarter of a mile make such a
6 material difference?
7 A Given the nature of that intersection, it would.
8 Q And the BP station, is that actually closer to the
9 mall?
10 A The BP station might be geographically closer and
11 yet a little outside the drive time.
12 Q And so is there any reason why you would add any
13 of these stations even though they're on the periphery, you
14 still would not include that?
15 A No.
16 Q And is the Shell station actually farther away
17 from the mall than the BP station?
18 A I was dealing with drive times, not with
19 distances.
20 Q And is there, there's two Shell stations, correct,
21 one on West University?
22 A One on where?
23 Q University Boulevard?
24 A There's a Shell station on Georgia. Let me look
25 at the list and just refresh my memory. Yes, 100 University

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1 Boulevard is a Shell station, that's right.
2 Q And is that Shell station closer to or more
3 distant from the mall and the BP?
4 A Well, I don't know the distances. I know that
5 it's within the 7-minute drive time.
6 Q Isn't the BP station between the Shell station and
7 the mall?
8 A It is, it may be, but it's not within the 7-minute
9 drive time.
10 Q But if you have to drive from the mall past the BP
11 station to get to the Shell, how can that be?
12 A Well, you might take a different route.
13 Q Even if you're on the same road?
14 A Even if what?
15 Q They're on the same road?
16 A Well, the map, Figure 3-1 in my report actually
17 shows the drive times. And I think you can see there that
18 the 7-minute drive time really is very, very relevant when
19 you look at that micro area. It's on page 3-1, Figure 3-1.
20 And you can actually go farther out. I guess it's
21 Colesville Road. Wait a minute. Yes, Colesville. Excuse
22 me, you can go quite a bit farther on the Beltway because
23 it's a 65 mile, or 60-mile-an-hour road and you'll get way
24 past those stations, but you won't include those stations
25 because they're not within seven minutes. So it's not

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1 distance we're talking about, it's drive time.
2 Q Is the Shell station located at 100 University
3 Boulevard within your general neighborhood?
4 A Pardon?
5 Q Is the Shell station at 100 University Boulevard
6 located within your general neighborhood?
7 A Yes, it is.
8 Q And is the --
9 MR. GROSSMAN: That's within the big general
10 neighborhood.
11 BY MS. ROSENFELD:
12 Q The 7-minute neighborhood, correct?
13 A Yes, that's right.
14 Q Is the BP station at 112 University Boulevard
15 within your neighborhood, your general neighborhood?
16 A No, it's not.
17 MR. CORDRY: Could I help, perhaps, one moment?
18 MS. ROSENFELD: Sure.
19 MS. CORDRY: Just the geography there as you go by
20 the Safeway, the BP, the post office, the Shell and then you
21 get to Colesville Road. So just so we understand, that's
22 the BP we're talking about where as you're driving from the
23 mall on University Boulevard, once you come into Four
24 Corners, you get to the Safeway, the BP, the post office and
25 then the Shell and what we're trying to understand is how

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1 you can drive by a station and get to one still in the seven
2 minute radius and the one that's in, that's before you get
3 to the one in the seven minute radius is somehow not
4 included in the seven minute radius?
5 MR. GROSSMAN: All right. There's your question.
6 THE WITNESS: Well, the calculation isn't based on
7 a certain pattern of driving. It's not based on the pattern
8 of driving past one station to another. It's based on
9 shortest drive time to the station. So it may exclude
10 stations that appear to be closer but are not within the
11 drive time.
12 MS. CORDRY: But how can you drive past a station,
13 get to another station that's still within seven minutes and
14 one that is closer is not within the drive time and the one
15 that's farther away is within the drive time? That's what
16 we're trying to find out.
17 THE WITNESS: Well, as you know, with Four Corners
18 there's lots of ways of getting there and the way that
19 you're taking is not the way of the shortest time.
20 MR. GROSSMAN: I know there seems to be a logical
21 conundrum there. So I guess I want to look at the, to
22 understand this issue better, and I was just looking for my
23 copy of the, of your report and it should be on the cart in
24 here, but I don't see my cart. Oh, here it is. All right.
25 Does anybody have an extra copy that I can take a look at?

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1 Is that an extra copy?
2 THE WITNESS: It's not an extra, but --
3 MR. GROSSMAN: Okay.
4 MR. GOECKE: And also, Mr. Grossman, Mr. Brann has
5 brought back Exhibit 217.
6 THE WITNESS: Yes, actually this is a good thing
7 to refer to.
8 MR. GROSSMAN: Let's point out where the two
9 stations are that are --
10 THE WITNESS: Yes, sir.
11 MR. GROSSMAN: -- are of concern here.
12 THE WITNESS: Let me make sure I have it right.
13 This is the site and this is University Boulevard. It
14 extends across the Beltway here. The Four Corners is the
15 intersection of Route 29 and University Boulevard, is that
16 right?
17 MS. ROSENFELD: Yes.
18 THE WITNESS: According to the drive time map --
19 MR. GROSSMAN: Yes.
20 THE WITNESS: -- generated here, you reach the 7-
21 minute distance when you get to, you're about a mile short
22 of where you would like to think you were. We're not there
23 yet. On this drive time analysis, you travel on, well,
24 probably on either Sligo Creek Parkway and Dennis Avenue and
25 then Colesville, or the Beltway, and you reach the Four

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1 Corners via a different route than the one you're
2 suggesting. And that's using a 7-minute drive analysis, not
3 a distance. You can see the gap right here. It's very
4 clear. This is the area. Even though they are next to each
5 other, the area is very fine. The line occurs and it's
6 between those two stations.
7 MS. CORDRY: Okay. So if we understand it,
8 you're saying you come down, you make a big U and then you
9 come back to get to that one as opposed to just driving on
10 University?
11 MR. GROSSMAN: This is actually defined, I take
12 it, by your Latis (phonetic sp.) program or whatever it was
13 called?
14 THE WITNESS: Claritas.
15 MR. GROSSMAN: Claritas.
16 THE WITNESS: Yes, the gap is very clear there.
17 (Discussion off the record.)
18 MR. GROSSMAN: But it's not, let me just -- when
19 you selected this unusual squiggly outline here, this, the
20 reason for the squiggleness of the outline of your general,
21 your defined, general neighborhood is because Claritas
22 defined it that way, is that correct once you put in the
23 parameters of a seven minute drive time?
24 THE WITNESS: Yes, sir.
25 MR. GROSSMAN: The --

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1 THE WITNESS: I didn't actually write that, make
2 that line.
3 MR. GROSSMAN: Right.
4 THE WITNESS: That's done by a computer algorithm
5 that uses speed on the road, on travel directions,
6 conditions, other things and makes that analysis.
7 MR. GROSSMAN: And, but that would account for the
8 fact that this station, which is apparently, or ostensibly
9 closer would actually be outside of the area?
10 THE WITNESS: That's right.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: It is an illusion.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: And I did look very carefully
15 because there are four stations there. And I would have
16 been happy to include them all. I did analyze and visit
17 every one of them multiple times. However, when I looked at
18 the line, the line is where it is. I couldn't do anything
19 about that.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: The line excludes that particular
22 station.
23 MR. GROSSMAN: Thank you.
24 BY MS. ROSENFELD:
25 Q I believe you testified that there were originally

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1 six stations competing with Costco in Beltsville area, now
2 that there are seven or eight, is that your testimony?
3 A The last time that I was there there was a new
4 one, the Wawa. And all the other ones were still there. I
5 think the number was seven in total.
6 Q And if there are now seven stations, would that
7 mean -- and one of them is a new Wawa, would that mean that
8 if there had been another one it would be closed in the
9 meantime?
10 A I'm not sure whether there were six when I started
11 and the Wawa is the seventh or whether there was seven and
12 the Wawa was the eighth.
13 Q This is the October 2010 report.
14 A Oh, okay.
15 MR. GROSSMAN: Thank you. This is Exhibit 7 in
16 2863 or is this Exhibit --
17 MS. ROSENFELD: No, this was from the prior
18 special exception, so it needs to be marked as an exhibit.
19 MR. GROSSMAN: Okay. So with your permission, I'm
20 going to take off the fronting that says Exhibit 7 because I
21 think that will confuse the issue. And we'll mark this as
22 Exhibit 224.
23 (Exhibit No. 224 was marked for
24 identification.)
25 MR. GROSSMAN: And this 224 is Mr. Flynn's October

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1 2010 report in S, what was the S number on the old case
2 again, 2793? What was it?
3 MS. CORDRY: 2794.
4 MR. GROSSMAN: I'm sorry? Ms. Cordry, did you
5 have --
6 MS. CORDRY: 2794.
7 MR. GROSSMAN: 2794? All right. Okay.
8 MS. HARRIS: So what was the exhibit number, Mr.
9 Grossman?
10 MR. GROSSMAN: The exhibit number is Exhibit 224.
11 BY MS. ROSENFELD:
12 Q And I'd like to refer you to Section 3.2.2 which
13 there are not page numbers in here. The bottom of that page
14 says 3.2.3 station impact. So I'm looking at this section.
15 There's an Exhibit 3.3 is at the top of the page.
16 A Yes, I have that. Thank you.
17 MR. GROSSMAN: Are these -- one says -- the page
18 before has Section 2.5. I don't see a Section 2.4.
19 MS. CORDRY: This is just the --
20 MS. ROSENFELD: It's excerpts.
21 MR. GROSSMAN: These are excerpts? I see.
22 BY MS. ROSENFELD:
23 Q And in the --
24 MR. GROSSMAN: All right. So let me correct
25 the -- these are excerpts from the Exhibit 224 is excerpts

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1 from Mr. Flynn's October 2010 report in S-2794. Okay.
2 BY MS. ROSENFELD:
3 Q And in the third full paragraph starting with, in
4 this analysis we've compared the Costco station in
5 Beltsville with all the stations in the greater Silver
6 Spring area. You say, it is interesting that there are
7 eight stations on Route 1 in Beltsville within a mile of the
8 Costco station. So in 2010 there were eight operating
9 stations, am I reading that correctly?
10 MR. GROSSMAN: And I'm sorry to be, interrupt
11 again, but what, where are you in this?
12 MS. ROSENFELD: This third full paragraph, it
13 says, in this analysis.
14 MR. GROSSMAN: So it doesn't have a page number,
15 but --
16 MS. CORDRY: No.
17 MS. ROSENFELD: There are not, there's not a page
18 number.
19 MR. GROSSMAN: Okay. I have -- okay. So in this
20 analysis. I've got you. I'm sorry. Go ahead.
21 BY MS. ROSENFELD:
22 Q It's interesting that there are eight stations on
23 Route 1 in Beltsville within a mile of the Costco station?
24 A I see your point now, yes.
25 Q So at the time there were eight operational

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1 stations, is that correct?
2 A I believe so. I did then in October of 2012 in my
3 subsequent report, the last report on the general
4 neighborhood, I say, it is interesting that there are seven
5 stations on U.S. Route 1 within a mile of the Costco
6 station. In the earlier work, I was referring to a one-half
7 mile distance.
8 Q No, it says --
9 A What I did say --
10 Q I'm sorry.
11 A -- I did say we did not study the Beltsville
12 situation at the same level of detail as Silver Spring. I'm
13 quoting from page 3-4 of my report of October 2012. And
14 that was true. I was simply stunned by how many stations
15 there were and by the fact that there was a new one. I did
16 notice in October of 2012 that there was a closed station.
17 It's on the west side of Route 1, but it looked like it had
18 been closed for a long time. And I was simply observing
19 here that even with a new Wawa, all these stations more or
20 less were thriving. I didn't try, as I said, to analyze
21 them at the level of detail that I was doing in the study
22 area. So whether there were seven or eight or whether it
23 was a half mile or a mile, I'm not sure.
24 Q Well, I think in 2010 you were looking at stations
25 within a mile. It says there are eight stations on Route 1

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1 in Beltsville within a mile of the Costco station. And then
2 in the following paragraph you say, construction began in
3 August 2010 on Wawa convenience store on Route 1. So there
4 were eight operational stations, plus a Wawa that was under
5 construction?
6 A Right. And I think the point I was making was
7 correct. In spite of the competitive pressures that Costco
8 puts on stations around it, there's still plenty of
9 activity. It's a very dynamic market and there's new
10 stations being built.
11 Q And at this point in time there are seven stations
12 in Beltsville, correct?
13 A Well, I think in October I believe there were.
14 That's what I said here.
15 MR. GROSSMAN: October 2010?
16 THE WITNESS: In 2010, yeah.
17 MS. ROSENFELD: No, 2012.
18 MS. CORDRY: 2012.
19 MS. ROSENFELD: 2012.
20 THE WITNESS: Excuse me, in 2012.
21 MR. GROSSMAN: All right.
22 MS. ROSENFELD: So --
23 MR. GROSSMAN: Well, wait a minute. Wait. But
24 this report is October of 2010?
25 MS. ROSENFELD: That's correct.

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1 MS. CORDRY: There were nine stations, or eight
2 stations, plus one being built.
3 BY MS. ROSENFELD:
4 Q And if at this point there are seven, that means
5 that including the Wawa you've lost two stations in that
6 area?
7 A I don't, I don't think I was using exactly the
8 same areas and I wasn't trying to get to the same level of
9 detail. It was simply an observation that this was a very
10 dynamic market and there was a new station built and
11 operating and that most of the stations, if not all of them,
12 were still operating that I had seen before. And I still
13 think that's true.
14 (Discussion off the record.)
15 BY MS. ROSENFELD:
16 Q In 2012, on page 3-6, you say that it is
17 interesting that there are seven stations on U.S. Route 1 in
18 Beltsville within a mile of the Costco gas station, I'm
19 sorry, not -- within a mile of the Costco station? So in
20 October of 2012 your report states that you determined that
21 there were seven stations within a mile of the Costco gas
22 station and that would reflect a loss of two stations?
23 A Well, again, I didn't apply the same level of
24 scrutiny to this area and I'm not sure that I used the same
25 geographic distance. I was driving in this area and

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1 verifying that the stations were there and I did that. I
2 did notice, as I said, recently that one station was closed,
3 but appeared to be closed for a long time and I didn't
4 really study that.
5 Q Well, you made the point over and over again that
6 you've been to these stations many times and done a great
7 deal of field analysis.
8 A Right.
9 Q If you were less careful in reaching this
10 conclusion for this statement, saying there are seven
11 stations on Route 1 within a mile of the Costco gas station,
12 what else were you less careful about in your report?
13 A Well, I was making that point about the 25
14 stations within our general neighborhood.
15 Q Yes.
16 A So I wasn't less careful about anything within
17 that general neighborhood.
18 Q Except this one statement?
19 A Pardon me?
20 Q It, you were just less careful about this one
21 statement in your report that --
22 A Well, these stations are not in the general
23 neighborhood. So as I said in my report --
24 Q Well, I understand it's not in the general
25 neighborhood, but it's a fact --

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1 A -- I did not apply the same degree of scrutiny to
2 this issue or to this place as I did within the general
3 neighborhood.
4 Q Okay. But you made this as a definitive
5 statement. So when we look at the gas prices in Beltsville,
6 were you less careful about looking at those prices when you
7 did that in 2012?
8 A No, I have records of what I looked at. I'm
9 saying that I didn't attempt to rigorously categorize every
10 station, whether there were seven or eight or whether one
11 had closed at the time. It wasn't the issue that I was
12 addressing. It was that there was a new station and this
13 was a dynamic, competitive environment and gas stations
14 seemed to be thriving. That was the point.
15 Q And part of your analysis includes your opinions
16 on whether or not Costco gas station will have an effect or
17 whether, and perhaps to what degree, of an effect it would
18 have on surrounding gas stations, is that correct?
19 A I have opinions on that, yes.
20 Q And you have them in your report, don't you?
21 A Well, there are some views on that, yes.
22 Q And don't you think that with the experience that
23 they had in Beltsville might have some bearing on what could
24 happen in Wheaton?
25 A Yes, I do.

