

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
:
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A hearing in the above-entitled matter was held on August 2, 2013, commencing at 9:38 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, 2nd Floor Council Hearing Room, Rockville, Maryland 20850
before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

For the Applicant:

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E X H I B I T S

Exhibit No.		Marked/Received
240	Letter from Blue Lagoon	12
241(a)	L1.01 - new planting plan	148
241(b)	L1.02 - new planting plan	148
241(c)	L1.03 - new planting plan	148
241(d)	L1.04 - new planting plan	148
241(e)	L1.05 - new planting plan	148
242	Stormwater management concept plan for former special exception application S-2794	159
243	Revised Exhibit 16, study of impact on nearby property values	223
244	Aerial photograph of neighborhood	287
245(a)	Landscape master plan, revised August 2, 2013	287
245(b)	Landscape sections, revised August 2, 2013	287
245(c)	Landscape section and elevation, revised August 2, 2013	288

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Joseph Cronyn				
By Ms. Harris	26			283
By Mr. Adelman			64, 222	
By Ms. Rosenfeld			244	
By Ms. Duckett			276	
By Mr. Scharman			278	
Dan Duke				
By Ms. Harris	89			209
By Mr. Sheveiko			103	
By Ms. Rosenfeld		168		210
By Mr. Adelman			194	
By Mr. Scharman				208

P R O C E E D I N G S

1

2 MR. GROSSMAN: This is the 11th day of a public

3 hearing in the matter of Costco Wholesale Corporation, Board

4 of Appeals No. S-2863, OZAH No. 13-12, petition for a

5 special exception pursuant to Zoning Ordinance Section

6 59-G-2.06 to allow petitioner to construct and operate an

7 automobile filling station which would include 16 pumps.

8 The subject site is located at 11160 Veirs Mill Road, Silver

9 Spring, Maryland, Lot N, 631 Wheaton Plaza, Parcel 10, also

10 known as the Westfield Wheaton Mall, and it is zoned C-2,

11 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, July 30, and July 31, 2013. It was noticed to

15 resume again today. The next session has been noticed for

16 Monday, September 9, 2013, in this room, second floor

17 OZAH/Board of Appeals hearing room, in this building, the

18 Council Office Building, at 9:30 a.m.

19 This hearing is conducted on behalf of the Board

20 of Appeals. My name is Martin Grossman. I'm the Hearing

21 Examiner, which means I will take evidence and write a

22 report and recommendation to the Board of Appeals which will

23 make the decision in this case. Will the parties identify

24 themselves for the record, please?

25 MR. BRANN: Erich Brann with Costco.

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1 MR. GROSSMAN: Good morning.
2 MS. HARRIS: Pat Harris with Lerch, Early, &
3 Brewer.
4 MR. GROSSMAN: Good morning.
5 MS. CORDRY: Karen Cordry with KHCA.
6 MS. ROSENFELD: Michele Rosenfeld, KHCA.
7 MR. ADELMAN: And Dr. Mark Adelman for the
8 Coalition.
9 MR. GROSSMAN: Okay. Okay. And do we have
10 anybody -- I see Mr. Scharman is in the audience, and
11 Mrs. Scharman. Do you have -- anybody else who wishes to be
12 heard today? Well, you can all identify yourselves, in
13 fact, yes.
14 MS. DUCKETT: Well, Eleanor Duckett, Kensington
15 View.
16 MR. GROSSMAN: Yes. Ms. Savage, go ahead.
17 MS. SAVAGE: Oh, Donna Savage, KHCA.
18 MR. GROSSMAN: Mr. Scharman, Ms. Scharman.
19 MR. SCHARMAN: Clifford Scharman on behalf of
20 myself.
21 MS. SCHARMAN: Barbara Scharman on behalf of
22 myself.
23 MR. GROSSMAN: Yes.
24 MS. ADELMAN: And Abigail Adelman, Coalition.
25 MR. GROSSMAN: All right. Sheveiko.

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1 MR. SHEVEIKO: Danila Sheveiko, KHCA.
2 MR. GROSSMAN: All right. And the other gentleman
3 in the audience?
4 MR. CRONYN: Joseph Cronyn on behalf of the --
5 MR. GROSSMAN: Mr. Cronyn, a witness to be named
6 by the applicant in the case. I see nobody else in the
7 audience; so I won't ask if anybody else needs to
8 participate today.
9 Okay. A couple of preliminary matters. I noticed
10 that Ms. Harris confirmed by e-mail that copies of the final
11 plans that were submitted on May 31 and the engineering
12 report, the final engineering report that were handed out at
13 that July 31 hearing, have been conveyed to technical staff
14 with a request that they review them and they indicated in a
15 response that they will get right on it as soon as possible.
16 Second item: The witnesses scheduled for today
17 were, according to Ms. Harris's e-mail, Joe Cronyn, who just
18 identified himself; Dan Duke, to the extent of his
19 availability; and Mark Willard, who may be here just for
20 direct, depending on our little discussion we'll have about
21 the timing. And Ms. Harris had asked you let me know about
22 the timing of witnesses and the timing of the break for
23 lunch for Mr. Duke so that we can assure his presence, to
24 the extent possible. I received an e-mail, I guess it was
25 issued this morning from Ms. Rosenfeld, saying that since

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1 she got Mr. Willard's plans late last night, I guess, or
2 4:00 --
3 MS. ROSENFELD: It was about 4:30, 4:40.
4 MR. GROSSMAN: -- 4:30 last night, that she did
5 not have sufficient time to prepare for cross-examination.
6 So I don't see any reason that she indicates in her e-mail
7 that we can't go ahead with his direct examination, and then
8 we can deal with the other issues -- I didn't receive a
9 similar objection from other parties, but we can see about
10 that.
11 MS. HARRIS: And one thing that Ms. Rosenfeld and
12 I discussed is potentially, depending on the timing of the
13 day, taking an afternoon break to provide sufficient time so
14 that they can thoroughly review the plans. I think once
15 Mr. Willard testifies, they'll realize that they probably
16 don't need that much time.
17 MR. GROSSMAN: Okay.
18 MR. ADELMAN: For the --
19 MS. ADELMAN: Mr. Grossman --
20 MR. GROSSMAN: Ms. Adelman.
21 MS. ADELMAN: -- just to make a point that I
22 received the plans at 4:26 and I forwarded them to
23 Mr. Sheveiko, who is going to be cross-examining, and -- at
24 4:30 -- and he was over to our home last night until 10:30
25 because he needed additional information that I could

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1 provide from old information that has been supplied by
2 Mr. Willard. So I don't know whether he was up all night,
3 but it's, in a way, from my point of view, prejudicial that
4 we received them so, so late in the day.
5 MR. GROSSMAN: Okay. Well, I'm not, I'm not going
6 to force cross-examination if you're not ready for it, given
7 that circumstance. I'll rely on Mr. Sheveiko to tell me
8 that. It may be that he's ready. He looks relatively
9 alert, I think. What about that, Mr. Sheveiko?
10 MR. SHEVEIKO: So he's going to be only in the
11 second part of the day?
12 MR. GROSSMAN: Yes.
13 MR. SHEVEIKO: And, Pat, what time do you think in
14 the second part of the day would he be available?
15 MS. HARRIS: It's hard to say. How I anticipate
16 the schedule is, once we get through the preliminary
17 matters, Mr. Cronyn will testify and we'll cross him and
18 then Dan Duke will be available between 12:30 and 1:00. So
19 whether Mr. Willard gets on in the morning or whether we
20 wait until the afternoon to put him on after Dan Duke -- I
21 mean, another possibility is we can say Mr. Willard needs to
22 come back on 9/9 and we'll put him on direct on 9/9. I
23 think that makes perfect sense as well.
24 MR. GROSSMAN: Okay.
25 MR. SHEVEIKO: Well, I think that the direct of

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1 Mr. Willard can go today, and if I have to leave, because I
2 do have a client appointment, then we'll postpone until
3 September the cross, if that's okay.
4 MR. GROSSMAN: Ms. Harris.
5 MS. HARRIS: I find it a little difficult to have
6 such wide gaps between direct and cross. It seems it's an
7 inefficient way of doing things. So, to some extent, it may
8 make sense just to have Mr. Willard come on the 9th and do
9 direct testimony at that point.
10 MR. GROSSMAN: Well, I'll leave that option to
11 you --
12 MS. HARRIS: Okay.
13 MR. GROSSMAN: -- and it may be that there's a
14 sufficient break and the other side will be comfortable in
15 doing their cross today.
16 MS. HARRIS: Okay.
17 MR. GROSSMAN: You can discuss it during the
18 break --
19 MS. HARRIS: Yes, that's perfect.
20 MR. GROSSMAN: -- and see how that, how that works
21 out.
22 MS. HARRIS: Okay.
23 MR. GROSSMAN: I guess the point is, I'm not going
24 to force them to do a cross-exam, having just gotten the --
25 MS. HARRIS: I understand.

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1 MR. GROSSMAN: -- the plans late in the afternoon
2 yesterday.
3 MS. HARRIS: Understood.
4 MR. GROSSMAN: Okay. Also, I received on my desk
5 this morning a letter from Blue Lagoon Productions -- and I
6 had copies made that I could hand out to folks -- in
7 response to the question raised on behalf of Mr. Sullivan,
8 as to whether he could get a copy of his portion, entire
9 portion of his testimony, and let me mark this as an
10 exhibit. I don't see, does anybody have -- were the exhibit
11 lists handed out this morning?
12 MR. ADELMAN: No.
13 MR. GROSSMAN: Ah. All right. Let's take a
14 two-minute recess while I make sure that we get copies of
15 the exhibit list handed out, I'm not sure why that didn't
16 happened today, and then we can add this as an exhibit. So
17 we'll take a very brief recess here while I get copies of
18 the exhibit list today.
19 MR. ADELMAN: Mr. Grossman, could you just ask
20 people in your office --
21 MR. GROSSMAN: I will ask.
22 MR. ADELMAN: -- if they had any problem with the
23 other note?
24 MR. GROSSMAN: I will.
25 MR. ADELMAN: Okay, thank you.

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1 MR. GROSSMAN: Thank you. They may not perceive a
2 problem because they also would have access directly, but I
3 will ask them to check. Thank you.
4 MR. ADELMAN: Fine. Thank you, sir.
5 (Whereupon, a brief recess was taken.)
6 MR. GROSSMAN: All right. Let's go back on the
7 record. The exhibit list that I just handed out does not
8 have anything from, e-mails from yesterday. It just covers
9 through our hearing on July 31. So we haven't exhibitized,
10 as it were, anything else. And we'll mark the letter from
11 Blue Lagoon, which is dated today, as Exhibit 240. I think
12 it's a letter from Blue Lagoon, declining Mr. Sullivan's
13 request for a copy of the videotape. Okay. And -- all
14 right, let's try to work it out during the break because --
15 (Exhibit No. 240 was marked
16 for identification.)
17 MR. ADELMAN: Right, fine.
18 MR. GROSSMAN: Okay. Thank you. All right. And
19 anybody have any comment regarding the letter from Blue
20 Lagoon? You all have a copy of it now.
21 MS. HARRIS: No comment.
22 MS. ROSENFELD: No comment.
23 MR. GROSSMAN: Okay. I don't believe I have any
24 authority to direct Blue Lagoon to provide a copy. My
25 authority would be to say that they can't film here, but

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1 given the Board rule that suggests that filming should be
2 permitted if it's not disruptive -- and it has not been
3 disruptive -- I am not going to order that. I would note,
4 however, yes, it is a public session, but it is also true
5 that court proceedings are public sessions and often courts
6 do not permit filming. So it's not, it's a mixed bag as far
7 as that, but it's not -- once again, I think the
8 open-government policy of this county certainly favors the
9 ability to be able to video these kinds of public sessions,
10 and I certainly wouldn't hinder, hinder that.
11 Okay. Enough said on that point. We'll go on.
12 Any other preliminary matters? Ms. Harris.
13 MS. HARRIS: A couple of scheduling issues.
14 Depending on how we proceed today, on September 9th I would
15 note that David Sullivan is not available. He had informed
16 us of that a while ago, but -- so we would be definitely
17 putting on Dr. Chase and potentially Mark Willard, depending
18 on what happens today, and then Mr. Sullivan on September
19 16th for his final testimony.
20 MR. GROSSMAN: That's actually, the next
21 session --
22 MS. HARRIS: Is the 9th.
23 MR. GROSSMAN: Yes, but the next session after
24 that --
25 MS. HARRIS: Would be the 16th.

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1 MR. GROSSMAN: Is it the 16th? I can't recall
2 whether --
3 MR. ADELMAN: Yes.
4 MR. GROSSMAN: Okay.
5 MS. HARRIS: And then the other scheduling, so
6 that, that will leave -- those aren't full days, obviously;
7 so we may need, I think we need to discuss how to fill those
8 days. I mean, that would complete our case once
9 Mr. Sullivan completes his testimony.
10 MR. GROSSMAN: Right.
11 MS. HARRIS: The other thing is that our needs
12 expert, Mr. Flynn, we would like him to be available when
13 opponents testify to the needs issue --
14 MR. GROSSMAN: Right.
15 MS. HARRIS: -- and unfortunately Mr. Flynn has
16 had a long-standing extended trip planned. He has a little
17 bit of flexibility on when he leaves, but he needs to leave
18 by the end of September. And so what we would request from
19 the other side, if possible, is whoever is going to be
20 testifying to the needs issue, whether they would be able to
21 testify either the 9th, the 16th or, at the very latest, the
22 20th so that we can have Mr. Flynn here during that time.
23 MR. GROSSMAN: All right. Response to that
24 suggestion? Any problems with that?
25 MS. CORDRY: Can we respond after a break and --

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1 MR. GROSSMAN: Sure.
2 MS. ROSENFELD: Can we respond after lunch?
3 MR. GROSSMAN: Absolutely.
4 MS. HARRIS: That's fine, yes.
5 MR. GROSSMAN: And you can also, off record,
6 discuss with each other the timing of witnesses that is most
7 convenient for everybody, as we've --
8 MS. CORDRY: Sure.
9 MR. GROSSMAN: -- I think this has been very
10 civilly conducted, to the extent we could, with all of these
11 parties, and I think that to the extent that we can
12 convenience the parties and the witnesses, we should do so.
13 All right.
14 MS. HARRIS: Then the other scheduling thing
15 was -- and we had, we have exchanged e-mails with opponents
16 regarding their order of witnesses --
17 MR. GROSSMAN: Yes.
18 MS. HARRIS: -- but we were hoping that we'd be
19 able to get a sense of their order of witnesses by August
20 9th at the latest, and I say that because of vacation
21 schedules and such --
22 MR. GROSSMAN: Right.
23 MS. HARRIS: -- it really doesn't leave a lot of
24 time for preparation on behalf of the applicant if we don't
25 get them by about that time.

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1 MR. GROSSMAN: All right. Dr. Adelman.
2 MR. ADELMAN: Yes. I'd rather our chair comment
3 on that, but that's going to be problematic.
4 MR. GROSSMAN: All right. Ms. Adelman --
5 MS. ADELMAN: Yes, sir.
6 MR. GROSSMAN: -- your husband says she would, he
7 would prefer you to comment on --
8 MS. ADELMAN: On?
9 MR. GROSSMAN: On the question of availability of
10 a list of who the witness would be by August 9, or the order
11 of the witnesses.
12 MS. ADELMAN: Can I discuss that after the break?
13 MR. GROSSMAN: Certainly.
14 MS. ADELMAN: I want to talk with Ms. Rosenfeld.
15 MR. GROSSMAN: All right.
16 MS. CORDRY: I would note that, as with everything
17 else in this case, things change. So whatever you give is
18 going to be subject to being adjusted perhaps. So --
19 MS. HARRIS: Absolutely, and we --
20 MR. GROSSMAN: All right.
21 MS. HARRIS: -- recognize that and certainly
22 that's gone both ways, but I think it would be helpful.
23 MR. GROSSMAN: Okay.
24 MS. HARRIS: And then one final preliminary matter
25 on our part.

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1 MR. GROSSMAN: Yes.
2 MS. HARRIS: I wanted to get clarification on your
3 comment about wanting final documents by August 9th unless
4 for good cause. You noted that, first of all, that that
5 would provide a 30-day window before the next hearing.
6 MR. GROSSMAN: The next hearing, right.
7 MS. HARRIS: If David Sullivan -- and, again, part
8 of this is just travel for business and vacations that are
9 coming up -- to the extent Mr. Sullivan needs to submit
10 additional information, we would hope that we could extend
11 that, not to the 9th, but to the 16th. And, again, that
12 would still give 30 days since he's not going to be
13 testifying until September 16th.
14 MR. GROSSMAN: What are we talking about in terms
15 of the additional information?
16 MS. HARRIS: He needs to submit the revision to
17 189(b)(2) and the corrected report regarding the parts per
18 billion, the --
19 MR. GROSSMAN: Right.
20 MS. HARRIS: -- conversion. And actually, those
21 three things he can get in before, but there's one other
22 item which had to do with this issue of the nitrogen, the
23 NOx issue --
24 MR. GROSSMAN: Right.
25 MS. HARRIS: -- and so that one piece, we would

1 request that that could come in on the 16th as opposed to
 2 the 9th.
 3 MS. ROSENFELD: I'm sorry. Can you go through
 4 that list again of what you expect he's going to update?
 5 MS. HARRIS: He needs to update 189(b)(2), Exhibit
 6 189(b)(2). He needs to correct his reports, his report
 7 regarding the parts per billion because of the transposed
 8 columns. He needs to provide the formula for conversion
 9 from parts per billion to cubic, micrograms per cubic meter.
 10 And then -- so those three things, and then the fourth thing
 11 is the issue that came up at the last hearing, which is why
 12 we adjourned the hearing or adjourned his testimony, which
 13 had to do with the issue of the nitrogen and his
 14 clarification of that.
 15 MR. GROSSMAN: All right. First of all, as I
 16 understand it, you used transposed columns. It wasn't
 17 exactly transposed columns. It was that -- he indicated to
 18 me the figure for parts per billion was the correct figure;
 19 he just had multiplied -- he divided instead of
 20 multiplied --
 21 MS. HARRIS: That's right. I'm sorry.
 22 MR. GROSSMAN: -- in terms of converting it.
 23 MS. HARRIS: You're correct.
 24 MR. GROSSMAN: Right. Okay.
 25 MS. CORDRY: One question. There was also

1 discussion -- and we would like to get this done now and not
 2 two weeks from now -- in terms of providing the raw data.
 3 I've gone back and looked, and Dr. Cole, I think, has
 4 looked, and we're having trouble finding it and that was
 5 what -- I talked to Ms. Harris about that. So I think --
 6 MR. GROSSMAN: Right.
 7 MS. CORDRY: -- that, we would certainly hope that
 8 that data would be provided.
 9 MS. HARRIS: And it's my understanding that Dr.,
 10 that Mr. Sullivan has been in touch or is going to be in
 11 touch today with --
 12 MS. CORDRY: Okay, good.
 13 MS. HARRIS: -- Dr. Cole. So they're
 14 communicating.
 15 MR. GROSSMAN: Okay.
 16 MS. CORDRY: Yes. I just want to make sure that
 17 that kind of data comes over -- whatever has already been
 18 done comes over right away and we're not waiting on that.
 19 MR. GROSSMAN: Okay.
 20 MS. CORDRY: Now, if he wants to create another
 21 report, that's a different question, but in terms of
 22 existing data, we don't want that being delayed at all.
 23 MR. GROSSMAN: Okay. Is that fair? So we get all
 24 the existing data by August 9?
 25 MS. CORDRY: Well, no. If it's existing, we

1 should be able to get it right now.
 2 MR. GROSSMAN: Well, yes, as soon as possible, but
 3 I'm just saying, that was an outside date --
 4 MS. CORDRY: Right.
 5 MR. GROSSMAN: -- because that gave you 30 days.
 6 MS. HARRIS: And I actually think -- and, again,
 7 this is a conversation that needs to occur between
 8 Mr. Sullivan and Dr. Cole -- that that data has been
 9 provided. It was provided back in November. So perhaps
 10 it's just telling Mr. Cole --
 11 MR. GROSSMAN: Where to find it.
 12 MS. HARRIS: -- Dr. Cole where to find it.
 13 MS. CORDRY: Both he and I had been looking at
 14 what is provided, and neither one of us can find this. Now,
 15 maybe we're misunderstanding --
 16 MR. GROSSMAN: Right.
 17 MS. CORDRY: -- what he says exists, but in terms
 18 of that kind of data --
 19 MR. GROSSMAN: Right. Let's try to --
 20 MS. CORDRY: -- we spent a lot of time looking.
 21 So --
 22 MS. HARRIS: Right.
 23 MR. GROSSMAN: Let's try to resolve that to
 24 avoid --
 25 MS. HARRIS: Absolutely.

1 MR. GROSSMAN: -- unnecessary time consumption by
 2 the opposition. And --
 3 MS. ROSENFELD: Maybe they can talk today.
 4 MS. CORDRY: Right.
 5 MR. ADELMAN: Mr. Grossman --
 6 MR. GROSSMAN: Yes.
 7 MR. ADELMAN: -- with respect to, I believe it's,
 8 it's the table which had multiple incomplete headings and
 9 labelings, which I think you in fact requested as well as
 10 Opposition, that table, my opinion, should not take very
 11 long to prepare. I don't understand the delay.
 12 MS. HARRIS: No, and in fact, as I said, that will
 13 be in by August 6.
 14 MR. GROSSMAN: That one will be in by August 9.
 15 MS. HARRIS: 9th.
 16 MR. ADELMAN: Fine.
 17 MS. ROSENFELD: Okay.
 18 MR. GROSSMAN: She's saying that just, there was
 19 one item regarding nitrous oxide that might be delayed a
 20 week, until September -- until August 16, which would still
 21 give you the 30 days before the next hearing date in which
 22 Mr. Sullivan is going to appear. I think that's a
 23 reasonable request.
 24 MS. ROSENFELD: And I didn't hear any mention of
 25 any updated noise analysis. Are you planning to provide

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1 that, and if so --
2 MS. HARRIS: Yes, I'm sorry, and that, I will
3 check on that. I --
4 MR. GROSSMAN: You said that additional
5 measurements were taken.
6 MS. HARRIS: Yes. Let me -- I think that can be
7 in by August 9th, and I will reserve. Let me check at the
8 break --
9 MR. GROSSMAN: Okay.
10 MS. ROSENFELD: Okay.
11 MS. HARRIS: -- and I'll get back to you on that
12 one.
13 MR. GROSSMAN: Okay.
14 MR. ADELMAN: And one last question.
15 MR. GROSSMAN: Dr. Adelman.
16 MR. ADELMAN: Given that Dr. Chase's testimony is
17 dependent on Mr. Sullivan's filings, I question the logic,
18 the whole having Dr. Chase testify before Mr. Sullivan has
19 completed clarifying his numbers, analysis, et cetera.
20 MR. GROSSMAN: All the documentation from
21 Mr. Sullivan will be in, well in advance of Mr. Chase's
22 testimony, of Dr. Chase's testimony. It's -- the completion
23 of Mr. Sullivan's testimony may take place after Dr. Chase
24 testifies, that's all, but all of the documentation and
25 corrections that were going to be made will be in at the

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1 latest by August 16 and most of it will be in by August 9.
2 And --
3 MR. ADELMAN: I don't wish to be argumentative,
4 but as we've experienced, documentation provided is not
5 necessarily the documentation that becomes accepted because
6 of revisions. And so given the pattern, it's not
7 unreasonable to suggest that there may be further
8 discussion, corrections, amendments, whatever you wish to
9 call them, and I repeat, I believe it's reasonable to
10 suggest that Dr. Chase testify after Mr. Sullivan is
11 complete, but I recognize --
12 MR. GROSSMAN: In a perfect world, I would agree
13 with you, but we do, we've spent a lot of time, a lot of
14 hearing dates, and we want to make sure that we use up the
15 published hearing dates to the best of our ability; that is,
16 we occupy that time. So I'm not going to require that.
17 Really, the order of witnesses is up to the applicant, in
18 any event, that they're calling, and the same way as the
19 order of your witnesses will be up to you. Okay.
20 MS. HARRIS: And then just in terms of your
21 comment about for good cause, I mean, as we proceed -- and
22 this applies to both sides, really -- if there's corrections
23 or clarifications, I'm assuming that that type of corrective
24 document would be acceptable if --
25 MR. GROSSMAN: I'm responding to what I think is a

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1 legitimate concern raised by the opposition. Multiple
2 changes in the course of this puts a strain on their time
3 and preparation --
4 MS. HARRIS: Yes, understood.
5 MR. GROSSMAN: -- and so that's the reason for the
6 restriction. A clarification, to the extent that you make
7 something more clear that you've already said, is one thing.
8 A change that, which requires them to backpedal on whatever
9 preparation they've done for their cross-examination is
10 something else. So that's the --
11 MS. HARRIS: Understood. Okay.
12 MR. GROSSMAN: -- that's the reason. I'm saying
13 let's -- there have been a number of changes here. Some of
14 them have been an admirable effort to respond to concerns
15 raised by the community, and others have just been to
16 correct errors and so on. And so, you know, we do want to
17 give them, not have a moving target here --
18 MS. HARRIS: Understood.
19 MR. GROSSMAN: -- in fairness.
20 MS. ROSENFELD: And we appreciate that.
21 MR. ADELMAN: Yes. Thank you, sir.
22 MS. CORDRY: I guess, from my perspective, I would
23 have to say, no. I think if there are still errors after
24 August 9th or August 16th, that's what the applicant has to
25 live with. They've had, you know --

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1 MR. GROSSMAN: Yes.
2 MS. CORDRY: -- three years to prepare these
3 reports correctly, and at some point, the answer is you do
4 your job, you put your reports in, and we deal with them,
5 and if they are wrong, they're wrong, and -- because that's
6 exactly what we're getting here. Every time we point out an
7 error we get a corrected report. That's exactly what your
8 ruling was going to.
9 MR. GROSSMAN: I understand. I understand, and I
10 did make a distinction between corrections and
11 clarifications.
12 MS. CORDRY: Thank you. Yes, thank you.
13 MR. GROSSMAN: On the other hand, my fundamental
14 job is to, as best as I can, find the facts as accurately as
15 I can. So with due consideration for the strain on the
16 parties, I want to make sure that to the extent I can, that
17 the evidence I have is the best evidence that most
18 accurately represents the facts on the ground, and so I'm
19 very reluctant to make absolute requirements here. That's
20 why I said that it would have to be good cause, but I think
21 the point has been made that we don't want to have a moving
22 target here. So that's why I'm not stating things in
23 absolute terms. My fundamental role here is to get the best
24 picture of the facts that I can.
25 Okay. All right. Any other preliminary matters?

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1 Hearing none --
2 MS. ROSENFELD: No, thank you.
3 MR. GROSSMAN: -- I think we're ready for our next
4 witness.
5 MS. HARRIS: Thank you. Our next witness is
6 Mr. Joe Cronyn.
7 MR. GROSSMAN: Oh, it also occurs to me, I saw
8 that you had e-mailed the landscape plans or whatever it
9 was. I didn't really have an opportunity this morning to
10 take a look at that. Do you have large copies of those
11 that --
12 MS. HARRIS: When Mr. Willard arrives, we will
13 have the hard copies.
14 MR. GROSSMAN: Okay. Okay. All right.
15 Mr. Cronyn, would you raise your right hand, please?
16 (Witness sworn.)
17 MR. GROSSMAN: All right.
18 MS. HARRIS: Thank you.
19 DIRECT EXAMINATION
20 BY MS. HARRIS:
21 Q Mr. Cronyn, I'd like to talk to you about the
22 Costco gas station and whether it will have an adverse
23 effect on the local property values, but first, can you
24 please introduce yourself to Mr. Grossman?
25 A My name is Joseph Cronyn, and I'm with Valbridge

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1 Property Advisors, Lipman, Frizzell & Mitchell, which is a
2 major real estate appraisal and consulting firm in the
3 Baltimore-Washington area.
4 Q And how long have you been with Lipman, Frizzell &
5 Mitchell?
6 A I've been with Lipman, Frizzell & Mitchell for 16
7 years.
8 Q Can you describe your education, please?
9 A My most recent degree was an MBA from Loyola
10 University Maryland, and I've been in the real estate
11 business for over 35 years.
12 Q And have you ever testified as an expert witness
13 before?
14 A Many times.
15 Q And where have you testified?
16 A In most of the counties of Maryland --
17 Q Yes.
18 A -- including Montgomery County.
19 Q And have you been qualified as an expert witness
20 in Montgomery County?
21 A Yes.
22 Q Yes. And --
23 MS. HARRIS: Well, I'd like to move Mr. Cronyn as
24 an expert in the field of real estate market analysis, and
25 his résumé, I would note, is, has been submitted as Exhibit

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1 17. I'm sorry, I had it. I'm sorry, 17(e).
2 MR. GROSSMAN: Okay. A copy of it, I notice, is
3 also attached as the last pages, an appendix to his report.
4 Report is exhibit number what?
5 MR. ADELMAN: 16.
6 MS. HARRIS: 16.
7 MR. ADELMAN: 16.
8 MR. GROSSMAN: Okay, Exhibit 16. Okay. We have
9 voir dire questions of this witness's qualifications?
10 MS. ROSENFELD: Yes. Yes, we do.
11 MR. GROSSMAN: All right.
12 MS. ROSENFELD: Mr. Cronyn, what is the scope of
13 your expertise in this proceeding? You're testifying as an
14 expert on what subjects?
15 THE WITNESS: On real estate market analysis.
16 MS. ROSENFELD: And are you a licensed real estate
17 appraiser in the State of Maryland?
18 THE WITNESS: No.
19 MS. ROSENFELD: Are you a licensed real estate
20 appraiser in any state?
21 THE WITNESS: No.
22 MS. ROSENFELD: And when is the last time that you
23 qualified as an expert witness in any proceeding?
24 THE WITNESS: Probably six months ago, something
25 like that.

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1 MS. ROSENFELD: Okay. And on what subject were
2 you qualified?
3 THE WITNESS: Real estate market analysis.
4 MS. ROSENFELD: Okay. And what jurisdiction was
5 that in?
6 THE WITNESS: That particular situation was
7 Carroll County.
8 MS. ROSENFELD: And what kind of property was --
9 what was involved in that case?
10 THE WITNESS: In that situation it was a proposed
11 Baltimore Gas and Electric substation.
12 MS. ROSENFELD: And what was your role in that
13 case?
14 THE WITNESS: To comment on real estate market
15 trends and whether that substation would impact the values
16 of neighboring residential properties.
17 MS. ROSENFELD: And which side were you testifying
18 for?
19 THE WITNESS: For Baltimore Gas and Electric.
20 MS. ROSENFELD: And are you a real estate broker?
21 THE WITNESS: No.
22 MS. ROSENFELD: And I think your résumé indicates
23 that you're a real estate agent. Are you an active real
24 estate agent at this time?
25 THE WITNESS: No, was at the time. This has gone

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1 on a while, and I decided that being a real estate agent was
2 not material to my business.
3 MS. ROSENFELD: Okay. When did your last license
4 expire?
5 THE WITNESS: December 31, 2012.
6 MS. ROSENFELD: Okay. And when you were an active
7 broker, did you, an active real estate agent, did you sell
8 residential real estate?
9 THE WITNESS: In -- I was an agent for, I would
10 say, approximately 30 years. In the beginning of my career,
11 I sold residential real estate. As I moved into commercial
12 real estate, I specialized in commercial properties, but
13 realistically speaking, my core business is not real estate
14 sales. I used it in order to keep in touch with trends and,
15 you know, keep education requirements up to date, things
16 like that.
17 MS. ROSENFELD: Oh, when is the last time you
18 listed a residential property for sale?
19 THE WITNESS: It was probably about 30 years ago.
20 MS. ROSENFELD: Okay. And where was that?
21 THE WITNESS: That would have been either in
22 Baltimore City or Baltimore County.
23 MS. ROSENFELD: But did you take courses in real
24 estate appraisal as part of your education for an MBA, for
25 your MBA?

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1 THE WITNESS: No.
2 MS. ROSENFELD: Or for your undergraduate degree?
3 THE WITNESS: No.
4 MS. ROSENFELD: What formal education do you have
5 in valuing residential real estate?
6 THE WITNESS: I guess you would call it the School
7 of Hard Knocks. I've been in the real estate market
8 analysis, development, and advisory business for 35 years,
9 and financing also.
10 MS. ROSENFELD: And so when is the last time you
11 evaluated the impact of new development on the value of
12 existing single-family homes?
13 THE WITNESS: You're saying in a zoning case or --
14 MS. ROSENFELD: In a zoning case.
15 THE WITNESS: It would be Carroll County, as I
16 testified.
17 MS. ROSENFELD: What kind of continuing education
18 classes, if any, have you taken with respect to the
19 valuation of real property, residential property?
20 THE WITNESS: None.
21 MS. ROSENFELD: In your résumé you say you have
22 over 30 years of experience in market and financial
23 feasibility analysis of major real estate projects. Do you
24 prepare those market and financial feasibility analyses?
25 THE WITNESS: Yes.

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1 MS. ROSENFELD: And in preparing those reports, do
2 you prepare the initial assessment of real estate values
3 contained in those reports or do you rely on the assessments
4 of others?
5 THE WITNESS: I do my own work.
6 MS. ROSENFELD: And when is the last time you
7 prepared one of those market and feasibility analyses for a
8 residential development?
9 THE WITNESS: Yesterday.
10 MS. ROSENFELD: Okay. And where was that located?
11 THE WITNESS: That particular case was Baltimore
12 City.
13 MS. ROSENFELD: And in what context was that
14 prepared?
15 THE WITNESS: A developer was asking me what I
16 thought was possible in a particular location.
17 MS. ROSENFELD: Okay. So the possible sales
18 prices of a new development, homes in a new development?
19 THE WITNESS: In this particular case, it was what
20 kind of rents he thought that he could get, what kind of
21 absorption for apartment units, and those kinds of market
22 factors.
23 MS. ROSENFELD: In your cover letter to
24 transmitting your report to Mr. Brann, you assert, in your
25 opinion, the proposed gas station will not be, quote,

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1 detrimental to the use, peaceful enjoyment, economic value,
2 or development, end quote, of surrounding properties or the
3 general neighborhood. Can you tell me what education or
4 training qualifies you as an expert on use or peaceful
5 enjoyment of the general neighborhood?
6 THE WITNESS: I'd say over 35 years of real estate
7 development, finance, and market analysis.
8 MS. ROSENFELD: Are you a land planner or
9 engineer?
10 THE WITNESS: I am not.
11 MS. ROSENFELD: Have you had training on what
12 constitutes peaceful enjoyment of land in Maryland?
13 THE WITNESS: I don't know that such training,
14 other than the School of Hard Knocks, exists; but no, I
15 haven't taken a class on peaceful enjoyment.
16 MS. ROSENFELD: And do you have technical training
17 in Montgomery County's zoning code?
18 THE WITNESS: I've testified as an expert witness
19 a number of times in Montgomery County; other than that, no.
20 MS. ROSENFELD: Have you ever testified on market
21 analysis in Montgomery County in a special exception case?
22 THE WITNESS: Yes.
23 MS. ROSENFELD: And when was the last time you
24 testified as to that?
25 THE WITNESS: My recollection is the last time was

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1 in the City of Rockville in a case for Darnestown Road, an
2 assisted living facility that was going into that location.
3 MS. ROSENFELD: And have you qualified as an
4 expert before the Board of Appeals in Montgomery County on
5 valuation?
6 THE WITNESS: I'm not an appraiser. I don't
7 testify on valuation.
8 MS. ROSENFELD: Have you qualified as an expert in
9 real estate market analysis before the Montgomery County
10 Board of Appeals?
11 THE WITNESS: I don't recall specifically. I've
12 been an expert witness more on the issue of need, and I've
13 testified before Mr. Grossman a number of times on that.
14 MR. GROSSMAN: In your question, when you say
15 before the Board of Appeals, are you including before the
16 Hearing Examiner --
17 MS. ROSENFELD: Yes, in a --
18 MR. GROSSMAN: -- in a Board of Appeals
19 proceeding?
20 MS. ROSENFELD: Yes --
21 MR. GROSSMAN: Okay.
22 MS. ROSENFELD: -- in a Board of Appeals, a
23 special exception case, in particular.
24 MR. GROSSMAN: Okay.
25 MS. ROSENFELD: Okay. So you've testified on need

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1 as an expert, but you don't recall if you've been qualified
2 for market analysis; is that an accurate --
3 THE WITNESS: Correct, I don't recall.
4 MS. ROSENFELD: -- characterization? I also see
5 on your résumé that you're a member of the Citizens Planning
6 and Housing Association, and according to its Web site, this
7 association, quote, has been Baltimore's premiere civic
8 action organization since 1941, end quote. What is your
9 role with this organization?
10 THE WITNESS: I'm a member.
11 MS. ROSENFELD: Okay. Are there any particular
12 qualifications to becoming a member?
13 THE WITNESS: To pay your dues --
14 MS. ROSENFELD: Okay. And --
15 THE WITNESS: -- and to be active. I mean, I'm
16 the president of a community association, but --
17 MS. ROSENFELD: Sure. But it's not affiliated
18 with anything to do with valuation or that type of thing?
19 THE WITNESS: No.
20 MS. ROSENFELD: Okay. And I would have the same
21 question of the Citizens Planning and Housing Association.
22 THE WITNESS: That was what you just asked.
23 MS. ROSENFELD: I apologize. I copied twice. The
24 National Trust for Historic Preservation, what role do you
25 have with that association?

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1 THE WITNESS: In addition to paying dues, every
2 now and then I do an economic analysis for them on a fee
3 basis.
4 MS. ROSENFELD: And what kind of economic
5 analysis?
6 THE WITNESS: Those analyses have been to measure
7 the impact of historic preservation tax credits on the
8 development, rehabilitation and development of real estate
9 and then on the economies of jurisdictions in which that
10 rehab is done.
11 MS. ROSENFELD: Okay. And it also says you're a
12 member of the Maryland Economic Development Association.
13 And how does one become a member of that organization?
14 THE WITNESS: One pays dues.
15 MR. GROSSMAN: That seems to be the constant
16 requirement.
17 MS. ROSENFELD: Mr. Grossman, I would note that in
18 their prehearing submission, well, which is, I think,
19 Hearing Examiner Exhibit No. 3, Mr. Cronyn was identified as
20 an expert in the field of land appraisal, and he's stated
21 that he is not an appraiser. And so I object to his
22 qualification as an expert for the purpose identified in the
23 prehearing submission and that he's not qualified for that
24 purpose.
25 I also object to him as an expert on the issue of

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1 whether the proposed special exception will be detrimental
2 to the use, peaceful enjoyment, or development of the
3 surrounding properties of the general neighborhood. He's
4 not demonstrated he has any educational background or
5 training in land use or zoning and has, lacks both the --
6 lacks the professional expertise to render an expert opinion
7 on those grounds.
8 And in addition, I object to his expert testimony,
9 his qualification as expert on more general grounds with
10 respect to valuation. He's not a real estate appraiser.
11 He's not a licensed real estate broker, does not value
12 individual residential properties in the course of his
13 professional experience. And to the extent that he's going
14 to testify on these grounds, I ask that you accept him as a
15 laywitness and take his professional background, his 30
16 years of the School of Hard Knocks into consideration when
17 you consider the weight of his testimony.
18 MR. GROSSMAN: All right. Any additional
19 questions, voir dire questions of this witness?
20 MR. ADELMAN: Yes. My questions may overlap
21 Ms. Rosenfeld's, but what I'd like to understand, if you
22 could help, is the relationship between your vividly limited
23 experience as a real estate agent and your research into
24 real estate market analysis. The question is, in any way is
25 the information that you provide relevant to the, let's say,

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1 negotiations that occur when a real estate agent,
2 representing a buyer or a seller, works through the process
3 of actually, of facilitating the sale of a house, and if so,
4 can you explain what that relationship is?
5 MR. GROSSMAN: That was a long question.
6 THE WITNESS: My business is to deal with sales
7 data and do economic analysis of sales data and other, you
8 know, real estate data in helping my clients come to
9 decisions. So when I'm working with some of my home builder
10 clients, you know, Ryan Homes, Ryland Homes, Beazer Homes,
11 Lennar Homes, various other clients of mine, I try to say,
12 well, here you are, here's a housing development that you
13 want to do, here's the kind of houses that you should build,
14 here's how you should price them, here's the amenities that
15 you should build into them and into their community. And so
16 the whole goal is to meet the needs of the market and to
17 sell homes to potential buyers.
18 MR. ADELMAN: Thank you. That's very helpful. So
19 if I understand, the chances, from your perspective, that a
20 real estate agent would use the kind of analyses you provide
21 to inform himself or herself as to the sale of a home in a
22 residential community is extremely limited, and -- is that
23 correct?
24 THE WITNESS: If the real estate agent is good,
25 then they and I would use the same information, which is, as

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1 I said, you know, the hard data on what homes have been
2 selling for in a residential context in a particular
3 neighborhood. You know, I have available State Department
4 of Assessment and Taxation sales data and various other
5 things -- again, hard data that, that real estate agents
6 presumably use in informing their clients about what price
7 they should be paying for a house or what, at what price
8 they should be selling a house.
9 MR. ADELMAN: Well, then let me follow that, if I
10 may. In recent years, has any individual real estate agent,
11 to your knowledge, used your services, either directly or
12 indirectly, to inform themselves as to how to price or bid
13 on a residential property?
14 THE WITNESS: I deal -- my clients are typically
15 not real estate agents. They're home builders. They're
16 state and county governments. They're, you know, folks who
17 are at a different level in the real estate business.
18 MR. ADELMAN: Then I just have one last question.
19 In your various testimonies, have you ever testified that a
20 proposed land use or development would have a negative
21 impact on sale prices of individual properties?
22 THE WITNESS: No.
23 MR. ADELMAN: I would echo what Ms. Rosenfeld
24 said, more -- more carefully than I said it, but I agree
25 with her.

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1 MR. GROSSMAN: All right. Any other voir dire
2 questions of this witness?
3 (No audible response.)
4 MR. GROSSMAN: All right. Do you wish to respond
5 to the objection that's been made by --
6 MS. HARRIS: Yes.
7 MR. GROSSMAN: -- Dr. Adelman and Ms. Rosenfeld?
8 MS. HARRIS: I would note that the prehearing
9 statement, Exhibit 3, does -- while acknowledging that it
10 does say that he'll be testifying in the land of land
11 appraisal, it goes on to say he'll be testifying with
12 respect to his evaluation of impact, if any, of the proposed
13 special exception on the economic value of the residential
14 properties located to the south and west of the property,
15 which is exactly the reason why we've called Mr. Cronyn
16 today: to testify as an expert in real estate market
17 analysis. I would also note that previous governing boards
18 have qualified him as an expert in that field and that, as
19 he noted, he has 35 years of extensive experience doing just
20 this.
21 MR. GROSSMAN: All right. Yes.
22 MS. ROSENFELD: May I respond just briefly to
23 that?
24 MR. GROSSMAN: Certainly.
25 MS. ROSENFELD: When I look at the other experts

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1 who've been identified, Mr. Gang will testify as an expert
2 in land planning in Montgomery County, I think in the world
3 of special exceptions a land planner has a certain, it's
4 common understanding as to what that professional field is;
5 Mr. Joel Russell will testify as a certified architect, is
6 an expert in the field of architecture; Mr. Willard will
7 testify as an expert in the field of landscape architecture;
8 Mr. Flynn, in the field of market analysis; and it says here
9 Mr. Cronyn will testify as an expert in the field of land
10 appraisal. He simply is not an appraiser, and I suggest
11 he's not qualified as an expert.
12 MR. GROSSMAN: Right. Well, she --
13 MR. ADELMAN: If I could add one point, sir?
14 MR. GROSSMAN: Yes.
15 MR. ADELMAN: The fact that other hearings have
16 found Mr. Cronyn qualified as an expert is a separate issue
17 from the facts that you must find. And the precedent, that
18 he has testified in the past as an expert, is in no way
19 determinative of what you will decide to rule.
20 MR. GROSSMAN: Well, it does bear on the issue.
21 It's a typical item of evidence, in terms of a voir dire of
22 an expert, as to whether or not the individual has been
23 qualified as an expert in the field by other tribunals. But
24 in any event, the, in addition to the, naming the
25 specification in the statement, as Ms. Harris has pointed

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1 out, there was a broader description and you have had a copy
2 of Exhibit 16, the witness's report, which I would assume
3 summarizes testimony he's about to give here. So you have
4 had ample notice of the nature of his proposed testimony. I
5 guess Exhibit 16 was filed when, Ms. Harris?
6 MS. HARRIS: November 2012.
7 MR. GROSSMAN: So I don't think there's any
8 prejudice whatever here in terms of the witness testifying
9 along the parameters of the report that has been filed for
10 many months in this case --
11 MS. ROSENFELD: And if I --
12 MR. GROSSMAN: Well, let me finish, counsel.
13 MS. ROSENFELD: I'm sorry. I'm sorry.
14 MR. GROSSMAN: And the other thing is that the
15 other objections noted go to the weight. He's certainly
16 qualified as an expert in market analysis, in real estate
17 market analysis, which is what he has been proffered, the
18 expertise has been proffered here. And to the extent that
19 his evidence wanders along the peripheries of that and to
20 the extent that your cross-examination brought out what
21 might be characterized as limitations in his knowledge, I
22 will consider that as part of the weight to be given to his
23 testimony, but I do accept him as an expert in real estate
24 market analysis.
25 Now, did you have something else you wanted to

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1 add, Ms. Rosenfeld?
2 MS. ROSENFELD: Yes. I was not objecting for the
3 purpose of striking him as a witness. I was objecting to
4 clarify that he's not testifying as an expert in appraisals
5 and that to the extent that you consider his testimony, that
6 his qualifications go to the weight of that testimony.
7 MR. GROSSMAN: Right, and as to appraisals, I
8 understand the points that you excellently brought out in
9 your voir dire. So I understand that that does go to the
10 weight, but he is qualified as a real estate, as an expert
11 in real estate market analysis.
12 MR. ADELMAN: Mr. Grossman, to clarify, that's
13 precisely what I was driving at, and this may be a question
14 of my lack of knowledge. I was not aware that -- and I
15 realize that ignorance of the law is not an excuse -- I was
16 not aware that the challenges in voir dire could, in
17 principle, be made way back. I just did not perceive that.
18 That's why I raised the issues today.
19 MR. GROSSMAN: Oh, no, I'm not suggesting that
20 your voir dire questions should have been posed or
21 objections made back when the documentation was filed. What
22 I'm saying is that there was ample notice of the field and
23 the general area in which he'd be testifying because he
24 didn't, the applicant didn't just file a statement,
25 outlining the witness testimony; she filed or the applicant

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1 filed copies of the report, outlining in more detail the
2 proposed testimony of the witness. So that's why I'm saying
3 there's been ample notice to the parties. To the extent
4 that the objection raised an issue of notice to the parties
5 of the nature of the testimony, I'm saying it's been amply
6 handled by what's been filed in this case.
7 MR. ADELMAN: Thank you, sir.
8 MR. GROSSMAN: All right.
9 MS. HARRIS: Thank you.
10 MR. GROSSMAN: You may proceed with your questions
11 then.
12 MS. HARRIS: Thank you.
13 BY MS. HARRIS:
14 Q Mr. Cronyn, can you explain why you're here today?
15 I dare to ask.
16 MR. GROSSMAN: Or why am I here today?
17 MS. HARRIS: Right.
18 THE WITNESS: You know, getting past the
19 metaphysical question --
20 BY MS. HARRIS:
21 Q Yes.
22 A -- I'd say my understanding is that I was to
23 testify as to the possible impact of the Costco gas station
24 on the values of neighboring residential properties.
25 Q Thank you. And did you evaluate what effect the

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1 proposed gas station might have with respect to the real
2 estate values of the surrounding properties?
3 A Yes.
4 Q And can you elaborate on what your evaluation
5 involved?
6 A So my evaluation, first of all, looked at the
7 Costco property and in its context within the shopping mall.
8 Number two, I looked at the neighborhood context in
9 Kensington Heights, looking at the adjoining properties, you
10 know, touring them, and also looking at what I thought might
11 be analogous situations against which someone could judge
12 whether gas stations have an impact on values. So those
13 were the sort of inspection kinds of issues.
14 In addition, I took a look at real estate
15 transactions, sales -- arm's-length transactions over a
16 period of time, trying to understand trends in values,
17 trends in pricing over that period of time for homes
18 adjacent to the shopping mall and to other
19 analogous-situation homes in the Connecticut Avenue corridor
20 against which I could compare them. So I looked at the
21 neighborhood, looked at the shopping mall, looked at the
22 Costco documents, and also looked at the data for real
23 estate sales underlying all of those situations.
24 Q And in your professional opinion, will the
25 proposed filling station adversely affect the local property

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1 values?
2 A No.
3 Q And why did you reach this conclusion?
4 A Well, I think simply put and, you know, based on
5 the previous testimony of other expert witnesses, it's my
6 judgment that the, that the station will not exercise any
7 negative influence on values. There are no, as they call it
8 in the real estate business, no negative externalities to
9 adjoining residential properties. Noise, hazards, odors,
10 nuisance behavior, traffic, and visual impacts will be as
11 close to zero as possible, and in many cases, because of the
12 green wall that's being put up between the gas facility and
13 residential properties, in my opinion, many of those
14 properties will actually be improved because their views,
15 et cetera, of the mall will be reduced even further than
16 they are right now, and in most cases, the views today are
17 actually relatively low just because of grade differential
18 between the residential properties and the mall, depending
19 on the area, one, or I'm sorry, 10 to 30 feet below the mall
20 property elevation, intervening trees and forest area, and
21 also the distances between the residential properties and
22 the mall itself. So, in many cases, the views and other
23 things will actually be more favorable than they are
24 currently.
25 So that was, that's actually the logical basis for

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1 my opinion. There will be no negative externalities to
2 these individual properties. Supportive of that, I also
3 looked at what I felt would be a reasonable analogy, and let
4 me go back a second from a methodological point of view. In
5 my business and in the appraisal business, one of the things
6 that you try to do in a situation like this --
7 MS. ROSENFELD: Objection.
8 MR. GROSSMAN: Hold on a second.
9 MS. ROSENFELD: Either he's testifying with
10 respect to appraisals or he's not. I mean, is he testifying
11 as to appraisal standards, or is he, or is he doing a market
12 analysis?
13 MR. GROSSMAN: Ms. Harris.
14 MS. HARRIS: I don't understand the objection.
15 MS. ROSENFELD: He said with respect to valuation
16 and using, I believe he said, appraisal standards or
17 appraisal considerations.
18 THE WITNESS: In my business and in the appraisal
19 business --
20 MS. ROSENFELD: And in the appraisal business.
21 MS. HARRIS: I believe, while he's not a certified
22 appraisal, I -- the witness certainly has understanding and
23 exposure to appraisals and --
24 MR. GROSSMAN: Well, let me ask you this for
25 clarification: Is appraisal, in the sense you're using it,

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1 part of market analysis, or is it some independent category
2 of expertise?
3 THE WITNESS: No, I'd say it's an independent,
4 let's call it, licensing. It's -- I'm happy if people don't
5 want me to use the word appraisal; you know, that's fine.
6 The issue is, from a methodology point of view, some people
7 who call themselves appraisers and are licensed as such use
8 the same methodology. So, you know, that's my only
9 reference.
10 MR. GROSSMAN: All right. So to that extent, I'm
11 going to overrule the objection, as his clarification makes
12 clear. I mean, it seems to me that what he is calling
13 appraisal is part of his market analysis. I guess we're
14 talking about a lingo issue here as opposed to an expertise
15 issue.
16 MS. ROSENFELD: Well -- go ahead.
17 MR. ADELMAN: Mr. Grossman, perhaps --
18 MR. GROSSMAN: Yes.
19 MR. ADELMAN: -- if Mr. Cronyn could use the word
20 evaluation. Appraisal to the layperson means something
21 quite specific when we're talking about real estate.
22 Evaluation sounds to me like a more appropriate term for
23 what he's describing.
24 MR. GROSSMAN: It may be, but I'm not going to --
25 since we understand that we're talking a linguistic

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1 distinction here as opposed to a substantive distinction
2 here in terms of how he's using it, I'm not going to control
3 the language he uses. I think he should best, use the
4 language that best describes what he did in his analysis.
5 So --
6 MS. ROSENFELD: Well, I just --
7 MR. GROSSMAN: -- I'll overrule the objection to
8 that extent.
9 MS. ROSENFELD: Okay. And for the record, I'd
10 like to note that an appraisal is a very specific way of
11 calculating property values. It's conducted by somebody
12 who's gone through specific training and is licensed in the
13 State of Maryland. And so for the record, to the extent
14 that he's using the word appraisal and it carries more
15 weight or suggests more weight to what he is describing or
16 to his conclusions, I object to the use of that term --
17 MR. GROSSMAN: Okay.
18 MS. ROSENFELD: -- and to that characterization of
19 the methodology that he's using.
20 MR. GROSSMAN: Okay. I'm going to overrule the
21 objection to his using the term because he's put a caveat on
22 the use of the term, explaining the nature in which he is
23 using it. I understand your objection to the extent it goes
24 to the weight. I will adjust my evaluation of his testimony
25 in accordance with the weight that should be accorded.

1 MR. ADELMAN: This is not an objection,
2 Mr. Grossman. It's a clarification. I'm a scientist. To
3 me, language means something, a great deal, and the choice
4 of words is very often determinative. So I, many of my
5 questions are going to be about the specific meaning of
6 words.

7 MR. GROSSMAN: Well, you can certainly ask any
8 relevant cross-examination question you want, but I'm not
9 going to place my words in the mouth of this expert, or
10 yours. Yes, sir, you may continue.

11 THE WITNESS: So let's just go to the data. What,
12 what I try to do in a situation like this is, once we, once
13 I've established the logic of the reasons why values may or
14 may not be affected, I try to look for some data to support
15 whatever analysis that I'm doing. In this particular case
16 and in every case that I testify on a similar issue, I try
17 to, first of all, see if we can do what's called a paired
18 sale analysis. Basically, what you try to do is say let's
19 take individual homes that have sold over a period of time
20 and see what their appreciation has been over that period of
21 time. You try to use paired sales -- the same home, selling
22 at an earlier period and at a current period -- to minimize
23 the subjectivity in a judgment. You say, you know, a
24 certain home over 10 years appreciated 20 percent, and you
25 try to look at that sale and other sales, hopefully in the

1 area, and that would document sales price trends in the
2 neighborhood over that period of time. One sale in
3 particular, you know, isn't determinative. You try to group
4 sales so that you understand what's going on in a market.

5 So in looking for paired sales, one of the
6 difficulties that I had was that the number of properties in
7 proximity to the mall was relatively finite. These are not
8 thousands of homes in the blocks that are adjoining the
9 mall. These are, you know, perhaps 100, 150 homes, or
10 something like that. So I looked through those properties,
11 and I found 66 arm's-length sales, according to the State
12 Department of Assessment and Taxation. I found 66 sales.
13 The difficulty was that in terms of paired sales, the same
14 property selling over time, the number of instances was
15 relatively limited.

16 So in order to deal with that problem that was
17 caused, to a certain extent, by the real estate recession
18 that we've just been through and are still climbing our way
19 out of, in order to deal with that situation, I then looked
20 at sort of general trends in the market, trying to track
21 sales over a period of time, from 1994 to 2011, tried to
22 track sales and say, on an average basis, where did the
23 sales trends seem to go.

24 Looking at that situation, I compared it to what I
25 felt would be a reasonably analogous situation to the Costco

1 gas station. There are no other Costco gas stations in
2 Montgomery County. So, again, one of the basics of my
3 business is to try to find something as close to home as
4 possible. Looking around, what I felt was a reasonable
5 analogy was the situation on Connecticut Avenue, you know,
6 let's say at, on intersections close to Connecticut and
7 Plyers Mill and, you know, in that area and just south of
8 that area. I found six gas stations that were at
9 intersections along Connecticut Avenue and just off of
10 Connecticut Avenue. I said, okay, those six gas stations
11 pump a significant amount of gas; they all seem to be, you
12 know, doing business well, et cetera. Some of them had
13 repair facilities, et cetera, but all of them seemed to be
14 in business and doing okay.

15 If I looked at the sales of residential
16 properties, in my case, within a 400-foot radius of the, of
17 those intersections, if I looked at sales of residential
18 properties, well, what would the value trends be in those
19 properties? And I found a total of 82 arm's-length sales
20 over that same period of time. Averaging those sales, I saw
21 that the trends were very similar. It wasn't like the sales
22 trends were, or the price trends were in any major respect,
23 you know, different from what was happening on the blocks
24 adjacent to the mall. Indeed, the sales trends rose through
25 the top of the housing bubble, they declined through the

1 housing recession, and then started to come back up again in
2 2010, 2011. I'd say, and it says in my report, that this is
3 not, not as determinative as a paired sales analysis, which
4 is, you know, my first effort here, but I'd say it's
5 reasonably supportive of the conclusion that the gasoline,
6 proximity to the gasoline station -- again, I used 400
7 feet -- was not necessarily, was not at all a factor in
8 prices increasing or decreasing. Indeed, the economy seemed
9 to be the biggest factor, and overall prices were pretty
10 much the same in terms of dollar amounts and in terms of
11 trends.

12 So, and the one thing that's occurred to me that
13 is relevant here -- and, again, it goes back to my initial
14 statement that, you know, that the impact of the Costco
15 station is going to be, is not going to have any impact on
16 the residential properties nearby -- it goes to the fact
17 that within that 400-foot radius, most of the properties
18 were, most of the residential properties were fronting on,
19 were next door to or, you know, nearby the gas station but
20 they were typically, you know, not sharing a driveway or in
21 any way, you know, directly impacted. They were on the,
22 around the corners, you know, on the side street from the,
23 from Connecticut Avenue, and that would be a very analogous
24 situation, again, to our current situation, where there is
25 no through traffic into the mall through Kensington Heights,

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1 these particular blocks are separated by a significant
2 topography, and you know, at best, there's a walkway into
3 the mall. There's no way that drivers can get into the
4 residential properties from the mall property and from the
5 Costco gas station. So it would be analogous in that way
6 also, where proximity doesn't mean that with good land
7 planning, et cetera, that there's going to be any negative
8 effect on property values at all.
9 BY MS. HARRIS:
10 Q Thank you. In your professional opinion, is there
11 a negative stigma associated with being, locating a house in
12 proximity to a gas station?
13 A I'd say, again, given good planning, if you're
14 next door but the gas station is, let's say, in that
15 situation, on Connecticut Avenue and you're around the
16 corner, there isn't necessarily any negative, you know,
17 connotation at all because you're part of the residential
18 neighborhood, you're not part of Connecticut Avenue
19 commercial situation.
20 Q So there could be situations where the proximity
21 to a gas station could hurt property values but not
22 necessarily here; is that what you're saying?
23 A Yeah. I mean, for example, if my house were, you
24 know, in the situation that I used here, on Connecticut
25 Avenue, if my house were placed right next to a gasoline

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1 station, then it's possible that there might be some impact
2 on value. Realistically, in that situation, my property
3 would probably be commercially zoned, and so I would
4 actually probably have a boost in value above residential
5 real estate value but, again, that goes to planning and
6 zoning issues. When it goes to more, whatever you want to
7 call it, situations in the day-to-day environment, I'd say,
8 you know, potentially it could be an issue, yes.
9 Q Are the properties that are approximate to the
10 mall site, are their values affected -- and take the gas
11 station out of the equation for a moment -- are their
12 property values affected currently by their proximity to the
13 mall?
14 A Actually, I don't think that they are. I mean, I
15 don't think that there's any negatives associated with being
16 in the block next to the mall versus being a block further
17 away, and I'd say that demonstrates the fact that, you know,
18 that Kensington Heights as a residential neighborhood
19 enjoys, you know, a good reputation, all those kinds of
20 things; but, basically, it's a residential neighborhood unto
21 itself, and the -- and people understand that they're buying
22 in Kensington Heights. It's a neighborhood that's in the
23 middle of things, that's, you know, well located on the
24 transportation grid, all those kinds of things, and indeed,
25 you can, for some folks, easily walk to the mall. There's a

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1 certain value that many people would give to being next to a
2 shopping center and in the middle of things.
3 So I'd say Kensington Heights is a nice
4 neighborhood and the -- and people understand, when they're
5 buying into Kensington Heights, that they're buying next to
6 the shopping center, and the people who buy in think that
7 that's wonderful. If somebody wants rural living, well,
8 they're not going to buy in Kensington Heights; they're
9 going to go to horse country somewhere. If somebody's more
10 urban-oriented, let's call it, then Kensington Heights is a
11 terrific deal.
12 Q Thank you. And then in your opinion, just to
13 follow up on that, if you then add the Costco gas station to
14 the equation and place it on the mall site, does your answer
15 change?
16 A No. I'd say people understand that they're buying
17 next to a regional mall and yet they're almost completely
18 separated from the regional mall. I mean, could you get any
19 better? You've got, you know, whatever it is, you know,
20 almost 2 million square feet of retailing next to you, and
21 yet none of the traffic is coming through your neighborhood,
22 all those kinds of things. It's a perfect situation for the
23 folks who are interested in a Kensington Heights kind of
24 situation.
25 Q If the eight-foot tall green screen wall were not

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1 constructed, would this alter your opinion about the
2 station's effect on the neighborhood?
3 A It really doesn't. I mean, again, I drove the
4 mall yesterday, and looking at the forest buffer between the
5 mall and most of the homes, I'd say there's a significant
6 buffer there already. And again, added to the grade
7 differential and to the distance from the existing homes,
8 I'd say, I think that the eight-foot buffer or the
9 eight-foot wall probably offers some additional protection
10 in some locations but, by and large, it seems to me that the
11 neighboring properties are already significantly buffered
12 from the existing mall and that's only going to remain the
13 same as far as the Costco gas station is concerned.
14 Q Your report noted that the wall was going to be
15 eight feet in certain areas and then 14 feet in other areas.
16 I'm assuming, based on the answer that you just gave, that
17 the fact that the wall is now eight feet --
18 MR. GROSSMAN: Well, let's not make an assumption
19 in the direct examination.
20 MS. HARRIS: Oh, okay.
21 BY MS. HARRIS:
22 Q What effect, if any, does the reduction of the
23 wall from 14 feet to eight feet have on your conclusion?
24 A It has no difference in my conclusion.
25 Realistically, a couple of the measurements in my report,

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1 since the report was done some time ago, there've been some
2 modifications in design, et cetera, but there's been nothing
3 that would go to the substance of my judgments.
4 Q Thank you.
5 MS. HARRIS: No other questions.
6 MR. GROSSMAN: Before you begin cross-examination,
7 I just have a quick question here. Your Chart 1 on page 10
8 of your report --
9 THE WITNESS: Yes.
10 MR. GROSSMAN: -- which reflects figures on Table
11 1, which is on the next page of your report, indicates that
12 the average sales price in 2011 for homes on Connecticut
13 Avenue jumped significantly from, it looks like from 2010,
14 from 497,000 to 600,000, whereas the homes in Kensington
15 Heights, 2010 to 2011 the average home price was 329,000 to
16 348,000, which is a much lower increase and more closely
17 reflects the overall Montgomery County price increase during
18 that period. Is there, in your analysis, a reason for this
19 distinction, or is it just an isolated peculiarity of the
20 particular data?
21 THE WITNESS: Yeah, I'd say it's an isolated
22 situation. Again, my point in doing the analysis was to
23 look at long-term trends, and the long-term trends are
24 basically conforming amongst the three areas. The -- an
25 individual year you could have a couple of high-priced homes

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1 that happened to sell in an area. An individual year
2 doesn't make that much difference. In terms of my analysis,
3 I'm looking at the long-term trends.
4 MR. GROSSMAN: Okay. All right. Who wishes to
5 begin the cross-examination?
6 MR. ADELMAN: I'm really excited to start. Thank
7 you, Mr. Cronyn.
8 MR. GROSSMAN: Dr. Adelman.
9 MS. CORDRY: Mark, Mark --
10 MS. ROSENFELD: Break?
11 MS. CORDRY: -- why don't we take the mid-morning
12 break and just take a look.
13 MR. ADELMAN: Oh, the suggestion was made we take
14 a break, but before we do that, perhaps during the break
15 Mr. Cronyn or someone could fix a minor problem. The
16 digital file, which I printed out to mpeg, refers to two
17 maps. The maps are not part of the digital file. I cannot
18 find them. And so I wonder if these location maps are
19 available in your hard copy and you could make copies to
20 provide us. Has anyone else found those maps? This is
21 on --
22 MR. GROSSMAN: Okay. Let me see. What maps are
23 you talking about, sir?
24 MR. ADELMAN: I'm talking on page 9 of
25 Mr. Cronyn's report --

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1 MR. GROSSMAN: Page 9, okay.
2 MR. ADELMAN: -- just above the line: No. 1,
3 Kensington Heights. The sentence says: two areas, paren.,
4 located on the following maps, end paren. Those maps are
5 not part of the digital file that I have.
6 MR. GROSSMAN: Yes, I actually printed mine out
7 from my digital file, but -- the one I have here today --
8 but I'll look in the file, the formal file to see if --
9 MR. ADELMAN: So you have a different digital
10 file?
11 MR. GROSSMAN: No, no. What I'm saying is, I --
12 when I prepared for today, I printed out a copy from my
13 digital copy of the record that was supplied to me and I
14 also don't have maps in what I printed out.
15 MS. CORDRY: Right. Right.
16 MS. ROSENFELD: Okay.
17 MR. ADELMAN: Fine. Fine.
18 MR. GROSSMAN: So now I'm going to look back in
19 the actual physical file to see if what was filed has the
20 maps that are referenced.
21 MR. ADELMAN: Thank you. Thank you very much.
22 MS. HARRIS: What reference was --
23 MR. BRANN: What page was it?
24 MS. CORDRY: Page 9.
25 MR. GROSSMAN: This is on page 9.