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1 Q And yet you are telling me that you weren't paying
2 particular careful attention to how many stations remained
3 operational within a mile of Beltsville --
4 MR. GOECKE: Objection.
5 MS. ROSENFELD: -- is that correct?
6 MR. GROSSMAN: What is your objection?
7 MR. GOECKE: She's mis-characterizing his
8 testimony and she's already provided several answers to this
9 question.
10 MR. GROSSMAN: All right. I'm going to sustain it
11 for a different reason and that is you've gone over it and
12 over it and over it. He's already answered it three times.
13 So we, you made your point. I understand it. Let's move
14 along.
15 BY MS. ROSENFELD:
16 Q In your report on page, on page ES1 of your
17 report, you indicate that Costco members must now drive to
18 the Costco in Gaithersburg or Beltsville to get gas. Are
19 you aware of the fact that the Costco store in Gaithersburg
20 does not sell gas?
21 A No, I wasn't.
22 Q Would that have, if you did know that, would that
23 have an influence on either the, your evaluation of need at
24 the Wheaton station?
25 A No.

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1 Q Okay.
2 MR. GROSSMAN: And why not?
3 THE WITNESS: The need that I determined
4 analytically is present and it will continue to be. It
5 could be everything is related and it could be that fewer
6 people will travel from the Gaithersburg area to the, to the
7 site in Laurel/Greenbelt and more, and when some of those
8 people would go to Silver Spring, but I don't want to
9 speculate on that. So I think my report is what it is and
10 the analysis is still the same.
11 BY MS. ROSENFELD:
12 Q Based on your testimony yesterday, am I correct in
13 understanding that the gas stations in the area that exist
14 now have the physical capacity to serve any absolute need
15 that there's --
16 A I'm sorry, have the physical capacity for what?
17 Q To serve any absolute need in the market area?
18 A To serve the absolute needs?
19 Q Right. Is there a shortage of gasoline in the
20 Kensington area?
21 A I don't think so. I'm not sure what an absolute
22 need is, but I --
23 MR. GROSSMAN: I'm not sure what that means
24 either, but is it the second question he's answering, is
25 there a shortage of?

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1 BY MS. ROSENFELD:
2 Q Is there a shortage of gasoline?
3 A Shortage of gasoline?
4 Q In the Kensington area?
5 A No.
6 Q And are you, do you agree that the 7-minute
7 driving radius is the appropriate market area for your
8 study?
9 A I'd agree that it's the general neighborhood. The
10 market area would be a much bigger thing.
11 Q And what is the market area in your opinion?
12 A I would say, I don't know. I never really figured
13 exactly how Costco determines its market area, but the
14 market area for the mall, they have shared with me,
15 Westfield, and they show it as a 20 to 30-minute ride,
16 drive.
17 Q Did you try and determine the market area for
18 Costco?
19 A No.
20 Q Do you have an opinion on that?
21 A No.
22 Q So having heard your answer that there's no
23 shortage of gasoline in the Kensington neighborhood, in
24 terms of capacity, you would agree that you don't actually
25 need another station to satisfy any shortage of gasoline in

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1 that area?
2 A I don't think the need that I'm looking at has to
3 do with capacity or shortage.
4 Q Okay.
5 (Discussion off the record.)
6 BY MS. ROSENFELD:
7 Q You've made some comparisons between the station
8 and the surrounding area and those stations in Elkridge and
9 Beltsville. You're familiar with --
10 A Yes, I am.
11 Q -- both of those stations?
12 A Yes.
13 Q And do I understand correctly that you state that
14 there's more than twice the number of households here
15 compared to those two areas?
16 A I would have to look at the figures, but I recall
17 that the market, well, potential in terms of household and
18 income is much greater in this case than it is in Elkridge.
19 Q And would that be page 4-3 of your report?
20 A Yes, it starts there, comparison of market areas,
21 Wheaton, Beltsville and Elkridge.
22 Q And the population in Wheaton is substantially
23 larger than the population in Beltsville or Columbia, is
24 that correct?
25 A Yes, it is.

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1 Q And in Elkridge they have 12 pumps, is that
2 correct, compared to 16 here?
3 A I don't know the number.
4 Q Do you know what existing sales volumes they had?
5 A No, I don't.
6 Q Do you know the sales volumes in Beltsville?
7 A No, I don't.
8 Q Then how do you derive your gas sales potential in
9 your, in Exhibit 4.2?
10 A The method of derivation of these potentials is
11 the same as I've used in the work here with respect to the
12 general neighborhood of the Costco station in Wheaton. I
13 use the analysis of a drive time and the Claritas estimates
14 of sales potential.
15 Q Did you do any independent analysis other than
16 just rely on the statistical information that you got from
17 Claritas?
18 A Did I do any independent evaluation of what?
19 Q Aside from reliance on the statistical data that
20 you got from Claritas?
21 A Yes, I did.
22 Q And where would that be shown in your report?
23 A Well, to start, it shows on -- if you go to page
24 3-2, Exhibit 3-1, and the material related to that exhibit
25 that follows on the next several pages, this is all my

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1 research. Going to page 3-6, the comparison of posted
2 prices in Exhibit 3-3. I visited all the stations. The
3 photographs that you see of the stations are all mine.
4 Q I'm sorry, you said page 3-2, 3-3 and 3-4?
5 A It starts on page 3-2, Exhibit 3-1.
6 Q Okay.
7 A Page 3-2 --
8 Q Okay.
9 A -- 3-4, or 3-3, 3-4. Exhibit 3-2 on 3-5. Exhibit
10 3-3 on page 3-6. Photographs on pages 3-8, 3-9 and
11 elsewhere in the report are mine. All of the field work is
12 original field work on my part.
13 Q On page 3-10, we were just looking at those
14 comparisons. I'm sorry, on page 3-10, you estimate that 35
15 to 40 percent of the sales at Costco would shift to the
16 Wheaton location, is that correct?
17 A At the Costco in Beltsville?
18 Q At Beltsville would shift to Wheaton?
19 A Yes, ma'am.
20 Q And so that would translate to about 12 million
21 gallons?
22 A I don't believe I tried to estimate that.
23 Q Can you calculate it based on the numbers in your
24 report?
25 A I don't know. I'm not sure that I could. I don't

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1 know what 35 percent of the customers at Beltsville would
2 amount to in terms of sales at the Silver Spring, at the
3 Wheaton station.
4 Q Well, it says in your report it represents a
5 volume of approximately 4.2 to 4.8 million gallons a year on
6 page 3-10.
7 A Yes, it does.
8 Q So what does that translate into?
9 A I don't recall the calculation. I could go back
10 and research my notes as to what it would be, how many
11 people were involved. I must have had a figure, a number of
12 people who actually bought gas or the sales at the Greenbelt
13 station, although, Beltsville station, although I don't
14 recall it right now. But I would have a note on it.
15 Q Do you know what the average sale is in terms of
16 gallons?
17 A I do not. We used the figure of 12 gallons as an
18 average sale in the most recent work. So I suspect that
19 it's pretty close to that.
20 Q And where did you get that total gallons per
21 average sale figure from?
22 A We developed it within our team and I think Mr.
23 Guckert told me about that figure and we wanted to be
24 consistent in the use of that.
25 Q Did you get that number, do you know if that's for

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1 the average sale for Costco?
2 A I don't know where --
3 MR. GROSSMAN: Average sale for Costco where?
4 MS. ROSENFELD: An average, is 12 gallons an
5 average sale in a Costco gas station.
6 MR. GROSSMAN: I see.
7 THE WITNESS: I don't know if we have a figure of,
8 based on Costco sales. That was the figure that we used for
9 this analysis.
10 BY MS. ROSENFELD:
11 Q And do you know where Mr. Guckert might have
12 gotten that number from?
13 A No, I don't.
14 Q Do you know what the total sales at Beltsville
15 are, what their total gallon sales are annually?
16 A No, I don't.
17 Q Well, if 4.2 or 4.8 million is 35 to 40 percent,
18 if you multiply that out, what number do you get or what's
19 that range?
20 A I don't have a calculator with me, but I suspect
21 that it's probably 10 to 12 million gallons.
22 MS. CORDRY: Would you like a calculator?
23 THE WITNESS: Pardon?
24 MS. CORDRY: Would you like a calculator?
25 THE WITNESS: No, thank you.

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1 BY MS. ROSENFELD:
2 Q And how many gallons annually did you assume that
3 Costco would sell at Wheaton?
4 A I didn't assume that they would sell any gallons.
5 Q All right. Could you explain that to me?
6 A Well, I estimated that there was a need in this
7 general neighborhood for a certain amount of gallons. I
8 didn't assume anything about what Costco would sell.
9 Q Did Costco ever tell you how much they expected to
10 sell?
11 A I was at meetings where that was discussed. I
12 never asked them and never told me directly. It really
13 didn't matter to me.
14 Q What was the number that was discussed?
15 A 12 million gallons.
16 Q And who was discussing that number?
17 A We had a team and there were probably 10 to 12
18 people in that group and I think it was probably Mr. Guckert
19 that, because of transportation relationship.
20 Q Is there a relationship between the number of
21 gallons sold and the amount of traffic?
22 A I believe so. I believe there is.
23 Q And what would that relationship be?
24 A It would be in the amount of traffic that stops to
25 buy gas. I think he made a calculation about that, that is

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1 the pass by traffic and the capture rate and how much gas
2 those folks would buy.
3 Q And if, the, I'm sorry, did you say you didn't
4 know how much gas they sell really at Columbia? You don't
5 know what those actual sales amount to?
6 A No, I don't.
7 Q And on this Exhibit 4-2 on page 4-3 for
8 Beltsville, you have gas potential and you have a, do I read
9 that as a negative number?
10 A I'm sorry, could you say that again please?
11 Q On page 4-3 of Exhibit 4, you have an Exhibit 4-2.
12 A Yes.
13 Q And it says comparison of 2012 population gas
14 sales potential at three Costco station locations.
15 Beltsville you actually -- am I reading correctly that your
16 gas sales potential there is a negative number?
17 A You're reading that correctly.
18 Q And can you explain why that's a negative number?
19 A Yes.
20 Q Would you?
21 A I can't say for sure because I pointed out
22 earlier, I haven't studied the Costco neighborhood as
23 thoroughly as I have studied this neighborhood. My guess
24 would be that the number of stations, seven or eight or
25 whatever it is, and the Wawa station, they are selling more

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1 gasoline than this model would normally predict. That's a
2 powerful location because of the confluence of the Beltway
3 and U.S. Route 1, the fact that it's a divided highway, the
4 fact that there's probably 50,000 cars a day on U.S. 1 and
5 150,000 on the Beltway.
6 So when the model looks at that location, it's
7 basically finding that there's no more gas opportunity there
8 and it's because, it's making this analysis because of the
9 tremendous amount that's sold there, the, and the unusual
10 nature of that location.
11 Q I'm sorry, I'm still trying to digest all of that.
12 So in this model that you show or in this comparison that
13 you show in Exhibit 4.4-2, the --
14 MR. GROSSMAN: In his exhibit 4?
15 MS. ROSENFELD: His Exhibit 4-2 on page 4-3.
16 THE WITNESS: Yes, ma'am?
17 BY MS. ROSENFELD:
18 Q The prediction, is this essentially a prediction
19 that you have here, the comparison? This is how the model
20 predicts sales of Beltsville, the prediction is that there
21 is a negative 25.8 million gasoline over supply in the
22 Beltsville area, is that really what this number says?
23 A I wouldn't use the word prediction, but I would
24 say essentially that that is what the model says. There's
25 more gasoline being sold than their analysis would suggest

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1 should be sold.
2 Q And so, and yet it would appear that
3 notwithstanding this analysis, Beltsville is selling
4 somewhere in the neighborhood of 12 million gallons of
5 gasoline a year based on your report, correct?
6 A Beltsville, you mean the Costco in Beltsville?
7 Q Yes.
8 A Yes, I think that is correct.
9 Q And this same model concludes that in Wheaton
10 there is a, quote, unquote, need for an additional 71
11 million gallons of gasoline to be sold? Are these dollars
12 or gallons?
13 A Pardon? These are dollars. The negative figure
14 is in gas station sales. So I don't know what it converts
15 to in gasoline. The point that's being made here is that
16 the general neighborhood is a much more lucrative location.
17 The need is much greater, much greater, than in, apparently
18 in Beltsville and yet in Beltsville there's plenty of gas
19 being sold as we can see from the fact that there are seven
20 or eight viable stations and Wawa just made a business
21 decision to build a new one and they're going to outsell
22 almost all of them, if not Costco.
23 The negative number is, reflects the fact that
24 this is a very unusual situation, that Beltway. I only
25 looked at it because the staff of Park and Planning said,

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1 well, compare a couple of other Costco situations and I did
2 it. Els, Elkhville is more of a normal kind of a suburban
3 mall type situation and more comparable. A Beltway location
4 is very different. But there is more gasoline sold there
5 than one would expect and that's the point made here.
6 Q And the other point would be that these models
7 don't necessarily accurately predict?
8 A In some cases, that's why I go into the field and
9 I look at the situation. That's why I did all the work that
10 I did on this station and in this general neighborhood over
11 and over again to verify that the model was applicable here
12 and it was probably, it was probably quite accurate and I
13 think that's true.
14 Q In terms of price comparisons, Costco's products
15 are going to be limited to regular and premium gasoline,
16 isn't that correct?
17 A In terms of price comparisons what?
18 Q Price comparisons with other gasoline stations,
19 and product comparisons, Costco is going to be selling
20 regular and premium gasoline and that's it, correct?
21 A Yes.
22 Q Mr. Brann talked earlier about an additive. Is
23 that another product that would be sold or is that just
24 something that would be added to the gasoline, do you know?
25 A I don't know what he meant by that. I wasn't

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1 here. I didn't hear that.
2 Q Okay. But they won't be selling any diesel or
3 kerosene?
4 A I understand that's the case, yes.
5 Q Okay. And are there other gasoline stations that
6 operate 24 hours a day?
7 A Anywhere?
8 Q In the general neighborhood, in those 25 gas
9 stations?
10 MR. GROSSMAN: Well, you said are there others
11 that operate 24 hours. You're not implying that this Costco
12 would operate 24 hours?
13 MS. ROSENFELD: Not Costco. In the --
14 MR. GROSSMAN: Okay.
15 MS. ROSENFELD: -- general neighborhood, are any
16 of the other 25 gas stations, do any of those operate 24
17 hours a day?
18 THE WITNESS: I believe so. I can't tell you
19 which ones, but I believe there are.
20 BY MS. ROSENFELD:
21 Q Okay. And some operate longer hours than Costco
22 later in the evening?
23 A I believe so, yes.
24 Q And do any of those stores offer other types of
25 services such as air for your tires or you can clean your

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1 windows?
2 A Yes, they do.
3 Q Okay. And so it is fair to say that there are
4 other gasoline stations that offer services and amenities
5 and products that are not available at the Costco gas
6 station?
7 A That's correct.
8 Q Okay. So in that regard is it fair to say that
9 your analysis of the gas station really boils down to price,
10 it really is a price-driven incentive that people --
11 A No.
12 Q Okay. What else?
13 A I concluded that there were three things that
14 made, really created the need here. Price was one of them,
15 but convenience and safety were the other two and that
16 became a constant thought and it reminded me when I heard
17 about the testimony this morning and I've seen it in other
18 ways in the use of Costco stations, it's price, convenience
19 and safety, and that's clearly reflected in the general
20 neighborhood analysis, but more specifically in the limited
21 neighborhood analysis.
22 Q And so if Costco priced its gasoline at 10 cents
23 higher than their competitors, people would still purchase
24 gasoline at Costco?
25 A I don't know.