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1 THE WITNESS: Page 9.
2 MR. GROSSMAN: The next to the last, or the last
3 unnumbered paragraph, it says: two areas, parens, located
4 on the following maps, closed parens, are defined as
5 follows. So it refers to two maps, and let's see if there's
6 something in the file itself. That would be Exhibit 16.
7 All right. Here's Exhibit 16.
8 MS. HARRIS: Mr. Grossman, our Exhibit 16 doesn't
9 have maps either.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: Yeah, and --
12 MR. GROSSMAN: Hold on one second. I'm going to
13 let you explain it in a second. Okay. Yes, I don't see --
14 there are no maps in the file. All right, Mr. Cronyn.
15 THE WITNESS: And I think that, you know, the maps
16 may have been dropped somehow from the electronic file there
17 for some reason. I have -- I'd say the more relevant map, a
18 copy of that, which is the location of the six gas
19 stations --
20 MR. ADELMAN: No. I'm sorry. That --
21 THE WITNESS: I understand which map you're
22 talking about following page 9 --
23 MR. ADELMAN: I know, and I'm saying that that,
24 that the more general map won't do because your comparison
25 is based on two maps. We need those maps.

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1 MS. CORDRY: Yes. I mean, it would appear to be
2 suggesting that there are particular houses, particular
3 blocks that are covered and so forth, and for both maps it
4 really is important to know what area you're taking into
5 account.
6 MR. GROSSMAN: Do you have copies of the maps in
7 question anywhere?
8 THE WITNESS: If you have the original report
9 from --
10 MR. GROSSMAN: It looks like the one in the file
11 is also a copy. It looks like it's a printout because
12 there's no color and it was printed out on a black-and-white
13 printer. So I'm not sure why that is.
14 MS. HARRIS: I don't appear to have it.
15 MR. GROSSMAN: That's one of the problems in this
16 case, is too much paper. All right.
17 THE WITNESS: It seems to have gotten dropped from
18 the most recent submission.
19 MR. GROSSMAN: Well, don't talk to me off the
20 record.
21 THE WITNESS: Oh, that's fine, sir. That's fine.
22 MS. ROSENFELD: Mr. Grossman --
23 MR. GROSSMAN: Yes.
24 MS. ROSENFELD: -- do you mind if we take a break
25 while you're looking, or are we still on the record?

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1 MR. GROSSMAN: I don't mind, but I'm also, I'm
2 also going to suggest that as we take our break, I'm going
3 to ask Ms. Harris, you're welcome to look through the file
4 on the table here and see if you -- I do not see it in here,
5 and as I say, the copy that's in the formal file for Exhibit
6 16 appears to be a printout of the digital file, and I'm not
7 sure whether it was just filed digitally and we just printed
8 it out or, because I guess we don't have a copy of the
9 original report.
10 MS. HARRIS: Okay.
11 MR. GROSSMAN: Do you have a copy of the --
12 MS. HARRIS: No. I looked through our exhibit
13 binders and I don't have it, and I looked through the other,
14 my other supporting file and I don't have it.
15 MR. GROSSMAN: All right. Perhaps when we take a
16 break here, let's take a little bit longer than an average
17 break. We'll take a 10-minute break here, and see if you
18 can check, Ms. Harris, see if you can check with your
19 office --
20 MS. HARRIS: Yes.
21 MR. GROSSMAN: -- and see if they can pull that up
22 before we resume. It's 11:10. We'll resume at 11:20.
23 (Whereupon, a brief recess was taken.)
24 MR. GROSSMAN: So maps are being located, copied,
25 and will be distributed; so let us resume with the

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1 cross-examination by Dr. Adelman.
2 MR. ADELMAN: All right. Thank you very much.
3 MR. GROSSMAN: You're welcome.
4 CROSS-EXAMINATION
5 BY MR. ADELMAN:
6 Q Let's see. First, I have a couple of questions
7 based on the direct; then I'll get to my reading of the,
8 your report. Am I correct that you said you were doing an
9 analysis of the possible impact on property values? I
10 believe that's what you said.
11 A Okay.
12 Q Fine, thank you. You also spoke of a logical
13 basis of how you proceed, is that correct?
14 A Yes.
15 Q And if I understood, please correct me, your
16 logical process led you to formulate what I would call a
17 hypothesis or a model or a presumption or something like
18 that, is that, is that correct?
19 A I don't know that I formulated a hypothesis. I
20 looked at the data, and the data in, you know, most ways
21 were self-explanatory. I --
22 Q Suppose --
23 A -- suppose, if you were going to say hypothesis,
24 you know, my hypothesis -- well, I didn't prejudge the
25 issue. I looked at value trends, and my assumption was that

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1 if value trends reasonably reflected each other, then that
2 would be supportive of my more basic judgment that, that
3 there's no negative impact.
4 Q Fine, thank you. I guess I used an improper word.
5 You had a basic judgment at the beginning that there was no
6 negative impact based on your experience and general
7 knowledge, is that correct?
8 A And based on lack of negative externalities, yes.
9 Q Thank you. We'll leave that for the moment. And
10 am I correct in saying that you found your analysis
11 reasonably supportive of the assertion that there was no
12 negative impact?
13 A Yes.
14 Q And am I correct in saying that you said there is
15 not necessarily any negative impact on property value?
16 A I mean, if you're quoting from the report, I guess
17 I did say that. I'd say I stand by what I wrote.
18 Q Excellent. I want to come back to a statement you
19 made about the forest buffer, but that will come up a bit
20 later; so I'm just going to star it so I don't forget that.
21 Now, with respect to your report, which is OZAH Exhibit 16,
22 first of all, the title is Costco Filling Station-Special
23 Exception Impact on Nearby Property Values, is that correct?
24 A That's correct.
25 Q It's not possible or probable or likely its

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1 impact, is that correct?
2 A That's what I wrote.
3 Q Good, thank you. And that report was prepared, or
4 submitted, excuse me, on September 21st, 2012, is that
5 correct?
6 A Yes.
7 Q Have you updated that report in any way since
8 then?
9 A No.
10 Q Have you read any of the supplementary filings
11 that Applicant has offered since that time?
12 A Yes.
13 Q And could you specify which you have read?
14 A I read everything that was forwarded to me. I
15 don't know, you know, exactly how many reports. I read
16 every report that was forwarded to me by counsel.
17 Q Fine, thank you. I'll try to clarify that
18 question, it was somewhat vague, as we go through the
19 document. I believe I understand what you mean by
20 externalities, but could you please clarify that just so I'm
21 not mistaken? What do you mean by externalities?
22 A Externalities are things which are outside a
23 particular property. They're external to it.
24 Q So things that are inside the property are
25 internal to it, is that correct?

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1 A Sure.
2 Q And is there ever, in your opinion, a situation in
3 which externalities and internalities merge together?
4 A No.
5 Q So they're absolutely distinct?
6 A In as far --
7 MR. GROSSMAN: Dr. Adelman, do you mean whether
8 the effects of them merge together, or do you mean whether
9 the --
10 MR. ADELMAN: Precisely.
11 MR. GROSSMAN: -- what they are --
12 MR. ADELMAN: Precisely.
13 MR. GROSSMAN: Precisely that the effects of them
14 may --
15 MR. ADELMAN: Precisely.
16 MR. GROSSMAN: Oh, so the question is whether or
17 not externalities and what we'll call internalities ever
18 merge together in their effects.
19 THE WITNESS: I would say sometimes it's difficult
20 to pull apart what might be the effect of an internality and
21 externality in any particular situation but, by and large,
22 if something's an internal -- if something is internal to a
23 property, you can usually determine that, and something
24 that's external you can determine that. Then you make a
25 judgment as to why, in this situation, a property value

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1 might go up or down, but --
2 BY MR. ADELMAN:
3 Q Yes.
4 A -- each individual impact, but by and large, the
5 effects themselves or the phenomena themselves are distinct.
6 Q Fine. I may come back to that. I should explain,
7 I'm simply reading your document. So some of the questions
8 I'm asking are minutia and others, I think, are more
9 substantial, but I'm just going through the document.
10 In your first paragraph, you state that Costco
11 engaged you to judge whether the operation of the proposed
12 filling station is likely to impact the values of
13 adjacent -- adjoining, excuse me, residential properties.
14 What about the actual construction of the gas station as
15 opposed to the operation? In other words, there will be a
16 time period, will there not, during which the gas station is
17 under construction and people are aware of the coming
18 existence of the gas station? Did you evaluate that time
19 period, which might be months or, I don't know, six months,
20 a year?
21 A No.
22 Q Did you evaluate the impact of knowledge or the
23 perception that the gas station is going to be built at some
24 point in the future and the apparent value or the analyzed
25 value of property?

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1 MR. GROSSMAN: The knowledge by whom?
2 MR. ADELMAN: Let's say a home buyer.
3 THE WITNESS: I evaluated actual sales data. I
4 didn't go into anything else.
5 BY MR. ADELMAN:
6 Q Thank you. In that same sentence, you refer to:
7 is likely to impact the values of adjoining residential
8 properties. Your definition of likely, I presume, please
9 correct me, involves some sort of assessment of probability,
10 is that correct?
11 A In this case, not a, you know, statistical
12 probability, but likely in the layman sense.
13 Q In the layman sense, thank you. And when you
14 refer to the two angles -- this is under: Methodology, LF&M
15 has approached our task from two angles -- do you mean, am I
16 correct, points of view or perspectives or directions?
17 A Two approaches.
18 Q Two approaches, fine. Thank you. Similarly, in
19 that first paragraph, paragraph 1, Evaluation of Typical
20 Valuation Externalities, you use the term enhance, the term
21 may hurt, and am I correct in assuming that when you say
22 enhance, you mean raise the value and that when you say
23 hurt, you mean lower the value?
24 A Sure.
25 Q Thank you. Just a couple of points. Might

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1 possibly impact values in the Kensington Heights
2 neighborhood -- you're probably aware there's been some
3 discussion at the table about the definition of
4 neighborhood. Do I understand you to be using the
5 definition that planning staff used?
6 A I'd say I'm not, I'm not limiting myself to
7 anybody else's definition of neighborhood. I'm trying to
8 look at Kensington Heights and the adjoining properties.
9 Whoever's definition of neighborhood that follows within,
10 that's fine with me, but I'm looking at adjoining
11 properties.
12 Q So I guess, please correct me if I'm wrong, the
13 definition of neighborhood that you're using we'll find out
14 when we look at the maps, is that correct?
15 A No. I'd say they're what's written in the report.
16 I mean, the maps are illustrative. They're not, you know,
17 determinative. They're illustrative. Basically, you know,
18 what I'm looking at, as it states a number of times in the
19 report, is the adjoining blocks to the mall.
20 Q Okay. Fine, thank you. That makes it clear.
21 Thank you very much. In Item 2, Examination of Comparable
22 Situation, when you refer in the last line of that paragraph
23 to the value trend of nearby control properties, is that
24 what a layman would refer to as a comparable or does control
25 have a different meaning?

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1 A I'd say the situation is comparable. Basically,
2 I'm looking at, in that situation, as I explained earlier,
3 sales within a 400-foot radius of the gas stations on
4 Connecticut Avenue that I identified as a block of gasoline
5 retailing.
6 Q I'm jumping out of sequence in my question. I
7 apologize. The question of comparables, I understand that,
8 I believe, but in this case, the issue is whether or not the
9 gas station will have an impact on, well, precisely, will
10 have an impact on nearby property values. So my question
11 fundamentally is, would it not be more appropriate to
12 compare properties that are not adjacent to gas stations
13 with properties that will be adjacent to a gas station?
14 A To the best of my knowledge, the Kensington
15 Heights properties that I looked at are not adjacent to a
16 gas station right now.
17 Q I know, and the question is --
18 A There you go. So we're comparing gasoline
19 proximity properties to the existing Kensington Heights
20 properties which have no gas station next to them.
21 Q Thank you. Am I correct in presuming that you
22 reviewed all of the revisions of the site plan? When you
23 said you reviewed recent updates, there've been a number of
24 revisions of the site plan.
25 A I have reviewed them, yes.

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1 Q Thank you. Actually, this subsumes a number of
2 questions: No statements -- I'm sorry. I'm on page 2, I
3 apologize, page 2, the second bullet point: No statements
4 contained in this report are, in this report as to values,
5 are to be construed as appraisals. We're talking -- excuse
6 me. This hearing is about a very specific location and a
7 specific site. I'm reminded of a discussion we had with
8 Mr. Guckert a long time ago in which we were discussing the
9 question of micro versus macro. For the individual or
10 couple wishing to buy a house in Kensington Heights, they
11 will be guided by an appraisal, will they not?
12 A Possibly.
13 Q And how does, in your mind, the broad general
14 analysis that you've done relate to the micro situation that
15 will impact specific sales -- one house, another house,
16 another house -- in the vicinity of, in the portion of
17 Kensington Heights that's close to the proposed special
18 exception area?
19 A I'd say my analysis would show that the, that
20 there's no negative impact on the, you know, on the
21 neighborhood and therefore a property owner shouldn't, or a
22 property -- prospective property buyer shouldn't worry about
23 broader, you know, neighborhood issues; they should worry
24 more about the specific property, the internalities, if you
25 will, rather than the broader neighborhood issue. If they

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1 like the neighborhood and they like the house, then they can
2 make their decision based on that.
3 Q And in your view, a person or a couple considering
4 purchasing a house in that proximate neighborhood would not
5 concern themselves with externalities or should not or do
6 not?
7 A They should, but I find that the externalities are
8 not negative. Everybody cares about their neighborhood
9 context, you know, but -- so, yes, everybody has to evaluate
10 the impact of externalities for themselves, what kind of
11 environment they want to live in.
12 Q Yes.
13 A In this situation, the environment, there's no
14 additional negatives that are added by the presence of a
15 Costco gas station, in my opinion.
16 Q That is in your professional judgment, correct?
17 A Correct.
18 Q Okay. On page 3 you referred to the special
19 exception area -- this is under the, this is Section A,
20 excuse me, Section A on page 3, the paragraph labeled
21 Limited Facilities. You state: The facility is situated
22 within a special exception area of only 36,950 square feet.
23 That number, that square footage is changed recently. The
24 original proffered number was 37,754. The current site plan
25 is 36,800. Your number is different. And I know, or I

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1 presume, excuse me, that you would regard those numbers as
2 not terribly important, but some people would regard those
3 numbers as important, and I wonder if your number reflects a
4 different source of information?
5 A My report was done in September almost a year ago,
6 and it reflects the sources that were available at that
7 time.
8 Q Have you read the land planning report that was
9 filed by Costco at that time?
10 A I've certainly reviewed it, and I'm assuming that
11 I, you know, took from it what was relevant to my analysis.
12 Q Fine. The number in that report was 37,754, and
13 my question is where you got your number.
14 MR. GROSSMAN: I'm not sure I understand. What's
15 the, in terms of his kind of testimony, what is the
16 difference in your mind, Dr. Adelman, between, or among
17 those various relatively close figures?
18 MR. ADELMAN: Very close figures and I was afraid
19 you'd ask the question which I can't answer directly without
20 testifying; so I won't do it. I'll simply say --
21 MR. GROSSMAN: Well, you can answer it directly.
22 I won't hold it against you. I know you're going to testify
23 sometime.
24 MR. ADELMAN: There is a very significant
25 difference procedurally on how one evaluates the special

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1 exception if the amount of land used for the special
2 exception decreases. I'm referring to something in the
3 Board Rules of Procedure and related material in the Board,
4 excuse me, in the OZAH Rules of Procedure and in the Board
5 of Appeals Rules of Procedure that speak to the importance
6 of the specific number --
7 MR. GROSSMAN: All right. So --
8 MR. ADELMAN: -- but I don't want to testify any
9 further.
10 MR. GROSSMAN: No, that's okay. You tell me, what
11 are you referring to?
12 MR. ADELMAN: There's a stipulation that the
13 amount of area in the special exception cannot increase and
14 it may decrease but only if the decrease does not lead to a
15 change in the intensity of the activity in the area.
16 MR. GROSSMAN: Okay. And what specific rule are
17 you referring to?
18 MR. ADELMAN: In the OZAH rule, it's 10.2 -- I
19 don't have it handy. I believe it's 10.2.2.
20 MR. GROSSMAN: Okay. And in the Board of Appeals
21 rule?
22 MR. ADELMAN: That's 3.2.2. They're slightly
23 different.
24 MR. GROSSMAN: Okay.
25 MR. ADELMAN: The Board of Appeals rule specifies

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1 that the amount of land for the specific site cannot
2 increase.
3 MR. GROSSMAN: Right.
4 MR. ADELMAN: It does not say anything about the
5 second part of what's in the OZAH Rules of Procedure 10.2, I
6 believe it's 10.2.2.
7 MR. GROSSMAN: Okay. And I'm not sure how that
8 will actually impact what you have to say later, but in
9 terms of this witness's testimony regarding his market
10 analysis, how does that distinction --
11 MR. ADELMAN: It's an --
12 MR. GROSSMAN: -- among those very close amounts,
13 bear?
14 MR. ADELMAN: Excuse me for interrupting. It's
15 tricky to do this without testifying.
16 MR. GROSSMAN: But that's okay. You can proffer
17 me what you would say.
18 MR. ADELMAN: Okay. Mr. Cronyn is referring to
19 the series of externalities.
20 MR. GROSSMAN: Right.
21 MR. ADELMAN: These are, to my mind, evaluated by
22 each individual differently, depending on their knowledge,
23 training, and their experience. If the special exception
24 area is diminished, the intensity of use will increase.
25 Intensity of use translates into how much congestion, how

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1 much idling of cars, and so forth. Some people may regard
2 the congestion in the mall as to them irrelevant. Other
3 people may regard the congestion in the mall to them as very
4 relevant. There's no way to state with certainty how many
5 people regard that as important.
6 MR. GROSSMAN: So your question to him is whether
7 that difference of perhaps 100 square feet makes a
8 difference in his opinion?
9 MR. ADELMAN: My question to him actually was
10 where did the number come from. I'm trying to determine
11 whether there are three different numbers that we were
12 considering. This is a new number. I --
13 MR. GROSSMAN: Okay.
14 MR. ADELMAN: -- understand where the first two
15 numbers came from.
16 MR. GROSSMAN: All right.
17 MR. ADELMAN: I'm just asking where that number
18 came from.
19 MR. GROSSMAN: All right. Okay. I think I
20 understand where you're coming from. Just from my
21 observation of this, it seems to me to be a de minimis
22 difference here in terms of what this witness is talking
23 about --
24 MR. ADELMAN: I understand. The question --
25 MR. GROSSMAN: -- which is the overall market

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1 analysis. So I --

2 MR. ADELMAN: The question was specifically a

3 number, where did it come from.

4 MR. GROSSMAN: Okay. All right. So do you, other

5 than what you've testified to, that you, this is based on

6 information you received at the time, do you have more

7 information as to whether or not -- where you got that

8 specific number of 36,950 square feet?

9 THE WITNESS: I do not.

10 MR. GROSSMAN: Okay.

11 BY MR. ADELMAN:

12 Q Fine. Thank you, sir. In that same paragraph,

13 you state: No accessories or services other than gasoline

14 are offered. Are you aware that Applicant has on numerous

15 occasions stipulated that the gas station has eye washes and

16 apparently regarded that as an important service? I'm not a

17 mind reader. I'm just asking you.

18 MS. HARRIS: Objection.

19 MR. GROSSMAN: Yes.

20 MS. HARRIS: That was a mischaracterization of

21 what the eye wash is, the purpose of the eye wash on the

22 site. It is not there as a service. It's there as a safety

23 precaution measure --

24 MR. GROSSMAN: And --

25 MS. HARRIS: -- if needed.

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1 MR. GROSSMAN: Okay. With that addition, would

2 that question then be appropriate, or with that modification

3 of the question, would it be appropriate?

4 MS. HARRIS: That's fine.

5 MR. GROSSMAN: Then I'll let the witness answer

6 the question as modified.

7 THE WITNESS: There are no accessory services that

8 I'm aware of that impact consumers here. There's no car

9 wash or other kinds of accessory services that are going to

10 be available.

11 MR. ADELMAN: The reason I raise the question is

12 that in testimony Wednesday, Applicant's counsel

13 specifically questioned a gas station owner as to whether or

14 not those stations had eye-wash stations.

15 MR. GROSSMAN: I recall that.

16 BY MR. ADELMAN:

17 Q On the same page under, excuse me, under Signage

18 and Marketing, you refer to: the subject's canopy, with an

19 understated 28.5-square-foot graphic design. What, in your

20 mind, does understated mean?

21 A Understated means that it doesn't have neon

22 flashing signs and rockets that go off.

23 Q Thank you very much. We're on to page 4 now, and

24 this is my lack of knowledge. In, let's see, under Item B,

25 the third paragraph, the last line refers to in-line

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1 dealers. I just don't know what that means. Could you

2 please explain?

3 A In the retail business, typically you categorize

4 tenants in a shopping center as anchor tenants, meaning

5 they're the big tenants who draw most of the traffic and --

6 so anchor tenants on one side and, or anchor retailers, and

7 in-line tenants or retailers, which tend to be your smaller

8 shops that, you know, have lower square footage and tend to

9 draw less traffic on their own.

10 Q Thank you very much. The next to the last

11 paragraph on page 4 refers to the number of visitors per

12 day. We heard from Mr. -- I'm blanking. Excuse me.

13 MS. ADELMAN: Agliata.

14 MS. ROSENFELD: Flynn.

15 BY MR. ADELMAN:

16 Q We heard from --

17 MR. GROSSMAN: Mr. Agliata or --

18 MS. ROSENFELD: Flynn.

19 MS. CORDRY: Mr. Flynn?

20 MS. ROSENFELD: Flynn.

21 MR. GROSSMAN: -- Mr. Brann?

22 MR. ADELMAN: Flynn.

23 BY MR. ADELMAN:

24 Q We heard from Mr. Flynn --

25 MR. GROSSMAN: Oh, Mr. Flynn, okay.

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1 BY MR. ADELMAN:

2 Q -- a data chart provided to him by Mr. Agliata

3 which gave significantly, excuse me, gave larger numbers for

4 the amount of patronage of the mall. I do not have the

5 numbers in front of me. I believe it was about a factor of

6 two or so, but Applicant, counsel can correct me if I'm

7 wrong. I believe it was a significantly larger number.

8 Would that, in your mind -- well, first, are you aware of

9 those numbers?

10 A My recollection is that the numbers that I got

11 probably came off of the shopping center, you know, Web site

12 or something like that. And I'd say, if the actual numbers

13 are now significantly higher, that only reinforces my case.

14 Q In what way?

15 A Well, my basic issue is the adjoining properties

16 in the Kensington Heights neighborhood probably knew that

17 there was a shopping center next door when they bought their

18 homes and that shopping center is a major traffic generator

19 and a very imposing land use and, you know, so that -- it

20 may be even more imposing than the numbers in that paragraph

21 would indicate. So, again, people know that they're moving

22 next to a major whatever, commercial use here.

23 Q You have had some experience as a realtor, is that

24 correct?

25 A Yes.

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1 Q And so you know, I presume, that people make
2 decisions about homes they purchase by balancing the number
3 of externalities -- proximity to work, proximity to
4 shopping, amount of traffic, time of day that traffic
5 exists, and so forth. It's not a black-and-white decision.
6 They come to a decision based on pluses and minuses, is that
7 correct?
8 A Sure.
9 Q Thank you. And so it's possible, is it not, that
10 a person who was quite pleased with the purchase of a home
11 in Kensington Heights 15 years ago when the traffic was at a
12 certain level would not be so pleased today because the
13 traffic had increased and a person who 15 years ago might
14 have wanted to buy a house in Kensington Heights would tally
15 up a balance sheet and decide no, we now know that traffic
16 around the mall is more than I'm willing to accept? Is that
17 not possible?
18 A People make real estate purchase decisions for all
19 sorts of reasons.
20 Q Precisely. And just a factual question. In the
21 last paragraph on page 4, opening at the end of October
22 2012, you are aware that the Costco warehouse store did not
23 open in 2012, are you not?
24 A Opened in April 2013.
25 Q Thank you. On the next page, the paragraph you

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1 have underlined, Proximity to Adjoining Residential
2 Properties: The proposed -- I'm quoting; I'm asking you to
3 confirm if I've read it correctly -- the proposed filling
4 station is located over 200 feet from the lot line of the
5 nearest residential properties to the west and from the lot
6 lines of the nearest residential properties to the south.
7 What portion of the filling station are you referring to,
8 because the number 200 does not agree with the numbers that
9 have been proffered, I guess is the word, as to the distance
10 between the lot lines and the lot lines?
11 MR. GROSSMAN: I'm sorry, Dr. Adelman. Where are
12 you on page, you said --
13 MR. ADELMAN: I'm on page 5 --
14 MR. GROSSMAN: And --
15 MR. ADELMAN: -- Section C --
16 MR. GROSSMAN: Okay.
17 MR. ADELMAN: -- paragraph, Proximity to
18 Adjoining, the second paragraph about proposed fill stations
19 located over 200 feet.
20 MR. GROSSMAN: But I'm actually not seeing that.
21 MR. BRANN: It's the third paragraph from the top
22 of the page.
23 THE WITNESS: No. I think it's an older version
24 of the report, I'm assuming.
25 MR. BRANN: No. It's --

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1 THE WITNESS: No?
2 MR. BRANN: -- it's in the version you have on
3 page 5.
4 THE WITNESS: Okay. In any case --
5 MR. GROSSMAN: Well, hold on one second. It may
6 be that I printed out an older version. I'm looking at a
7 report dated September 21, 2012.
8 MR. ADELMAN: And that's what I'm, that's what I'm
9 looking at.
10 MR. BRANN: That's what I have here. It's on page
11 5. It's the third paragraph.
12 MR. GROSSMAN: The third paragraph on page 5 on my
13 copy says: The Costco special exception area is located
14 approximately 136 feet from the nearest home.
15 MS. ROSENFELD: What?
16 MR. ADELMAN: What?
17 MR. GROSSMAN: That's what the third, that's what
18 my copy says. Now, maybe --
19 THE WITNESS: I think that --
20 MR. GROSSMAN: Can I see what you're looking at,
21 Mr. Brann?
22 MR. BRANN: My attorney said I pulled.
23 MR. GROSSMAN: Okay.
24 MR. BRANN: I get a little aggressive toward her
25 sometimes.

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1 MR. GROSSMAN: And while we're doing that, I'll
2 look at the one I have in the file itself so we'll make sure
3 we're all on the same page. That's File 3.
4 MS. HARRIS: Our copy in our exhibit files
5 indicates the 136.
6 MS. ROSENFELD: Mine says 200. September 21,
7 2012?
8 MS. HARRIS: Oh, unfortunately, this date is the
9 same.
10 MR. GROSSMAN: Let's see. Yes, the one in our
11 file says 200. All right.
12 MS. ADELMAN: Two hundred feet?
13 MR. GROSSMAN: Yes. The one in our file on page 5
14 says: The, just what you read, the proposed filling station
15 is located over 200 feet from the lot line of the nearest
16 residential properties. The one that I printed out from my
17 digital copy says: The Costco special exception area is
18 located approximately 136 feet from the nearest home. Those
19 are not exactly parallel statements, in addition to the
20 distance being different, but the issue, I guess, is the
21 difference in the copies, and they all seem to be dated
22 September 21, 2012.
23 MR. ADELMAN: Actually, I think the question is,
24 which number is the number that's being proffered.
25 MR. GROSSMAN: Well, we also, yes, we want to --

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1 we also want to make sure that we're working off the same
2 plan here. Do you want to take a break to -- what's the
3 timing with Mr. Duke, by the way?
4 MS. HARRIS: He's on his way.
5 MR. BRANN: He's on his way.
6 MS. HARRIS: So that means he'll be here around
7 12:30, quarter to 1:00.
8 MR. GROSSMAN: I guess we could just break for
9 lunch now, you could figure out in the interim what's
10 happening with the report, Mr. Cronyn's report --
11 MS. HARRIS: Yes.
12 MR. GROSSMAN: -- the difference, and perhaps put
13 Mr. Duke on when he comes in and, or you know --
14 MS. HARRIS: And then Mr. Cronyn can come back?
15 Okay.
16 MR. GROSSMAN: So we'll break for lunch until
17 12:45. Does that make sense in terms of Mr. Duke's timing?
18 MS. HARRIS: I think that's probably perfect.
19 MR. BRANN: Yeah.
20 MR. GROSSMAN: Okay. All right. So let's do
21 that, and --
22 MS. ROSENFELD: Wait, wait, wait.
23 MR. GROSSMAN: I'm sorry. Ms. Rosenfeld.
24 MS. ROSENFELD: I'm sorry. I had two people
25 talking at once. We'll take a break?

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1 MR. GROSSMAN: What we're doing is we're going to
2 break for lunch --
3 MS. ROSENFELD: Okay.
4 MR. GROSSMAN: -- until 12:45. Mr. Duke is set to
5 arrive at about that time.
6 MS. ROSENFELD: Okay.
7 MR. GROSSMAN: We'll break with this witness,
8 we'll take Mr. Duke --
9 MS. ROSENFELD: Perfect.
10 MR. GROSSMAN: -- because he has limited
11 availability, and then we'll go back to Mr. Cronyn, and
12 meanwhile, Ms. Harris can try to figure out why we have two
13 different numbers in the same report. And also,
14 Mr. Scharman, I want to return your thumb drive to you that
15 you gave me yesterday; so if you would just stop by my
16 office one second. All right. We're breaking now for lunch
17 until 12:45 at which time we'll pick up with Mr. Duke if
18 he's arrived.
19 (Whereupon, at 12:10 p.m., a luncheon recess was
20 taken.)
21 MR. GROSSMAN: Did we figure out the discrepancy
22 or --
23 MS. HARRIS: We figured out the discrepancy, but I
24 don't have a great explanation for the reason.
25 MR. GROSSMAN: Okay.