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1 Q You don't know? Okay. Of price, convenience and
2 safety, which do you think is the most important for its
3 customers?
4 A I believe that price is the most important of all.
5 Q Okay. And at 11 o'clock at night when Costco is
6 closed?
7 MR. GROSSMAN: Is there a question?
8 MS. ROSENFELD: Yes, there is.
9 BY MS. ROSENFELD:
10 Q Is price the overriding factor?
11 A I don't know.
12 Q You don't know? If -- is your analysis of need,
13 do you base your analysis of need on the fact that you can
14 actually sell gasoline at a given price?
15 A I don't understand the question.
16 Q Okay. If you lower your price enough, you can
17 attract customers, correct?
18 A It depends on other things. In general, in a
19 hypothetical way I think it's correct.
20 Q So if you lower the price enough, you can generate
21 a need even if you have other, other stations that can
22 serve, that can sell gas, correct?
23 A I would have to say that if you generate, if you
24 lower your price, but you make your station all hazardous,
25 that people will avoid it no matter what the price. Or if

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1 it's extremely unclean, or if it's unsafe or unsanitary or
2 in any way undesirable, then the price will -- other things
3 will trump price.
4 Q And you said that you've been to these other 25
5 gas stations a number of times, each of them?
6 A Yes.
7 Q Is it your testimony that all 25 of them are
8 hazardous? Are any of them?
9 A I believe that all gas stations are hazardous.
10 Q Including Costco?
11 A Yes.
12 Q Okay. And were one or more of the gas stations,
13 the other 25, I'm talking about the non-Costco gas stations,
14 the 25, unsafe in your opinion?
15 A Would you repeat that please?
16 Q Were one or more of the gas stations in the
17 general neighborhood unsafe?
18 A Yes.
19 Q And that would be why?
20 A Would be why?
21 Q Yes.
22 A Well, on two of the occasions that I visited all
23 the gas stations, one of the gas stations was being
24 refueled. That was in the middle of the afternoon on a
25 Tuesday or one day, I don't know, Thursday or the next day,

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1 it was the Shell station on Georgia Avenue. The truck that
2 refuels the station doesn't have room to park on the station
3 site itself. It parks on the sidewalk and on the street.
4 And I took pictures of people walking around the truck in
5 order to get to the other parts of the CBD.
6 It struck me that this was one of the most
7 dangerous situations I could imagine in a central business
8 district. It was frightening really and yet people are
9 accustomed to it, they take it for granted and they live
10 with it. And it's just one example, but there are many.
11 Q Well, did you see any examples of the 25 that were
12 safe?
13 A I wouldn't use the word safe. I would say some
14 are better than others and I did see some that were better
15 than others, yes.
16 Q And so based on your testimony, it's your opinion
17 that a fuel tanker parked in a vehicular drive lane is a
18 hazardous condition?
19 A No, I said on the sidewalk.
20 Q Oh, on the sidewalk. Okay. And that pedestrians
21 having to maneuver around the fuel truck is a hazardous
22 condition?
23 A I believe so.
24 Q Okay. And of the 25 stations that you visited,
25 were they all unclean?

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1 A No.
2 Q Okay. So you said that if your station is
3 hazardous, unsafe or unclean, that people won't go there and
4 you said all stations are hazardous. The bottom line is is
5 it your testimony that all 25 of those stations have ruled
6 themselves out of the market because they're hazardous
7 and/or unsafe and/or unclean?
8 A No.
9 Q Okay. When you were comparing prices, you did
10 some extensive price comparison between the Beltsville
11 Costco gas station and the 25 stations in the general
12 market. Did you do any price comparisons at Elkridge?
13 A I believe so.
14 Q Okay. And are they reflected in your report?
15 A Were they what?
16 Q In your report?
17 A I believe so. I'd have to check though. Hold on.
18 Oh, here it is. I believe it's on page 3-6 --
19 Q Okay.
20 A -- of the October 12th, October 2012 report and
21 I'll just quote from that if I may? the Park and Planning
22 staff suggested that the consultant survey gas station
23 prices in the vicinity of the Costco warehouse and gas
24 station in Elkridge, Maryland, Costco price for regular gas
25 at that station on October 12, 2012, was 3.59 per gallon.

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1 We identified six other stations in the immediate area
2 ranging from one to six miles from the Costco station. The
3 regular gas price, the prices at those stations ranged from
4 3.69 to 3.89. The average price at those other stations is
5 3.79 per gallon was 5.6 percent higher than the Costco
6 price.
7 Q And do you know what the gas price in Beltsville
8 was that day?
9 A I'm not sure, but let's see. Well, I didn't go to
10 all these, to Beltsville and Elkville, Elkridge on the same
11 day, but in two paragraphs above, also on page 3-6 of the
12 October 2012 document, I say on September 8, 2012, the,
13 those stations, the ones around the Beltsville showed an
14 average price of 3.89 a gallon. Of course, that's a month's
15 difference, so anything could have happened.
16 Q I lost you. Where are you? You're on page 3-6?
17 A Page 3-6. You first asked about Elkridge and
18 that's the bottom paragraph of that page and I reported
19 those figures based on observations on October 12th. But
20 two paragraphs above I talk about Beltsville and that
21 analysis I undertook on September 8th. So I'm pointing out
22 that it may not, these prices fluctuated a lot.
23 Q Okay. And when you compared the prices for gas in
24 Wheaton against the prices in Beltsville, did you also --
25 okay.

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1 MS. ROSENFELD: One moment please, Mr. Grossman.
2 I'm getting lost in numbers here.
3 MR. GROSSMAN: How much longer do you think your
4 cross-examination will take?
5 MS. ROSENFELD: Maybe an hour.
6 MR. GROSSMAN: All right. Then perhaps we'll take
7 a mid-afternoon break now and come back and get, at 26 or so
8 after we'll come back at 3:35.
9 (Whereupon, at 3:25 p.m., a brief recess was
10 taken.)
11 MR. GROSSMAN: All right. We're back on the
12 record. Ms. Rosenfeld, you may continue your cross --
13 MS. HARRIS: Mr. Grossman --
14 MR. GROSSMAN: Ms. Harris?
15 MS. HARRIS: -- excuse me. Before we proceed, can
16 we just clarify the amount of time for cross and then I
17 assume is Mr. Silverman planning to cross as well? I'm just
18 trying to get a sense --
19 MR. SILVERMAN: Yes.
20 MS. HARRIS: -- of schedule.
21 MR. SILVERMAN: About a half hour or less. I'll
22 try to be quick.
23 MS. HARRIS: Okay. So maybe -- good.
24 MR. GROSSMAN: We may finish.
25 MS. HARRIS: That would be --

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1 MR. GROSSMAN: That would be good.
2 MS. HARRIS: That would be great. And one other
3 item before everyone departs, we do have the drawings from
4 the engineer, so we want to make sure we distribute them.
5 MR. GROSSMAN: Let's do that now rather than
6 waiting for everybody to depart.
7 (Discussion off the record.)
8 MS. ROSENFELD: I did appreciate the break. We
9 were able to eliminate some questions.
10 MR. GROSSMAN: Great. We love elimination, but it
11 doesn't sound right either.
12 MS. HARRIS: You know what, they need to be
13 collated. I think maybe we should do that and then --
14 MR. GROSSMAN: Okay.
15 MR. BRANN: I'll do that and then we'll --
16 MS. HARRIS: Yes.
17 MR. BRANN: I'll be quiet.
18 MS. HARRIS: Yes.
19 MR. GROSSMAN: A quiet collator, huh?
20 MR. BRANN: Right.
21 MR. GROSSMAN: All right. Then we're being
22 collated.
23 MS. HARRIS: Sorry.
24 MR. GROSSMAN: You proceed then, Ms. Rosenfeld.
25 BY MS. ROSENFELD:

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1 Q Did, Mr. Flynn, did you look at any other Costco
2 gasoline stations for price comparisons, for example, the
3 one in Frederick?
4 A No.
5 Q Did you make any attempt to determine how Costco
6 sets its prices for gasoline at any given station?
7 A I had discussions about that.
8 Q And what were those discussions?
9 A It was that Costco has to deal with the same issue
10 as other, as independent dealers in other stations, that is,
11 it buys its gas on a spot market and prices change, I guess,
12 every day. That was the extent of my discussion.
13 Q And that really then goes to their purchasing
14 issues and not really their pricing issues then, correct?
15 A I would make that distinction, but I don't really
16 know what it goes to. I just know that that's what happens.
17 Q Okay. So you don't know how they set their prices
18 at any particular station?
19 A (No audible response.)
20 Q Let me ask the question differently. Do they
21 charge the same price for gasoline at Frederick and
22 Sterling, Virginia, and Beltsville?
23 A I don't believe so.
24 Q And do you know how they determine what they would
25 charge at Sterling versus what they charge in Frederick?

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1 A No, I don't.
2 Q The price argument in your analysis is very
3 important. Why didn't you talk to Costco about how those
4 prices are set?
5 A I wasn't interested in that. I was interested in
6 what the prices were that they were charging on the days
7 that I made those surveys.
8 Q So it's not how they established the prices, what
9 the price is?
10 A I have curiosity, but I didn't pursue that. It
11 wasn't in my, the mission here.
12 Q Do you know if Costco has a policy of trying to
13 price adjust a small amount below the surrounding stations?
14 A A policy of what?
15 Q Pricing just below the immediately surrounding
16 stations in a given area?
17 A I don't know that, but I can see that they don't
18 do that.
19 Q And why would you say they don't do that?
20 A Just based on an observation around the Greenbelt
21 station.
22 Q Does that mean that they price higher than some
23 gas stations?
24 A Their price is always lower. I don't -- my point
25 was I don't think that they set out to make it lower, they

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1 set out to make the lowest price that they could and they
2 did that and it was always lower than the prices of
3 competitive stations.
4 Q But you don't know?
5 MR. GROSSMAN: You don't know what?
6 THE WITNESS: I don't know what?
7 BY MS. ROSENFELD:
8 Q You don't know whether it's that they are in a
9 position to charge, always charge lower or they
10 intentionally set it lower?
11 A Correct, I don't know about that.
12 Q Had you had any representations from Costco that
13 it would set its prices in Wheaton at the same level that it
14 charges in Beltsville?
15 A No.
16 Q Do you know if the surrounding gas stations in the
17 general area in Wheaton generally charge more for gas than
18 in the mile surrounding the Beltsville station?
19 A I did make a comparison in my work. I'm not
20 sure -- I can go back and look exactly what we included
21 there. Let me find that. This would be in Section 3.2.2
22 and it's what we discussed earlier on page, on page 3-6. On
23 September 8th, the stations around the Costco station in
24 Beltsville had an average price of \$3.89 per gallon.
25 Q And, I'm sorry, I lost you. Three?

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1 A Three, page 3-6.
2 Q Okay.
3 A The second full paragraph.
4 Q Okay.
5 A This refers to the September 8th findings that the
6 price, average price of the stations in Greenbelt, not the
7 Costco station, were \$3.89 on the -- again, this is on a
8 different day, the comparison of the stations in the
9 Elkridge area, 3.59. That was on October 12th. In the
10 first paragraph of that same page, I'm referring to the
11 stations in Silver Spring, and let me find the comparable
12 price. September 8, 2012, so that would be the same as the
13 date of the Beltsville analysis, September 8, 2012. Right.
14 There it is.
15 The first two paragraphs I think answer your
16 question there, ma'am. The Costco price on that date was
17 3.77 a gallon. The Costco, the price of the stations in the
18 Beltsville area was 3.89 a gallon. And those first two
19 paragraphs, I think that answers your question.
20 Q All right. So the 3.77 was the Costco price in
21 Beltsville, correct?
22 A Yes.
23 Q Okay. Do you know what the average Silver Spring
24 prices were?
25 A Oh, I'm sorry, yeah, you did ask that. Let me

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1 find that in there. Exhibit 3-2 on the preceding page, page
2 3-5 I believe answers that question. The average price of
3 all the stations, well, let's see. No, it's not in the
4 exhibit, excuse me. It must be in the text. I don't show
5 the average price of all the stations on September 8, 2012.
6 I just point out that the Costco price on that date was
7 lower than prices at any of the stations. I probably do
8 have that, the overall average. In fact, I'm sure I do, I
9 just have to find it. Let me see if it's in the appendix.
10 No, it's not.
11 Let me make sure I understand what you're asking.
12 You want me to compare the average price of the stations in
13 the Wheaton area with the average price of the stations in
14 the Beltsville area?
15 Q Correct.
16 A I probably have the data to do that, but I'm not
17 sure exactly where it is. I can get that.
18 Q Okay.
19 MR. GROSSMAN: What, where would that lead us?
20 What is that going to help us establish?
21 MS. ROSENFELD: Well, like my next questions go to
22 assuming that Costco sets its prices to compete directly
23 with the stations that surround it, it really is going to
24 prices point at the lower end of those numbers, correct?
25 THE WITNESS: Well, I don't know how it sets its

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1 prices other than what it pays for gas. I don't know.
2 BY MS. ROSENFELD:
3 Q But you've testified that it's uniformly below as
4 to price?
5 A It is the lowest, yes.
6 Q Okay. So in that case people who are saving
7 money, when you calculated the annual savings, did you
8 calculate it based on the lower average of gasoline prices?
9 A We calculated it based on the difference between
10 the Costco price and the average price at other stations,
11 yes.
12 Q If the Costco gas purchasers are price-driven,
13 though, they're going to purchase elsewhere, they're more
14 likely to go to the low-end cost gas stations, wouldn't you
15 think?
16 A Not everyone does that. I did the comparison
17 between the average price and the Costco price. I don't
18 know what people would do if, you know, depending on other
19 things. I don't know.
20 MR. GROSSMAN: Would you eliminate for me what it
21 is you're getting at here? What's the point in this, this
22 particular line? How does this affect the need analysis
23 that I'm evaluating?
24 MS. ROSENFELD: Well, to the extent that the
25 Costco customers are price-driven --

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1 MR. GROSSMAN: Yes.
2 MS. ROSENFELD: -- I'm trying to get a comparison
3 of what they would be paying in Beltsville as opposed to
4 what they're paying in Wheaton. I don't --
5 MR. GROSSMAN: To what end is my -- so whatever
6 that comparison is what does that show?
7 MS. ROSENFELD: These numbers, I think are
8 unrealistic in terms of what the real Costco gas prices are
9 going to be because I think as a general principle, prices
10 in Beltsville are less expensive than they are in Wheaton
11 and that they're going to set their prices tied to the
12 competitors in Wheaton, they're going to be at a higher
13 price.
14 MR. GROSSMAN: Okay. And so?
15 MS. CORDRY: Well, there's an argument here from
16 this witness that there's X amount of savings, that someone
17 will save X numbers of dollars which it comes to, among
18 other things, by saying there's a difference between the
19 price in Beltsville versus this price of an average gas
20 station in Wheaton and, therefore, and I multiply this out
21 and I come to this great savings and that's one of the great
22 reasons why you should find there's a need here.
23 MR. GROSSMAN: That's one of the three reasons you
24 said --
25 MS. CORDRY: Right.