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1 MS. HARRIS: But we can --
2 MR. GROSSMAN: We can deal with that after
3 Mr. Duke?
4 MS. HARRIS: Exactly.
5 MR. GROSSMAN: Okay. All right. Then do you want
6 to officially call your next witness with -- thank you for
7 your courtesy, Mr. Cronyn, in letting us interrupt you to
8 deal with a more pressing calendar matter here.
9 MS. HARRIS: Our next witness is Mr. Dan Duke.
10 MR. GROSSMAN: All right, Mr. Duke, and you are
11 still under oath. Welcome back.
12 (Witness was previously sworn.)
13 THE WITNESS: Very good. Thank you.
14 MR. GROSSMAN: I'm sure you're glad to return.
15 THE WITNESS: I'm very happy to be here.
16 MR. GROSSMAN: All right.
17 MS. HARRIS: And Mr. Duke is here exclusively to
18 discuss the latest revisions reflected on the special
19 exception plans that were included on the exhibit list
20 yesterday.
21 MR. GROSSMAN: Right.
22 MS. ROSENFELD: And I believe the truck turning
23 exhibits, because he's not been called back since those were
24 filed.
25 MS. HARRIS: Correct.

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1 MR. GROSSMAN: She's including, there were truck
2 turning exhibits added yesterday, yes.
3 MS. ROSENFELD: Yes. Okay.
4 DIRECT EXAMINATION
5 BY MS. HARRIS:
6 Q So, Mr. Duke, can you please explain what,
7 describe what revisions were made to the special exception
8 area, referring to Special Exception Plan 229(c) or the
9 redline, which was Exhibit 231, whatever may be easiest for
10 you?
11 A Sure. Erich, if you could please draw up the red
12 line plan and I'll speak to that. There were a couple of
13 modifications that were provided to the special exception
14 plan. Again, to orient us, before I get started, north is
15 to the top of the plan, east is to the right, west is to the
16 left, and south is the bottom of the plan. The special
17 exception area has not changed. The pump configuration has
18 not changed. The curb alignment around the station itself
19 in a few areas have been modified. If I may approach the
20 exhibit?
21 MR. GROSSMAN: Certainly.
22 THE WITNESS: The first modification in red is,
23 originally the curb line on the west side of the island was
24 out in an arc here. We've made that curb line a straight --
25 MR. GROSSMAN: Here being? First of all, let's

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1 identify the exhibit that you're using.
2 MS. HARRIS: This was 231.
3 MR. GROSSMAN: Right. Let me just turn to the
4 right page here. Yes, 231 is the July 31, '13, red line
5 overlay, and you're pointing to the southwest corner then,
6 right?
7 THE WITNESS: Southwest corner. East curb line of
8 the southwest corner island was pulled in closer to the fuel
9 station. The north side of that island was extended up a
10 few feet. The island on the, again, the west side of the
11 station, the same island that the kiosk is in, originally on
12 the western side it was a straight line. We've made that an
13 angle as opposed to a straight line, with the primary
14 purpose being to facilitate greater ease of entering/exit
15 for the truck and -- fuel delivery truck -- and for vehicles
16 parked across the drive aisle.
17 Now, one of the things we wanted to do when we
18 made those changes is we wanted to balance the green space
19 so it was the same net amount of green space before that
20 revision to this revision. So given that, I modified the
21 island that is in the southeast quadrant in order to add
22 some more green space, in order to balance out that area.
23 So we still have a 900-square-foot net addition of
24 impervious area within the special exception area.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: So with that change, some other
2 modifications were made, as I expanded the footprint of the
3 tank field. Really, I expanded the concrete pad that is
4 over the tanks, the primary purpose being to give fuel
5 operators flexibility when they actually place those tanks,
6 to give them a greater space and greater leeway to place
7 those tanks within that concrete pad.
8 Lastly, within the special exception area, a
9 series of bollards and a chain were placed on the western
10 side --
11 MR. GROSSMAN: You mean the eastern side?
12 THE WITNESS: East, thank you very much, eastern
13 side, directly across from the loading dock, in order to
14 prevent vehicles from, from diving into the fuel station
15 from, from that striped area.
16 The special exception plan itself has also been
17 modified to reflect the addition of the five-foot wide
18 pedestrian path that is outside of the special exception
19 area. So there's a separate set of exhibits that fully show
20 the pedestrian path, but for the plan view that shows the
21 special exception area, it was updated to show the
22 pedestrian path and restriping of the ring road to
23 accommodate it.
24 BY MS. HARRIS:
25 Q And I'll get into more questions regarding the

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1 pedestrian path, but for a moment, let's just stay within
2 the special exception area. In your opinion, is the revised
3 loading, gas loading area an improvement from the previous
4 plan?
5 A Yes, ma'am, it is.
6 Q And why is that?
7 A Because the drive aisle was increased in width to
8 30 feet. So with an eight-foot truck, you then have 22 feet
9 of drive aisle space between the truck and the parking space
10 that is located to the west of the, of the fuel pad area.
11 Q And what's the standard drive aisle width?
12 A Twenty feet. The standard drive aisle width is 20
13 feet. We're now providing 22 when the truck is parked
14 there. So we actually exceed the minimum width requirement.
15 Q And along the western side of the special
16 exception area, when gas is not unloading, what would
17 prevent a car from coming in that western cut area?
18 A Costco uses two basic different techniques in
19 order to prevent vehicle access through there. A chain can
20 be put up or orange traffic control cones can be placed in
21 that area in order to prevent vehicles from pulling through
22 there.
23 Q Thank you. Did you evaluate the truck turning
24 radius for the gas delivery truck?
25 A Yes, I did.

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1 Q And is there adequate room for the delivery truck
2 to make the necessary turn into the drive aisle and to then
3 position themselves at the gas unloading?
4 A Yes. As I testified before, previously the truck
5 had access. With this layout, the truck still has access.
6 Q I believe you prepared --
7 A Yes.
8 Q -- a truck turning diagram.
9 A There is a truck turning diagram with this revised
10 layout.
11 Q And that is Exhibit 232(a).
12 A That one, Erich. There you go.
13 Q Can you please explain your conclusions based on
14 this plan?
15 A So this plan shows the tracking of the vehicle.
16 The truck, as testified previously, comes in from the public
17 roadways, enters the ring road. This truck shows -- this
18 plan shows the truck making a left-hand turn from the
19 eastbound lane to the ring road, enters the fuel station
20 area, parks, delivers product; then it would continue in a
21 northerly direction and exit just as it was exiting on the
22 previous exhibits.
23 Q Thank you. Have you reviewed the site lines for
24 vehicles moving along the ring road that may want to be
25 turning into the drive aisle?

1 A Yes, I have, and there's more than adequate site
2 lines for vehicles from the ring road into the site and from
3 that western drive aisle exiting the site as well.

4 Q You started to mention the pedestrian path. Let's
5 move to the details of the pedestrian path, and let's refer
6 to Exhibits 233(a) through (d).

7 A We can start with the overall plan, the overall
8 exhibit.

9 Q Okay. Can you describe in detail the pedestrian
10 path that is now being proposed?

11 A Yes. This is the Pedestrian Circulation Key Map.
12 Again, north is up, south is at the bottom, east is to the
13 right; west is to the left. A five-foot pedestrian path has
14 been installed starting from the area in front of Target
15 that ties into an existing sidewalk. It's five-feet wide
16 concrete, runs behind the curb. Then it enters an area just
17 about where the Target intersection is where, basically,
18 what we're doing is we're taking the existing curb line
19 that's there now and moving that out five feet. We're
20 moving that out five feet to create that five-foot sidewalk.

21 So the pedestrian path runs along the entire limit
22 along the eastbound lanes of the ring road, continues in
23 front of the Costco store itself, and terminates at the
24 crosswalk where the Stephen Knolls School is located.

25 MR. GROSSMAN: I'm not sure I understand. When

1 you say you moved something out, are you saying you expanded
2 the size of the ring road? What are you saying by moving --

3 THE WITNESS: No. Actually, what we did is
4 reduced the size of the ring road.

5 MR. GROSSMAN: Right.

6 THE WITNESS: So I'm going to point to cross
7 sections. This is Sheet No. 2. This covers the, I'm going
8 to call it, the northern area of the path along the ring
9 road. So I drew a cross section, which we drew a line
10 across the ring road and put the dimensions across there.
11 So starting with your westbound lanes in this area, the 13
12 feet, 11 feet; then you got an eastbound lane that's 13
13 feet; there's a seven-foot parallel parking space --

14 MR. GROSSMAN: Excuse me. Mr. Sheveiko, I can't
15 hear when --

16 MR. SHEVEIKO: I apologize.

17 THE WITNESS: -- and then a five-foot sidewalk.
18 And if you look at the cross section, I've labeled on here
19 where the existing curb is, and then the proposed path
20 extends out from where that existing curb is. So you remove
21 that curb; right now it's a ring road; you take out that
22 ring road, and sidewalk is going to be installed with the
23 new curb.

24 BY MS. HARRIS:

25 Q And can you explain where, what happened to the

1 lane widths in order to achieve that?

2 A The lane widths of the entire ring road varies as
3 you go through it. We held, on the eastbound lane, since
4 there's basically a single eastbound lane, we held 13 feet
5 width for the entire length of that lane. Then we held the
6 seven-foot parallel parking space. There's one area where
7 we reduced it to six-and-a-half feet, which is allowed, in
8 order to maximize the space on the ring road, and then we
9 maintained, of course, the westbound movements. The lane
10 dimensions shifted one foot max, depending on where we were,
11 in order to make that 13 feet, seven feet, and five feet fit
12 in the existing ring road configuration.

13 MR. GROSSMAN: I just don't understand the math.
14 How did you add a five-foot sidewalk without taking that
15 five feet from somewhere if you kept all the other
16 dimensions? I don't understand that.

17 THE WITNESS: Because the original configuration
18 of the eastbound lanes was two lanes.

19 MR. GROSSMAN: I see.

20 THE WITNESS: They had two lanes, and what they
21 did is they took one of the lanes that was 12 feet plus or
22 minus wide and they just put in some parallel parking
23 striping. So what we did is we moved that parallel parking
24 striping out and took that space in order to create the five
25 feet.

1 MR. GROSSMAN: Right now, before you put in the
2 pedestrian path, is there one lane eastbound there or are
3 there two lanes now eastbound?

4 THE WITNESS: There is one lane with a parallel
5 parking lane that's basically 12 feet.

6 MR. GROSSMAN: I see. So you've just reduced, by
7 12 feet -- the parallel parking lane is 12 feet wide, you're
8 saying?

9 THE WITNESS: Correct. Yes, sir, that is correct.

10 MR. GROSSMAN: And now it will be about seven feet
11 wide?

12 THE WITNESS: That is correct.

13 MR. GROSSMAN: All right. Okay.

14 BY MS. HARRIS:

15 Q And the standard width for a parallel parking
16 space is in fact?

17 A An original shopping center, it's allowed to be
18 six-and-a-half feet. The standard width is seven feet. We
19 provided seven feet for the vast majority of the parallel
20 parking spaces. There's, I think, four of them that we made
21 six-and-a-half as you go around the bend, just to provide as
22 much space as possible within the ring road.

23 MR. GROSSMAN: All right.

24 BY MS. HARRIS:

25 Q Thank you. And then were there also any traffic

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1 signal, not traffic signal, but painted warning signs added
2 to this plan?
3 A So within the, within the entire ring road length,
4 we're going to restripe, provide new striping in order to
5 better delineate where the different lane widths are. In
6 front of the Costco entrance at the loading dock, there's
7 new stop bars and stop signs that'll be painted and placed
8 in that area.
9 Q And just to clarify, because I don't know if you
10 mentioned it, is the five-foot pedestrian pathway elevated
11 or not elevated?
12 A You're correct, I did not specifically say that.
13 It is elevated. It is on a curb that's separated from the
14 ring road by six inches and gray change.
15 Q In terms of the ring road lane widths, it appears
16 that the -- how narrow is the narrowest lane?
17 A The narrowest lanes -- I'm going to refer to Sheet
18 3 of the cross sections that's directly in front of the
19 Costco itself. I didn't change any of the lane widths here.
20 They were 9.6 feet, each of the lanes on the westbound
21 direction, maintained those lane widths in that area.
22 MR. GROSSMAN: When you say directly in front of
23 the Costco, you mean in front of the Costco warehouse
24 loading dock?
25 THE WITNESS: Loading dock, correct.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: In the ring road, adjacent to the
3 Costco warehouse loading dock, there's two eastbound lanes
4 at 9.6 feet in width.
5 MR. GROSSMAN: Okay.
6 BY MS. HARRIS:
7 Q And that's currently existing?
8 A And that's what exists there now --
9 Q Okay, thank you.
10 A -- that's correct.
11 Q In your opinion, is the pedestrian path a safe
12 pedestrian way?
13 A Absolutely. Given the number of pedestrians that
14 are actually out there, the fact that it is, meets all the
15 ADA code compliance in terms of widths and grade, that the
16 five feet is -- a grade-separated path is very safe for
17 pedestrians in that area.
18 Q And then once one reaches the eastern terminus of
19 that pedestrian path, what then becomes the route, the
20 pedestrian route?
21 A On the eastern end, past the Stephen Knolls School
22 where you take the crosswalk across the ring road, there's
23 then a sidewalk/crosswalk/handicap ramp system that takes
24 you through the perimeter of the Westfield Mall up to the
25 Metro station.

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1 Q Thank you. And will any trees in the buffer area
2 be affected by the pedestrian path?
3 A No, none of the forested buffer or the trees will
4 be affected by the pedestrian path.
5 Q And will the construction of the pedestrian path
6 in any way interfere with the existing forest buffer?
7 A No, especially given, since that pedestrian path
8 is being entirely built within a paved area right now,
9 there's no impact to the forested buffer.
10 Q Okay. Has the location of the green wall changed?
11 A The starting and ending point have not changed.
12 They are the exact same starting and ending points. We did
13 move the green wall as close to the sidewalk as we could to
14 get planting in there, in order to get it as far away from
15 the forested buffer as possible, which was about a
16 foot-and-a-half shift.
17 Q And I believe Mr. Brann noted this earlier this
18 week, but can you just review how that green wall will be
19 constructed?
20 A Yes. The green wall is on drilled sonotube
21 piling; so it's basically a tube one foot four inches in
22 diameter. They drill it into the ground. They put the post
23 in there, fill it up with concrete, and then put the panels
24 in between. So it's -- the concrete posts are every eight
25 feet; so it is not a continuous footing. It's just, you

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1 drill it down, pour the concrete, put the post in.
2 Q Will the construction of the green wall in any way
3 adversely affect the forest buffer?
4 A No, ma'am.
5 Q Did you evaluate the turning radius of the trucks
6 going into the Costco warehouse?
7 A Yes, I did.
8 Q And can you explain your results?
9 A Yes.
10 Q So we have a separate exhibit for that scenario.
11 So this is the truck turn exhibit for the Costco warehouse.
12 We analyzed the entrance and exit movements for the two
13 extreme loading bays. The truck turns in from the ring
14 road --
15 MR. GROSSMAN: Hold on one second.
16 THE WITNESS: Yes, sir.
17 MR. GROSSMAN: Identify the exhibit number.
18 MS. HARRIS: Oh, sorry. It is 232(b).
19 MR. GROSSMAN: Okay.
20 THE WITNESS: So the trucks turn in from the ring
21 road -- shaded in gray is the vehicle tracking -- they then
22 back into the loading bay, and it's well clear of the curb
23 on the eastern side of the special exception area, and then
24 this movement on the upper right-hand side is the truck
25 leaving. And then we also analyzed the far north space,

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1 same type movement: comes in from the ring road, makes a
2 left in, goes north, backs into the spot, and then it pulls
3 out from the spot and exits onto the ring road again.
4 BY MS. HARRIS:
5 Q Will the installation of the bollards along the
6 eastern side of the special exception plan affect the truck
7 turning movements?
8 A No, not at all. The bollards have no impact on
9 the truck circulation.
10 Q Are they permanent bollards?
11 A No. They are removable bollards. You do not need
12 to remove the bollards in order to have your Costco trucks
13 load the warehouse. They're only there for oversize loads
14 or a scenario where the trucks need some additional
15 maneuvering room. It's not for your typical scenario.
16 Q When you say they're only there for, you mean the
17 fact that they're removable is only there --
18 A Yes.
19 Q -- for that situation? Thank you.
20 A Correct.
21 MS. HARRIS: I have no other questions for
22 Mr. Duke.
23 MR. GROSSMAN: All right. Cross-examination.
24 MR. SHEVEIKO: I'm ready to go.
25 MS. ROSENFELD: Mr. Grossman, we spoke with

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1 Ms. Harris earlier. Mr. Sheveiko has some questions limited
2 exclusively to forest conservation issues, and she's agreed
3 that for purposes of this one witness, she will allow him to
4 question on that and I will conduct the remainder of the
5 Kensington Heights' cross-examination.
6 MR. GROSSMAN: If Ms. Harris is happy, I'm happy.
7 MS. HARRIS: I'm always happy.
8 MR. GROSSMAN: All right. Go right ahead then.
9 MR. SHEVEIKO: All right. Thank you very much.
10 CROSS-EXAMINATION
11 BY MR. SHEVEIKO:
12 Q Starting with the submission you made on July 31st
13 here, the engineering report, looking at the table of
14 contents here, Exhibit A --
15 MR. GROSSMAN: This is Exhibit 239. This is the
16 July 31, 2013, report, correct?
17 MR. SHEVEIKO: 239, okay.
18 BY MR. SHEVEIKO:
19 Q All right. So Exhibit A says it includes the
20 NRI/FSD and forest conservation exemption letter from 2010,
21 but the actual report has just the exemption letter and not
22 the NRI/FSD. Do you have that?
23 A The NRI/FSD was submitted as part of the record.
24 Q Okay. And what's that exhibit number?
25 MR. GROSSMAN: You're talking about the original

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1 NRI/FSD?
2 MR. SHEVEIKO: Right, yes.
3 MR. GROSSMAN: Okay.
4 MS. HARRIS: I will look for that. I don't have
5 it offhand, but we'll find it.
6 MR. SHEVEIKO: Okay, but so, so we could get it
7 here because it is definitely included in the -- I'm not
8 sure. There's several NRI/FSDs. So that one doesn't
9 specify which one it is. So if we could get some clarity on
10 that, that would be, that would be great. While I ask other
11 questions, maybe if you can --
12 MS. HARRIS: That's fine.
13 MR. SHEVEIKO: -- if you can pull it up.
14 MR. GROSSMAN: Okay.
15 BY MR. SHEVEIKO:
16 Q Second question is the table of contents also
17 lists Exhibit B, and it says it includes a letter from
18 November 9th, 2021. I assume that's, that's a typo?
19 A Yes, I would assume so.
20 Q Okay. Well, you know, mistakes happen; so we're
21 used to it by now.
22 MR. GROSSMAN: Costco is a futuresque company;
23 that's all.
24 MR. SHEVEIKO: Right. Right.
25 BY MR. SHEVEIKO:

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1 Q Okay, next question. The same Exhibit B, the
2 letter that it's talking about, which is from 2012, not
3 2021, it talks about a conservation exemption 42013053E, and
4 I was not able to find this exemption in the, in the
5 submissions.
6 A That exemption is the limited NRI/FSD plan that
7 was stamped and approved by Amy Lindsey at Park and Planning
8 Environmental staff.
9 Q Well, according to my records, that's actually
10 42013052E, not 53E.
11 A I'm looking at, it -- I'm looking at her approval
12 stamp.
13 Q Right.
14 A 42013053E.
15 Q 53E?
16 A Yeah, 11/9/2012.
17 Q Okay. So 11/9 --
18 A Which is, which is the date of the letter I'm
19 looking at in the report.
20 Q All right. Let me just verify this real quick.
21 Yes, I'm looking at 11/9 as well, I think, from what I can,
22 I can make it out, but this one is actually 52E, not 53E.
23 Are they different exemptions or --
24 A There have been a series of NRI/FSD plans. Let me
25 check. I may be able to tell you exactly.

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1 MR. GROSSMAN: This letter that's included in the
2 latest report, the November 9, 2012, letter, is the Amy
3 Lindsey --
4 MR. SHEVEIKO: Right.
5 THE WITNESS: Yeah.
6 MR. GROSSMAN: -- letter, which contains her, her
7 number.
8 THE WITNESS: I'd have to go back and check, but I
9 believe the 52 was when the fuel station was in its former
10 location, before we moved it.
11 MS. HARRIS: And actually, if I could,
12 Mr. Grossman?
13 MR. GROSSMAN: Yes.
14 MS. HARRIS: It occurs to me that Mr. Duke was
15 brought back to testify about the revisions to the plan. He
16 previously testified about the NRI/FSD. So I'm not --
17 MR. GROSSMAN: Right, but I think in fairness, if
18 there are some inconsistencies in the report that he's just
19 filed --
20 MS. HARRIS: Okay.
21 MR. GROSSMAN: -- straightening them out would
22 make sense.
23 MS. HARRIS: Okay.
24 MR. SHEVEIKO: Yes.
25 BY MR. SHEVEIKO:

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1 Q And actually, per your last statement, Mr. Duke,
2 52E was not the previous location of the gas station. I'm
3 looking at a 52E right now, and the gas station is in the
4 new location. So --
5 MR. GROSSMAN: What's the date on that?
6 MR. SHEVEIKO: The date is -- I can't make it out.
7 It's too small. Let me see here.
8 MS. CORDRY: We have a magnifying glass.
9 MR. SHEVEIKO: All right.
10 MR. GROSSMAN: Wow, you are equipped, I tell you.
11 MS. ADELMAN: That's me.
12 MR. GROSSMAN: Yes, Ms. Adelman, I'm referring to
13 you too.
14 MS. ADELMAN: I'm the one with the scales and
15 everything.
16 MR. SHEVEIKO: Where would the date be?
17 MS. ROSENFELD: Here, let me take a look.
18 MS. ADELMAN: It should be in the, it should be up
19 here. You can pull it up, Dan, and that makes it bigger.
20 MR. SHEVEIKO: Yes. Yes. No, since it's a
21 printout, we don't get the original PDF; so there's, when
22 you zoom in, there's really nothing, nothing there. So any
23 luck, Pat?
24 MS. HARRIS: The limited NRI/FSD --
25 MR. SHEVEIKO: Well, yes. So we have --

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1 MS. HARRIS: -- is Exhibit 112(f), no --
2 MR. BRANN: No.
3 MS. HARRIS: -- (e). It's a simplified NRI/FSD.
4 MR. SHEVEIKO: And what do the numbers end in?
5 53E or 52E?
6 MS. HARRIS: My reading glasses aren't that
7 strong.
8 MR. SHEVEIKO: Yes. You know, that's --
9 MR. GROSSMAN: You have a magnifying glass up
10 there on the table. So --
11 MS. HARRIS: E, ends in an --
12 MR. SHEVEIKO: Okay. So it's 52E or 53E?
13 MR. BRANN: E, 52E.
14 MR. SHEVEIKO: 52E. Okay.
15 BY MR. SHEVEIKO:
16 Q So that's your latest submission, right?
17 MS. CORDRY: 52E?
18 MS. HARRIS: Does that sound right, Dan, April
19 29th?
20 THE WITNESS: What --
21 MS. HARRIS: Well, the letter was dated --
22 THE WITNESS: The letter is dated November 9th.
23 The approval stamp on the plan is dated 11/9, and a number,
24 the handwritten-in number, which matches the approval
25 letter, is the 53E. That's on the approval stamp.

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1 MR. GROSSMAN: Does it make a difference? Other
2 than figuring it out, does --
3 MR. SHEVEIKO: Well, there's so many forest
4 conservation exemptions. I have one referenced in one
5 document that I cannot find, and I have another one that Pat
6 just mentioned, 52E, but there is no approval letter
7 included for it in the, in the engineering report. So --
8 MS. CORDRY: In other words, he's referring, do
9 you have a stamp of approval on 53E?
10 THE WITNESS: Correct.
11 MS. CORDRY: And we have 52E in our documents.
12 MR. SHEVEIKO: As the actual submitted document.
13 MS. CORDRY: We don't know then, I guess, right,
14 if there's --
15 MR. GROSSMAN: Well, let's ask this question:
16 Would it make a -- if you do have an approval, a stamped
17 approval on an NRI/FSD that's ending in the 3E, is it
18 necessary and, on the way this process works, to have one
19 with a 2E? In other words, do you have to have an approval
20 for both, or is it --
21 THE WITNESS: No.
22 MR. GROSSMAN: -- is the one you have cumulative?
23 THE WITNESS: The one that I have, the 52E --
24 MR. GROSSMAN: You mean 52E or 3E?
25 THE WITNESS: I'm sorry. 53E is, is in the

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1 current special exception area. So this is the one that
2 counts.
3 MR. GROSSMAN: Okay.
4 MS. CORDRY: Okay. But we don't have it.
5 MR. SHEVEIKO: But we don't have it.
6 MR. GROSSMAN: All right.
7 MS. CORDRY: So the one that counts we don't have.
8 MR. GROSSMAN: Is there a larger version of that
9 one if we don't have the -- I don't think the NRI/FSD was
10 part of what was filed in the groups that were filed on the
11 31st.
12 MR. BRANN: Yeah, it was.
13 MS. CORDRY: Yes.
14 MR. SHEVEIKO: Yes, it was. It --
15 MR. GROSSMAN: Oh, the ones that were filed the
16 other day? Okay.
17 MR. BRANN: No, not the other day.
18 MR. GROSSMAN: Okay. When was that one filed
19 then?
20 MS. CORDRY: Well, 112, Exhibit 112 is dated
21 4/29/13. That's the one that has the 2E.
22 MR. GROSSMAN: Okay. Let me see if I have that in
23 the box here. I'm sorry. What was the number of that?
24 MS. CORDRY: 112.
25 THE WITNESS: So here's, here's where the

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1 confusion is --
2 MR. GROSSMAN: Okay.
3 THE WITNESS: -- so this is Exhibit 104. So we
4 talked about this at the last hearing. The --
5 MR. GROSSMAN: By the last hearing, you mean
6 when -- we've had a lot of last hearings.
7 THE WITNESS: Whatever hearing I was last here at.
8 MR. GROSSMAN: Yes. That was back in April, I
9 think, or May.
10 THE WITNESS: Okay. So here's the stamped
11 approval, okay?
12 MR. GROSSMAN: Yes.
13 THE WITNESS: 42013053E has the fuel station in
14 its location. That was handwritten in there. In the title
15 block I had 52E. So why Amy gave it a 53E, I don't exactly
16 know why but that's, that's the number that is --
17 MR. GROSSMAN: Okay.
18 THE WITNESS: -- corresponds with the letter, and
19 this is the plan we're working off of.
20 MR. GROSSMAN: Okay. So what you're saying is the
21 typed version on the side ends in a 2E --
22 THE WITNESS: Right.
23 MR. GROSSMAN: -- the actual approval number is
24 the 3E --
25 THE WITNESS: And this is all coming back. I

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1 remember seeing that. Because she had already signed it, I
2 didn't want to go and --
3 MR. GROSSMAN: Right.
4 THE WITNESS: -- change anything.
5 MR. GROSSMAN: Right.
6 THE WITNESS: So I do understand.
7 MR. GROSSMAN: Okay.
8 MS. ROSENFELD: And what exhibit number is that
9 again?
10 THE WITNESS: 104 --
11 MS. ROSENFELD: Thank you.
12 THE WITNESS: -- is what's written on there, is
13 104.
14 MS. ROSENFELD: Okay.
15 BY MR. SHEVEIKO:
16 Q Okay. So what number are we using, because 53E is
17 also referenced in her letter. So she didn't just stamp it
18 53E, but it's also --
19 A Yeah. She --
20 Q -- 53E on her approval notice.
21 A Correct. We're using 53E and that's, that's the
22 approval letter that's in the, that is in the, in the
23 report.
24 Q Right. So we're using 53E, but yet that exhibit,
25 the actual number that it says is 52E. So --

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1 MR. GROSSMAN: Right, but as he just --
2 BY MR. SHEVEIKO:
3 Q -- I just want to make sure that it's, we don't
4 have any lost forest conservation exemptions here.
5 A I'll say it again. Her approval number is 53E.
6 Q Okay.
7 A That's the number she gave it --
8 Q Okay.
9 A -- after I submitted it. I wrote that in there
10 before. I had that number on all of the submissions.
11 Q Yes.
12 A When she approved it, she gave it a 53E number.
13 Q Okay.
14 MR. SHEVEIKO: So how should we reference it for
15 the --
16 MR. GROSSMAN: Right, and he couldn't change it
17 thereafter --
18 MR. SHEVEIKO: How should we reference for the
19 record? 53E or 52E, just so we're not confused?
20 MR. GROSSMAN: All right. Let's --
21 MR. SHEVEIKO: Make it --
22 MR. GROSSMAN: This is Exhibit 104. Let's call it
23 the 3 because that's what's approved.
24 MR. SHEVEIKO: Okay. So that's what --
25 MR. GROSSMAN: All right.

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1 MR. SHEVEIKO: -- what's approved. Okay. Well,
2 I'm glad we got that straightened out --
3 MR. GROSSMAN: All right.
4 MR. SHEVEIKO: -- because I literally spent half
5 the night looking for 53E and it was very frustrating not
6 finding it, so okay.
7 MR. GROSSMAN: I apologize to you.
8 BY MR. SHEVEIKO:
9 Q So we're dealing with just two forest conservation
10 exemptions that you have submitted, right? There is the
11 original, the 6E, and now there is the 3E, right? So
12 we're --
13 A Uh-huh.
14 Q -- dealing with two exemptions, right?
15 A Correct.
16 MR. GROSSMAN: And I should mention that on our
17 exhibit list we do refer to it as 42013053E.
18 MR. SHEVEIKO: 3E.
19 MR. GROSSMAN: On the exhibit list for 104.
20 MR. SHEVEIKO: All right. So we're going to refer
21 to it as 3E, even though it says 2E on the actual printout,
22 okay.
23 MR. GROSSMAN: Well, it says 2E on the --
24 MR. SHEVEIKO: All right. So we're going to call
25 it 3E.

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1 MR. GROSSMAN: -- on the printed, but he is not
2 going to change after -- once she's done her approval, he's
3 not going to modify it or anything. Okay.
4 MR. SHEVEIKO: Right. Right. Right. Yes. So I
5 just wanted to make sure there were no lost forest
6 conservation exemptions.
7 BY MR. SHEVEIKO:
8 Q So moving on here. So we have two. So why not
9 just file one exemption? Why did you need two exemptions?
10 A The county regulation requires that each time you
11 submit a plan to improve the property, you file a forest
12 conservation exemption. So when the warehouse was
13 developed, a forest conservation exemption was, was
14 submitted. When the fuel station goes in, a forest
15 conservation exemption was submitted. When something else
16 gets developed on the property, you know, the pad site or
17 whatever, another forest conservation exemption will be
18 submitted.
19 Q Okay. The gas station was not included in the
20 original forest conservation exemption?
21 A I don't remember exactly what we showed on the
22 original one. I think we showed a pad site in the formal --
23 former gas station location on the initial forest
24 conservation exemption for the warehouse.
25 Q Okay. So it does show it. So the gas station was

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1 in the plans already for this development?
2 MR. GROSSMAN: He said for the former location of
3 the gas station.
4 MR. SHEVEIKO: Right, the former location, right.
5 BY MR. SHEVEIKO:
6 Q So I'm just trying to figure out why, why you had
7 to file a separate forest conservation exemption for the gas
8 station even though at the time the first one was filed, the
9 gas station was part of the plans.
10 A Because it moved.
11 Q Okay.
12 A It was in the old location.
13 Q All right. So it was a matter of moving it?
14 A Yes.
15 Q Okay. And so wouldn't that just amend the
16 original forest conservation exemption?
17 MR. GROSSMAN: That was a different special
18 exception. I mean, I can answer the -- they filed a new
19 special exception application --
20 MR. SHEVEIKO: Right.
21 MR. GROSSMAN: -- for the new location.
22 MR. SHEVEIKO: Right.
23 MR. GROSSMAN: So that would result in a
24 requirement for the new NRI/FSD.
25 MR. SHEVEIKO: Okay.