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1 MR. GROSSMAN: -- right.
2 MS. CORDRY: So, you know, we're getting at is
3 that a realistic way of determining what, if anything,
4 someone is going to say if there's a gas station here. I
5 mean that's one of his major points. You're going to say,
6 well, this is \$283 and what we're trying to get at is
7 that a likely a number or is that number substantially
8 overstated?
9 MR. GROSSMAN: All right. Well, you have pursued
10 this now for some period of time. I mean I'm not, I don't
11 want to cut you off on something you consider critical here,
12 but how critical really is it that whatever difference
13 you're going to establish there in terms of the standards
14 for need in this jurisdiction? That's what I'm -- what's
15 your -- so you can make your determination about that. I'm
16 not cutting you off, I'm just saying -- okay.
17 BY MS. ROSENFELD:
18 Q I have an excerpt from a report that you prepared
19 in 2011 in support of Costco's prior special exception
20 application and page 2 of that report states the presence of
21 a gas station increases warehouse sales by about 20 percent.
22 Do you recall that statement from your report? Should I
23 refresh your memory?
24 A I don't recall. If I made it, it must be true.
25 (Discussion off the record.)

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1 THE WITNESS: I see it here.
2 BY MS. ROSENFELD:
3 Q That statement is not included in your 2012
4 report. Did somebody ask you to take that out?
5 A No.
6 Q Why did you remove it?
7 A I tried to be original every time I did this work,
8 even though it was very repetitious.
9 Q What bearing did you think it had, the end of your
10 2011 report?
11 A I don't think it had any bearing.
12 Q With the station being part of the larger
13 warehouse operation, do you think Costco has more leeway at
14 how it prices gasoline at its station that other stations
15 might have?
16 A I don't know.
17 Q Do you understand that Costco derives almost all
18 of its profits from membership fees?
19 A No.
20 MR. GROSSMAN: I don't know if that's the case. I
21 mean we've assumed that in your question, but I have no idea
22 if that's the case or not. So, yes, I presume --
23 MS. ROSENFELD: And substantiate --
24 MR. GROSSMAN: -- I'm going to presume that you
25 have a factual basis for asserting that. You don't have to

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1 find it for me if you assure me that you have a factual
2 basis for asserting, it, I'll take your word for it.
3 MS. ROSENFELD: I assure you we do.
4 MR. GROSSMAN: Okay. By the way, did you want to
5 have this excerpt --
6 MS. ROSENFELD: Yes.
7 MR. GROSSMAN: -- from his prior report marked?
8 MS. ROSENFELD: If you would, if you would do that
9 and if you would put this in (indiscernible).
10 MR. GROSSMAN: All right. Okay. So Exhibit 225
11 is a page, I'm not sure which page, from the -- Exhibit 225
12 is a page from Mr. Flynn's 9/2/01 report in S-2794.
13 (Exhibit No. 225 was marked for
14 identification.)
15 MR. GROSSMAN: And Exhibit 226 is Costco's --
16 (Discussion off the record.)
17 MR. GROSSMAN: Exhibit 226 is Costco's 2012 annual
18 report.
19 (Exhibit No. 226 was marked for
20 identification.)
21 MR. GROSSMAN: Is that the whole thing or is that
22 just excerpts?
23 MS. CORDRY: That's excerpts.
24 MR. GROSSMAN: So excerpts from Costco's 2012
25 annual report. Okay.

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1 MS. ROSENFELD: And if you go over to the last
2 page of this report which is page No. 45 on that copy here,
3 and this is 2012 annual report from Costco, revenue, I think
4 you see net sales.
5 MS. HARRIS: What page? I'm sorry.
6 MS. CORDRY: The last page.
7 MS. ROSENFELD: Page 45 --
8 MR. GROSSMAN: The last page, 45.
9 MS. ROSENFELD: -- the last page.
10 MS. HARRIS: Thank you.
11 MS. ROSENFELD: Top column.
12 MS. CORDRY: Let me just double check that.
13 (Discussion off the record.)
14 MS. ROSENFELD: And then just below that you have
15 membership fees. And then when you go down several lines
16 you have net income attributable to Costco. And these are
17 in millions. And as you see, if you add the top two lines
18 and then you go down to the bottom line, it's a differential
19 of the membership fees that brings them out as positive
20 income for the year. And so, Mr. Grossman, I'm just
21 submitting this to establish the foundation for our --
22 MR. GROSSMAN: You're saying the membership fees
23 put them in the black?
24 MS. ROSENFELD: That's correct.
25 MS. CORDRY: Right.

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1 MR. GROSSMAN: Yes, I -- not knowing more than
2 this, I guess it's sufficient to establish the basis for the
3 premise of the question, although one I suppose could argue
4 that it's the combination of net sales and membership fees
5 together that put them over the top, however you want to
6 phrase it, but in any event I understand the basis for your
7 premise now.
8 BY MS. ROSENFELD:
9 Q In your report, I believe you stated that a
10 typical household buys all of its gasoline that would -- it
11 buys all its gasoline would save a certain amount based on
12 purchases of 1,012 gallons a gasoline a year. Can you tell
13 me what the source of that number is in your report?
14 A Yes. I believe it was a study prepared for the
15 Department of Energy by the University of Michigan in
16 approximately 2008.
17 Q And is that source referenced in your report?
18 A I don't see it referenced here. I think I might
19 have referenced it in the first edition, but I don't see it
20 in this third one.
21 Q Could you at some point provide me with a source -
22 -
23 A Yes, I will.
24 Q -- for that information?
25 A Yes, I will.

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1 Q Do you recall if that report gave you that
2 specific number of 10,012 gallons?
3 A Do I recall what?
4 Q If it gave that specific number of 1,012 gallons?
5 A Yes, it did.
6 Q When you calculated the price savings that a
7 household would garner from purchasing gas from Costco, did
8 you subtract out the annual membership fee from that cost?
9 A No, I did not.
10 Q Also anybody who buys gas at Costco does have to
11 be a member, is that correct?
12 A I believe so.
13 Q And so they have to purchase a membership?
14 A Yes.
15 Q And do you know the cost of an individual
16 membership?
17 A I have -- I think it was \$55.
18 Q That's a property that should be deducted from the
19 gas total, shouldn't it?
20 A No.
21 Q And why not?
22 A I don't buy gas from Costco, I buy other things,
23 and that \$55 pays for itself many times over.
24 Q But for people who care to purchase gas, \$55 is
25 such a price of admission, correct?

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1 A No.
2 MR. GROSSMAN: If that's the only thing they're
3 purchasing.
4 MS. ROSENFELD: Whether it's the only thing or
5 whether it's gasoline as well is --
6 MR. GROSSMAN: Well, but I think what he's saying
7 is why does the \$55 come off the gas savings as opposed to
8 coming off every savings that they have? That's, I think,
9 what he was saying, is that correct, Mr. Flynn?
10 THE WITNESS: Yes, sir.
11 BY MS. ROSENFELD:
12 Q So 50/50?
13 A Pardon?
14 Q So 50/50 perhaps?
15 A 50/50?
16 Q Half the price toward gas and half the price
17 toward products?
18 A No, not at all.
19 Q No? Are there members who purchase only gas?
20 A I don't know.
21 Q The -- in your 2012 report, you state that long-
22 term projections indicate the demands for gasoline will
23 continue to grow. Where did you get that information from?
24 A It came from the Federal Government and I should
25 be more specific. Let me look back here. I recall that. I

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1 initially researched this using the U.S. Energy Information
2 Administration Publication Short-Term Energy Outlook,
3 January 2012, right after this question first came up. I
4 then looked at the annual, the update of this, which I
5 believe was six months, approximately six months later. As
6 I understand it, this references the gold standard in this
7 kind of predictive fuel analysis. That's the source I used.
8 MR. GROSSMAN: What page are you looking at?
9 THE WITNESS: Sorry, page 4-4, the first, the
10 second paragraph.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: It's under Section 4.5.
13 MR. GROSSMAN: Right.
14 BY MS. ROSENFELD:
15 Q And are you aware of the fact that that report has
16 since been updated?
17 A Yes, yes, I was aware, I am aware of that.
18 Q And it goes through 2040 I believe?
19 A I don't know what year it ended, it would end.
20 Q And do you know if it continues to project to
21 decline in consumption, in gasoline consumption?
22 A I don't know.
23 MR. GROSSMAN: Well, when you say continues to
24 project a decline?
25 BY MS. ROSENFELD:

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1 Q Did the original report, the report that you
2 referenced, did that project a decline in gasoline
3 consumption?
4 A No.
5 Q Do you know if -- and you don't know what the
6 current report projects?
7 A I thought that I used the current report, I used
8 the summer update of the report that I referenced. I
9 thought it was the last available source.
10 MR. GROSSMAN: Because just reading in the
11 paragraph that he cited on page 4.4 of his report, this is
12 in Exhibit 14, it says, however, the administration has
13 projected that gasoline consumption will grow by 1,000
14 barrels a day from 2008 to 2035. That's not decline. So,
15 Ms. Rosenfeld, I'm -- what did you mean by continued to
16 decline? That's what --
17 MS. ROSENFELD: That was just a mis-statement.
18 MR. GROSSMAN: Oh, I see. Okay.
19 MS. ROSENFELD: I apologize.
20 MR. GROSSMAN: No problem. Okay. Do you wish me
21 to mark this as an exhibit?
22 MS. ROSENFELD: Yes, please.
23 MR. GROSSMAN: It's Exhibit 227.
24 MS. ROSENFELD: Mr. --
25 MR. GROSSMAN: It is the U.S. Energy Information

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1 Administration, U.S. Energy Information -- I didn't know
2 there was such an administration -- Administration's Annual
3 Energy Outlook for 2013 with projections to 2040.
4 (Exhibit No. 227 was marked for
5 identification.)
6 MR. GROSSMAN: Well, are these excerpts or this is
7 the whole -- these are excerpts, right?
8 MS. CORDRY: Yes.
9 MR. GROSSMAN: All right. So excerpts from U.S.
10 Energy Information, blah, blah, blah.
11 BY MS. ROSENFELD:
12 Q And looking at page 4, which would be the second
13 sheet that you have, and on, there's a, next to Figure 3,
14 there's paragraph. It starts with, more efficient light-
15 duty vehicles, motor gasoline consumption declines while
16 diesel fuel use grows. And then under there, the last, the
17 last sentence says, LEV energy use continues to decline
18 through 2036 and levels off until 2039.
19 MR. GROSSMAN: I'm sorry, but I haven't found you
20 on page -- start, where was the first --
21 MS. ROSENFELD: If you see Figure 3?
22 MR. GROSSMAN: Oh, I'm, this is the first page in
23 there or the second page, what page?
24 MS. ROSENFELD: It should be page No. 4.
25 MR. GROSSMAN: Page No. 4? Okay.

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1 MS. ROSENFELD: Yes.
2 THE WITNESS: It's the second page of --
3 MS. CORDRY: It's the second page, but No. 4, page
4 No. 4, but --
5 MS. ROSENFELD: Oh, it's, on the blow-up it says
6 page 4.
7 MR. GROSSMAN: It's actually the third page on
8 mine. But, okay, page 4 and now which paragraph?
9 MS. ROSENFELD: To the right of Figure 3, it says,
10 with more efficient, --
11 MR. GROSSMAN: All right. I see that.
12 MS. ROSENFELD: -- light duty vehicles.
13 MR. GROSSMAN: Okay. With more efficient light-
14 duty vehicles, motor gasoline consumption declines while
15 diesel fuel use grows even as more natural gas is used and
16 heavy-duty vehicles.
17 MS. ROSENFELD: And if you go to the last sentence
18 down there, it says, LDV energy use continues to decline
19 through 2036 and levels off until 2039 as growth and
20 population in vehicle miles traveled offsets more modest
21 improvement in fuel efficiency.
22 BY MS. ROSENFELD:
23 Q Did you, did you account for declining gas
24 consumption in your lead report?
25 A I didn't account for it because I don't believe

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1 that gas consumption was expected to decline. I do note, I
2 did my work in approximately January and February of 2012
3 and I see that this is dated April 2013. I updated my work
4 late last year of 2012. I still wouldn't have captured
5 this.
6 I always felt being in the business of markets and
7 this kind of research, that any projections beyond the next
8 five years are speculative at best. The revolution of
9 natural gas has been a stunning event of the last five or 10
10 years, has made huge changes and yet I continue to see
11 projections that gasoline use is the basic component for
12 light-duty vehicles and will continue to grow and I believe
13 that's the case. I think what we're reading here is an
14 excerpt from a very complicated analysis and I believe that
15 gasoline use is likely to continue to grow, but what happens
16 in 2040, I don't even want to speculate on.
17 Q But you did consider it to be credible enough to
18 rely on the previous report on page 4-4 of your analysis,
19 correct?
20 A It was the only reference I had. As I said --
21 Q Okay.
22 A -- I understood it to be the gold standard in this
23 field.
24 Q Okay.
25 MR. GROSSMAN: I'm not sure if that's anywhere in

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1 that sentence, the preface to it with more efficient light-
2 duty vehicles. Do they mean that they are projecting that
3 there will be more efficient light-duty vehicles or are they
4 saying if we had more efficient light-duty vehicles, motor
5 gasoline consumption declines? I'm not sure -- is there
6 somewhere else in the text that they clarify what that, what
7 they're saying there?
8 MS. ROSENFELD: Yes. They also refer to some new
9 Federal standards.
10 MS. CORDRY: If I could just clarify that? The
11 cafe standards, which are the corporate average fuel economy
12 I believe it is --
13 MR. GROSSMAN: Right.
14 MS. CORDRY: -- in 2012 were amended to two sets
15 of increases so that by, I think, 20, mid-twenties, we are
16 supposed to be going to 54.5 miles per gallon and, yes,
17 absolutely we have now new standards in place that are going
18 to require vehicle fuel economy to increase year by year by
19 year which is why we see these changes and I guess why in
20 his report initially he noted that they were projecting out
21 from 2012 to 2025 and that was before the second set of cafe
22 standards were put in place which is why you now have the
23 further decline from that point on out.
24 MR. GROSSMAN: Right. But is there some -- I
25 understand what you're saying, but is there somewhere else

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1 in this document, these excerpts that it makes that sentence
2 clear?

3 MS. CORDRY: You can also look back on page 84
4 there which also talks about, I mean the document is very
5 long and you can get into it and you can certainly give you
6 much more detail.

7 MR. GROSSMAN: Page 84?

8 MS. ROSENFELD: We'd proffer --

9 MR. GROSSMAN: Hold on one second.

10 MS. ROSENFELD: -- that we will be providing you
11 with direct testimony on this issue as we move forward.

12 MS. CORDRY: But I think the diagram on page 84
13 also, again, shows in even more clear detail the projected
14 trend line with hitting a peak in 2004 and continuing
15 declining all the way out through 2040. And as it says on
16 there, based on the estimates, more stringent efficiency
17 standards for LDV's, which is light-duty vehicles, cars and
18 so forth, will require them to average approximately 49
19 miles per gallon in 2025 in addition to regulations
20 requiring increased use of ethanol, contributes to decline
21 and consumption of motor gasoline, motor gasoline
22 consumption fault, despite an increase in VMT, which is
23 vehicle miles traveled, so on and so forth.

24 MR. GROSSMAN: Okay. Thank you.

25 THE WITNESS: I have, though, this one thing I

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1 would just like to mention. When I read the other, the
2 earlier version of this, I noticed when they used the
3 present tense as they do here, they're talking about a
4 predicted scenario. They're not talking about an actual
5 realistic scenario. They're saying, and they do it here,
6 with more efficient light-duty vehicles, just as you pointed
7 out here. This is an ambiguous phrase. Even, well, motor
8 gasoline consumption declines. They're using the present
9 tense here.

10 And when they use the present tense, they're
11 using, they're referring to a scenario and it's based on a
12 lot of other assumptions and there may be other scenarios.
13 This is a very complicated document, I assure you, and this
14 may be one of a number of scenarios. I do believe that in
15 my analysis of, and in other parts of this document you'll
16 find other scenarios where gas consumption is actually
17 increasing.

18 BY MS. ROSENFELD:

19 Q On page 2-5 and 2-6 in your report, you state
20 that more than half the population of the study area drives
21 more than 30 minutes to work. Where did you get that
22 information?

23 A It comes from the census. The census has a
24 section about drive time to work.

25 Q This is the United States census?

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1 A Yes, ma'am.

2 Q Okay. The Wheaton sector plan at page 15 says
3 that a much larger percentage of residents in the Wheaton
4 area use transit than County residents as a whole. Page 71
5 of the sector plan notes that 52 percent of the Wheaton
6 residents use transit to get to and from work, nearly three
7 times the County average. So when you say that more than
8 half the population drives more than 30 minutes to work, I
9 assume you mean half of the 48 percent of the Wheaton
10 residents that actually drive to work and not 52 percent
11 that are taking transit, am I --

12 A I mean people who drive to work, the average drive
13 time is 37 minutes. But this is clear on page 2-6 on
14 Exhibit 2-5 of my report where we present the fact about how
15 people get to work and we identify what percentage use
16 public transit and that's 20, in this general neighborhood
17 that's 22.7 percent of the population that goes to work uses
18 public transit.

19 Q Except in Wheaton, that's a much higher number, 52
20 percent of the Wheaton residents use transit. Am I
21 misunderstanding?

22 A I don't know. I only, I know what I represented
23 here. Since there's a transit station there, if you create,
24 looked at the very narrower, maybe the limited neighborhood,
25 a higher proportion would probably use transit.

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1 Q And if those transit numbers are more accurately
2 reflected in the sector plan, does the need for gasoline in
3 the Wheaton area is reduced, isn't that correct?

4 A I missed a part, I'm sorry.

5 Q Assuming that the number of people in Wheaton who
6 take transit is really 52 percent and not, as I understand,
7 the 27 percent that you've reflected, the need for gasoline
8 is less than what would be projected?

9 A Well, the proportion that I used was based on the
10 general neighborhood and you're talking about Wheaton. I
11 don't know what exactly area you mean, but that's a
12 different area. Yesterday when we went through the analysis
13 of the limited neighborhood, we showed that regardless of
14 how many people use transit, there was a tremendous number
15 of people driving to this place and it's from that
16 population that we drive this huge volume of need.

17 MR. GROSSMAN: Ms. Rosenfeld, are you talking
18 about the, from the figures from the Wheaton CVD sector and
19 vicinity plan?

20 MS. ROSENFELD: That's correct.

21 MR. GROSSMAN: Okay. So they're talking about
22 that area as opposed to --

23 MS. ROSENFELD: Which?

24 MR. GROSSMAN: When you said Wheaton, I'm not sure
25 that --

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1 MS. ROSENFELD: Well, let me redo this.
2 MR. GROSSMAN: -- that's the Wheaton CBD and
3 vicinity. I'm not sure whether that figure is intended to
4 apply across the board.
5 MS. ROSENFELD: Transit use by residents' journey
6 to work data. As opposed to transit use by employees
7 working in Wheaton, it is estimated at 52 percent, --
8 MR. GROSSMAN: Right. Residents of what area?
9 MS. ROSENFELD: -- nearly three times the County-
10 wide average.
11 MR. GROSSMAN: Are we talking about of the Wheaton
12 CBD? Are we talking about residents, does it say whether
13 they're talking about residents of the Wheaton CBD?
14 MS. ROSENFELD: I don't know if it's limited to
15 that or not.
16 MR. GROSSMAN: Yes, I mean that's -- I don't know
17 if we have an orange/apples situation here. I mean,
18 clearly, it's just common sense that the population living
19 next to the subway is going to be, a much higher percentage
20 of those are going to use the, use the Metro, but as you get
21 further out, obviously, a lower and lower percentage will.
22 BY MS. ROSENFELD:
23 Q Can you, on page 2-6 of your report, you say
24 households with members who do this much driving use more
25 vehicles than the average household and that more than half

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1 the households have two or more cars. Where did you get
2 that information from?
3 A Well, this comes from the U.S. census of
4 population and housing.
5 Q U.S. census as well you say?
6 A The U.S. census of population and housing.
7 Q Is it fair to say that you view most of the
8 stations in this area as older and lacking in convenient
9 store amenities that you think play a larger role in the
10 market?
11 A I'm sorry; I know I'm a little hard of hearing. I
12 missed part of what you said.
13 Q Is it fair to say that you view most of the
14 stations in the general area as older and lacking in the
15 kind of convenience amenities that play a larger role in gas
16 stations these days?
17 A Got it. Yes, I think that's fair to say.
18 Q But Costco is not going to have a convenience
19 store associated with it, is that clear?
20 A Not in the sense used in that term, no.
21 Q So when you talk about convenience, you're talking
22 about proximity?
23 A No. I'm talking about the fact that the people
24 are already there and the gas station is convenient to the
25 fact that they're already there.

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1 Q When you talk about demand, can you explain what
2 generates demand?
3 A Yes. I would say demand is one aspect of need.
4 In the normal sense, we say we, there is demand when there
5 is a need and that's what we've been talking about here.
6 Generate demand is the fact that people have to get to work,
7 they have to get to their shopping, they have to get places.
8 Most of those people want to use cars and that generates the
9 need for gasoline and fuel to cars. So I know that's not a
10 perfect explanation, but it's the best one I can make in
11 that situation.
12 Q Can we take a look at the Claritas process a
13 little bit? Can you explain how they collect their data?
14 A Yes. I would refer to their, to Appendix D,
15 Neilson (phonetic sp.) Retail Market Power release notes,
16 page D-1, excuse me, D-3, their supply site estimates come
17 from the sources that are bulleted there. If I could read
18 them, I don't want to waste your time, but I -- it's the
19 Census Bureau, census of retail trade. This is the
20 fundamental document of retail analysis. The annual survey
21 of monthly retail trade, the Neilson business facts, the
22 Bureau of Labor statistics quarterly, census of employment
23 and wages and other fundamental reference point for the
24 economy, state sales tax reports, trade associations.
25 Q And so they make certain assumptions about what

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1 kinds of sales can be projected in certain markets, is that
2 correct?
3 A Yes.
4 Q Okay. And do you have those assumptions in your
5 report or did you just extrapolate them?
6 A I used their data. I don't have access to their
7 algorithm. It is the algorithm that has all of the
8 assumptions and that's why I provided this Neilson market
9 power in document, for release notes. Beyond this, this is
10 a proprietary system.
11 Q And you mentioned earlier that people, some of the
12 people who purchase at the Costco gas station live there,
13 but others are driving through in pass-by traffic --
14 A Yes, ma'am.
15 Q -- for example? And that would be the case for
16 any kind of product generally, right?
17 A Yes, ma'am.
18 Q Okay. Is there -- are you aware as to whether or
19 not there's a differential in terms of what kind of, whether
20 or not gas stores with convenience, gas stations with
21 convenience stores capture a larger or smaller percentage of
22 the market as opposed to ordinary gas stations without --
23 A Am I aware of what?
24 Q Is there a different capture rate of the market
25 between gas stations with convenience stores and gas

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1 stations without?
2 A Yes.
3 Q And can you explain what the differential is, if
4 you know?
5 A I'm not sure what you mean by differential.
6 Q Which one captures a larger percentage of the
7 market?
8 A All things being equal, a station with a
9 convenience store would do better than a station without a
10 convenience store.
11 Q And do you know how much better?
12 A No.
13 Q Okay.
14 MR. GROSSMAN: Do you want this document marked as
15 an exhibit?
16 MS. ROSENFELD: Please, yes.
17 MR. GROSSMAN: You realize that when I fill up
18 this page, I'm not going to take any more exhibits?
19 MS. ROSENFELD: Well, I don't think I'm going to
20 get to the bottom of your page.
21 MR. GROSSMAN: Thank you. All right. This will
22 be Exhibit 228.
23 (Exhibit No. 228 was marked for
24 identification.)
25 MR. GROSSMAN: And are these excerpts again? Yes.

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1 All right. So this time I was smart enough to ask at the
2 beginning. Excerpts from Montgomery County snapshot dated
3 May 2012. Okay.
4 MS. ROSENFELD: And, Mr. Grossman, I'll proffer to
5 you that this is a publication by Montgomery County --
6 MR. GROSSMAN: Yes.
7 MS. ROSENFELD: -- and --
8 MR. GROSSMAN: I've seen it at some prior time.
9 MS. ROSENFELD: Okay. Probably in another gas
10 station case. And if you see -- I'm going to point your
11 attention to page 33 and you will see the source is
12 Montgomery County Planning Department analysis plan, just
13 report data. And, if we go about a third of the way down
14 the page, you'll see gasoline stations with convenience
15 stores.
16 MR. GROSSMAN: Right.
17 MS. ROSENFELD: And they capture approximately 29
18 percent of the market. And then if we go down below that,
19 you'll see other gasoline stations captured, about 66
20 percent.
21 MR. GROSSMAN: Right.
22 BY MS. ROSENFELD:
23 Q And, Mr. Flynn, in doing your needs analysis, did
24 you allocate any kind of different capture rate given the
25 fact that this was not a gasoline with convenience stores?

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1 MR. GROSSMAN: What exactly, by capture rate, what
2 does that --
3 MS. ROSENFELD: Okay. Well, I'll let Mr. Flynn
4 explain.
5 MR. GROSSMAN: Okay. Because 29 and 66 does not
6 add up to 100.
7 MS. CORDRY: No.
8 MR. GROSSMAN: So I want to know what we mean by
9 capture rate.
10 THE WITNESS: I'm not sure what you mean by
11 capture rate either. I don't know quite what to make of
12 this. I see two; I have two highlighted lines, gasoline
13 stations and other gasoline stations. Is there some other
14 gasoline category?
15 MS. CORDRY: Well, with or without convenience
16 stores.
17 THE WITNESS: That's what that is, with and
18 without?
19 MS. CORDRY: Yes.
20 MS. ROSENFELD: Yes.
21 THE WITNESS: Okay. I'm aware of this as an
22 issue, you know, in my analysis. This is very important.
23 What we have here in Montgomery County, one of the most
24 progressive counties in the world I'm sure, is a very
25 unusual situation. There's no, one of the most important

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1 trends in the gas station business in the last 20 years has
2 been the emergence of gas stations associated with club and
3 mass, and large footprint stores such as Sam's, Walmart,
4 even some food stores.
5 In Montgomery County, we don't have any of those
6 types of stores. When this distinction was made which
7 occurred in this book right here. In 1996 this was, this is
8 the North American Industry Classification System which
9 replaced the standard industrial code, they analyzed the gas
10 station industry and they felt in 1996 that there were two
11 types of stations, those with convenience stores and those
12 without.
13 What happened, in spite of the wisdom of the
14 people who did this, was shortly thereafter emerged a new
15 kind of station, a station in, such as this one here. They
16 were contemplating at Costco or other stations where there's
17 no convenience store, it's a club, and it constituted a
18 whole new category that is not included in the structure or
19 the form that they used here. And I have the actual
20 language, gas stations is a code called 4471 and then
21 there's 44711, gasoline stations with convenience stores,
22 and then there's 44719, other gasoline stations.
23 So Montgomery County is using this format when, in
24 fact, it's been replaced by a new reality and that is that
25 sometime after 2000, large stations such as a Costco-related

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1 station or a Walmart or a Sam's Club type station came in
2 and has totally abandoned this. So this is where my
3 experience comes in.
4 I go into the market and I see that these stores
5 have convenience, some gas stations have convenience stores
6 and some don't, they're all old, most of them were built in
7 the '50's, '60's, '70's. In many cases, the convenience
8 stores have been grafted on. It's all irrelevant with a new
9 type of store. So, therefore, instead of accepting this
10 distinction between stores with and without convenience
11 stores, I have to look at the whole universal potential
12 sales and that's what I did, all gasoline sales, because
13 this distinction is only, only reflects a historic reality
14 of about 30 years ago when there were stations with
15 convenience stores and without and stations with or did much
16 better. Now we have club stores and large format stores and
17 they are much more powerful than any convenience stores
18 you'll find.
19 MR. GROSSMAN: Okay. But, Ms. Rosenfeld, I'm
20 still -- what, since you supplied the exhibit, perhaps you
21 can clarify for me what the term capture rate means?
22 MS. ROSENFELD: Well, as I understand it, it means
23 that the entire market that's available, that this
24 percentage, for example, gasoline stations with convenience
25 stores, 29 percent of that market, of their dollars go to,

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1 or spent at gasoline stations with convenience stores.
2 MR. GROSSMAN: But how could there be some of
3 these figures --
4 MS. CORDRY: Okay.
5 MR. GROSSMAN: -- have, go over 100 percent? I
6 don't understand it.
7 MS. CORDRY: Can I clarify?
8 MR. GROSSMAN: Ms. Cordry.
9 MS. CORDRY: Okay.
10 MR. GROSSMAN: Help.
11 MS. CORDRY: I think, from what I understand from
12 Mr. Flynn's testimony about the Claritas data, that this
13 goes back to this question of, and I don't know that he's
14 really gone through all that questioning yet about data, but
15 that the Claritas says of the total market that, the total
16 number of sales that someone might want to buy in the area
17 of a given good or service, you can buy all of it in the
18 area, you can buy less than all of it in the area, you can
19 buy more than all of -- you know, in other words, the
20 people --
21 MR. GROSSMAN: That's the more than that I mean.
22 MS. CORDRY: Well, people might come in from
23 outside the area to buy here if you, which I think is
24 actually what was happening with the Beltsville gas station.
25 If you have a very high concentration of a given, particular

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1 kind of sale, people might come within, come from outside
2 the area to this area to buy that particular thing in which
3 case it might be more than 100 percent.
4 MR. GROSSMAN: Let me, well, all right. So let me
5 ask that question a different way. It says capture rate.
6 Capture rate of what?
7 MS. CORDRY: Okay.
8 MR. GROSSMAN: What are they, what's the rate
9 being applied to?
10 MS. CORDRY: Of all the sales and, again, Mr.
11 Flynn can tell me if I'm wrong, but this is the way I've
12 been reading this, of all the sales that someone might want
13 to buy of gasoline at a convenience store, which would be
14 not only the gasoline, but the other things at the
15 convenience store. Of all the kind of things that people in
16 this area would buy of gasoline at a convenience store, how
17 much of that sales of gasoline at a convenience store did
18 they buy within this area? Let me make it a little easier.
19 Clothes. I want to buy, of all the clothes that I want to
20 buy or all of the restaurant food that I want to buy for me
21 for the course of a year, do I buy all of that restaurant
22 food within Wheaton, in which case I have a 100 percent
23 capture rate, or do I buy some of it outside of Wheaton, in
24 which case then my total restaurant food purchases, I would
25 only, for instance, perhaps buy 50 percent in Wheaton, is

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1 that correct, Mr. Flynn?
2 MR. GROSSMAN: So if I understand what this chart,
3 pages 31 and 32, or page 31 and 33 is a portion you've shown
4 me, for example, on 31 there's a capture rate for food and
5 beverage stores of 127 percent.
6 MS. CORDRY: Right.
7 MR. GROSSMAN: Does that purport to mean that
8 Montgomery County is attracting --
9 MS. CORDRY: D.C. residents let's say.
10 MR. GROSSMAN: -- people from outside --
11 MS. CORDRY: Yes.
12 MR. GROSSMAN: -- of --
13 MS. CORDRY: That's my understanding.
14 MR. GROSSMAN: -- a disproportionate amount of
15 what area? That's what I don't see. The unit is not clear.
16 MS. CORDRY: Well, this is the county-wide data,
17 this particular data here. It is county-wide data for --
18 MR. GROSSMAN: Right. But what's still not clear
19 to me is it's 127 percent of what?
20 MS. CORDRY: Okay.
21 MR. GROSSMAN: Of the total demand in the greater
22 metropolitan area --
23 MS. CORDRY: No.
24 MR. GROSSMAN: -- that total demand, 127 percent?
25 MS. CORDRY: Okay.