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1 BY MR. SHEVEIKO:
2 Q But, you know, so that would just move the gas
3 station, though. It wouldn't, you know, it would still --
4 any disturbance for the gas station would still be included
5 in the original forest conservation exemption?
6 A The original forest conservation exemption showed
7 the former gas station location --
8 Q Okay.
9 A -- an LOD associated with that gas station. When
10 the location changed --
11 Q Okay. So limits of disturbance were included,
12 okay.
13 A -- when the location changed, a new one was done,
14 as is the code requirements.
15 Q Okay. So the original limits of disturbance,
16 which you just mentioned, were -- included the gas station
17 work, okay. All right. So going back to the 53E exemption,
18 which you have there right now, can you point out Silver
19 Creek, please, on the, on the diagram?
20 A Silver Creek?
21 Q Yes.
22 A No.
23 Q No?
24 A No.
25 Q Okay.

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1 A There are two stream areas --
2 Q Yes.
3 A -- listed on, shown on the property --
4 Q Okay.
5 A -- one on the southwest corner --
6 Q Yes.
7 A -- and one on the southeast property line --
8 Q Yes.
9 A -- adjacent to the old church.
10 Q Okay.
11 A So two streams are shown. They're listed as
12 streams.
13 Q Okay. But did you review the sector plan when you
14 were coming up with these documents?
15 A Yes.
16 Q So that stream is in fact named, is it not, in the
17 Wheaton Sector Plan?
18 A I don't know off the top of my head.
19 Q Okay.
20 MR. SHEVEIKO: So the Wheaton Sector Plan is in
21 evidence somewhere, right?
22 MR. GROSSMAN: Yes, absolutely.
23 BY MR. SHEVEIKO:
24 Q Okay. Well, for convenience purposes here, I'm
25 going to --

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1 MR. GROSSMAN: You mean the Wheaton CBD --
2 MR. SHEVEIKO: Yes, the --
3 MR. GROSSMAN: -- and Vicinity Sector Plan? Yes,
4 that's in evidence.
5 MR. SHEVEIKO: -- Vicinity Sector Plan.
6 MR. GROSSMAN: In fact, multiple copies of it for
7 one reason or another are in.
8 MR. SHEVEIKO: Right. Right. Right.
9 BY MR. SHEVEIKO:
10 Q So if you could point out, if I may approach, if
11 you could read what it says over here?
12 MR. GROSSMAN: So you're showing him a page from
13 the sector plan?
14 MR. SHEVEIKO: Yes, a page from the sector plan.
15 MR. GROSSMAN: What page?
16 MR. SHEVEIKO: It's page, it's marked -- it's Map
17 20, Natural Systems.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: Page 76.
20 MR. GROSSMAN: Okay.
21 BY MR. SHEVEIKO:
22 Q Okay.
23 A In the left-hand corner, it says: Kensington
24 Branch, Silver Creek.
25 Q Silver Creek and it's pointing. Can you show what

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1 it's actually defining, what stream that is?
2 A There's actually not a leader pointing to any
3 particular stream that I see.
4 Q Well, maybe it's not quite colored, but if you can
5 see, that's actually a leader, and so this is a remnant
6 stream.
7 A Well, now I'm going to, you know, I'm --
8 Q Maybe a color copy would help, but --
9 A Yeah.
10 Q So can we agree for the purposes of this
11 cross-examination that that is in fact Silver Creek, this
12 remnant stream, if we're to comply with the Wheaton Sector
13 Plan designation for this, for the stream?
14 A Honestly, without seeing a color copy and seeing
15 where the leader is pointing to --
16 Q Okay. Can I provide --
17 MR. GROSSMAN: I can, if it helps, I have Exhibit
18 150, which is a copy of the Wheaton CBD Sector Plan. What
19 page was it again?
20 MR. SHEVEIKO: It's --
21 THE WITNESS: 76.
22 MR. GROSSMAN: 76? Okay.
23 THE WITNESS: Okay. There's not a leader, but
24 there is a blue line that shows, extending from the
25 Kensington Branch to the southwest corner of the site.

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1 BY MR. SHEVEIKO:
2 Q Okay. And by leader, what exactly do you mean?
3 A Leader, to me, is there's a label with a little
4 arrow that points to it and says here it is.
5 Q Are there any other streams that those names could
6 have possibly been attributed to? Are there any other --
7 A No, none.
8 Q -- streams in the vicinity?
9 A Yeah, that one is just the one right in that
10 corner there.
11 Q So is the absence of a leader material to the name
12 of the stream?
13 A No, just the leader came up; so I just wanted to
14 clarify that.
15 Q Okay. All right. So even though there's no
16 leader, it's absolutely clear that Silver Creek is in fact
17 what is labeled on the sector plan for the stream?
18 MR. GROSSMAN: Mr. Sheveiko, what are we getting
19 at here, just so I understand how to analyze whatever you're
20 bringing out here?
21 MR. SHEVEIKO: Well, I am --
22 MR. GROSSMAN: What are you bringing out?
23 MR. SHEVEIKO: I think it's going to be, it's
24 going to be clear in the next two questions here. So --
25 MR. GROSSMAN: Okay. Go ahead.

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1 MR. SHEVEIKO: And if not, it can stop.

2 BY MR. SHEVEIKO:

3 Q All right. So if you could point now on your 53E

4 diagram out here what, you know, based on what we just

5 reviewed, if you could point to Silver Creek?

6 A It is on the extreme southwest corner --

7 Q Okay.

8 A -- a dashed line that extends right here.

9 Q All right. So the stream that is on your map is

10 in fact Silver Creek. We can agree on that?

11 A (No audible response.)

12 Q Okay. All right. So looking at this 53E

13 exemption, what is the total forested area disturbed?

14 A On 53E?

15 Q Yes, on this one, yes.

16 A There's no forest disturbed.

17 Q Okay. So it's -- what's the number? Is it --

18 A Zero.

19 Q Zero, okay. And what is the total disturbed area?

20 A We label an LOD. I'm just seeing if we have a

21 disturbed area label or calculation on here. We do not

22 calculate the total disturbed area.

23 Q Well, you know, amazingly enough, I just, if you

24 look closely, it is, it is actually, I believe --

25 MS. CORDRY: Would the magnifying glass help?

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1 MR. SHEVEIKO: Yes. I believe it is there. I

2 have my notes here. It's in the upper right, Erich.

3 THE WITNESS: Oh, okay. Note No. 4 under Resource

4 Data Table, total disturbed area, 1.29 acres.

5 BY MR. SHEVEIKO:

6 Q Okay. All right, great. So what are the

7 components of this total disturbed area? Where is the

8 disturbance occurring?

9 A It's a box around the fuel station that I'm

10 circling with my finger. It says LOD.

11 Q Right. Okay. So the entire one-acre, 1.29-acre

12 disturbance is limited to the actual special exception

13 area --

14 A Correct.

15 Q -- is that correct?

16 A That's what's shown on that plan.

17 Q Okay. And so there's no other disturbance at all

18 as part of this forest conservation area, exemption?

19 A Correct.

20 Q Okay. And what constitutes a disturbance, in your

21 view?

22 A There is a label -- actually, outside of that area

23 there's a green wall limited disturbance that just basically

24 goes around where the green screen is being installed.

25 Q Okay. So the green wall does, will create some

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1 disturbance?

2 A The green wall is drilled tubes.

3 Q Right.

4 A We have a note specifically on our plan: Proposed

5 eight-foot acoustic and green wall to be located behind the

6 face of curb. Installation of this wall is through drilled

7 sonotubes. Land grading is not necessary to install the

8 wall. So technically it's not land grading --

9 Q Okay.

10 A -- because you're drilling the tubes into the

11 ground, but we did call it out as disturbance, needs to be

12 done in order to install the wall.

13 Q Okay. But why is this disturbance not part of the

14 total disturbed area?

15 A Just for the very fact that I said, put this note

16 on the plan and discussed it with Park and Planning staff

17 that you're just drilling the tubes, you're not digging; so

18 it doesn't count as true disturbance.

19 Q Okay. So this is something that the planning, the

20 planning staff said, even though it's limited disturbance,

21 it's not actually disturbance; am I reading it right?

22 A Correct.

23 Q Okay. And how many total drilling points will

24 there be for the sonotubes? How many total sonotubes are we

25 talking about?

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1 A It's every eight feet over 700 feet. So I don't

2 know how many tubes there are.

3 Q So hundreds?

4 A Yes. Well, no, I can do the math.

5 Q So 700 feet, 700 -- so roughly 100?

6 A Roughly.

7 Q Roughly 100 tubes.

8 A Saying it's 770 feet.

9 Q Yes. And how big, each tube is --

10 A One point two feet, one foot four inches.

11 Q One feet for inches, and is that --

12 A Ninety-seven.

13 Q Okay. And is that the total area disturbed by

14 each tube or --

15 A That's the diameter.

16 Q Okay. So the diameter is one foot four inches,

17 you said?

18 A Yes.

19 Q Okay. Okay. And how big is the concrete area

20 that you're actually digging out to install that tube?

21 A The drilled area is that.

22 Q Okay. So one foot four inches --

23 A Correct.

24 Q -- four inches in diameter?

25 A In diameter.

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1 Q Right.
2 A Correct.
3 Q So we have roughly 100 points of disturbance at
4 roughly one foot four inches in diameter?
5 A It's 97, plus or minus, but yes.
6 Q Okay, 97. Okay, 97 tubes.
7 A Ninety-seven of the sonotubes.
8 Q Right. Right. Right. Okay. And there's no
9 other disturbance that is connected to installation of the
10 green wall. So there's not going to be any equipment being
11 used outside of the ring road?
12 A No. It's all from the ring road.
13 Q And all the workers installing the wall will be
14 operating from the ring road and not, not from the forested
15 buffer?
16 A I'm sure that they will be standing around the
17 tubes to set the posts and the panels. I'm sure of that.
18 Q Okay. Well, so as far as standing around, what's
19 the width of their standing around along that area? How
20 much space do you think they need? Will they be using heavy
21 machinery or --
22 A Normally we, we estimate about five feet.
23 Q Five feet, okay. Okay. All right. And next
24 question is, I'm looking at your latest submission here and
25 it indicates that -- it seems to be indicating, correct me

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1 if I'm wrong, that not the entire area of the green forested
2 buffer is actually considered forest stand. So I see you
3 have dotted lines, delineating the actual boundaries.
4 A Correct.
5 MR. GROSSMAN: Which latest submission are you
6 talking about?
7 MR. SHEVEIKO: The 53E --
8 MR. GROSSMAN: Okay. Okay. Exhibit --
9 MR. SHEVEIKO: -- otherwise known as 52E.
10 MR. GROSSMAN: -- Exhibit 104.
11 MR. SHEVEIKO: Excuse me. I apologize for that.
12 MR. GROSSMAN: Okay.
13 MR. SHEVEIKO: Exhibit 104.
14 MR. GROSSMAN: Okay.
15 BY MR. SHEVEIKO:
16 Q So you don't consider the entire forested buffer
17 as forest, only parts of it, is that correct?
18 A For the purposes of the county code --
19 Q Yes.
20 A -- that is correct.
21 Q Okay. And I'm going to turn your attention to --
22 do you have the other, the page 2 of the 53E, of Exhibit
23 104, because there were two pages to that.
24 A Yeah, there were two pages. The second page was a
25 blowup.

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1 Q Right, yes. That's exactly what I'm looking for
2 here.
3 A I have a copy of it here in front of me.
4 MR. GROSSMAN: And I can probably pull it out of
5 our file if we have it. Let's see. It'll be Exhibit
6 104(b). So let me see if we have it here, the large
7 version.
8 BY MR. SHEVEIKO:
9 Q And so while Erich is looking for that, just one
10 clarification. So you used the County's definition of what
11 constitutes a forest, and then you drew the boundaries of
12 the forest stands, which were approved by planning staff?
13 Is that how the process took place or --
14 A Correct.
15 Q Okay. All right. And can you tell me what a,
16 what that definition entailed, why the line is drawn here
17 and why it doesn't go, you know, why it doesn't go all the
18 way to the curb, all the way to the fence?
19 A I don't have the exact definition from the county
20 code in front of me, but it is based upon a field visit by
21 county staff and by an arborist. We also did a detailed
22 survey and located all the specimen trees. So --
23 Q Yes.
24 A -- we have exact locations of those trees and that
25 line is determined based upon quality of the forest and the

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1 site visits and the survey information.
2 Q Okay. So correct me if I'm wrong. Looking at --
3 since we don't have the big printout, I'm not trying to put
4 words in your mouth, I'm just trying to get things straight
5 here. So the portion of the forested green buffer that is
6 immediately adjacent to the guardrail and the ring road is
7 not actually considered forest. There's a strip there that
8 is kind of in the forested green buffer, but it's not
9 considered forest?
10 A Yeah. There's -- yes, that's correct.
11 Q Okay. According to the county definition?
12 A Correct.
13 Q Okay.
14 MR. GROSSMAN: I'm not seeing the exhibit itself
15 in the files.
16 MR. BRANN: It's 104(b).
17 MR. GROSSMAN: I know what the number is. I'm
18 just --
19 MR. BRANN: Sorry.
20 MR. GROSSMAN: -- not seeing the exhibit itself.
21 Let me see if it's in here. Hold on a second because we
22 have some here.
23 MR. SHEVEIKO: Okay. Well, I guess we don't
24 really need it per se as long as -- you have the little one
25 in front of you, right, Mr. Grossman?

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1 MR. GROSSMAN: I think I have -- no, I don't
2 actually have the little one in front of me right now, but I
3 have every other number in the world here.
4 MS. HARRIS: Mr. Grossman, do you want to see a
5 copy of the reduced one?
6 MR. GROSSMAN: Well, of the blowup you mean?
7 MR. SHEVEIKO: Yes. Yes. This is the blowup.
8 MR. GROSSMAN: Yes, all right, if you think it's
9 relevant.
10 MR. SHEVEIKO: Yes, I think it's relevant.
11 MR. GROSSMAN: Okay. Thank you.
12 BY MR. SHEVEIKO:
13 Q So we have a strip of the forested green buffer
14 immediately adjacent to the guardrail that is not considered
15 forest. All right. If I could have you --
16 MR. SHEVEIKO: Erich, I'll just put it up myself.
17 I'll just take this big one here.
18 MR. BRANN: That's upside down, Dan.
19 THE WITNESS: We got to keep that north up.
20 BY MR. SHEVEIKO:
21 Q Right. Right. Right. Can you show me the
22 guardrail on this aerial photograph, please?
23 A The elevation is such that I can't see the
24 guardrail now.
25 Q What is it obscured by, sir?

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1 A I think the height of where this picture is taken
2 from.
3 Q Are you sure it's not obscured by all those trees?
4 A We can switch to a different exhibit.
5 Q Okay, please.
6 A I'm just seeing if it's shown on this one. This
7 has the new pedestrian path on there. The pedestrian path
8 is actually in front of the guardrail location. So it's --
9 Q Right. Well, I'm just trying to ascertain,
10 specifically, what the boundaries are of this area that is
11 not considered forest. And so can I get you to agree that
12 you can't see the guardrail because it is covered by tree
13 canopy?
14 A Yeah, I'm not going to state that, you know. I
15 would have to see a better aerial, but you know, I've gone
16 out there and I've walked it and I've seen the guardrail.
17 It's been right there, and the forest is behind it.
18 Q Okay. So would you say that it does have tree
19 canopy over it?
20 A I can't say that right now. I don't know. I'd
21 have to go out there and either look at it again or --
22 Q All right. But --
23 A -- look at a different aerial that zooms in more.
24 Q But looking at this aerial, you do see the tree
25 canopy hanging --

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1 A Yeah, I do.
2 Q -- over the ring road, right?
3 A I definitely see --
4 Q Okay.
5 A -- a tree canopy adjacent to the ring road, yep.
6 Q Okay. All right. So the area of the forested
7 green buffer that you don't consider a forest actually has
8 forest canopy covering it. Would that be a correct
9 statement?
10 A I don't know if I can state that definitively.
11 Hold on. I'm checking my plans here too.
12 Q So you would be able to look at a different blowup
13 and give us an answer later? Is that what you stated?
14 MR. GROSSMAN: Well, instead of an answer later,
15 where are we going with this? What is this showing me?
16 MR. SHEVEIKO: Well, it's showing that the area
17 they don't consider forest indeed has forest canopy and
18 further attributes of a forest, which I'm going to,
19 hopefully will come out during my -- yes, we're, we're
20 looking at a different angle here, and it is clear that the
21 guardrail is obscured by tree canopy.
22 MR. GROSSMAN: And so --
23 MS. HARRIS: Mr. Grossman --
24 MR. GROSSMAN: Yes.
25 MS. HARRIS: -- if I could, Park and Planning

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1 staff, in accordance with the county procedures and
2 regulations, determined the area. We simply delineated that
3 on our plan. It wasn't Costco's determination. It was the
4 County's determination.
5 MR. GROSSMAN: When you say determined the area,
6 of what?
7 MS. HARRIS: Of the forest stand delineated area.
8 MR. GROSSMAN: Okay. The size of the --
9 MS. HARRIS: Yes.
10 MR. GROSSMAN: -- delineated forest stand.
11 MR. SHEVEIKO: But that's not what Mr. Duke just
12 testified to.
13 MR. GROSSMAN: Well, let's --
14 MR. SHEVEIKO: I asked him specifically if the
15 area was determined by him and then planning approved it,
16 and he said yes.
17 THE WITNESS: I said it's, it's in conjunction.
18 We draw it, we go to the site, they go to the site, and then
19 the plan is approved.
20 BY MR. SHEVEIKO:
21 Q So they approved your delineation, was my
22 question.
23 A Trust me, there was a lot of back-and-forth and
24 comments on that plan. So they had a lot to do with that
25 delineation.

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1 Q Well, I'm --
2 MR. GROSSMAN: But regardless, I just want to
3 know, what significance does it have to the case? That's my
4 point.
5 MR. SHEVEIKO: Well, the significance to the
6 case --
7 MR. GROSSMAN: I mean, I don't want to argue back
8 and forth forever on the size of it unless I know what
9 difference it makes to this case.
10 MR. SHEVEIKO: The difference is, if this area of
11 the forested green buffer that is not considered forest is
12 actually forest, because it does have forest canopy and it
13 does have forest critical root zones, then disturbance in
14 that area would constitute forest disturbance and the zero
15 foot of forest disturbance in the NRI/FSD would then be
16 inaccurate and that would therefore trigger a forest
17 conservation plan.
18 MR. GROSSMAN: I see. So what you're saying --
19 MS. CORDRY: Perhaps I might --
20 MR. SHEVEIKO: So --
21 MS. CORDRY: If I might be able to help just a
22 moment. I walked there in the last day or two, and there is
23 an area right where the guardrail starts --
24 MR. GROSSMAN: Well, no, I don't want you to
25 testify. Now, I --

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1 MR. SHEVEIKO: Right.
2 MS. CORDRY: Okay. Well, but you only asked what
3 the significance was. It's simply that --
4 MR. GROSSMAN: Yes. I mean, he's obviously
5 getting a point with all of this --
6 MS. CORDRY: Okay. Okay.
7 MR. SHEVEIKO: Right.
8 MR. GROSSMAN: -- I would hope, and so I want to
9 know what the point is that we're getting at --
10 MS. CORDRY: Okay.
11 MR. SHEVEIKO: Right.
12 MR. GROSSMAN: -- and I understand it now. The
13 point he's getting at is that there is no forest
14 conservation plan and he thinks there should be a forest
15 conservation plan.
16 MS. CORDRY: Right.
17 MR. SHEVEIKO: Well, I'm just trying to figure out
18 why parts of the forested buffer are not actually considered
19 forest even though they have forest canopy and they have
20 forest critical root zones --
21 MR. GROSSMAN: Right. I understand.
22 MR. SHEVEIKO: -- and I'm not trying to testify
23 here, but --
24 MR. GROSSMAN: I'm not stopping you. I'm just
25 trying to figure out why --

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1 MR. SHEVEIKO: Right. Right. Right.
2 MR. GROSSMAN: -- you want to know it like that.
3 Okay. That's because it --
4 MR. SHEVEIKO: Yes, that's where I'm going with
5 this.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: Let me just, again, I don't have the
8 definition in front of me, but there's more -- just having a
9 tree there doesn't make it a forest canopy. There's a lot
10 of other trees on the site in that buffer that aren't part
11 of the forested buffer, outside of the area, beyond that,
12 that guardrail.
13 BY MR. SHEVEIKO:
14 Q Okay. Could you point to one of those areas now,
15 please?
16 A So, like, this is a forest stand.
17 Q Yes.
18 A This is a forest stand.
19 Q Yes.
20 A There's trees --
21 MR. GROSSMAN: The this being?
22 THE WITNESS: I'm sorry. I'm sorry.
23 MR. GROSSMAN: Describe --
24 THE WITNESS: On the south side of the ring road,
25 you know, there's a Forest Stand B with a dashed line around

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1 it. It's in the southwest corner. North of that area there
2 are trees that run up that aren't considered part of the
3 forest. So, you know, just, just because there's a tree
4 there doesn't make it a forest stand --
5 BY MR. SHEVEIKO:
6 Q Okay. So the northern part of, I believe it's
7 Portion, Stand B?
8 A Stand B.
9 Q Stand B. The northern part of it is not
10 considered a forest and --
11 A There's an area north of Stand B that is not
12 considered a part --
13 Q Right. Right. Right.
14 A -- for example.
15 Q Okay. Because it's a thin, thin strip, I
16 assume --
17 A There's --
18 Q -- that is not wide enough to be considered --
19 A There's various criteria.
20 Q -- a forest? Okay. So --
21 MR. GROSSMAN: Did you raise this point with the
22 technical staff or the Planning Board?
23 MR. SHEVEIKO: No, we haven't yet because, you
24 know, these submissions, this exact area of disturbance and
25 the delineation of the forest stand was not, I don't see --

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1 I don't think I've seen it in the previous submissions. So
2 this is --
3 MR. GROSSMAN: Well, that was Exhibit 104 --
4 MR. SHEVEIKO: Right.
5 MR. GROSSMAN: -- which --
6 MS. CORDRY: That came in during this hearing, I
7 believe.
8 MS. DUCKETT: I have a question that might clear
9 this up --
10 MR. GROSSMAN: Yes, Ms. Duckett.
11 MS. DUCKETT: -- just by asking.
12 MR. GROSSMAN: Yes.
13 MS. DUCKETT: Was this forest conservation --
14 MR. GROSSMAN: Just so the record is clear as to
15 who's --
16 MS. DUCKETT: -- it says: No. 2, the modification
17 does not --
18 MR. GROSSMAN: Just so the record is clear as to
19 who's talking, just announce yourself.
20 MS. DUCKETT: Oh, I'm sorry, Eleanor Duckett.
21 MR. GROSSMAN: Okay.
22 MS. DUCKETT: Does not affect any forest in a
23 stream buffer or located on property in a special protection
24 area which must submit a water quality plan. My question
25 is, could it be that this waiver was given prior to them

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1 offering to put a wall in that stream buffer, because there
2 is a stream buffer area, does have a forest, but maybe the
3 area that this is applying to did not apply to where the
4 wall will be.
5 MR. GROSSMAN: Well, first of all, as far as the
6 special protection area, it's not in the special protection
7 area, is that correct?
8 THE WITNESS: That is correct.
9 MR. GROSSMAN: You don't need a --
10 MS. DUCKETT: It's a stream buffer.
11 MR. GROSSMAN: Right, but even if it's a stream
12 buffer, you only need a water quality plan when you have a,
13 when you're in a special protection area. So --
14 MS. DUCKETT: Well --
15 MR. GROSSMAN: -- as far as a water quality plan,
16 I just want to alleviate your concern about that because
17 that's --
18 MS. DUCKETT: I'm reading the --
19 MR. GROSSMAN: No, I know, but that's part of what
20 it said there. It talks about it being in a special, not in
21 a special protection area. Under the statute you don't have
22 a water quality plan if you're outside of a special
23 protection area. That's when a water quality plan is
24 required.
25 MS. DUCKETT: Well, that says, or located in a

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1 special -- the modification does not affect any forest in a
2 stream buffer --
3 MR. GROSSMAN: Yes. I --
4 MS. DUCKETT: -- or --
5 MR. GROSSMAN: I understand. I'm just trying to
6 alleviate any concern about --
7 MS. DUCKETT: Oh, where you need a water quality.
8 MR. GROSSMAN: -- a water quality plan, if that's
9 part of your concern. It doesn't apply when you're not in a
10 special protection area.
11 MS. DUCKETT: My question really is, was this
12 waiver given, or this exemption, I'm sorry, not a waiver,
13 was the exemption given prior to them putting a wall through
14 the stream buffer?
15 MR. GROSSMAN: Okay. Do you know the answer to
16 that?
17 THE WITNESS: I do know the answer.
18 MR. GROSSMAN: And what is the answer?
19 THE WITNESS: The wall is shown on the plan that
20 is associated with that waiver.
21 MS. DUCKETT: Okay, thank you.
22 MR. GROSSMAN: Okay.
23 MS. HARRIS: Mr. Grossman --
24 MR. GROSSMAN: Yes.
25 MS. HARRIS: -- may I just add something that may

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1 clarify? The staff report, dated February 28th, 2013,
2 states: This wall can be installed while still meeting the
3 conditions of, and then it states the exemption number.
4 MR. GROSSMAN: The exemption.
5 MS. HARRIS: Yes. That's page 11 of the staff
6 report.
7 MR. GROSSMAN: All right. So my concern with this
8 line, Mr. Sheveiko, is that the question of forest
9 conservation plan is not technically before me. That is a,
10 that is a matter for the Planning Board and the technical
11 staff, and if there is one required by them, then that's
12 something different, but if there's not, that's their issue.
13 It's the Planning Board that approves preliminary and final
14 forest conservation plans. It's not the Board of Appeals or
15 the Hearing Examiner.
16 MR. SHEVEIKO: Of course.
17 MR. GROSSMAN: So I don't want us to go too far on
18 this point if we're not going to get anywhere with it.
19 MR. SHEVEIKO: Well, I'm just trying to figure out
20 the rationale for this decision here, and if it needs to be
21 taken with the planning department, then so it will. I just
22 have a couple of questions left here. So --
23 MR. GROSSMAN: Okay, sure.
24 BY MR. SHEVEIKO:
25 Q So you pointed to the, to the northern boundary of

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1 Stand B as something that doesn't qualify as a forest. Can
2 we take a look at 104(b) again on your, the blowup?
3 MR. SHEVEIKO: And one of the other reasons,
4 Mr. Grossman, some of these questions weren't answered is
5 because we didn't have the, it doesn't look like we even
6 had -- you know, I'm looking at the list of exhibits, and it
7 doesn't even show 104(b). It says 104 --
8 MR. GROSSMAN: No. It says --
9 MR. SHEVEIKO: Oh, it says 104, okay, so (b) and
10 then 104 enlarged for detail.
11 MR. GROSSMAN: It says enlarged -- 104(b) is
12 104(a) enlarged for detail.
13 MR. SHEVEIKO: Okay.
14 BY MR. SHEVEIKO:
15 Q All right. And so on this, on this blowup here,
16 if I could show you this area here, where there's a bump-out
17 on the boundary where --
18 A Uh-huh.
19 Q -- you know, several trees, and you show some
20 significant trees here.
21 A Uh-huh.
22 Q Can you explain to me why that is not considered
23 part of the forest?
24 A For, it may be the type of tree, the size of the
25 tree, or the quality of the tree, I'm not sure exactly why,

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1 it wasn't included within that dash line.
2 Q Yes. Yes. Could it be that it was not included
3 in the dash line because that's where the bulldozer access
4 road is for the outfall stabilization project?
5 A I don't know the location of the access road.
6 Q Okay. You don't know the location of the access
7 road?
8 A I don't have it surveyed. I don't know exactly
9 where that was.
10 Q Okay. That's interesting. Let me pull up --
11 well, let me pull up the planting plan here. The planting
12 plan shows the, shows the area. Both the old planting plan
13 and the new planting plan show the bulldozer -- are you
14 familiar with the planting plan? Have you --
15 A Yes. Yes.
16 Q Okay. So --
17 MR. GROSSMAN: We don't have the -- have the new
18 planting plans arrived yet?
19 MS. HARRIS: They're in a box right there.
20 MR. GROSSMAN: Okay. So if we're going to refer
21 to them, let's have them marked as an exhibit.
22 MS. HARRIS: Are you looking at the new one,
23 Danila, or the old one?
24 MR. GROSSMAN: He just said the new and the old.
25 MR. SHEVEIKO: Both the old and the new one, yes.

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1 MR. GROSSMAN: So let's --
2 MR. SHEVEIKO: This is the new one right here.
3 MR. GROSSMAN: If he's going to refer to the new
4 one, we want to mark it as an --
5 MR. SHEVEIKO: Yes, I will refer to the new one.
6 The wording is a little different.
7 MS. HARRIS: Well, that's the old one. So you
8 want the new one, Mr. Grossman?
9 MR. SHEVEIKO: I want this one.
10 MR. GROSSMAN: Yes. He's referred to it. So
11 let's have it as an exhibit. Right now it's not an exhibit.
12 Thank you. Mr. Duke, what time do you have to leave? There
13 was an issue on that. I --
14 THE WITNESS: Yeah.
15 MR. SHEVEIKO: A few more minutes and then I got
16 to go.
17 MR. GROSSMAN: Oh, you have to leave too?
18 MR. SHEVEIKO: Well, I mean --
19 MR. GROSSMAN: You guys can leave together if you
20 want.
21 THE WITNESS: No, no. I can stay --
22 MR. GROSSMAN: You can stay, okay.
23 THE WITNESS: -- obviously, to finish up the
24 questioning.
25 MR. SHEVEIKO: The agreement was this would happen

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1 in the first part of the day, to begin with. So --
2 MR. GROSSMAN: So --
3 MR. SHEVEIKO: Guys, I'm looking at this right
4 here. Erich.
5 MR. GROSSMAN: I have an aerial photograph. All
6 right.
7 MR. SHEVEIKO: I'm looking at this one here. It
8 clearly delineates the --
9 MR. BRANN: I just want to make sure I have the
10 same plan that you're talking about.
11 MR. SHEVEIKO: Right.
12 MR. GROSSMAN: Yes, just want to make sure we're,
13 at this point, marking what you are going to be using. All
14 right. So you're referring to the planting plan?
15 MR. SHEVEIKO: Yes.
16 MR. GROSSMAN: Okay. So the planting plan, the
17 new planting plan, although this is -- I'm looking for the
18 date.
19 MR. SHEVEIKO: Yes, they have it up on the board
20 now.
21 MR. GROSSMAN: Okay. I'm looking for the revision
22 date on this plan. It says --
23 MR. BRANN: 7/15/13.
24 MR. GROSSMAN: 7/15/13? Okay.
25 MR. BRANN: Uh-huh.

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1 MR. GROSSMAN: All right.
 2 MR. SHEVEIKO: Okay, but it was submitted
 3 yesterday.
 4 MR. BRANN: Yeah, working on it. He didn't get it
 5 done yesterday.
 6 MR. SHEVEIKO: Okay. So there should be an
 7 additional revision date there, or was this done on the 15th
 8 and you were waiting --
 9 MS. HARRIS: No. It --
 10 MR. SHEVEIKO: -- until last night to send it?
 11 MS. HARRIS: No. Believe it or not, there was
 12 another change that was made before we got them to you at
 13 4:30; hence the reason we didn't get them to you until 4:30.
 14 MR. GROSSMAN: All right.
 15 MR. SHEVEIKO: Okay. So I guess --
 16 MR. GROSSMAN: All right. So --
 17 MR. SHEVEIKO: -- you made changes since 7/15 to
 18 this plan, is that correct?
 19 MS. HARRIS: Was this the one that had the final
 20 change made?
 21 MR. BRANN: That's when we received the -- we
 22 coordinated the changes with the engineering drawings and
 23 received all the changes around 7/15 and that was the date
 24 this revision date refers to.
 25 MS. HARRIS: I mean, if you want us to change the

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1 revision date, we will.
 2 MR. GROSSMAN: No.
 3 MR. SHEVEIKO: No. So you've made a revision
 4 since 7/15, is my question?
 5 MR. BRANN: Well, the plans weren't completed
 6 until yesterday, with all the changes --
 7 MR. SHEVEIKO: Okay.
 8 MR. BRANN: -- but the changes really weren't --
 9 MR. SHEVEIKO: All right. Okay. So --
 10 MR. GROSSMAN: The 7/15 thing --
 11 MR. BRANN: MoCo, Montgomery County comments
 12 were --
 13 MR. GROSSMAN: Yes.
 14 MR. SHEVEIKO: Okay.
 15 MR. BRANN: -- dated 7/15.
 16 MR. GROSSMAN: That's what it says. It says the
 17 7/15 date refers to MoCo comments. So --
 18 MR. SHEVEIKO: Right. So there have been
 19 revisions since then; it's just they're not marked. Okay.
 20 Is that correct?
 21 MR. GROSSMAN: Not marked as a separate
 22 revision --
 23 MR. SHEVEIKO: Right. Okay. All right.
 24 MR. GROSSMAN: -- but it's been revised apparently
 25 in response to the Montgomery County comments of 7/15.

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1 MR. SHEVEIKO: Right, yes. I just wanted to make
 2 sure that Mr. Duke has seen the latest revision so that --
 3 MR. GROSSMAN: Right.
 4 MR. SHEVEIKO: -- he can point out where the
 5 disturbance for the bulldozer access path is.
 6 MR. GROSSMAN: All right. So we'll call this the
 7 new planting plan. L1.01 is Exhibit 241(a), and then L1.02
 8 is 241(b), and then L1.03 will be Exhibit 241(c), and L1.04
 9 will be Exhibit 241(d), and L1.05 will be Exhibit 241(e).
 10 So --
 11 (Exhibit Nos. 241(a) through
 12 241(e) were marked for
 13 identification.)
 14 MR. SHEVEIKO: Yes, I wish this would go faster,
 15 but there's just a number of inconsistencies that we have to
 16 plow through there. So --
 17 MR. GROSSMAN: I'm not rushing you. I just want
 18 to make sure that we're addressing something that is, is
 19 going to be relevant to the case. That's all.
 20 MR. SHEVEIKO: Right.
 21 MR. GROSSMAN: Okay.
 22 BY MR. SHEVEIKO:
 23 Q Okay. So would you point out on the map the, the
 24 bulldozer path disturbance?
 25 A The area that this plan is showing as

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1 replanting --
 2 Q Yes.
 3 A -- is in the southwest quadrant of the outside of
 4 the ring road.
 5 Q Okay. And could you read the text that it, with
 6 the leader, the leader pointing to there?
 7 A Proposed plantings to be located within area
 8 disturbed from outfall stabilization project only.
 9 Q Okay. And now going back to the bump-out that I
 10 asked you previously, which is not considered part of the
 11 forest on 104(b) --
 12 A Uh-huh, yep.
 13 Q -- so looking at the bulldozer path area, which
 14 you did not recollect previously, would you now consider
 15 that that bump-out in lack of forest corresponds to the
 16 bulldozer path?
 17 A First of all, I didn't say that I didn't recollect
 18 it. I said I didn't have it on the plan in front of me. So
 19 I just want to correct that --
 20 Q Okay.
 21 A -- and that the forest line goes like that.
 22 MR. GROSSMAN: Goes like what?
 23 BY MR. SHEVEIKO:
 24 Q Could you repeat that again?
 25 A I mean, I'm just looking at the blowup.

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1 Q Right. Right. Right. Right.
2 A If you're asking where the forest line is, then
3 the forest line goes across the front of that path.
4 MR. GROSSMAN: And that path being in the extreme
5 southwest corner?
6 THE WITNESS: In the extreme southwest corner,
7 yes.
8 MR. GROSSMAN: Okay.
9 BY MR. SHEVEIKO:
10 Q Okay. But that --
11 MR. GROSSMAN: I'm just trying to make sure that
12 the record reflects what you're, what you're testifying.
13 THE WITNESS: Thank you.
14 BY MR. SHEVEIKO:
15 Q But that bump-out that I was specifically asking
16 you about that is not considered part of the forest there,
17 does it correspond to the bulldozer path?
18 A No.
19 Q No. So is it to, where --
20 A It's to the east.
21 Q It's to the east?
22 A Correct.
23 Q Okay. So the bulldozer path is considered
24 forested even though it doesn't have any trees on it or any
25 plantings?

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1 A It was within the area of the forest, yes. It's
2 within Stand B.
3 Q Okay. But the bump-out was not within the area of
4 the forest?
5 A No.
6 Q Okay. All right. So just a couple of questions
7 left here. If we could go back to the original part of
8 Exhibit A of your report filed on Wednesday, which is the
9 original NRI/FSD, 26E. Were you part of the team preparing
10 this document?
11 A Yes.
12 Q Okay. Would you --
13 MR. SHEVEIKO: Do we have that somewhere as a
14 blowup? No?
15 MR. BRANN: What?
16 MR. SHEVEIKO: 26E.
17 MR. GROSSMAN: Exhibit 26(e)?
18 MR. SHEVEIKO: No. The Exhibit -- Exhibit A in
19 the plan here is, is this right here, where it says the
20 NRI/FSD is included, but it wasn't included. So do we have
21 that as a blowup?
22 MR. BRANN: Yeah. We just had it up there.
23 MR. SHEVEIKO: No. That was 53E. I'm talking
24 about -- so Exhibit A pertains to 26E, not 53E. If you look
25 at the, you look at the exhibits here --

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1 MR. GROSSMAN: Exhibit A.
2 MR. SHEVEIKO: -- see this Exhibit A, it's talking
3 about 26E, and the NRI/FSD is listed as included in this
4 report, but it's not in the report. So I'm asking if you
5 guys have it.
6 MR. GROSSMAN: All right. The exemption, in other
7 words, the exemption from submitting a forest conservation
8 plan; that is 42011026E.
9 THE WITNESS: Yeah. That is the NRI/FSD that was
10 submitted, the first one that was submitted as part of the
11 warehouse expansion, which included the fuel station in its
12 original location on the southwest corner under the old
13 special exception.
14 MR. GROSSMAN: Okay. So that may well be in the
15 original special exception application 2794, is that
16 correct --
17 MR. SHEVEIKO: Okay. Well --
18 MR. GROSSMAN: -- rather than in this file,
19 because it pertained to that.
20 MR. SHEVEIKO: Okay. Well, since technically --
21 MR. GROSSMAN: I'm not sure.
22 MR. SHEVEIKO: -- it's listed as part of a
23 submission but we don't have it in front of me, I have a
24 convenience copy. Can I just show this convenience copy?
25 MR. GROSSMAN: Sure, and I'll look to see if there

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1 is an Exhibit -- yes, it may well be in here, Exhibit 8(c)
2 and (d), hold on a second, exemption letters.
3 MS. HARRIS: Well, the one --
4 MR. BRANN: The letters -- go ahead, Pat, sorry.
5 MS. HARRIS: The exemption letter of October 20th
6 is in this packet. Is that the confusion?
7 MR. GROSSMAN: Okay. But you want to look at the
8 actual --
9 MR. SHEVEIKO: NRI/FSD, which is in the table of
10 contents.
11 MR. GROSSMAN: -- NRI/FSD that pertains to it. It
12 may be in Exhibits 8(a) in Box 1. So let's see if it's
13 8(a). See, my problem is I don't have enough paper here.
14 MS. HARRIS: I'm sorry. Where do you see it in
15 the table of contents?
16 MR. SHEVEIKO: See, it says NRI/FSD. It's not
17 actually --
18 MR. GROSSMAN: I do have a bunch of exhibits back
19 from them.
20 MS. HARRIS: It says NRI/FSD and forest
21 conservation exemption letter.
22 MR. SHEVEIKO: Right. So the letter is there, but
23 the NRI/FSD is not, is my point.
24 MR. BRANN: Doesn't say it is.
25 MR. GROSSMAN: Hold on. Hold on.

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1 MR. SHEVEIKO: But it says NRI/FSD.
2 MR. GROSSMAN: Don't get excited yet. Okay. It
3 may be in here. Here's 8, hold on, NRI/FSD. This may be
4 what you're looking for, and this one is 421012052E. Is
5 that the one you're looking --
6 THE WITNESS: He's looking for 206.
7 MR. SHEVEIKO: 6E, yes, ending in 6E, yes.
8 THE WITNESS: 6E.
9 MR. GROSSMAN: 6E. This is the one ending in 52E.
10 This is 52E.
11 MS. HARRIS: There's no indication -- no, I think
12 you're misreading that. It's not saying NRI/FSD plan and
13 forest conservation exemption letter. It's saying NRI/FSD
14 and forest conservation exemption letter, and if you notice
15 on the cc of that, it says NRI/FSD.
16 MR. SHEVEIKO: Right, but if you look at Exhibit
17 A, it doesn't say NRI/FSD. It just say forest conservation
18 exemption letter. So it's obviously, Exhibit A has two
19 components and Exhibit B has one component. All right. So
20 we have the big plan for 26E?
21 MR. GROSSMAN: This plan, 8(a), doesn't pertain --
22 it says pertains to NRI/FSD 421012052E. So --
23 MR. SHEVEIKO: Well, that's even a different --
24 MR. GROSSMAN: -- so that apparently is a
25 different one, and so I don't know where that's in. So

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1 what's the plan that you have in front of you?
2 MR. SHEVEIKO: Okay. Well, I have the 26E,
3 which --
4 MR. GROSSMAN: Okay.
5 MR. SHEVEIKO: -- according to my reading of it,
6 is included in the table of contents for the submission.
7 MR. GROSSMAN: Okay.
8 BY MR. SHEVEIKO:
9 Q So can you point out Silver Creek on this diagram,
10 please?
11 A Silver Creek is not labeled on this diagram. It
12 was in this corner.
13 MR. GROSSMAN: South --
14 THE WITNESS: In the southwest corner.
15 MR. GROSSMAN: Oh, southwest corner, okay.
16 THE WITNESS: I'll learn one of these days.
17 BY MR. SHEVEIKO:
18 Q Okay. Now, is it just not labeled as Silver
19 Creek, or is there a stream labeled here at all?
20 A The original 26E forest stand delineation that was
21 approved by the County was not required to label the stream.
22 Q Well, the conditions for this planner are very
23 specific, and I can refer you to the letter. It says that
24 the exemption will be issued as long as no streams exist on
25 site.

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1 A And at the time that approval was granted, it was
2 determined that that was not a stream.
3 Q And who made that determination?
4 A County staff.
5 Q County staff. Which department?
6 A Environmental Planning.
7 Q So the planning department?
8 A Correct.
9 Q Okay. But then later they went back and decided
10 that it was a stream?
11 A Yes.
12 Q Okay. Well, I'm looking at your --
13 MR. GROSSMAN: I should mention that the NRI/FSD
14 that I mentioned here before, which is the one labeled
15 421012052E on the right-hand side but has the approval for
16 2013053E of November 2012, which is apparently what we were
17 looking for before but was included as Exhibit 8(a) rather
18 than Exhibit 104, I'm not sure why, but in any event, that
19 does show something labeled Existing Stream.
20 THE WITNESS: Correct.
21 MR. GROSSMAN: Okay.
22 BY MR. SHEVEIKO:
23 Q Okay. So the planning department told you there
24 was no stream, is that kind of to summarize it, at that
25 time?

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1 A The site was visited by both the, by our office
2 and by county staff, and it determined there was not a
3 stream there at that time.
4 MR. SHEVEIKO: Okay. I submit into evidence
5 stormwater management concept plan signed by Mr. Duke at
6 about the time that is being discussed right now, and this
7 plan was approved by DPS, Water Resource Center.
8 MS. HARRIS: Can we see, have a copy of that,
9 please?
10 MR. SHEVEIKO: Yes. I just have one, but as long
11 as we agree what it says, we can enter it into evidence.
12 MS. HARRIS: It looks to me like this is relevant
13 to the prior special exception.
14 MS. CORDRY: Well, the stream is --
15 MR. SHEVEIKO: Well, this is relevant to the
16 forest conservation exemption that we're discussing right
17 now which is not showing Silver Creek.
18 MS. HARRIS: Mr. Grossman, I question the
19 relevancy of all this. I think it was established that the
20 appropriate county staff has determined what the areas are
21 for the forest stand delineation. They're the authority to
22 grant the forest conservation exemption, and I'm not really
23 sure where this is going.
24 MR. GROSSMAN: Right. I mean, I agree. There's a
25 big relevance question here. I'm not going to prohibit him

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1 from having this marked as an exhibit. When the, when
2 exhibits are moved in at the end, you can raise an objection
3 if you want, but he will mark it as an exhibit, and then
4 we'll see if it's going to be admitted later on this
5 question, if this is a relevant question.
6 MR. SHEVEIKO: Okay. Well --
7 MR. GROSSMAN: And this will be Exhibit, this will
8 be Exhibit 242 --
9 MR. SHEVEIKO: So --
10 MR. GROSSMAN: -- and --
11 MR. SHEVEIKO: Go ahead.
12 MR. GROSSMAN: May I have it, please?
13 MR. SHEVEIKO: Yes.
14 MR. GROSSMAN: Thank you. Exhibit 242 --
15 MR. SHEVEIKO: That's my only copy. So I'll give
16 it back to you once I'm done questioning Mr. Duke about it.
17 MR. GROSSMAN: Okay. Hold on one second. Exhibit
18 242, and this -- it's hard to read this. Oh, this is part
19 of the stormwater management concept plan.
20 MR. SHEVEIKO: Yes.
21 MR. GROSSMAN: Okay. And what's the date on this?
22 MR. SHEVEIKO: It's hard to make out. All the
23 stuff --
24 MR. GROSSMAN: I mean, we might have this already
25 in the record as part of the stormwater management concept

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1 plan. I don't know --
2 MR. SHEVEIKO: Well --
3 MR. GROSSMAN: -- I have no idea.
4 MR. SHEVEIKO: Okay. Well, then --
5 MR. GROSSMAN: I haven't looked, but --
6 MR. SHEVEIKO: -- as long as we can proceed with
7 the questioning.
8 MR. GROSSMAN: -- but I'll mark this -- it's
9 marked as Exhibit 242, as stormwater management concept
10 plan. I wish we had a date here.
11 (Exhibit No. 242 was marked
12 for identification.)
13 MS. HARRIS: It's probably in the prior special
14 exception file.
15 MR. GROSSMAN: Yes. Can you tell, Mr. Duke,
16 looking at this, what plan this is, from when?
17 THE WITNESS: This is a stormwater concept plan
18 for the old fuel station location.
19 MR. GROSSMAN: All right, concept plan for --
20 THE WITNESS: The other special exception, the
21 former.
22 MR. GROSSMAN: Okay, for former special exception
23 application S-2794. Okay.
24 BY MR. SHEVEIKO:
25 Q All right. So now we're straight on that.

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1 Mr. Duke, could you point out Silver Creek on this map?
2 A The Silver Creek is not labeled on this plan.
3 Q But a stream is. So as long as we agree that the
4 stream is Silver Creek --
5 A There's not a label for a stream. There's a
6 150-foot stream buffer --
7 Q Yes.
8 A -- but there's not a label for the stream. You
9 can tell from the topography where that would be located, in
10 the lower left-hand corner, southwest corner.
11 Q All right. But the stream buffer is indeed, is
12 indeed labeled?
13 A Yes.
14 Q Okay. So for the purposes of the, of forest
15 conservation, as you testified, county staff that said that
16 no stream exists on site?
17 MR. GROSSMAN: He said at one time they said that,
18 then they changed their mind.
19 MR. SHEVEIKO: Right. Right. right.
20 BY MR. SHEVEIKO:
21 Q But concurrently you filed this, this document
22 with Department of Permitting Services, Water Resources
23 Center, and it does have a stream, in fact, delineated on
24 the submission.
25 MR. GROSSMAN: I don't know if it was filed

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1 concurrently. I mean, I don't think he's testified it was
2 concurrently.
3 MR. SHEVEIKO: Right. Right. Right. But --
4 MR. GROSSMAN: So I don't want to mischaracterize
5 what he said.
6 MR. SHEVEIKO: Right. Right. Yes, I retract
7 that.
8 BY MR. SHEVEIKO:
9 Q So on this map you did in fact delineate a stream
10 valley buffer?
11 A Yes. On that map there is a stream valley buffer,
12 yes.
13 Q Okay. And could you explain the contradiction
14 that it's labeled here but it's not labeled on the forest --
15 on the NRI/FSD?
16 A As I already stated, the NRI/FSD was approved
17 prior. I don't know what the date was of that and when that
18 came in. That probably came in after the fact, after the
19 stream discussion started, which is why it was probably
20 added to that plan.
21 Q Okay. And this is a supposition at this point
22 that this was filed after the forest conservation exemption
23 was already approved, right?
24 A Yeah. Correct --
25 Q Okay.

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1 A -- and you know, the other scenario is potentially
2 DPS saw that stream valley or saw the contours and they
3 wanted to show a buffer. You know, I don't know exactly
4 what the derivative of that line was.
5 Q Okay. So --
6 MR. GROSSMAN: I still don't understand,
7 Mr. Sheveiko, how this is going to establish anything that I
8 have to act on here. So --
9 MR. SHEVEIKO: This establishes that there's
10 numerous errors in the submissions, and a forest
11 conservation plan is indeed, is indeed required, but I'm
12 going to --
13 MR. GROSSMAN: Well, once again, that's something
14 you'd have to take up with the Planning Board, not with the
15 Board of Appeals or the Hearing Examiner, okay? It's not --
16 MR. SHEVEIKO: Well --
17 MR. GROSSMAN: -- it's not in my bailiwick as to
18 whether a forest conservation plan is required. That's a
19 matter for the, for the Planning Board to determine.
20 MR. SHEVEIKO: Right, and I understand that, but
21 for the purposes of the green wall installation and for the
22 purposes of the master landscaping plan, this speaks
23 directly to the fact of the forest disturbance and the
24 questions as to where the forest ends and where it doesn't
25 and to the accuracy of the documents submitted. One more

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1 question on this avenue and then I'll move on, okay?
2 BY MR. SHEVEIKO:
3 Q So we arrive to the fact that DPS said yes, so
4 there is a stream in there, so you put in a stream and --
5 A That's supposition.
6 Q Right, but you signed the document and it shows a
7 stream, right?
8 A I don't think I signed and sealed that one, just
9 to clarify.
10 Q I believe I just saw your --
11 A I just want to be sure.
12 Q -- D.M. Duke.
13 A Yeah, that would be me then, yeah.
14 Q Okay. So you signed it. All right. So if you
15 marked the stream buffer on this --
16 MR. GROSSMAN: If you want that document to be
17 part of the exhibits --
18 MR. SHEVEIKO: Yes, I'm giving it to you right
19 now.
20 MR. GROSSMAN: Thank you.
21 MS. HARRIS: And do you have any copies?
22 MR. SHEVEIKO: No, sorry. That's your copy now.
23 BY MR. SHEVEIKO:
24 Q So a stream wasn't there and then it was there.
25 So if I could read you --

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1 MR. GROSSMAN: No, he didn't say that. Please, he
2 didn't say that a stream wasn't there and then it was.
3 MR. SHEVEIKO: Right. Okay, I apologize.
4 MR. GROSSMAN: Don't characterize his testimony.
5 Just --
6 MR. SHEVEIKO: Yes. Yes. Yes. I retract that,
7 retract that statement.
8 MR. GROSSMAN: You just asked your last question,
9 you told me. You said, I have one more question. You asked
10 it, right?
11 MR. SHEVEIKO: One more question on this avenue
12 and then I have two more questions.
13 MR. GROSSMAN: You've been saying you have two
14 more questions for a long time now. I don't want to --
15 MR. SHEVEIKO: Well, because half the time we're
16 dealing with inconsistencies.
17 MR. GROSSMAN: -- waste a lot of time in an area
18 that is not relevant to what I have to look at, okay? You
19 keep on telling me that it's relevant, but I'm telling you
20 that whether or not a forest conservation plan is required
21 is something for the technical staff and the Planning Board,
22 not for me to decide.
23 MR. SHEVEIKO: Right, I understand that, but as
24 far as health --
25 MR. GROSSMAN: So --

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1 MR. SHEVEIKO: -- safety, and general welfare of
2 the public --
3 MR. GROSSMAN: I'm not going to --
4 MR. SHEVEIKO: -- and how this work affects
5 neighbors --
6 MR. GROSSMAN: If you think I'm going to make a
7 decision or a recommendation on this case based on whether
8 or not a forest conservation plan was required when the
9 Planning Board has not told me that it is, you're mistaken,
10 okay? I'm not going to set a standard regarding a forest
11 conservation plan that the agency charged with that
12 obligation has not set.
13 MR. SHEVEIKO: Right. I understand. I
14 understand.
15 MR. GROSSMAN: So I don't want you to waste a lot
16 of time in an area that I've already given you --
17 MR. SHEVEIKO: Right. Well, I am addressing --
18 MR. GROSSMAN: -- you've been doing this now for
19 an hour. So --
20 MR. SHEVEIKO: Right, and I do have to go, but I
21 am addressing, I am addressing the statement that there's
22 zero forest disturbance on the submission that we just
23 received two days ago. So the submission --
24 MR. GROSSMAN: He's answered that question
25 already, but go ahead. You have, you said, one more

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1 question. You've asked that, but go ahead, ask another
2 question.
3 BY MR. SHEVEIKO:
4 Q Okay. So the exemption does not contain a stream,
5 and in fact, if I could get you to read this here. That's
6 what the exemption says and that's for convenience purposes.
7 It's just a blowup of --
8 MR. GROSSMAN: What are you showing the witness?
9 MR. SHEVEIKO: It's a blowup of the text of the
10 26E. It just -- because it's so small to read, I'm giving
11 it to him to read in large type.
12 MR. GROSSMAN: What do you mean when you say 26E?
13 What is that?
14 MR. SHEVEIKO: That's the forest conservation
15 exemption we were talking about.
16 THE WITNESS: That's the forest conservation
17 exemption for the --
18 MR. GROSSMAN: Oh, I see. You're referring to the
19 number, okay.
20 THE WITNESS: -- for the warehouse and the old gas
21 station --
22 MR. GROSSMAN: I get you. Okay.
23 MR. SHEVEIKO: Right. Right. Right.
24 THE WITNESS: -- which was done in 2010, well,
25 before the new submission. What this plan, what note number

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1 -- what you point to is from the notes table --
2 BY MR. SHEVEIKO:
3 Q Right.
4 A -- No. 9, it says no streams exist on site.
5 Q Okay. And if I could get you to read the last
6 paragraph, please.
7 A Any changes from the approved exemption request
8 may constitute grounds to rescind or amend any approval
9 actions taken to appropriate enforcement actions. If there
10 are any subsequent modifications planned to the approved
11 plan, a separate application must be submitted to M-NCPPC
12 for review and approval prior to those activities occurring.
13 Q All right. Thank you very much. So once it
14 became clear that there was a stream there indeed, doesn't
15 this paragraph require that changes be made to the NRI/FSD?
16 A And as a matter of fact, a new plan was submitted
17 for the new gas station location and the stream was shown.
18 Q Right, but I'm talking about the original
19 exemption under which the actual Costco project was
20 developed.
21 A When it was --
22 MR. GROSSMAN: No, we're not, we're not, this case
23 does not involve -- when you say the original Costco
24 product, project, this case involves this special exemption
25 application, okay?

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1 MR. SHEVEIKO: Right. I understand that.
2 MR. GROSSMAN: I'm a pretty patient guy, but
3 really.
4 MR. SHEVEIKO: Right. Right. Right. Well,
5 it's --
6 MR. GROSSMAN: You're just going over the same
7 thing over and over --
8 MR. SHEVEIKO: -- it's called --
9 MR. GROSSMAN: -- and he's answered the question.
10 So move to something else, please.
11 MR. SHEVEIKO: Okay. All right. Well, then -- I
12 guess I'm done then, but this is called project
13 segmentation, just so you know.
14 MR. GROSSMAN: All right, sir. All right. The
15 next person --
16 MS. ROSENFELD: Yes.
17 MR. GROSSMAN: -- for cross-examination.
18 MS. ROSENFELD: Yes. Thank you.
19 BY MS. ROSENFELD:
20 Q Mr. Duke, in your direct testimony, you talked a
21 little bit about the removable bollards, and I think you
22 said that they were there to be removed in the event of
23 oversized loads or if you need additional maneuvering room.
24 What kind of oversized loads would you be talking about?
25 A Say a truck had to bring in a new air-conditioning

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1 unit for the, for the warehouse itself, those kind of
2 situations. That's all.
3 Q Do you have any idea how often that might happen,
4 how often that might be required?
5 A Rarely or however often they replace their
6 air-conditioning units.
7 Q Okay. Do you have any understanding that it would
8 be required for typical deliveries to the warehouse itself?
9 A No, does not.
10 Q Could you pull the exhibit for the pedestrian
11 path?
12 A Is there a particular one, Ms. Rosenfeld, that
13 you'd like to start with?
14 Q I'd like to start with the overall, and then I
15 will be going to the 233(d). Okay. There had been some
16 discussion about the guardrail. Is the guardrail, is --
17 well, let me ask this question first: Is the guardrail
18 going to remain, or is it going to be removed?
19 A The guardrail will be removed, and then it will
20 be, a new guardrail will be attached to the front of the
21 green wall in the areas where there's a guardrail now and
22 that's shown on the detail of the guardrail -- of the green
23 wall.
24 Q Okay. That detail would be shown in the exhibits
25 we just got from Mr. Willard or --

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1 A No. It's actually on Sheet 3. I'm not, it's, I'm
2 not sure what exhibit number it is, but it's Sheet 3 of 4,
3 Cross Sections.
4 MR. GROSSMAN: Okay. That would be --
5 BY MS. ROSENFELD:
6 Q Which set of cross --
7 MS. HARRIS: It's 233 --
8 MR. GROSSMAN: (C).
9 MS. CORDRY: 233(c).
10 MR. GROSSMAN: (C).
11 MS. ROSENFELD: 233(c)?
12 MR. GROSSMAN: Because if it's a third sheet, it
13 would be a (c).
14 THE WITNESS: And in the center of the plan,
15 there's a detail that shows the guardrail attached to the
16 green wall.
17 BY MS. ROSENFELD:
18 Q And can you just show generally where that
19 guardrail will begin and end?
20 A There's a note that says beginning guardrail at
21 about Station 10 plus 50, and then there's a note that says
22 end guardrail, if I can find it, end guardrail at about
23 Station 1400 and that basically matches the limits for where
24 the guardrail is right now.
25 Q Okay, thank you. And will there be a handrail

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1 along the pedestrian path at any point?
2 A No.
3 Q And can you describe what the surface of the path
4 will be?
5 A Concrete.
6 Q And is there going to be any kind of painted or
7 other kind of surface over it or --
8 A No. It would be your Montgomery County standard
9 concrete sidewalk.
10 Q And looking at Exhibit No. 233(d), I'm looking --
11 which is Sheet 4 of 4 -- looking at the insert, Proposed
12 Ring Road D-D, where you have the existing curb to the
13 proposed six-inch curb --
14 A Uh-huh.
15 Q -- can you tell me what the slope of that is?
16 A It'll be one-quarter inch per foot maximum, which
17 is an ADA-compliant grade.
18 Q One-quarter inch?
19 A Basically, two percent, two percent cross slope.
20 Q Okay. And is that shown somewhere? Is that
21 dimension somewhere on here?
22 A The cross slope? I don't know if it's dimensioned
23 on there or if we had a note for it. I will say that the
24 ring road is going to be built to ADA standards, which would
25 have a maximum two percent cross slope. And on Sheet 1 of

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1 the series, which I guess is 233, there's ADA instructions
2 to contractor notes that have been added to the plan that
3 speak to some of the ADA specifications.
4 Q And is there this type of cross slope along all
5 sections of the path, or is it just this one? The others
6 look level.
7 A Yes. I think that's just a graphical, the way it
8 was drawn. They're all going to be a two percent cross
9 slope.
10 Q And going back just a moment to the guardrail, is
11 it going to be actually mounted on the concrete panel of the
12 wall or mounted on the mesh?
13 A To the post.
14 Q And do you know if the greenery will go the full
15 height of the wall?
16 A I think that Mr. Willard can probably better speak
17 to that.
18 Q Could you turn for a moment to your overall
19 illustrative plan? And it looks to me like this one is just
20 a little bit different from the other one because it looks
21 like you've actually dimensioned, added some dimensions in
22 this plan, is that correct, in particular, from the special
23 exception to some of the adjoining properties?
24 A No. The only intended change was to just show the
25 pedestrian path on the overall illustrative plan.

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1 Q Okay.
2 A You know, there are, obviously, a series of
3 dimensions on the plan, and those were on the original
4 submission as well.
5 Q There's been a lot of discussion about some
6 distances, and I know you testified to them earlier. Could
7 you just highlight the distance between the southernmost
8 boundary of the special exception and the nearest
9 residential property line? Could you just highlight that
10 arrow?
11 A Okay.
12 Q And this is on Exhibit No. 230.
13 A So 230, in the southwestern corner of the special
14 exception area, there's an arrow, and you want to know from
15 the special exception to the residence, correct?
16 Q To the property line.
17 A To the property line.
18 Q And that distance is what?
19 A One hundred eighteen feet.
20 Q Thank you. Okay. So there's a jog in that arrow?
21 It's -- okay.
22 A Correct. It goes like that.
23 Q Thank you.
24 A You're welcome.
25 MR. GROSSMAN: And that 100 feet to the -- 118

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1 feet to the property line, from what point?
2 THE WITNESS: From the southwestern corner of the
3 special exception area.
4 MR. GROSSMAN: Okay.
5 BY MS. ROSENFELD:
6 Q When the wall is actually installed, is there
7 going to need to be any tree removal in order to install the
8 wall?
9 A No, there's not.
10 Q Is there going to need to be any kind of tree
11 pruning or cutting back of any vegetation to allow for
12 installation of the wall?
13 A Not that I'm aware of.
14 Q Would that be a question for Mr. Willard, or is
15 that --
16 A I mean, it's outside of the canopy area. It's at
17 the back of the curb. So I don't -- I wouldn't foresee that
18 there would need to be any pruning, but --
19 Q Okay. And are you talking only about the trees
20 that are in the forest conservation area, or are you --
21 A Yeah, I was speaking specifically to the trees in
22 the forest conservation area.
23 Q Okay. Do you know if any trees will need to be
24 removed outside of the forest conservation area?
25 A No.

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1 Q You don't know?
2 A I don't believe there are going to be any trees
3 removed outside of the forest conservation area either to
4 accommodate the wall.
5 Q Do you know if there's going to have to be any
6 significant pruning of trees to install the wall?
7 A I didn't analyze that, but based on the wall
8 location, I don't believe there'll need to be any pruning of
9 trees, no.
10 Q Okay. And I'm trying to remember. Your approved
11 NRI is in the record, I believe, is that correct?
12 A That is correct --
13 Q Okay.
14 A -- and it shows the green wall on the approved
15 NRI. It actually shows it closer to, further -- further
16 from the curb than it is shown on these current plans. We
17 moved the wall closer to the curb.
18 Q And how far? I didn't --
19 A We moved it up --
20 Q -- actually see it dimensioned.
21 A We moved it up 1.5 feet.
22 Q So the actual, was it one foot, how many inches
23 from the curb now?
24 A Well, from the existing curb, it's basically one
25 point, one foot two inches from the existing curb.