1 MR. GROSSMAN: I don't understand the unit.
 2 MS. CORDRY: Okay. Well, again, we probably
 3 should have it through Mr. Flynn, but it's my understanding
 4 that residents of Montgomery County, let's take food, would
 5 need to buy let's say \$100 worth of food or \$100 million
 6 worth of restaurant food, but restaurants in Montgomery
 7 County would actually sell \$127 million worth of food. That
 8 additional 27 million, 27 percent, is being sold to people
 9 who are not within the County. Conversely, with these
 10 gasoline stations, people within Montgomery County might
 11 need to buy \$100 million worth of gasoline services, but
 12 they are not necessarily buying all of it within Montgomery
 13 County. They are buying, in this case, 29 percent of their
 14 demand for convenience stores within Montgomery County
 15 because perhaps there's a limited number of convenience
 16 store stations here and they are buying 70 percent of their
 17 need for gasoline without convenience stores within
 18 Montgomery County.
 19 MR. GROSSMAN: So accepting that --
 20 MS. CORDRY: 66 percent.
 21 MR. GROSSMAN: -- accepting that, what does this
 22 then show me of significance to the case?
 23 MS. CORDRY: It is my understanding this is
 24 exactly the data from which Mr. Flynn in deriving his,
 25 showing that there is a gap and a retail gap in a 13.1

1 million -- this is, this is the numbers that are also the
 2 same kind of numbers that are shown on his Exhibit A2 to his
 3 2012 report, which is where he derives his showing that
 4 there's -- first off, if you go down to gasoline stores
 5 there, 447 --
 6 MR. GROSSMAN: Okay.
 7 MS. CORDRY: Okay.
 8 MR. GROSSMAN: So?
 9 THE WITNESS: We're still on page 33, right?
 10 MS. CORDRY: Well, at the moment I'm looking at
 11 your 2012 report and Exhibit A2 of your 2012 report.
 12 MR. GROSSMAN: All right.
 13 THE WITNESS: Sorry.
 14 MR. GROSSMAN: Okay. Exhibit A2, yes, okay. I'm
 15 looking at Exhibit A2, right, the report. Now where am I
 16 looking on there?
 17 MS. CORDRY: And now you're, the second chunk of
 18 categories above the bottom there where it says gasoline
 19 stations, 447.
 20 MR. GROSSMAN: Gasoline stations, 447, yes.
 21 MS. CORDRY: Okay. And it has a figure of 71
 22 million?
 23 MR. GROSSMAN: Right.
 24 MS. CORDRY: And then 61 million and 9 million?
 25 MR. GROSSMAN: Yes.

1 MS. CORDRY: This is the gap that is related to
 2 these capture rates because you're not capturing all of, in
 3 other words, if you had 100 percent capture, this number
 4 would be zero because we are not capturing all of it. This
 5 is a positive number. If you were capturing more than it,
 6 it would be a negative number.
 7 MR. GROSSMAN: I understand the concept there.
 8 MS. CORDRY: Okay.
 9 MR. GROSSMAN: I'm not sure that I find that a
 10 useful way to approach this. Maybe you can show me, if you
 11 think it's necessary, why that's useful in interpreting this
 12 data or having me analyze his needs report.
 13 MS. CORDRY: Because --
 14 MR. GROSSMAN: I --
 15 MS. CORDRY: Because --
 16 MR. GROSSMAN: I don't see it.
 17 MS. CORDRY: -- this, as I understand it, is the
 18 crux of how these need analyses work. They look at the
 19 capture rate -- this is exactly what Mr. Flynn's report is
 20 talking about.
 21 MR. GROSSMAN: He told me he didn't know what the
 22 capture rate means.
 23 MS. CORDRY: Well, he, I believe he has used it in
 24 other categories and --
 25 THE WITNESS: I, can I clarify something --

1 MR. GROSSMAN: Yes, sir.
 2 THE WITNESS: -- Mr. Grossman?
 3 MR. GROSSMAN: Yes.
 4 THE WITNESS: I think we're confusing two ideas
 5 here. I'm embarrassed because when I referred to this, I
 6 was answering a question that hadn't been asked. But I
 7 thought this question --
 8 MR. GROSSMAN: Okay.
 9 THE WITNESS: -- would be asked, but it hasn't
 10 been asked yet. When you talk about the capture rate, when
 11 we talk about that in my business, we say, as you pointed
 12 out, I need 1,000 gallons of gasoline a year, how much of
 13 that am I going to buy in Montgomery County? Eighty
 14 percent. Okay. That's what Montgomery County is calling
 15 their capture rate.
 16 MR. GROSSMAN: All right.
 17 THE WITNESS: That's the ratio of this over that.
 18 They're capturing that. The division here that's
 19 highlighted in yellow, that's a different issue. That has
 20 to do with how much gas is sold to gasoline stations with
 21 convenience stores and how much is sold to gasoline stations
 22 without. It's true, these figures are the same sources as
 23 my figures. I'm not talking about capture rate. I'm saying
 24 that there's a certain amount of gas that's in demand and
 25 that that's available and that reflects a need and that's

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1 this 13 million gallons in the general neighborhood of 11
2 some million gallons in the limited neighborhood.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: I'm not trying to nail a capture
5 rate. That's up to the retailer to do that.
6 BY MS. CORDRY:
7 Q Isn't that 71 million gallons a reflection of the
8 fact that you have a less than 100 percent capture rate?
9 That is the gap between 100 percent and something less than
10 100 percent, that \$71 million you are representing there is,
11 that represents the fact that you do not have 100 percent
12 capture rate?
13 A It reflects the fact that a lot of people are
14 traveling outside your area to buy gas. I think that's
15 probably what you're saying.
16 Q Yes.
17 A Yes. All the people --
18 Q And that, therefore --
19 A -- I met at Greenbelt or over there who came from
20 Silver Spring, they're all that, part of that loss. They're
21 not capturing their sales.
22 Q Exactly.
23 A Yes.
24 Q And these are just the two flip sides? If you
25 capture 100 percent, you wouldn't have a retail gap. If you

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1 have a retail gap, it's because you're not capturing 100
2 percent, is that --
3 A And I think you're right. Greenbelt is capturing
4 people from Virginia and capturing people from Prince
5 George's County and from Sandusky, Ohio. So I think we're
6 in agreement on that.
7 MR. GROSSMAN: I'm oriented towards evidence
8 that's going to help me reach a conclusion about this case.
9 I just don't see how capture rate is going to do it. Sorry,
10 but I don't. If you think you can explain it to me, but I
11 don't want to waste any more time on this hearing, however,
12 you explain it to me. You can submit something in writing
13 showing me how his needs analysis is right or wrong based on
14 your figures on capture rate in this Montgomery County
15 snapshot. I just don't see it now. But, in any event, as I
16 said, I don't want to waste any more time pressing on it.
17 Let's let Ms. Rosenfeld continue with her cross-examination.
18 BY MS. ROSENFELD:
19 Q Going to your supplemental needs analysis, you
20 said it's based on projected annual sale of 12 million
21 gallons per year. Where did you get that figure of 12
22 million gallons in sales?
23 A The supplemental, is that the memo of July, of
24 July 3rd, analysis of need, general neighborhood?
25 Q It's the --

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1 A Am I looking at the right thing here?
2 Q Yes, you are.
3 A Yes. Sorry.
4 Q That's what I'm asking about.
5 A Just wanted to make sure I didn't answer the
6 wrong, a different question this time.
7 Q On page 2 of that report.
8 A What is my estimate? It's 11.1 million gallons
9 based on, I think, it's summarized in the exhibits and let's
10 start with the first one. Exhibit 2 on page 3, and that
11 shows the capture of neighborhood traffic and that
12 represents 4.4 million gallons per year of the total demand.
13 The next part of that component of that demand is sales of
14 gas to workers in the neighborhood. There are --
15 Q Could we back up just a minute, though?
16 A Yes, ma'am.
17 Q Because when I look at the bottom of page 2, it
18 says this is based on projected sale of 12 million gallons
19 per year. Am I mis-reading your report?
20 A The bottom of page 2?
21 Q The very last sentence.
22 A Yes. I'm referring here to the analysis that was
23 implicit in the traffic analysis and this is something that
24 Mr. Guckert presented, I believe, and I was trying to make
25 sure that it was understood that while I might differ in

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1 some small respects, we were essentially consistent. So he
2 was using this simplified figure of 12 million gallons per
3 year, but my figure was a little more sophisticated in my
4 opinion. It's 11.2 million gallons per year and I'm
5 explaining where that analysis comes from and I'm beginning
6 on Exhibit 2 at the bottom. That's the start of this. And
7 the first component is the capture of neighborhood, of
8 traffic, sales to people passing by. And in that component,
9 I agree with Mr. Guckert and I say that 4.4 million gallons
10 comes from that source, pass by traffic, and I explained
11 why.
12 The second component is people who work in that
13 neighborhood of whom there are some 3,800 employees and I
14 say that 246,000 gallons per year will come from them. And
15 the third component is from shoppers who are already at the
16 neighborhood. They're in the Costco or they're in the mall
17 or they're in the Giant or they're at the health club or in
18 other places. There's many of those, 23,000 people a day
19 visit for that purpose and I say that 6.4 million gallons
20 per year is going to come from that source and that adds up
21 to 11.2 million gallons per year of the 6.4, which is by far
22 the largest, more than half, about 75 percent of that or 5.4
23 million gallons comes from people who are at Costco.
24 So in this analysis, this supplemental analysis of
25 the limited neighborhood, 5.5 million gallons out of 11.2

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1 million come from sales to people who are already shopping
2 at Costco. That's the fundamental convenience connection
3 that we're making here. I didn't even realize this until I
4 was asked to do this analysis at this level. How much of it
5 is already there? It's not out in seven minutes. These
6 people are already there. You know, it's very striking to
7 me.

8 Q And how did you determine that Costco would
9 capture 1.18 percent of the pass-by traffic?

10 A I looked at the traffic, the traffic flow, talked
11 that over with Mr. Guckert and we agree that that figure was
12 reasonable based on what we understood to be a pass-by
13 traffic at other Costco and large store sales locations. He
14 has a lot of experience in that, much more than I do in
15 terms of traffic and I took that figure and felt that it was
16 right.

17 Q Is that capture rate contained in his report?

18 A I don't know. I haven't fully read that.

19 Q And then your, so you have pass-by traffic, you
20 have employees and you have people who are going to be at
21 the mall in any event, is that correct?

22 A Yes, ma'am.

23 Q And I think Mr. Guckert had pass-by traffic,
24 people coming to the store and people coming forward for the
25 gas station. Are those different groups of people?

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1 A We analyze the same people. How we group them
2 might be a little different.

3 Q Okay. In your report, you indicate that you
4 thought approximately a third of the customer base itself
5 was just for the Wheaton store, is that correct?

6 A Yes, ma'am.

7 Q About 35 to 40 percent of the current gas sales at
8 the Costco Beltsville will then shift to Wheaton, correct?

9 A Yes, ma'am.

10 Q Okay. And your survey of individuals who shop at
11 Beltsville indicated that a number of people who are buying
12 gas at Beltsville, in fact, would likely shop at the Wheaton
13 gas station if it were built, correct?

14 A Yes.

15 Q A significant percentage? So according to your
16 analysis, the Beltsville station already serves a need of
17 Costco gas that exists within the Silver Spring/Kensington
18 market, isn't that correct?

19 A No.

20 Q And how did you get to no?

21 A Those people are traveling 20 to 25 minutes, I
22 believe, to that station. They would much prefer to be
23 closer to where they reside or where they work. They're
24 going out of their way. So it's not acceptable to them I
25 don't think.

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1 Q Well, but what is preferable to them, it's
2 available to them?

3 A Yes, they can drive there.

4 Q They clearly make use of --

5 A Yes.

6 Q -- that gas station? It is available.

7 A It's very inconvenient, but it is available.

8 Q But it's available.

9 (Discussion off the record.)

10 MS. ROSENFELD: One moment please.

11 MR. GROSSMAN: Sure.

12 BY MS. ROSENFELD:

13 Q With respect to the July 3, 2013 supplemental
14 memorandum, on page 5 you have an Exhibit 4 and in it you
15 project at the mall that there would be 24,500 people there
16 on a daily basis. Where did you get that number from?

17 A I interviewed representatives of the Westfield
18 Shopping Center.

19 Q Because the, there's been testimony that like
20 13,500 is typical for a weekday.

21 A Whose testimony was that?

22 MS. CORDRY: Mr. Agliata.

23 MS. ROSENFELD: This was Mr. Agliata from
24 Westfield Wheaton Mall.

25 THE WITNESS: I spoke with Mr. Agliata and I have

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1 their most recent figures. He sent them to me.

2 MS. ROSENFELD: Okay.

3 THE WITNESS: And I probably have them with me.

4 MS. ROSENFELD: Terrific. That would be helpful.

5 THE WITNESS: And I not only included the mall,
6 there are other out parcels that he may not have included.
7 But that's an actual estimate based on recent, they are
8 recent numbers.

9 MS. ROSENFELD: Okay.

10 BY MS. CORDRY:

11 Q And, Mr. Flynn, that would be just a run of the
12 mill day or a weekend day or a weekday, do you know?

13 A It was on the annual average over a period of May
14 1, 2013 to May 31, 2013.

15 BY MS. ROSENFELD:

16 Q And that was, that's where you got the number
17 24,500?

18 A Yes. I actually had to use that number to derive
19 the number that I put in the report because the mall traffic
20 is only a portion of the overall traffic, but this is one of
21 the sources.