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1 Q Okay. And is that to the face of the inside of
2 the wall?
3 A Yeah, it's the face of the wall.
4 Q Okay. And the depth, the full depth of the wall
5 or maybe width? I'm not sure which I'm talking about. From
6 the front face to the rear face of the wall?
7 A I want to say, I want to say it's, that the post
8 itself is three inches, and then -- but I'm not 100 percent
9 positive on that. It's probably about six inches, plus or
10 minus, when you get the post in there plus the green screen,
11 the mesh that attaches the, for the plants to grow on.
12 MR. GROSSMAN: I think we had some testimony on
13 that from --
14 MS. ROSENFELD: From Ms. Vopicelli, I believe.
15 MR. GROSSMAN: Vopicelli, yes.
16 MS. ROSENFELD: Right, but I also think she wasn't
17 entirely clear on --
18 MR. GROSSMAN: Right.
19 MS. ROSENFELD: -- what that would be.
20 BY MS. ROSENFELD:
21 Q Mr. Duke -- and I'm not going to spend a lot of
22 time on this -- from the outer portion of the mesh wall
23 facing the special exception area through the concrete panel
24 to the outer wall of the mesh area facing the neighborhood,
25 can you tell me how much space that will take up?

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1 A So from mesh panel to mesh panel?
2 Q Right, yes.
3 A Unfortunately, I don't have that exact dimension.
4 It's probably six inches, nine inches, somewhere in that
5 range, but I'm not 100 percent sure.
6 Q And do you know who's responsible for maintaining
7 the plantings on the green wall?
8 A It'll be Costco.
9 Q And Costco will be responsible for maintaining the
10 wall itself as well?
11 A That is correct.
12 Q Okay.
13 MR. GROSSMAN: Costco or the plaza?
14 THE WITNESS: My understanding is Costco.
15 BY MS. ROSENFELD:
16 Q And do you know if the maintenance requirements
17 for the wall and/or the plantings are in the record itself?
18 A I do not know that. Again, Mr. Willard may be
19 able to speak to the planting maintenance.
20 Q Okay. So planting requirements would be his
21 bailiwick --
22 A Yes.
23 Q -- and maintenance requirements? And would
24 maintenance requirements for the wall itself also be his
25 bailiwick? For the plantings and the wall or just the

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1 plantings?

2 A I don't know if he'll speak to the maintenance

3 requirements for the wall itself. I mean, it's a wall, and

4 you know, it's set in concrete footings. I don't think from

5 a -- it's a substantial wall from a structural standpoint.

6 So I don't think there's going to be a lot of maintenance

7 that's needed for that.

8 Q Maybe not an ongoing basis but I've seen lots of

9 walls been around for 20 or 30 years that --

10 A I mean --

11 Q -- overdone.

12 A -- my understanding is Costco is paying for it,

13 Costco is maintaining it, they're responsible for it.

14 MR. GROSSMAN: Mr. Brann, would that be something

15 that you'd be agreeable to, a condition that Costco will

16 maintain the wall and the plantings on the wall?

17 MR. BRANN: Yeah. We have a, we have an agreement

18 with Westfield. So it's already part of our agreement with

19 Westfield.

20 MR. GROSSMAN: I'm talking about as part of the

21 special exception conditions. If --

22 MR. BRANN: That we would maintain the plantings?

23 MR. GROSSMAN: -- in fact there were a special

24 exception granted by the Board of Appeals here, would that

25 be an appropriate condition?

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1 MR. BRANN: Sure.

2 MR. GROSSMAN: Okay. So you might put that in

3 your list of conditions that ought to be suggested.

4 BY MS. ROSENFELD:

5 Q Mr. Duke, could you turn for a moment to the

6 Pedestrian Circulation Key Map, which is 233(a)? Okay. And

7 the title of this is the Pedestrian Circulation Key Map, and

8 I know it's there in part for the pedestrian path. Are

9 there any other pedestrian circulation elements associated

10 with the special exception application that are shown on

11 this plan?

12 A As I testified the first time, there's a striped

13 pedestrian area within the north -- outside of the special

14 exception area on the north side of the parking field, there

15 was a striped area that was put in to allow customers to

16 better access the parking lot that's to the west of the fuel

17 station.

18 Q Okay. And do you know if there's any other

19 striped pedestrian walkways on the property in the vicinity

20 of the special exception area?

21 A I mean, there are sidewalks in front of the Costco

22 warehouse. There are crosswalks up there by Target that are

23 shown. There's crosswalks by the Target entrance. There's

24 another pedestrian access to, you know, the main doors.

25 Q The main mall entrance?

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1 A Right.

2 Q Okay. All right. And if you could also turn to

3 the truck turning radius exhibit for the loading docks,

4 please.

5 MS. HARRIS: Is it behind the --

6 THE WITNESS: We had it out earlier.

7 MR. BRANN: Yeah, we did.

8 MS. ROSENFELD: Yes, we did.

9 MR. BRANN: Here it is. I'm sorry.

10 BY MS. ROSENFELD:

11 Q I think you described earlier that these reflect

12 one turning movement --

13 A Yeah. What each of these --

14 Q -- beyond the loading dock and then one turning

15 movement back in, is that correct?

16 A In order to provide clarity, we have two view

17 ports, one showing the truck pulling in from the ring road

18 and backing up to the loading spot, and then the second view

19 port shows the truck pulling away.

20 Q Okay. For the other port, the one on the lower

21 section of the exhibit, that also requires pulling forward

22 beyond the loading dock and then backing into it, is that

23 correct?

24 A That's correct.

25 Q And both of those, that's just a forward and a

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1 back; it's not multiple movements?

2 A Correct. Yes, ma'am.

3 Q And in order to accomplish that movement, does the

4 driver need to occupy -- first of all, is that a two-way

5 drive aisle between the special exception area and the

6 loading docks?

7 A Yes, it is.

8 Q And does that turning movement require that the

9 vehicles occupy both directions of that drive aisle?

10 A Yes. When the truck is backing, pulling off and

11 backing, yes, he goes across both lanes of that drive aisle.

12 Q And when the truck exits the loading dock, it

13 crosses both drive aisles as well --

14 A Yeah.

15 Q -- from both ports, correct?

16 A It comes out, makes a left, and yes, it would

17 cross both to get to the far travel lane, yes.

18 Q And do you know approximately how much time it

19 takes to execute that maneuver?

20 A No, I do not.

21 Q And do you know how many drivers can do it with

22 only one try?

23 A I do not.

24 Q Okay.

25 A This -- what I will say is that this is a very

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1 typical movement for a, this type of retail facility.
2 Q Do you know if there's any other loading docks at
3 the mall that have this same amount of space to maneuver
4 into a loading dock?
5 A That, I do not know.
6 Q Okay. And do you know if there are any other
7 loading docks in the mall that require that vehicles execute
8 this movement within two-directional traffic lanes?
9 A That, I do not know.
10 Q Okay. And could you also turn to the other truck
11 turning radius plan, the one for the fuel station itself?
12 MR. GROSSMAN: That's 232(b).
13 BY MS. ROSENFELD:
14 Q Okay. The truck turning radius that I see here,
15 as you said, the truck comes down the south side of the ring
16 road, makes a left, and pulls into the fuel area, and
17 there's, there's actually three sort of, not exactly
18 parallel, but somewhat parallel lines that run along the
19 left-hand side of the special exception. Can you describe
20 to me what those three lines represent, or explain to me?
21 A Basically, one's just the truck cab, and then you
22 have the tracking of the wheels.
23 Q The wheels for the trailer portion of the --
24 A Yeah, correct. Yes, ma'am.
25 Q So the two lines that really do run completely

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1 parallel right up against the westernmost side of the
2 fueling tanks, those would be the wheel tracks for the cab
3 then. That's what you said?
4 A Well, no. It's the far outside track. So, you
5 know, that's, this, the far eastern line --
6 Q Yes.
7 A -- that's, that's the furthest line that, furthest
8 distance that that truck travels, whether it's the cab or
9 the trailer. It's just showing the path where the truck is
10 running.
11 Q Where the truck would run?
12 A Correct.
13 Q Okay. But then you also have a third line that
14 extends more to the western side of the property, correct?
15 A Correct.
16 Q And would that be the outermost left-hand wheel of
17 the trailer?
18 A Yes, ma'am --
19 Q Is that --
20 A -- well, not necessarily the trailer, whatever the
21 most outermost point is, whether it's the cab or the
22 trailer.
23 MR. GROSSMAN: I think her confusion is -- and I
24 can understand that confusion -- is why is there a third
25 line? You have two sets of wheels, one on either side, I

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1 presume.
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: So that's what we're confused
4 about. Why is there a third line? Is that my -- do I sense
5 your confusion?
6 MS. ROSENFELD: That is. That's right. I mean,
7 when I read this --
8 THE WITNESS: So the -- okay. I'm sorry.
9 BY MS. ROSENFELD:
10 Q No. Go ahead.
11 A The third, that's what we use in the --
12 Q The third wheel.
13 A The third line is what we use in the program to
14 set the path of the truck, and then the wheels follow that
15 path.
16 Q So is it your testimony that the front two wheels
17 of the cab and the four wheels of the trailer follow each
18 other exactly, they would follow --
19 A No.
20 Q The rear, this swings out, correct?
21 A Correct.
22 Q The rear end of the trailer swings out like that?
23 A Correct.
24 Q Okay. So the entirety of the truck is taking up
25 all of the space in between the --

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1 A Yes, ma'am.
2 Q And there's a middle line --
3 A Yes, ma'am.
4 Q -- subsumed within the outermost --
5 A Yes, ma'am.
6 Q -- tracks of the wheels? Okay. Now, when the
7 trailer pulls in, or when the fuel tanker pulls in up here,
8 makes its left-hand turn, drives north and parks in front of
9 the fuel tankers, where is the outermost portion of the fuel
10 tanker trailer itself?
11 A It is that section of that line --
12 Q Okay. Now --
13 A -- which is the westernmost line.
14 Q And can you tell me how far into the drive aisles
15 that line extends?
16 A The total drive aisle width is 30 feet. The --
17 Q Okay.
18 A -- the truck is eight feet wide. So there's 22
19 feet resulting at that point --
20 Q Okay.
21 A -- 22 feet of clear space between the truck and
22 the parking stall.
23 Q Okay. So here, where it says 30 feet --
24 A That's the total width.
25 Q -- it's 22 feet from here --

1 A Right.
 2 Q -- from the parking aisle to the edge of the
 3 trailer?
 4 A Correct.
 5 Q Okay. And then what clearance did you assume
 6 between the island and the edge of the truck wheels?
 7 A I assumed the truck wheels were adjacent to -- the
 8 truck laid adjacent to the island.
 9 Q Okay. Are you assuming that that clearance to the
 10 island is south or up near where the kiosk is located?
 11 A Up both islands.
 12 Q Both? And then when the truck is pulling out this
 13 way, you're assuming how much clearance?
 14 A Oh, as the truck pulls forward, the cab turns and
 15 pulls into the drive aisle itself --
 16 Q Yes.
 17 A -- and again, I'm assuming that the truck is
 18 staying adjacent to the island --
 19 Q Okay.
 20 A -- as he's pulling out.
 21 Q Okay. And heading north, as the truck would make
 22 a left-hand turn into the drive aisle to exit, how much
 23 clearance do you assume that there is along that portion of
 24 that drive aisle?
 25 A I want to make sure I'm clear on the question. As

1 the truck pulls between the fuel station and this main drive
 2 aisle?
 3 Q That's correct, yes.
 4 A Yeah, that is a 24-foot drive aisle.
 5 Q Okay. And then at the corner as it's moving into
 6 the westbound lane?
 7 A As it makes it's turn here, that's also a 24-foot
 8 drive aisle.
 9 Q How much clearance are you assuming between the
 10 wheels and those islands that are at the end of the parking
 11 aisles? There you go.
 12 A I'm assuming that the truck is driving adjacent to
 13 those islands.
 14 Q Okay. Six inches? Twelve inches? Two feet?
 15 A You know, the line thickness is a foot. So you
 16 basically got a foot of play in there.
 17 Q And what is the gray area at the upper northeast
 18 corner where the rear of the trailer -- yes. What is that
 19 gray area?
 20 A That's a striped area.
 21 Q That's a pedestrian walking area?
 22 A No. This, originally there was an island in
 23 there --
 24 Q Yes.
 25 A -- and so when we were doing the analysis before

1 the submission and we ran the truck turn, we saw that, you
 2 know, an island would not work there for the truck radiuses.
 3 So instead of putting a landscape island in there, we put a
 4 striped area in there.
 5 Q But that striped area is a continuation of the
 6 striped pedestrian walkway that's coming out of the main
 7 mall entrance, is that correct?
 8 A Yes, that's correct. The striped area comes --
 9 basically, it ties into that just like if it was a parking
 10 space. I believe that was spoken to at the last hearing as
 11 well.
 12 Q And going back just for a moment to the exhibit
 13 for the loading docks, and how much clearance room do you
 14 have in making those turns between the islands?
 15 A I want to make sure I understand the question. Do
 16 you mean the distance from this island, which is on the
 17 western end of the loading dock, to the island on the
 18 eastern side of the fuel station?
 19 Q No. I mean, you have the gray area that shows
 20 where the wheels are expected to be. Let's say, for
 21 example, the bottom right-hand.
 22 A This one?
 23 Q I'm sorry, the upper right-hand. There we go.
 24 Okay. So you have an island coming out on the lower
 25 right-hand side from the loading dock. That's right. And

1 then there's another island right opposite that. Exactly.
 2 How much extra room is there between the wheel turns and
 3 those islands? How much extra clearance space do you have?
 4 A About four feet, four to five feet.
 5 Q And can you show me where that would be?
 6 A So, again, a curb line here --
 7 Q Yes.
 8 A -- edge of the truck path here, which that was, I
 9 was speaking to the western side of the loading dock, and
 10 then on the eastern side of the special exception area with
 11 the curb line in the southeast quadrant, there's a curb line
 12 here and a truck path.
 13 Q Right. And you say there's four feet of extra
 14 clearance?
 15 A On this side it looks like about four feet. On
 16 the east side of the truck, four feet; on the west side of
 17 the truck, maybe five feet.
 18 Q It looks to me like they're flush with each other.
 19 Oh, that's what that 4 is?
 20 A Yeah. That 4 --
 21 Q Yes.
 22 A -- that's actually a four-foot bar. So that's
 23 telling you what the radius around that curb is.
 24 Q You're saying that where it says 4R between the
 25 gray area for the truck and the corner of the island, that

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1 that's four feet?
2 A It's about -- if I understand your question
3 correctly, what I'm saying is, from that curb line to the
4 edge of that truck --
5 Q Yes.
6 A -- I think from -- and this distance is about four
7 feet. That looks like that's about two feet.
8 Q Okay. And what about from --
9 MR. GROSSMAN: Counsel, I can't see what you're
10 pointing to, but also, you're not identifying which two
11 points you're identifying are separate --
12 MS. ROSENFELD: Space --
13 MR. GROSSMAN: -- from whatever. So the record is
14 not going to reflect that unless you specify that.
15 MS. ROSENFELD: Space No. 1 out on Exhibit No.,
16 this is Truck Turn Exhibit --
17 MR. GROSSMAN: Yes, that --
18 MS. ROSENFELD: It doesn't have a number on it.
19 MR. GROSSMAN: The truck turning exhibit --
20 THE WITNESS: This is the warehouse truck turning
21 exhibit.
22 MR. GROSSMAN: Right. Right.
23 MS. ADELMAN: 232(b).
24 MR. GROSSMAN: 232(b), exactly. You beat me to
25 it.

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1 BY MS. ROSENFELD:
2 Q On No. 232(b), and maybe what I can do is, the
3 closest point between the island at the southernmost loading
4 dock and the truck turning radius, the southern side of the
5 truck turning radius, what is the distance between the
6 closest point?
7 A I don't have a dimension on it, but I'm going to
8 say it's two feet.
9 Q Okay. And the closest dimension between the
10 southeastern island of the special exception area and the
11 nearest truck wheel, which looks like the actual truck wheel
12 itself for the front of the cab, would be?
13 A That's the rear of the trailer right there.
14 Q Okay.
15 A So that looks about the same; so I'm going to call
16 it two feet --
17 Q Two feet.
18 A -- maybe three feet, probably closer to two.
19 Q And Space No. 4 in, again, can you tell me the
20 dimension of the closest point between the southernmost
21 island south of the loading dock and the wheel turning
22 radius as shown on --
23 A That looks about six inches right there.
24 Q About six inches, okay. And pulling -- and
25 backing into the loading bay, again --

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1 A Uh-huh.
2 Q -- Space 4 in, there's an island just north of
3 there, of the loading bay. What would be the distance
4 between the wheel turning -- the wheels of the truck and the
5 closest point of that?
6 A That's probably six inches or three inches. It's
7 right up against the curb line at that point, yeah.
8 Q And the same would be true for Space No. 1 in?
9 Those dimensions look similar?
10 A Yeah, they look similar. I think Space 1 in has a
11 little more space but not much.
12 Q But, yes, we're talking about a matter of inches.
13 A We're talking about inches, correct.
14 Q Do you expect that truck drivers will actually be
15 able to maneuver within these confines, within the spaces
16 that you described, the dimensions that you described, in
17 one turn?
18 A Yes, ma'am.
19 Q Are you familiar with the Wheaton CBD Sector Plan
20 on page 48, which says that you -- recommends to retain the
21 existing green buffer along the property's southern edge
22 between the residential community and the mall ring road to
23 reduce the impact of new development on adjacent residential
24 areas and the nearby school?
25 A Yes, I am.

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1 Q Are you familiar with that?
2 A Uh-huh.
3 Q And in your opinion, if any trees or vegetation
4 needs to be removed to construct the wall, would it
5 contravene that recommendation?
6 A Well, as I said before, we're not planning on
7 taking out any trees for that wall, but -- so no, I don't
8 believe the wall --
9 Q And I think you had testified that no trees within
10 the forest conservation --
11 A Correct.
12 Q -- within the forest --
13 A Yeah.
14 Q -- the defined forested area --
15 A Right.
16 Q -- but would you agree that a buffer is a broader
17 term than the forest, as defined under the forest
18 conservation law?
19 A Yes.
20 Q Okay. Okay, thank you.
21 MS. ROSENFELD: I have no further questions.
22 MR. GROSSMAN: Any other questions? I see --
23 MR. ADELMAN: Oh, yes.
24 MR. GROSSMAN: -- I see Dr. Adelman reaching for
25 the microphone. How long do you think your examination will

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1 take?
2 MR. ADELMAN: I would be surprised if it was more
3 than 15 minutes.
4 MR. GROSSMAN: Because I don't know what -- you're
5 okay, Mr. Duke?
6 THE WITNESS: Let's do it.
7 MR. GROSSMAN: Okay. Let's do it.
8 MR. ADELMAN: Okay.
9 MR. GROSSMAN: I was thinking about taking a
10 break, but if it's 15 minutes, then we'll do it.
11 MR. ADELMAN: I believe it'll be 15 minutes,
12 but --
13 MR. GROSSMAN: Okay.
14 CROSS-EXAMINATION
15 BY MR. ADELMAN:
16 Q I want to make sure that I understood a couple of
17 things you said, Mr. Duke, and perhaps I misunderstood; so
18 please correct me. I believe you stated that the special
19 exception area has not changed. If I'm correct in that
20 statement, are you saying it has not changed since the new
21 submissions or are you saying it has not changed since your
22 original engineering report?
23 A For the new submissions. I was referring to the
24 new submissions.
25 Q The 36,8 is still the same number --

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1 A Correct.
2 Q -- has not changed since last week?
3 A Correct.
4 Q Fine, thank you. And did I understand that the
5 pedestrian path as is envisioned will include widening the
6 curb at the corner of the intersection of Valley View and
7 the ring road, the southwest corner, where people coming
8 into the mall, turning right to go towards the special
9 exception site, the pedestrian path will extend five feet
10 into the now existing roadway? Is that correct?
11 A So I'll refer to the overall pedestrian
12 circulation map, which doesn't have --
13 Q Yes.
14 A -- an exhibit number on it yet.
15 MR. GROSSMAN: Yes. That's --
16 THE WITNESS: 233.
17 MR. BRANN: 233(a).
18 THE WITNESS: 233(a). It does tie into the ring
19 road, I'm going to say, about 100 feet from that
20 intersection.
21 BY MR. ADELMAN:
22 Q Fine. So at the point where cars entering from
23 University through Valley View through the ring road and
24 turning right to go towards the Costco station, the road
25 will be five feet narrower than it currently is?

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1 A No, that's -- not, not where you make the turn.
2 After you make the turn and you drive for 100 feet, that's
3 when the sidewalk then ties into the ring road.
4 Q Ah. Okay. I believe I understand. So the
5 narrowing, if you'd permit me the word narrowing, of the
6 ring road occurs at a point perhaps 50 feet north of the
7 main point of entrance for customers of Target?
8 A Correct.
9 Q Okay. And it occurs approximately 10 feet south
10 of the secondary entrance into the area that cars that are
11 going into the Target, I don't know the word to use, loading
12 dock area -- yes, that. So it occurs just south of that?
13 A Roughly.
14 Q Fine. In your opinion, will that not, or is it
15 not possible that that will constitute a point of additional
16 congestion in the ring road because of the amount of cars
17 that make that right turn and proceed towards Target?
18 A In my opinion, no. It maintains the through lane
19 and the left-turn lane. There's additional striping that
20 goes in there to control the flow of traffic. So --
21 Q Do you happen to know how wide the southbound
22 lanes will be after the new pedestrian path goes in? Or
23 compare them to what they presently are. What will they be
24 after the pedestrian path is created?
25 A It's 10 feet. It's 10 feet now and it's going to

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1 be 10 feet when we're finished.
2 Q Unless, how can -- I missed something. If you're
3 going to take five feet for the pedestrian path, how can the
4 lanes remain the same?
5 A Because there's a painted white line and we're
6 tying into that existing white line and the path goes within
7 that area, because remember, it was extra wide to begin
8 with.
9 Q Fine, thank you. That answers that. And then,
10 finally -- I'm sorry, because we got this relatively
11 recently -- if I understand, Exhibit 239 is a slightly
12 revised version of the original Exhibit 13, is that correct?
13 A What was -- 239 was?
14 Q 239 is the one we're looking at today. 13 is the
15 original engineering report.
16 A The engineering report, yes.
17 Q Right. Okay. So you can imagine that I will, of
18 course, be going through the new report and old report with
19 a fine-tooth comb, but I'd like to know if you could tell me
20 specifically what changes were made in the new report. I
21 found one. Let me ask you about it, and then you can tell
22 me about others. On page -- oh, they're not numbered. Just
23 a second. On the first text page of the old report, the one
24 that starts with Property Description, the capacity of the
25 fuel tanks is listed as 20,000 gallon, three, and in the new

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1 or all of the documents? In other words, to save time, do I
2 refer to this one or this one, but the package that was the
3 geotechnical report is not correct and I have to specify
4 that.

5 MR. GROSSMAN: Well, I'll answer that. You refer
6 to anything that -- you make clear what you're referring to,
7 and if it's a plan, if it's a specific exhibit, then just
8 refer to the exhibit. That's the best way, and you're -- if
9 you're talking about it in your testimony, the best way to
10 do it is to make clear what exhibit you're referencing,
11 whether it's a specific engineering plan or the report,
12 whatever else. That way the record will be clear.

13 MR. ADELMAN: Thank you.

14 MR. GROSSMAN: Sure.

15 MR. ADELMAN: One second, please.

16 MR. GROSSMAN: Sure.

17 MR. ADELMAN: I had a couple of questions that
18 were given to me by Mr. Silverman before he left, but I'm
19 not clear. Am I allowed to ask questions about, for
20 example, ground soil pollutants? This is a new exhibit,
21 which is a revision of the previous one. Mr. Duke has
22 testified to certain aspects of it, but am I restricted to
23 only asking questions about the things he testified about?
24 MR. GROSSMAN: Well, technically yes,
25 cross-examination is supposed to be within the scope of the

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1 direct, but I'm going to give you some leeway. If you think
2 that it's something that's of critical importance, go ahead
3 and ask the question, and we'll --

4 MR. ADELMAN: It is.

5 BY MR. ADELMAN:

6 Q When Mr. Goalwin testified using the operations
7 safety training manual as his supporting document, we could
8 not find any way to ask questions about fundamental issues
9 as to the level of pollutants in the soil, which is going to
10 be disturbed when the excavation is done to put in the
11 underground tanks and so forth. So my question
12 fundamentally is, where is that issue addressed in the
13 various files? Are you aware of a document that
14 specifically addresses the question of -- for example, there
15 was an Montgomery Ward store --

16 MR. GROSSMAN: No, let's not make it too long.

17 MR. ADELMAN: Okay, fine.

18 BY MR. ADELMAN:

19 Q Where can we --

20 MR. GROSSMAN: Just aware of, what's the -- fill
21 in the rest of that sentence. Are you aware of?
22 BY MR. ADELMAN:

23 Q Are you aware of a document that Applicant has
24 filed that specifies how underground pollutants will be
25 dealt with?

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1 A The scope of my work was to site civil lens. So
2 I'm not aware or I don't know whether or not there was
3 anything that addressed the underground pollutants or lack
4 thereof.

5 Q Related question, how would you -- can you suggest
6 a way in which we can determine what documents do address
7 that issue?

8 A No.

9 Q Fine. And then I have one last question --

10 MR. GROSSMAN: That may be an issue that's down
11 the road if a special exception were approved, in terms of
12 permitting process and Maryland Department of Environment.
13 Montgomery County environmental people might deal with that
14 kind of issue if it is an issue in this case. So it may be
15 that not, not covered, I don't know. I'm just --

16 MR. ADELMAN: Right.

17 MR. GROSSMAN: -- I let you ask the question, and
18 he's answered. So --

19 MR. ADELMAN: Fine, thank you, and I will address
20 that further in my testimony.

21 MR. GROSSMAN: Okay.

22 BY MR. ADELMAN:

23 Q One last question. What wasn't clear to me,
24 because I wasn't paying attention to it, is the issue of, if
25 a person in a wheelchair wants to get on or off the

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1 pedestrian path, is there some sort of ramp at either end
2 that allows them to get on and off the path?

3 A Yes, sir, there is a handicap ramp on both sides
4 of the path.

5 Q But there are no exit or entrance ramps in between
6 the beginning and the end, is that correct?

7 A Not planned at this time, no, sir, not in between.
8 It's on the end. So you get on it and you get off it.

9 Q And do you know whether that satisfies ADA
10 requirements, to have a path that long with only a ramp at
11 the end, on the end?

12 A To my knowledge of reviewing the ADA code, yes, it
13 does.

14 Q So, for example, if a person in a car being driven
15 to the mall and that car parked on the ring road beside the
16 curb and got up on the ramp, got up on the pedestrian path,
17 there would be no ramp for them to go from the pedestrian
18 path down to the road and cross into the parking lot, is
19 that correct?

20 A That's correct, but that's why ADA spaces are
21 provided by the front door of the mall in multiple
22 locations.

23 Q We have heard testimony, I believe, from one of
24 the citizens who testified that there are a very limited
25 number of spaces for handicap parking --

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1 MR. GROSSMAN: I think he said that he wished
2 there were more, yes --
3 MR. ADELMAN: Wished there were more.
4 MR. GROSSMAN: -- but I don't know what number
5 there are or aren't. I mean, on this, on the question of
6 ADA compliance, there's always a condition, if a special
7 exception is granted, requiring compliance with all
8 applicable state, local, federal regulations. So they would
9 have to comply. If one had to be added, it would be added
10 in order to comply.
11 MR. ADELMAN: You may disallow this question, but
12 fundamentally, as you know, we have raised the question
13 numerous times as to the extent to which the future
14 operation of this gas station, if it is approved, will
15 require enforcement of agencies which, on the face of it,
16 appear not able to enforce the various issues in the County
17 at presently.
18 MR. GROSSMAN: Well, I don't know what -- is there
19 a question? I'm not sure. What are you asking me?
20 MR. ADELMAN: I believe I've asked you this once
21 before, Mr. Grossman. Can you, in contrast to planning
22 staff, factor in in your decision-making the reality or the
23 possibility that there are enforcement mechanisms required
24 that will not in fact function?
25 MR. GROSSMAN: That's so hypothetical. I guess,

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1 in general, that's not an assumption that we deal with in
2 the, in review of the, of applications. There are agencies
3 that are specified, Department of Permitting Services
4 overall, for enforcing the special exception. And so since
5 there is a general condition in all special exceptions that
6 are granted requiring compliance with all regulations, when
7 DPS does its inspections, if it sees a violation, then it
8 will site that violation and a correction would have to be
9 made. And, also, individuals can submit a complaint of
10 noncompliance to the Board of Appeals or the Department of
11 Permitting Services, claiming that there is noncompliance,
12 and then it would be investigated by investigators for the
13 Department of Permitting Services and then proceeded, and it
14 would proceed from there, and then usually there's a
15 violation notice issued. If there's not a correction made,
16 then there are a variety of things that can happen,
17 including revocation of the special exception after a
18 hearing.
19 MR. ADELMAN: One moment.
20 BY MR. ADELMAN:
21 Q This is a following one to the question about the
22 availability of ramps on the, providing access to/from the
23 pedestrian path at points other than the northwest corner or
24 the, excuse me, the northeast corner or the -- no, northwest
25 corner or southeast corner. I forgot the question. Just a

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1 second. Oh, in addition to the question about availability
2 of points of access to the pedestrian path for people in
3 wheelchairs, what about people who are pushing carts, for
4 example, from Costco or whatever, from the parking area,
5 having shopped, to the ring road where they have parked, as
6 they do sometimes, and not being able to push the cart up a
7 ramp -- is that not an issue?
8 A There is a very -- the answer is no, we did not
9 plan additional ramps within the pedestrian path. If Costco
10 requested us to add ramps to facilitate access, we certainly
11 would, or if it was a condition of approval to add ramps, we
12 certainly would. There's no technical reason why we can't.
13 Q Thank you very much.
14 A Thank you.
15 MR. GROSSMAN: Mr. Scharman.
16 MR. SCHARMAN: I know that you're about to recess,
17 but I had a couple of questions that were not addressed
18 previously, and I was wondering if I may --
19 MR. GROSSMAN: All right. Come on forward and
20 have a seat next to Ms. Harris.
21 MR. SCHARMAN: Thank you.
22 BY MR. SCHARMAN:
23 Q Good afternoon, Mr. Duke. My name is Clifford
24 Scharman. I'm a resident of the Town of Kensington. The
25 first question I have for you is, do you recall being

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1 present when a group of Costco, I don't know if they were
2 representatives, but a team of Costco people came in and
3 made a presentation to the Town of Kensington at a town
4 council? This was several years ago.
5 A I don't believe I was at that meeting.
6 Q So you don't recall making any presentation on
7 the, on the technicalities of groundwater or Silver Creek?
8 A No, sir.
9 MR. SCHARMAN: Then I have nothing further.
10 MR. GROSSMAN: Okay. All right. Is there any
11 redirect?
12 MS. HARRIS: Briefly.
13 REDIRECT EXAMINATION
14 BY MS. HARRIS:
15 Q Is the Costco warehouse currently receiving truck
16 deliveries?
17 A Yes, it is.
18 MR. GROSSMAN: I'm sorry. Currently receiving
19 what kind of deliveries?
20 MS. HARRIS: Truck deliveries.
21 MR. GROSSMAN: Truck deliveries, yes, okay.
22 BY MS. HARRIS:
23 Q And can you describe the turning movements that
24 are occurring now for the trucks to get into the loading
25 dock?

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1 A It's the, basically the same maneuvers as what I
2 showed on the exhibit that was submitted.
3 Q Currently what is in the space that would, where
4 the gas station is being proposed?
5 A Parking. So there's parking -- there's
6 obstructions there now and that's exactly what maneuvers the
7 trucks are making. It's going to be the same condition when
8 the fuel station, if the fuel station was to be constructed.
9 Q Thank you.
10 MS. HARRIS: I have no other questions.
11 MR. GROSSMAN: Any recross on that point only?
12 MS. ROSENFELD: Just clarification. I want to
13 make sure I understand his answer.
14 **REXCROSS EXAMINATION**
15 **BY MS. ROSENFELD:**
16 Q So if we were to compare --
17 MR. BRANN: Do you want me to hold that for you?
18 MS. ROSENFELD: Yes, and I need my glasses.
19 **BY MS. ROSENFELD:**
20 Q So looking at Exhibit 232(b), Space No. 1 out, for
21 example, the island that's shown just north of the
22 northernmost loading bay, would that correspond with the
23 island that's just north of the orange dumpster shown on
24 Exhibit No. 101?
25 A I'm sorry. Ask the question again.