22 Q And so when you say non-mall retail, that
23 reflects --

24 A Pardon?

25 Q -- under the mall you say 24,500. Those are

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1 people coming to actually shop at the mall, is that what
2 that number represents?
3 A That's correct.
4 Q And what does non-mall retail mean?
5 A That's the Giant, the health club, the Target.
6 It's not the Costco, but other retail activities that are
7 there, a pretty significant amount of activity.
8 Q Okay. Like the Starbucks and other, everything
9 that's outside of the mall itself, at the mall footprint?
10 A Yes, I believe so.
11 Q And then the Costco, those are the five, number of
12 shoppers daily at the Costco warehouse itself?
13 A Yes.
14 Q And you got those numbers from Mr. Agliata?
15 A No, I got those numbers from Mr. Brann.
16 Q And what period of time does that reflect?
17 A I believe there was approximately two weeks from
18 the opening to when I did this work, approximately a 2-week
19 period.
20 Q And then the numbers for households, where did you
21 get those numbers?
22 A I used a device or there of 1.5 persons which is
23 shown in footnote No. 1, the first star, because we were
24 talking about customer, about customers and I needed to talk
25 about vehicles. So that was an attempt to get at how many

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1 people come in a car.
2 Q And in the context of this Exhibit 4, could you
3 please explain to me what you mean by capture rate and what
4 these numbers reflect?
5 A Yes. I go into this in the text here. The 1
6 percent mean capture rate for the, that's the .01, 1
7 percent, means that of the 22,698 vehicles that come into
8 the site daily, not including Costco employees or shoppers,
9 227 drivers are likely to purchase Costco gas.
10 Q But you've got the number of vehicles in Exhibit 4
11 as 26,222 and then below that you have 22,698 in the second
12 full paragraph.
13 A I'm looking at that second full paragraph.
14 Q The reason why those numbers are different?
15 MR. GROSSMAN: She's saying the column in the
16 vehicles column and in Exhibit 4, the total is 26,222,
17 whereas in the paragraph you just looked at, the total for
18 vehicles is 22,698.
19 THE WITNESS: Oh, I see. I'm sorry. I don't know
20 why that difference exists now. G21. No, I don't know
21 what -- I'd have to go back and look at my notes on that.
22 Oh, excuse me. I believe that the 22,298 is the sum of
23 13,883 plus 8,415. Those are the first two lines up
24 there --
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: -- the mall and the non-mall retail.
2 And the sentence then is correct because the parentheses
3 says not including employees or Costco shoppers.
4 MR. GROSSMAN: Okay. I understand.
5 BY MS. ROSENFELD:
6 Q And then when you have the 24,500 daily visitation
7 for the mall, how did you determine how many vehicles were
8 coming?
9 A I divided the number by 1.5.
10 Q Oh, I thought that was for households?
11 A Oh, excuse me. Yes, the second, the second set of
12 footnote there, 85 percent of other shoppers arrive by car
13 because I recognized there is a neighborhood and there is
14 some street, some walking traffic. So it's 85 percent.
15 Q And where did you get that 85 percent number from?
16 A Let's see. I think we -- I'm not sure. I heard
17 that and it was, might have been from Park and Planning
18 staff, but I can't say for sure. I can find out from --
19 Q If it comes to you or if you can find out, you can
20 let Ms. Harris know and she can tell us.
21 A I've got it here somewhere.
22 Q And the number that you got, the 24,500 from Mr.
23 Agliata, do you know if that was actual, an actual
24 computation?
25 MS. CORDRY: Hooking people in?

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1 BY MS. ROSENFELD:
2 Q Those are very precise dates, May 1 to May 31. Do
3 know if they actually count the number of people who attend?
4 A He gave me some data and I estimated it based on
5 the data he gave me. So I rounded up a calculation or
6 rounded a calculation, but it was based on their data.
7 Q Okay. And do you know how they collect their
8 data?
9 A Let's see. No, I don't know exactly.
10 MS. ROSENFELD: Mr. Grossman, I have no further
11 questions.
12 MR. GROSSMAN: Mr. Silverman.
13 MR. SILVERMAN: Yes.
14 CROSS-EXAMINATION
15 BY MR. SILVERMAN:
16 Q Good evening.
17 MR. GROSSMAN: No, it's not after 5:00.
18 MR. SILVERMAN: Oh, okay.
19 BY MR. SILVERMAN:
20 Q Mr. Flynn, you testified about --
21 MR. GROSSMAN: Let me stop you for one second.
22 Can we all stay until -- you estimated that you would be --
23 MR. SILVERMAN: I'm going to try to be as fast as
24 I can because I'd really like to get out of here.
25 MR. GROSSMAN: Okay.

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1 MR. SILVERMAN: I'll try. And if his answers will
2 be short, my questions will be short.
3 MR. GROSSMAN: Okay. Can you stay, Madam Court
4 Reporter, until --
5 (No audible response.)
6 MR. GROSSMAN: Okay. So we'll assume that --
7 THE WITNESS: Okay.
8 MR. GROSSMAN: -- by 5:30 or so.
9 BY MR. SILVERMAN:
10 Q You testified recently two gas stations closed
11 because of eminent domain, do you recall that?
12 A Well, I said that they closed. I'm not sure it
13 was eminent domain. It looked to me like that situation,
14 yes.
15 Q And you said one of them was pretty run down?
16 A Yes.
17 Q I think you observed, lucky for him, that the
18 state, the County, whoever it was took the property? At
19 least he got paid.
20 A I had that feeling.
21 Q So had that not happened, what would have happened
22 to that station?
23 A I don't know.
24 Q You testified about a station in Beltsville that
25 you said had been shuttered and it looked like it had been

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1 shuttered for a long time?
2 A Yes.
3 Q So gas stations that are closed down and
4 shuttered, do you have a sense of how long they are that
5 way?
6 A No, I don't.
7 Q As a person who is -- you've worked in a lot of
8 sort of gritty cities I take it, so do you have any
9 experience with abandoned gas stations or gas stations that
10 have gone broke?
11 A I do.
12 Q Do you know the word brown fields?
13 A I do.
14 Q Can you tell us quickly what that is?
15 A Yes. It initially refers to, and it's an official
16 term, it's a defined legal term under EPA regulations, but
17 it usually refers to a place where hazardous materials have
18 been abandoned, usually in an industrial setting.
19 Q And there are a number of brown fields that are
20 associated with old gasoline stations --
21 A Yes.
22 Q -- would you agree with that? We had testimony
23 this morning from a gas station owner that he thought, I
24 don't know if he said three or four or two or three stations
25 he was pretty sure would close down pretty quickly if

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1 Costco, if Costco came in. Do you agree with that analysis?
2 A That report, I noted in my report that there's a
3 national trend towards the closing of stations. It's
4 happening on a very large scale around the country. There
5 are stations closing as we are doing this work regardless of
6 Costco. So I believe that there will be stations closing in
7 the general market, in the general neighborhood in the next
8 few years no matter what happens.
9 Q And the permitting of Costco would accelerate that
10 trend in your judgment?
11 A I don't know.
12 Q Well, why do you hesitate? I mean --
13 A Because when I look at the situation in Greenbelt,
14 I see that Wawa is opening, stations are thriving.
15 Q But you also indicated that the stations in this
16 area are generally pretty old?
17 A Yes.
18 Q And you said some are better than others. You
19 didn't say anyone is excellent if I recall. Do you
20 anticipate that they will be thriving? Would you encourage
21 young men and women to get into the small gas station
22 business in Montgomery County?
23 A No.
24 Q No? I wouldn't think so. So also did you know is
25 it only that, except for the very oldest ones, gas stations

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1 in Montgomery County, I guess, the vast majority go through
2 a process similar to this and get special exceptions?
3 A Yes, sir.
4 Q So when you --
5 MR. GROSSMAN: No, there's no process similar to
6 this one.
7 MR. SILVERMAN: Oh, yes. Well, I --
8 MR. GROSSMAN: I can't remember a gas station
9 case --
10 MR. SILVERMAN: Yes.
11 MR. GROSSMAN: -- as this. This one is pretty
12 unique.
13 MR. SILVERMAN: Yes, it is. Well, I hope so. So
14 when you testified that one of the major stations,
15 significant stations is a danger by the way they park their
16 fuel trucks and I think you used the word terrifying or
17 frightening, you were really saying that the special
18 exception board permitted things which are dangerous, is
19 that fair?
20 THE WITNESS: No, sir. Most of those stations I
21 was, I think have been long, have been many years in these
22 places.
23 BY MR. SILVERMAN:
24 Q Do you think they precede 1954?
25 A Oh, that I don't -- I didn't know. It was just

1 when that, this special exception process came?
 2 Q Mr. Grossman knows better than I, but I think it's
 3 something like that.
 4 MR. GROSSMAN: I, there's been a -- I don't know
 5 when the special exception process itself began. There have
 6 been hearings of this kind in special exceptions probably
 7 since 2003 or so, but there have been hearings by the Board
 8 of Appeals prior to that, so --
 9 BY MR. SILVERMAN:
 10 Q Yes. I'm just trying, I only ask that question to
 11 inject some humility here in what we're doing.
 12 A I think we put up with a lot of things back then
 13 that we wouldn't put up with now.
 14 Q I'm sure that's correct. So what is the
 15 difference to, oh yes, the final question on this line.
 16 After Costco is built, wait a few years, how many gas
 17 station related brown fields can we expect to see in the
 18 general neighborhood?
 19 MR. GOECKE: Objection.
 20 MR. SILVERMAN: Well, I don't know. What
 21 objection?
 22 MR. GROSSMAN: Yes, what's the basis for your
 23 objection?
 24 MR. GOECKE: The basis is that it's speculative.
 25 I mean he's already testified he doesn't know for certain

1 what's going to happen in the future.
 2 MR. GROSSMAN: I sustain it.
 3 MR. SILVERMAN: Can I rephrase it less
 4 speculative?
 5 MR. GROSSMAN: Sure.
 6 BY MR. SILVERMAN:
 7 Q Do you expect to see any?
 8 A See any what?
 9 Q Gas station related brown fields?
 10 A I believe Montgomery County is very rigorous kind
 11 of place and there will be, there might be ways to prevent
 12 brown fields from happening. Just because a station closes
 13 doesn't mean it becomes a brown field.
 14 Q And does it cost money to close a station?
 15 A It can. It depends on that transaction happens.
 16 We have a station that we worked on in Silver Spring where
 17 Exxon closed a station and it stood there empty. I don't
 18 know whether there were tanks underground, but I do know
 19 that now there is a requirement that a station operator have
 20 the ability to remove a tank if they're closing a station.
 21 Q And do you think station owners who are going out
 22 of business because they can't compete will have that
 23 ability in fact?
 24 A In some cases there's a prepaid requirement, it's
 25 part of an operating agreement. I don't know the details.

1 I shouldn't even say anything about that.
 2 Q And just, again, I'm just asking you to reflect, I
 3 was very impressed with your credentials, reflect of your
 4 work in other places. The, though you're not sure about
 5 brown fields? You think it's a risk possibility?
 6 MR. GROSSMAN: Well, he's already --
 7 MR. SILVERMAN: Okay. All right.
 8 MR. GROSSMAN: -- we've exhausted brown fields.
 9 MR. SILVERMAN: All right. We've got it. It's as
 10 far as we can go.
 11 BY MR. SILVERMAN:
 12 Q What is the difference between markets and needs?
 13 A Is it very similar, different ways of looking at
 14 something. When we have need, we create a market.
 15 Sometimes a market can reflect a need. There are some
 16 apparent markets that are frivolous and don't reflect need.
 17 Do we need a fur coat? I don't think so. But is there a
 18 market for one? Do we need gas? Yes. And is there a
 19 market for it? These are different aspects of the same sort
 20 of desire.
 21 Q When you, when I read your calculations of need in
 22 your report which I must say I do not understand as well as
 23 I should, I get the sense that what you're really talking,
 24 you're really doing a market analysis. You say if Costco
 25 opens a station it will sell 12 million gallons of gas.

1 A If we're looking at cost and price, I think that
 2 would be true.
 3 Q I didn't say that.
 4 A But I'm looking at all aspects of the situation
 5 and I'm saying that people feel a need for this product
 6 that's safe and convenient and economical.
 7 Q Well, Costco, whatever Costco is selling, which is
 8 a whole package, I understand, I don't have any quarrel with
 9 Costco, they're selling the whole package. You think that
 10 they have a market for it here, for that product?
 11 A Yes.
 12 Q Okay. You agree with their -- obviously they made
 13 a market calculation before they entered this area?
 14 A I don't know.
 15 Q You don't? I thought you said you work for
 16 companies like Costco that, and help them site the
 17 facilities?
 18 A I can't imagine that they didn't, but I didn't
 19 want to speculate --
 20 Q Well --
 21 A -- I don't know. I never talked with anyone about
 22 that.
 23 Q Okay. You, you have, you don't know directly, but
 24 it would be good business practice to evaluate market
 25 potential before you make a major investment?

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1 A Yes, sir.
2 Q And probably Costco is not, is a company known for
3 good business practices?
4 MR. GROSSMAN: So where is this going, Mr.
5 Silverman? So what?
6 MR. SILVERMAN: Well, is there any place, the
7 question I have -- let me just ask one other question and
8 I'll get to the point.
9 BY MR. SILVERMAN:
10 Q You also testified that Montgomery County, for all
11 its progressiveness, does not have the mega stations yet, it
12 hasn't quite hit us yet, is that correct?
13 A Yes, sir.
14 Q Well, is there any place in Montgomery County
15 where you would not find a need for a Costco gas station?
16 A I don't know. When I look at this general
17 neighborhood, it's really striking how big this need is.
18 But I don't know about other parts of the County.
19 Q And --
20 A And there are, I know there are rural parts of the
21 County too. There's an agricultural area, a very large part
22 of the County around Poolesville, I work there, and I don't
23 think they could justify this need.
24 Q So but in Rockville if they opened a gas station
25 in Rockville, you would find a need? I mean it's not

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1 site -- all you need is a large population, is that what
2 you're saying?
3 A No.
4 MS. DUCKETT: Gaithersburg.
5 BY MR. SILVERMAN:
6 Q Gaithersburg, if they -- thank you.
7 MR. GROSSMAN: No, no calling out from the --
8 MR. SILVERMAN: It's just an act of mercy, an act
9 of mercy for a tired attorney. So --
10 THE WITNESS: I guess I would say it's not just
11 population, it's income and it's travel characteristics,
12 it's the whole package.
13 BY MR. SILVERMAN:
14 Q But you're, it seems to me that it may be and
15 we'll have legal arguments about this, but the need really
16 relates to very local areas. And it seems to me, and tell
17 me if you agree, that your analysis is really looking at the
18 markets and you think that there may be a market for mega
19 gas stations with excellent service and all that here in
20 Montgomery County and it could happen in large parts of the
21 County, would you agree with that?
22 A Yes.
23 Q So that's what I think -- that's the point I think
24 we can base the meaning of that from, you know, what your
25 job is and what the, your job, Mr. Grossman or what the

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1 special exception board has to do. I just want to
2 understand that this, that you could probably put a Costco
3 in many parts of this County and make money doing it and
4 sell 12 or even more million gallons a year in most of the
5 County and in your view that would demonstrate a need, is
6 that correct?
7 MR. GOECKE: That's sort of a long question. I'm
8 not sure exactly what it was.
9 MR. GROSSMAN: Yes, I'm not sure. I mean also
10 there's a court definition of need in the court cases which
11 is even more relaxed than the pure market kind of need that
12 we've been talking about here. So I'm not exactly sure
13 where you're going.
14 MR. SILVERMAN: Well --
15 MR. GROSSMAN: So, you know, where does that get
16 us?
17 MR. SILVERMAN: I think Costco witnesses tend to
18 prove too much, they have proven too much here.
19 BY MR. SILVERMAN:
20 Q The one last area, you testified that you're not
21 a, you're no Gallup, right?
22 A Yes, sir.
23 Q You don't take scientific surveys?
24 A No, I don't think so.
25 Q And you do have experience in focus group

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1 operations for other ways of getting public opinion?
2 A I have.
3 Q Do you have training in that?
4 A Yes, sir.
5 Q Okay. All right.
6 MR. SILVERMAN: That's my questions.
7 MR. GROSSMAN: Okay.
8 MR. SILVERMAN: Thank you.
9 MR. GROSSMAN: Did we have any questions from
10 the --
11 MS. DUCKETT: No, I got it answered --
12 MR. GROSSMAN: -- the back?
13 MS. DUCKETT: -- from my yell out.
14 MR. GROSSMAN: Okay. All right. Anybody else?
15 Any redirect?
16 MS. HARRIS: No redirect.
17 MR. GROSSMAN: No? All right. Well, thank you,
18 Mr. Flynn.
19 THE WITNESS: Thank you.
20 MR. GROSSMAN: Surprisingly you're now off the
21 hook.
22 THE WITNESS: Thank you.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: And I'll follow-up on those two
25 points that I wrote down.

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1 MR. GROSSMAN: All right. Thank you. All right.
2 So when we return on Friday, oh, you have the things to hand
3 out? Yes.
4 MR. BRANN: They're collated now.
5 MR. GROSSMAN: They're collated? All right. The
6 handing out of the collated documents. Thank you, sir.
7 MR. BRANN: Okay.
8 MR. GROSSMAN: So let's mark these as exhibits, a
9 whole new set of plans in 11 by 14 format. Okay. So it
10 starts on the top here. Mr. Brann, I just want to make sure
11 I know what I have. I have some things that are stapled
12 together and some things that are not. So let me see what
13 I've got here. Let's start out with the special exception
14 plan. That's got three sheets and we'll call that Exhibit
15 229. Oh, did I -- yes, Exhibit 229.
16 (Exhibit Nos. 229A, 229B and 229C
17 were marked for identification.)
18 MR. GROSSMAN: And A will be, and we'll say this
19 is the revised special exception plan and the date is
20 7/31/13, if I'm reading correctly, correct?
21 MS. HARRIS: Yes.
22 MR. GROSSMAN: Version 7. Version 7/31/13 and A
23 will be sheet 1, the cover sheet, B will be the survey plat,
24 existing conditions and C will be proposed special exception
25 plan.

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1 MS. ROSENFELD: And, Mr. Grossman, was the number
2 again?
3 MR. GROSSMAN: The number is 229.
4 MS. ROSENFELD: Thank you.
5 MR. GROSSMAN: All right. And then the next
6 document here is titled overall illustrative plan. What is
7 that illustrating? It's hard to -- I can't read the general
8 notes. They're too small for me, so tell me what I'm
9 looking at in the overall --
10 MS. HARRIS: Mr. Grossman, I'm sorry, what was
11 your question?
12 MR. GROSSMAN: What -- the plan that's labeled
13 overall illustrative plan?
14 MR. GOECKE: That's somewhat strange just being
15 able to spell.
16 MR. GROSSMAN: I don't know what the notes say
17 because I can't --
18 MR. GOECKE: The general notes say, number one, it
19 says developer Costco Wholesale and number two says this
20 plan is based upon the following, ALTA/ACSM land title
21 survey titled Costco Wholesale Corporation prepared by
22 Bohler Engineering dated --
23 MR. GROSSMAN: All right.
24 MR. GOECKE: -- 12/30, 2010, revised June 10,
25 2011, project No. MB092038.

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1 MR. GROSSMAN: So this is not a revision from the
2 prior one because it doesn't have a revision date of 7 --
3 MS. HARRIS: Well, yes, because it reflects the
4 pedestrian path revisions, so --
5 MR. GROSSMAN: Okay.
6 MS. HARRIS: -- that's, so it's been updated to
7 reflect that.
8 MR. GROSSMAN: All right. So --
9 MR. BRANN: We have a certain number of full-size
10 copies also.
11 MR. GROSSMAN: Okay. Yes. I, we should --
12 MR. BRANN: So we'll pass out the, I'll pass out
13 the full-size copies then.
14 MR. GROSSMAN: Yes, we should have a full-size
15 copy as part of the record here.
16 MR. BRANN: Absolutely.
17 MR. GROSSMAN: These are 11 by 17.
18 MS. ADELMAN: Mr. Grossman?
19 MR. GROSSMAN: Yes?
20 MS. ADELMAN: Could I get a verbal clarification
21 of pedestrian circulation from Map 1?
22 MR. GROSSMAN: I haven't gotten that far yet.
23 MS. ADELMAN: Oh, okay.
24 MR. GROSSMAN: You're already, as usual, you're
25 ahead of me, Ms. Adelman. Okay. Thank you. I guess what

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1 I'm going to do first is I'm marking the 11 by 17's first.
2 I just wonder whether we should just have this as one.
3 Thank you.
4 MS. HARRIS: Does it make more sense just to mark
5 the full-size plans?
6 MR. GROSSMAN: Well, I've already started out
7 marking the 11 by 17's, but you may be right. All right.
8 I'll go back to the full-size plans here. All right. And
9 what we'll do is, all right, so let's mark the, instead of
10 the 11 by 17's, let's mark the full-size plans. And that
11 will be Exhibit 229 is the new, full-size plan. And page 1,
12 as I said, is A and then this one will be 229B and this one
13 will be 229C is page 3. And then I can't recall how we did
14 it before with the additional plans, whether we just
15 continued that numbering system and whether that would make
16 sense with some parallelism here would be, or we just have
17 new, additional numbers.
18 MS. ROSENFELD: I'm looking.
19 MR. GROSSMAN: I remember one was a little
20 misleading.
21 MS. HARRIS: It looks like based on the 153, 54
22 series, that would be all independent numbers. If you look
23 at Exhibits 152 through 156?
24 MR. GROSSMAN: All right. So let's call the
25 overall illustrative plan, we'll call Exhibit 230, plan.

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1 (Exhibit No. 230 was marked for
2 identification.)
3 MR. GROSSMAN: And then all right. And then 230
4 is the overall illustrative plan, 7/31/13. Then the redline
5 overlay will be Exhibit 231, redline overlay of special
6 exception plan, 7/31/13.
7 (Exhibit No. 231 was marked for
8 identification.)
9 MR. GROSSMAN: All right. And then the truck turn
10 exhibit will be Exhibit 232. Truck turn exhibit and that's
11 also dated 7/31/13.
12 (Exhibit No. 232A and 232B were
13 marked for identification.)
14 MR. BRANN: There's two sheets.
15 MR. GROSSMAN: Two sheets on that, so we've got --
16 are they labeled differently? All right. Well, let's --
17 what is, page 1 is showing what with page 2?
18 MS. HARRIS: Page 1 is showing the past delivery
19 truck versus the warehouse truck.
20 MR. GROSSMAN: Okay. So --
21 MS. CORDRY: Do you want to call it tanker truck
22 and the other delivery truck?
23 MR. GROSSMAN: A is --
24 MS. CORDRY: Call that tanker truck delivery or
25 tanker truck?

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1 MR. GROSSMAN: All right. A is the tanker truck,
2 232A. 232B. A is tanker truck --
3 MS. CORDRY: And B would be the delivery trucks.
4 MR. GROSSMAN: You mean warehouse delivery truck?
5 MS. CORDRY: Warehouse delivery trucks, yes.
6 MR. GROSSMAN: B is warehouse delivery trucks.
7 Okay. And then Exhibit 233 is pedestrian path.
8 MS. HARRIS: 233? Is that?
9 MR. GROSSMAN: 233 is pedestrian path. I guess A
10 would be the pedestrian path circulation map. And that's
11 also dated 7/13/13. And B will be cross-sections. What, B
12 is cross-sections of what?
13 MS. HARRIS: Of the pedestrian path.
14 MR. GROSSMAN: Oh, the pedestrian path?
15 MS. HARRIS: And the path.
16 MR. GROSSMAN: No, but what is C then? Also --
17 MS. CORDRY: There are different sections of it.
18 I believe if you look at, I think it's starting A, B starts
19 at the northwest corner of the mall up by the Giant and the
20 Target, is that correct, I believe?
21 MS. ROSENFELD: Correct.
22 MS. CORDRY: And comes out on the west side of the
23 point that's labeled A and then the next, then it would turn
24 into B from that point, going over to the next sheet and
25 then C.

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1 MR. GROSSMAN: Is there a good way to label is
2 what I'm getting at other than just the term cross-sections,
3 233B versus 233C? They're both cross-sections.
4 MS. CORDRY: Well, you could say A.
5 MS. HARRIS: You could say cross-section A, cross-
6 section B, cross-section --
7 MS. CORDRY: Well, B and C --
8 MS. HARRIS: -- B and C and then cross-section D?
9 So 23B is cross-section A.
10 MS. ROSENFELD: I'm sorry, cross-section?
11 MS. HARRIS: A.
12 MR. GROSSMAN: Cross-section A.
13 MS. HARRIS: Then 23 --
14 MR. GROSSMAN: Is cross-section B and C?
15 MS. HARRIS: -- 233C is B and C.
16 MR. GROSSMAN: And D is cross-section --
17 MS. HARRIS: D.
18 MR. GROSSMAN: -- D. Okay. And that's Exhibit
19 233A, Exhibit 233B. The other, 233C and Exhibit 233D.
20 (Exhibit Nos. 233A through 233D
21 were marked for identification.)
22 MR. GROSSMAN: Okay. And so, and that leaves us
23 with the 11 by 17's which I'll ask my staff to follow the
24 same routine. We'll make that Exhibits 234, 5, 6 and 7, and
25 they'll have the same -- because they're 11 x 17.

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1 (Exhibit Nos. 234 through 238 were
2 marked for identification.)
3 MS. ROSENFELD: So you're just going to follow the
4 extension?
5 MR. GROSSMAN: Pardon me?
6 MS. ROSENFELD: Just follow then sequentially in
7 the same order?
8 MR. GROSSMAN: Yes, right. 234 is going to be the
9 11 by 17 equivalent of 229, A, B and C, and then Exhibit 235
10 will be the equivalent, the 11 by 17 equivalent of 230.
11 Exhibit 236 will be the equivalent of --
12 MS. SAVAGE: You're separately numbering the 11 by
13 17's?
14 MS. ROSENFELD: Yes.
15 MR. GROSSMAN: Yes.
16 MS. SAVAGE: Okay.
17 MR. GROSSMAN: Yes, just -- 236 will be the 231,
18 the 11 by 17 equivalent. 237 will be the equivalent of, 11
19 by 17 equivalent of 232. And 238, if I counted correctly,
20 will be the equivalent of 233. All right.
21 MS. HARRIS: Now, Mr. Grossman, there was the 11
22 by 7, I mean 8 and a half by 11?
23 MR. GROSSMAN: Yes, one more. We have --
24 MS. HARRIS: Updated engineering report.
25 MR. GROSSMAN: Updated engineering report will be

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1 Exhibit 239 if I haven't miscounted. Stop me if I've
2 miscounted. Exhibit 239, updated engineering report,
3 7/31/13.
4 (Exhibit No. 239 was marked for
5 identification.)
6 MR. GROSSMAN: All right. Ms. Adelman, did you
7 have something you wanted to add?
8 MS. ADELMAN: I just want a clarification please
9 that pedestrian circulation, if I read it correctly, the
10 proposed pedestrian path is now going to be 5-foot wide and
11 it is going to begin at the Valleyview extension which acts
12 as the ring road and continues around the south and the west
13 to the south ending at the crosswalk for the school, is that
14 correct?
15 MS. HARRIS: That's correct.
16 MR. GROSSMAN: Yes.
17 MS. ADELMAN: And has this been approved or
18 sanctioned by --
19 MS. HARRIS: Yes, it has.
20 MS. ADELMAN: -- Planning Staff?
21 MS. HARRIS: By Planning Staff, no. We're
22 submitting contemporaneously with --
23 MR. GROSSMAN: Submitting this at the same time to
24 the Planning Staff.
25 MS. ADELMAN: Okay.

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1 MS. ROSENFELD: By tenants? Do you have release?
2 MS. HARRIS: We have it, yes, we'll be getting a
3 letter from --
4 MS. CORDRY: I'd actually make one clarification.
5 It looks to me like it actually ends at the Torrance
6 Court --
7 MR. BRANN: That's correct.
8 MS. CORDRY: -- crosswalk.
9 MR. BRANN: It ends at the Torrance Court
10 crosswalk.
11 MS. CORDRY: And then it goes up there to where
12 the Sears outlet is picks up at that point?
13 MR. BRANN: Correct.
14 MS. CORDRY: Okay.
15 MS. HARRIS: That is correct.
16 MS. CORDRY: And goes over to the north side where
17 the sidewalk ends on the north side, the west of --
18 MR. BRANN: Well, it ends at he Torrance Court
19 crosswalk.
20 MS. CORDRY: Right. Exactly.
21 MR. GROSSMAN: So are you going to file this
22 tomorrow with technical staff?
23 MR. BRANN: We'll have it to Parks and Planning
24 tomorrow.
25 MR. GROSSMAN: Okay. Good.

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1 MR. BRANN: Yes, sir.
2 MR. GROSSMAN: And would you ask them if they --
3 well, obviously, they're not going to have a response by
4 tomorrow, but we do have a little time because our next
5 hearing is in September. So ask them if they can get
6 something out in a couple of weeks.
7 MS. HARRIS: Yes. Okay.
8 MS. ADELMAN: And will there be electronic copies
9 of these also or just the hard copies?
10 MR. GROSSMAN: No, there will be electronic
11 copies.
12 MR. BRANN: We can provide the electronic
13 copies --
14 MR. GROSSMAN: Yes.
15 MR. BRANN: Sure.
16 MR. GROSSMAN: Because I use the electronic copies
17 when I do my stuff.
18 MS. ADELMAN: Thank you.
19 MR. GROSSMAN: Anyway, well, that's good. I mean
20 I think that however this ends up, if it does end up with a
21 special exception, at least there's a pedestrian path which
22 the community wanted of the size that it sounds like staff
23 would approve. So, okay. Is there anything else that we
24 have to discuss? Okay. So --
25 MS. ADELMAN: I just had one more question.

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1 MR. GROSSMAN: Yes?
2 MS. ADELMAN: The last version of the pedestrian
3 path, excuse me, Mr. Grossman.
4 MR. GROSSMAN: Yes?
5 MS. ADELMAN: The version of the pedestrian path
6 would it begin at the loading dock and ended at the Stephen
7 Knolls School crosswalk, that was elevated. Is this an
8 elevated for walking also?
9 MS. HARRIS: It is.
10 MR. BRANN: This is elevated.
11 MS. HARRIS: And it's reflected in this section.
12 MR. BRANN: If you look at the spec sheets --
13 MS. ADELMAN: All right. Okay.
14 MR. BRANN: -- it will show you it is elevated.
15 MR. GROSSMAN: Okay. Is there anything else?
16 Then when we meet again, don't forget we'll be downstairs in
17 the second floor and we have two witnesses in the offing at
18 least. Well, we hope for Dan Duke in the afternoon --
19 MS. HARRIS: Well, we will have Mr. Cronyn and
20 we --
21 MR. GROSSMAN: Oh, Mr. Cronyn, I forgot about --
22 MS. HARRIS: Right. And then Mr. Willard and
23 hopefully --
24 MR. GROSSMAN: Right.
25 MS. HARRIS: -- time will allow for Dan Duke as

1 well.
 2 MR. GROSSMAN: Right.
 3 MS. HARRIS: And then as soon as I know that, I'll
 4 let everyone know.
 5 MR. GROSSMAN: Very good. Okay. Anything else?
 6 MR. SILVERMAN: You will not have me.
 7 MR. GROSSMAN: Pardon me?
 8 MR. SILVERMAN: You will not have me.
 9 MR. GROSSMAN: All right. We will miss you then,
 10 Mr. Silverman. You'll be here in spirit, I'm sure. All
 11 right. Then we are adjourned until Friday at 9:30.
 12 MS. HARRIS: Thank you.
 13 MR. GROSSMAN: Thank you.
 14 (Whereupon, at 5:37 p.m., the hearing was
 15 adjourned.)
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. Digitally signed by Tracy M. Hahn

ELECTRONIC CERTIFICATE

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

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

By:

 Tracy M. Hahn, Transcriber

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