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1 Q The island that I first described --
2 A Uh-huh.
3 Q -- Space No. 1 out, does that correspond with the
4 island?
5 A Correct.
6 Q And they're the same dimensions?
7 A Yes.
8 Q And the island that's shown just south of the
9 southernmost loading bay, does that correspond with what's
10 just south of the loading bay wall?
11 A Yes. Yes, ma'am.
12 Q And is that going to change in dimension --
13 A No, ma'am.
14 Q -- from what's shown on Exhibit 232(b)?
15 A No, ma'am.
16 Q And there is an island to the west of the loading
17 bays, as shown on Exhibit 101. How does that correspond to
18 what's shown on the island that's opposite the loading bays
19 on Exhibit 232(b)?
20 A Referring to Exhibit 101, this curb-line radius is
21 the, at the exact same point. So --
22 Q And by this --
23 A -- this curb-line radius and this, that's the
24 same, same location.
25 Q And by this curb-line radius, you're talking about

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1 the curb-line radius that's shown up, just immediately north
2 of the ring road or --
3 A Yes. Yes, ma'am.
4 Q And then where there's this sort of like S-shaped
5 island to the west of the loading bays, is this little
6 bump-out to the east just going to get carved off? Is
7 that --
8 A No. The curb line along the edge of the fuel
9 canopy will align with these spaces, and then it angles
10 back --
11 Q Oh, I see.
12 A -- like that. And on 101, which shows the curb
13 cut that's furthest south of the parking area, that gets
14 closed off.
15 Q Is there an exhibit anywhere that has an overlay
16 of those?
17 A No, ma'am.
18 Q And at the current time, trucks that are coming
19 into the loading bay, of course, have freer access, is that
20 correct, because you have a curb cut here between the
21 southernmost island and the one north of it?
22 A The models that we didn't -- you can see the
23 vehicle tracking in the aerial, actually. Where the trucks
24 have been turning, they're making this kind of maneuver.
25 MR. GROSSMAN: I can't see. So what's this kind

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1 of maneuver?
2 THE WITNESS: Basically, the same maneuver I
3 described.
4 MR. GROSSMAN: Before?
5 THE WITNESS: Yes.
6 MR. GROSSMAN: Before the new plan?
7 THE WITNESS: Correct.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: You can actually see where their
10 wheels have been tracking --
11 MR. GROSSMAN: Okay.
12 THE WITNESS: -- and it's in the basic patterns
13 that I talked about previously.
14 MR. GROSSMAN: Okay.
15 **BY MS. ROSENFELD:**
16 Q And the islands that are shown on Exhibit 101, are
17 they the -- are these currently constructed? These are
18 conditions on the ground today --
19 A Yes, ma'am.
20 Q -- at today's hearing?
21 A Yes, ma'am.
22 Q Okay.
23 MS. ROSENFELD: One minute, please.
24 MR. GROSSMAN: Ms. Rosenfeld is still
25 contemplating.

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1 MS. ADELMAN: Oh, I thought she was done, sorry.
2 MR. GROSSMAN: When she's finished --
3 BY MS. ROSENFELD:
4 Q Do you know if trucks ever actually do use that
5 break between the southernmost island and the one north of
6 it to enter?
7 A I do not know if they actually use it. It's not
8 signed off, it's not blocked off for them not to use it.
9 Q All right, thank you.
10 MR. GROSSMAN: Ms. Adelman, do you have questions
11 pertaining directly to this redirect?
12 MS. ADELMAN: Well, to the redirect, see if I
13 can -- I don't know if I can phrase it as a question. It
14 was a point of personal observation. Is that allowed?
15 MR. GROSSMAN: No.
16 MS. ADELMAN: No. Okay. How do I do that? I --
17 MR. GROSSMAN: When you testify, if you testify,
18 you can certainly --
19 MS. ADELMAN: Well, this is the opportune time to
20 do it.
21 MR. GROSSMAN: -- you can certainly testify as to
22 anything that's relevant to the case.
23 MS. ADELMAN: They're telling me to shut up.
24 MR. GROSSMAN: All right.
25 MS. CORDRY: Well, I don't think we --

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1 MS. HARRIS: Tough crowd.
2 MS. CORDRY: -- I don't think we quite said that.
3 MR. GROSSMAN: Yes, I'm sure they didn't say that.
4 MS. ROSENFELD: We were more polite than that.
5 MR. GROSSMAN: All right then. So that completes
6 the examination of Mr. Duke. Thank you very much. I know
7 you'd be anxious to come back still another time, but --
8 THE WITNESS: I'm just waiting for an invitation.
9 MR. GROSSMAN: Thank you. You have a good
10 weekend.
11 THE WITNESS: Thank you.
12 MS. ROSENFELD: Thank you, Mr. Duke.
13 THE WITNESS: Thank you.
14 MR. GROSSMAN: And so I think we can break until,
15 let's give ourselves until 20 to 4:00 and come back with
16 Mr. Cronyn.
17 MS. HARRIS: Thank you.
18 (Whereupon, a brief recess was taken.)
19 MS. HARRIS: Mr. Grossman, before we get
20 started --
21 MR. GROSSMAN: Yes.
22 MS. HARRIS: -- with Mr. Cronyn, perhaps we can
23 explain the differences on the two reports. Would that be
24 helpful?
25 MR. GROSSMAN: Oh, yes, that would be helpful.

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1 MS. HARRIS: Okay. And, unfortunately, I don't
2 have an explanation as to why there are two versions with
3 the same exact dates. I compared the two versions, and I'm
4 going to hand out two pages, and if I could just briefly
5 walk through what the, what the differences are --
6 MR. GROSSMAN: Okay.
7 MS. HARRIS: -- I think that's probably the best
8 way to handle it.
9 MR. GROSSMAN: All right. Which is the more
10 correct one?
11 MS. HARRIS: The one that states 136.
12 MR. GROSSMAN: Okay. Well, I'm glad, because
13 that's the one I have.
14 MR. CRONYN: Right.
15 MR. GROSSMAN: We don't care what Dr. Adelman has.
16 MR. ADELMAN: Thank you very much, sir.
17 MS. HARRIS: So that paragraph was the first
18 change between the old and the new, where there was a
19 difference in the measurement from the way it was measured.
20 And so the newest version notes that it's 136 from the
21 nearest home and 284 from the fuel dispensers.
22 MR. GROSSMAN: Right.
23 MS. HARRIS: Okay. Then the next change, the
24 next, the other change is at the bottom of that page, and
25 this happened in two places. When he references the old

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1 Montgomery Ward's auto service operation --
2 MR. GROSSMAN: Yes.
3 MS. HARRIS: -- in the previous report he noted
4 that it was in essentially the same location as the Costco
5 gas station. That's not accurate and that was taken out.
6 So that's no longer on that last paragraph.
7 MR. GROSSMAN: Okay.
8 MS. HARRIS: And then similarly on page 6, on the
9 second paragraph that begins the Westfield Shoppingtown
10 Mall, at the end of that paragraph, same thing, he took out
11 the phrase that said in essentially the same location.
12 MR. GROSSMAN: Okay.
13 MS. HARRIS: And then the only other change is,
14 the very next paragraph says: The most approximate Costco
15 fuel dispenser will be 284 from the neighboring homes and
16 will be totally concealed by the screen wall. That's new
17 language and it replaces the old language, which was: The
18 proposed Costco filling station will be a minimum of
19 approximately 200 feet from the closest residential property
20 and will be totally concealed by the screen wall.
21 MR. GROSSMAN: Okay.
22 MS. HARRIS: None of these are material changes,
23 but they are, they were minor revisions.
24 MS. CORDRY: As I recall, the planning staff asked
25 you to make some of these changes. So would this have been

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1 in response? Or the Planning Board or planning staff, one
2 or the other of them, said that it should be changed to
3 reflect --
4 MR. BRANN: Correct.
5 MS. CORDRY: -- that Montgomery Ward's was not in
6 that location, so forth.
7 MR. BRANN: That, that was --
8 MR. CRONYN: Correct.
9 MS. CORDRY: So these changes would have been made
10 in response to those directives, I believe.
11 MS. HARRIS: You have a very good memory and that
12 is probably accurate. I need to go back and check my notes.
13 MR. CRONYN: It is accurate.
14 MS. HARRIS: Okay. Joe said it is, good.
15 MR. GROSSMAN: And so I guess what we should do
16 is, I mean, because right now the report that's Exhibit --
17 MR. ADELMAN: 16.
18 MR. GROSSMAN: -- 16 in the file has the old
19 language, make --
20 MS. ROSENFELD: 16(a)?
21 MR. GROSSMAN: Pardon me?
22 MS. CORDRY: Make it 16(a).
23 MS. ROSENFELD: 16(a)?
24 MR. GROSSMAN: Oh. Well, let's see, 16.
25 MR. ADELMAN: No. She wants to --

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1 MS. ROSENFELD: No. No. I'm suggesting maybe
2 we --
3 MS. CORDRY: Call it 16(a).
4 MS. ROSENFELD: -- call it 16(a).
5 MR. GROSSMAN: Oh, well, that was one possibility,
6 or we could just give it a new exhibit number, although it's
7 still dated the other -- yes, that may be a little
8 confusing. I mean, I guess we --
9 MS. CORDRY: Well, it's just these two pages and
10 they're next to 16; then they actually might be easier to
11 find if somebody goes to look for them.
12 MR. GROSSMAN: I mean, I guess the choice is
13 whether to substitute the new one, but --
14 MS. ADELMAN: Yes.
15 MR. GROSSMAN: -- for the old one, or is there any
16 point that you wish to make regarding that, that that would
17 create a problem about?
18 MR. ADELMAN: There are several points to be made,
19 but substituting won't --
20 MR. GROSSMAN: No. I just want to make sure that
21 I don't eliminate an issue that you wanted to raise by
22 substituting it. If that's a problem at all, then we would
23 just put it as a new --
24 MR. ADELMAN: Could we think about that? I'm not,
25 I'm not firing on all pistons. Could I have some time to

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1 think about that?
2 MR. GROSSMAN: Sure. Why don't I just make it a
3 new exhibit number, and then --
4 MR. ADELMAN: Okay. Well, it's fine, but we'll --
5 MR. GROSSMAN: -- then you don't have to fire on
6 any pistons.
7 MR. ADELMAN: I'm being told it's fine.
8 MS. ROSENFELD: I think we'd be okay replacing it
9 with the correct report --
10 MR. GROSSMAN: Okay. All right.
11 MS. ROSENFELD: -- and I don't think there are
12 material differences.
13 MR. GROSSMAN: All right. So the Exhibit 16 will
14 have the corrected language.
15 MS. ROSENFELD: And then if we could get an
16 electronic copy of that --
17 MS. HARRIS: Certainly.
18 MR. GROSSMAN: Okay.
19 MS. ROSENFELD: -- so I can update my own files.
20 MR. GROSSMAN: Okay. Okay.
21 MS. CORDRY: So we're just going to replace the
22 prior Exhibit 16 with a new Exhibit 16?
23 MR. GROSSMAN: Yes, with the one that has the
24 correct language.
25 MS. CORDRY: Got it.

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1 MR. GROSSMAN: Right. And I know I have that
2 correct language because that's what I printed out my copy
3 from electronically. All right. There were also the two
4 maps that were not in either copy which we now have.
5 MS. HARRIS: Right. So we can attach those as
6 well.
7 MR. GROSSMAN: And those can be attached to the
8 new --
9 MS. CORDRY: Should we make them 16(a) and(b)?
10 MR. GROSSMAN: -- to the new, to the new 16. All
11 right. With those changes and additions, are we ready to
12 proceed then with Mr. Cronyn?
13 MS. HARRIS: Yes.
14 MR. ADELMAN: Yes.
15 MR. GROSSMAN: Okay, sir. You're still under
16 oath.
17 (Witness was previously sworn.)
18 THE WITNESS: Thank you.
19 MR. GROSSMAN: And I think we were in --
20 MR. ADELMAN: Yes.
21 MR. GROSSMAN: -- Dr. Adelman's cross-examination.
22 MR. ADELMAN: Right. First, just for a point of
23 clarification, while Ms. Harris characterized the changes as
24 not substantive, I would consider them quite substantive.
25 MR. GROSSMAN: You mean the changes that were just

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1 made in the new 16?
2 MR. ADELMAN: Yes, right.
3 MR. GROSSMAN: Okay.
4 MR. ADELMAN: Place an objection but that's my
5 objection.
6 MR. GROSSMAN: Okay.
7 CROSS-EXAMINATION (Resumed)
8 BY MS. ROSENFELD:
9 Q So the height of the screen wall has been
10 corrected to being eight feet. Okay. Are you aware,
11 Mr. Cronyn, that Mr. Gang showed, when he testified, a large
12 number of pictures, I believe, of views from various houses
13 in proximity with the eight-foot screen wall in place and,
14 while some of the houses were totally -- were you aware that
15 Mr. Gang showed pictures of what various houses would see of
16 the special exception site if it were built?
17 A I was not here for Mr. Gang's testimony.
18 Q Have you seen his filings on that?
19 A I don't think so. I may have looked at them over
20 a period of time.
21 Q Okay.
22 MR. GROSSMAN: By the way, let me interrupt one
23 second. Your comment, Dr. Adelman, made me reconsider just
24 substituting. If you think that the changes are
25 substantive, then I'm not going to just change the old one

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1 for the new one. I'm going to just create a new exhibit
2 number called Revised Exhibit, Revised Exhibit 16, impact, I
3 can say study of impact on nearby property values, and
4 that'll be Exhibit 243, and I will -- and we'll include the
5 two maps that we now have in that. And so that's the,
6 that's the exhibit we're working off of. That way we don't
7 have any confusion. It's probably a better idea anyway just
8 in case somebody went over the file earlier and then they
9 reviewed some language from Exhibit 16 and now it's
10 different language. Why, you know, why have the question?
11 (Exhibit No. 243 was marked
12 for identification.)
13 MR. ADELMAN: Thank you. Okay.
14 MR. GROSSMAN: So Exhibit 243.
15 BY MR. ADELMAN:
16 Q Mr. Cronyn, if the pictures I'm referring to from
17 Mr. Gang's report are correct that some houses are not,
18 their view of the special exception site is not totally
19 blocked, if that is correct, would you agree that that could
20 have an effect on the value to the residents of those houses
21 on, of this -- excuse me. Would you agree that if the view
22 from certain houses is -- the view of the special exception
23 is not totally blocked by the fence, that for the residents
24 of those houses, that would have a significant impact and
25 possibly --

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1 MR. GROSSMAN: Well, let's stop. You had a good
2 question there, and --
3 MR. ADELMAN: Stop.
4 MR. GROSSMAN: -- but you say from the houses.
5 Are you talking about from the ground level, from the first
6 floor, second floor? What are you talking about?
7 MR. ADELMAN: I believe in those cases I'd be
8 talking about the second-floor level --
9 MR. GROSSMAN: Okay.
10 MR. ADELMAN: -- because I think the pictures
11 Mr. Gang showed were taken from the second-floor level.
12 MR. GROSSMAN: Okay, some of them.
13 MS. HARRIS: Objection. That's a
14 mischaracterization of the sections in the photos which in
15 fact show that it wasn't.
16 MR. GROSSMAN: Right. I think that some of the
17 photos were taken -- I don't think any of the photos were
18 taken from the second floor.
19 MS. HARRIS: Right.
20 MR. GROSSMAN: He couldn't get access. Wasn't
21 that his testimony? He asked. He said he --
22 MS. HARRIS: Yes. Remember his -- he wasn't
23 invited in, right.
24 MR. GROSSMAN: -- he didn't get invited. So,
25 but --

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1 MR. ADELMAN: Okay.
2 MS. HARRIS: But they did cross sections.
3 MR. GROSSMAN: Right, but I think we get the sense
4 of the question; so let's ask it. If the view from the
5 second floor of these houses actually you could see the gas
6 station that is proposed here, would that change your
7 opinion? Is that a fair characterization of your question?
8 MR. ADELMAN: That's fine. Thank you very much.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: You know, going on the
11 hypotheticals -- I mean, this is very difficult. Again, my
12 recollection is that I've looked at the cross sections and,
13 as far as I could tell, there wasn't any visibility. If
14 there were visibility, then, you know, realistically it
15 depends on how serious any visibility and any negative
16 externality is. And my impression would be, given the
17 distances involved and the type of operation that we've got
18 here, even any visual, you know, negatives would be minimal,
19 if there were any. So, you know, again, in the hypothetical
20 situation, perhaps if there were some serious intrusiveness.
21 I don't, I haven't seen that in anything that I've reviewed.
22 BY MR. ADELMAN:
23 Q The next series of questions have to do with,
24 please correct me if I'm wrong, I believe you are using your
25 analysis to state that people who purchase homes in

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1 Kensington Heights are well aware of the existence of the
2 mall, of all of its properties, and that therefore there is
3 no change by virtue of putting in the special exception. Is
4 that an unfair characterization?
5 A Well, that's not the way that I would put it. The
6 fact is that if they bought on those blocks adjacent to the
7 mall, they would be very much aware of the mall. You can't
8 miss it.
9 Q Agreed. With respect to the previously existing
10 Montgomery Ward store, I think the correction has been made
11 about the proximity. Do you happen to know where the
12 Montgomery Ward store was relative to where the special
13 exception site is now?
14 A I don't have a precise measurement. I mean, it's,
15 generally speaking, on the parking field that was being
16 redeveloped for the Costco and the related elements in the
17 mall there.
18 Q So it's a significant distance away from the
19 special exception site?
20 A I don't have a measurement.
21 Q Fine, thank you. Do you know whether that
22 Montgomery Ward service center sold gasoline to cars, to
23 vehicles?
24 A To the best of my knowledge -- again, it wasn't
25 open at any time recently -- to the best of my knowledge, it

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1 was a service center; it wasn't a fueling station.
2 Q Fine, thank you. Would you agree that a person,
3 that someone buying a home in Kensington Heights, being
4 cognizant of the existence of the Montgomery Ward, is
5 different from a person, say, two years hence considering
6 buying a property in Kensington Heights if the Costco gas
7 station was present?
8 A Everything's different. I mean, the Montgomery
9 Ward station was how many ever years ago, and you know, so
10 things change. I'd say it's different.
11 Q Fine, thank you. I quote your page 6 of the
12 second sentence: In any case, the mall has been in
13 development next door to these residential properties and
14 the Kensington Heights neighborhood for more than 50 years.
15 That is true, but the question is, is it relevant to the
16 discussion?
17 A Yes. That's why I put it in there.
18 Q Under Section D, Evaluation: The Westfield --
19 excuse me, second paragraph: The Westfield Shoppingtown
20 Mall has been in operation next to Kensington Heights since
21 1960. Since you previously stated in your report that
22 Westfield purchased the mall in the late '90s, I believe,
23 that is a factual error, is it not?
24 A If you want to say that the mall has changed its
25 name and its ownership, well, perhaps it's a factual error,

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1 but I think the bigger point is probably something that I
2 was trying to focus on which is that the mall has been
3 there, whatever you call it, whoever owns it, for 50 years.
4 Q How would you characterize the size and the
5 patronage of the mall that existed in 1960 versus the mall
6 that currently exists? Are they the same? Is one
7 significantly bigger, smaller?
8 A I'm assuming that like any good business, and you
9 know, it seems evident, you know, in this situation, the
10 mall has succeeded as a business and has grown and has -- I
11 don't have exactly the square footage or the roster in 1960,
12 but I'm assuming that there's been more retail space added
13 and therefore patronage has grown as the population of
14 Montgomery County has grown.
15 Q Given that there is some growth, perhaps large,
16 depending on one's assessment, is it not possible that
17 persons wishing to purchase homes in Kensington Heights
18 would view the situation very differently today than in
19 1960?
20 A I suppose anything is possible.
21 Q Would you consider it likely?
22 A If someone wants to live in Kensington Heights,
23 they want this location because it's a very convenient
24 location, it's a great neighborhood, and it has very good
25 connectivity to everything that anybody would want. I mean,

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1 it's got shopping nearby; it's got, you know, Montgomery
2 County schools; it's got Metro nearby; it's got good
3 transportation linkages. What more could you want? So --
4 Q Well --
5 A -- and people choose it for that reason, and you
6 know, the mall is part of the package that you've got, and
7 somebody who wants to live in the middle of things has got
8 an incredibly good location here.
9 Q Let me shift gears slightly. You've heard
10 discussion about the forest buffer, and I'm not going to ask
11 you anything about the forest buffer exemption or any of
12 that.
13 A Thank you.
14 MS. HARRIS: I would object.
15 MR. ADELMAN: If you're saying objection, thank
16 you, but I'm --
17 BY MR. ADELMAN:
18 Q The forest buffer is a very important buffer for
19 the people who live in Kensington Heights. It is true, is
20 it not, that the forest buffer allows people in Kensington
21 Heights to reside in close proximity to the mall and yet not
22 have direct impact upon them of the mall because of that
23 forest buffer?
24 A The forest buffer is one element. The road
25 network is another element. There are no connecting

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1 streets. The grade differential is another element. The
2 stream, you know, going and the topography difference
3 because of that, these are all elements in the, you know,
4 the isolation of the neighborhood in certain ways from the
5 mall.
6 Q Those are all, I believe, in your terminology,
7 externalities. Would that be correct?
8 A When you're considering the value of a residential
9 home, if that's what you're referring to, externalities
10 would be things that are not basically within the four walls
11 of the property, probably not even within the property line
12 of the residential property. Externalities are all things
13 that are surrounding the residential property.
14 Q The last paragraph on page 6 begins: LF&M finds
15 that, if there is any impact, positive or negative. The
16 word if implies not being certain, does it not?
17 A It implies the fact that I'm open to any
18 conclusion that the data will lead me to.
19 Q Thank you. With respect to incremental traffic,
20 how would you define a relatively small increase in
21 incremental -- an incremental increase which is relatively
22 small?
23 A I'm not a traffic engineer; so I don't purport to
24 comment on, in any detail, on traffic issues. I'm relying
25 on the traffic report that was submitted that gave a small

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1 incremental increase in traffic volume that would be
2 attributable only to the gas station.
3 Q And are you aware of a concept of traffic
4 increment as a nuisance as opposed to a traffic impact
5 analysis demonstrating failure to satisfy certain countywide
6 laws or regulations? They're separate issues.
7 A I mean, traffic can be a nuisance, for sure.
8 Q Fine. Page 7, Factors to be Evaluated, with
9 respect to noise, are you aware that in previous
10 cross-examination the issue of how much noise impact there
11 is has been called into question?
12 A In all of the statements that I'm making here, I'm
13 relying on the expert testimony and analyses of the other
14 professionals who were involved, the noise engineer, the,
15 you know, and various other, environmental, traffic, and
16 other experts.
17 Q So that means, does it not, that if the reports or
18 opinions of those experts are called into question, to some
19 extent, that calls into question your conclusions?
20 A I'd say my conclusions are dependent on, you know,
21 having a situation where, relatively speaking, there's no
22 impact, you know. If -- saying calling into question, well,
23 everything should be questioned. You know, that's fine --
24 Q Yes.
25 A -- it's, I think that I've relied on professionals

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1 who've said that there is virtually no noise over and above
2 what occurs due to the existing shopping center uses.
3 That's what they've testified. My review, as a
4 non-professional in their area of expertise, seemed to
5 indicate that, you know, what they said had some basis.
6 Q And therefore I presume your answer would be the
7 same with respect to the expert opinions of others as to
8 hazards, odors, nuisance behavior, traffic, et cetera, is
9 that correct?
10 A Correct.
11 Q Fine. With respect to visual impacts, on what
12 basis do you assert that the visual impact will be improved?
13 A Well, I think that it's something that, that the
14 neighbors really do have to evaluate. As I look at the
15 existing forest buffer, I'd say, by and large, it's a pretty
16 solid buffer, at least through most of the extent of, you
17 know, any impact at all from the gasoline operation; say
18 that, first of all, the forest buffer is relatively solid
19 and that's fine.
20 From a layman's point of view -- I'm not an
21 environmental engineer either, you know, or landscape
22 architect; Mr. Willard can speak to that better than I -- my
23 impression would be that, let's say, the wall that's being
24 built, the green wall, will fill in in the areas where the
25 tree cover might be less or during seasons when the tree

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1 cover might be less. When the leaves fall, whatever,
2 there's going to be certain gaps, at least, in the tree
3 cover, and it seems to me that the tree wall will complement
4 what's going on in terms of the existing forest buffer
5 that's already there.
6 Q Thank you. That's very clear. There are two
7 aspects of that I want to question. The first is, are you
8 aware that the extended dialogue about the forest buffer
9 exemption has a separate component which is whether or not
10 the forest buffer will be impacted by the construction, for
11 example, of the green wall and other factors. So separate
12 from the issue of whether or not the exemption is valid, the
13 issue has been raised by Opposition that there will be
14 damage done to the forest buffer and, if that damage occurs,
15 the forest buffer will not be as good a buffer as it is.
16 MR. GROSSMAN: Is that a question?
17 MR. ADELMAN: That's a question.
18 BY MR. ADELMAN:
19 Q Are you aware --
20 MR. GROSSMAN: What's the question?
21 BY MR. ADELMAN:
22 Q Are you aware of the assertions of Opposition that
23 damage will be done to the forest buffer?
24 A Not in any detail, not beyond what I've heard
25 today in terms of the questions.

1 Q Thank you. Is it unreasonable to suggest that
2 certain potential buyers of houses in Kensington Heights
3 would view the green wall as not an improvement but
4 something artificial and ugly?

5 A You know, I mean, some people view the sun rising
6 as a negative. I mean, you know, realistically, anything is
7 possible. I'd say, my evaluation, as somebody who knows a
8 lot about real estate, is that the green wall will be a
9 positive and will complement what's out there right now,
10 which is already pretty substantial and basically blocks, in
11 virtually all situations, views from the residential
12 properties to the mall and ultimately to the gasoline
13 station operation here.

14 Q So there are a whole host of questions that could
15 be posed like the ones I just posed, and I guess my
16 overarching question is, do you have any numerical basis for
17 asserting that these various externalities in fact work out
18 to be either neutral or positive, any kind of actual data
19 involving surveys of people as to their opinions or
20 discussions with realtors as to their experience with sales
21 of properties?

22 A I didn't do any survey work.

23 Q Have you spoken to any realtors who sold property
24 in this vicinity?

25 A No.

1 Q Now we can go to the maps. Thank you for
2 providing them. If I understand, the map that, I'm not sure
3 what it's been labeled, Kensington Heights Proximity to
4 Westfield Shoppingtown Mall is to be compared to the
5 properties on Connecticut Avenue, and the comparison is that
6 the properties near the various gas stations on Connecticut
7 Avenue demonstrate that the property values of homes in the
8 Kensington Heights vicinity will not be negatively impacted
9 by the presence of gas stations, is that correct -- of the
10 proposed gas station, is that correct?

11 A So I tried to set up an analogy so that we could
12 look at what I judge to be a reasonable, reasonably similar
13 situation. And, you know, Map, whichever map is Map No. 1,
14 I'm assuming it's Kensington Heights, you know, shows the
15 blocks in proximity to the plaza and to the, obviously to
16 the Costco site, and you know, those blocks are identified
17 on page 9 of the report, you know, as it says, and they're
18 pictured on that, on that map.

19 The second map, Connecticut Avenue, that shows the
20 concentration of six gas stations within a couple blocks of
21 each other along Connecticut Avenue that I was using as,
22 again, what I felt was a reasonable analogy to our situation
23 in Montgomery County and in some proximity to the property
24 so that -- to our property -- so that everybody could have a
25 better sense of what was going on.

1 Q Fine. I'm not sure these were ever numbered, but
2 this map, which, I believe --

3 MR. GROSSMAN: Connecticut Avenue.

4 BY MR. ADELMAN:

5 Q -- I'm referring to as Map 2, the one that's
6 titled Connecticut Avenue Gasoline Station Locations --

7 A Sure.

8 Q -- do any of the homes in the general vicinity of
9 these various gas stations, are any of those homes situated
10 in the residential neighborhood, which is quite distant,
11 excuse me, which is distant from a major road, separated
12 from the main shopping area by a forest buffer, are they in
13 fact really comparable?

14 A In making comparisons you do the best you can, and
15 again, given the concentration of gasoline stations and
16 therefore traffic to and from gasoline stations and given
17 proximity to Kensington Heights, so that everybody could get
18 an idea of what was going on what I did was I looked at,
19 basically drew a 400-foot, excuse me, radius around these
20 gas stations to say, okay, here are sales with some
21 proximity to gasoline stations, and you know, it's going to
22 be a mixed bag. Some are, some residential sales are going
23 to be, you know, closer to the gas station; some, a little
24 bit farther away.

25 Q To be very precise, in looking at the Kensington

1 Heights Proximity to Westfield Shoppingtown Mall and
2 considering, for example, the houses on Torrance Court, are
3 there any homes in the map of Kensington Avenue that are in
4 fact comparable to those on Torrance Court in terms of the
5 externalities, truly comparable?

6 MR. GROSSMAN: Well, truly is a loaded word.
7 So --

8 MR. ADELMAN: All right.

9 BY MR. ADELMAN:

10 Q All right. How --

11 MR. GROSSMAN: -- and even comparable is a loaded
12 word. I think he's --

13 BY MR. ADELMAN:

14 Q All right. Then how --

15 MR. GROSSMAN: -- he's testified on that point.

16 BY MR. ADELMAN:

17 Q How comparable are the homes on Connecticut
18 Avenue?

19 MR. GROSSMAN: He's actually addressed that point
20 already, saying when you're trying to compare, you do the
21 best you can, there are differences.

22 MR. ADELMAN: All right, thank you.

23 BY MR. ADELMAN:

24 Q And you acknowledge, do you not, that trend
25 analysis is challenging? That is what you said? In other

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1 words, it's not a trivial thing to do, a simple thing to do?
2 A Well, there's another loaded question. You know,
3 I'd say you have to understand what you're doing. I mean, I
4 tried to show, as best I could, given the information that
5 was available, what the real estate trends have been for
6 those two groups of properties. And so it's important, when
7 you're doing trend analysis or any other kind of real estate
8 analysis, to explain what your assumptions are, what your
9 data is, and where you want it to go, and then people can
10 make up their own minds as to, you know, what regard they
11 want to give the analysis.
12 I'd say the analysis that was done here, based on
13 the data available, which is all hard data -- there's no
14 question about the data; it's all from the State Department
15 of Assessment and Taxation -- the data is hard, and then
16 I've explained how I got to all the various pieces along the
17 way. And, again, the purpose of the analysis was to
18 demonstrate not, not anything more than it seems that in
19 terms of value appreciation for homes in the two areas, that
20 they appreciated at more or less the same rate and along the
21 same path; not only that, they more or less duplicated
22 overall sales, computed in a similar fashion, for Montgomery
23 County. So you have a third, sort of, control line there
24 that would indicate were any of the data completely out of
25 kilter, whatever.

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1 Q For the record, I'm not implying that your data is
2 incorrect. I'm trying to get at the interpretation of the
3 data.
4 A Sure.
5 Q I asked that question. Trend lines are trend
6 lines. When there is -- is it not so that when a very new
7 variable is introduced, that trend lines may or may not
8 follow previous history?
9 A May or may not.
10 Q In other words, is there any way you can
11 quantitate the probability that the similarity of these
12 trend lines up until 2011 will continue to be as tight as it
13 is now that the Costco warehouse store has been built and if
14 the special exception is granted?
15 A It's my conclusion that since the proximity to
16 gasoline station does not seem to have negatively affected
17 appreciation rates in the homes proximate to Connecticut
18 Avenue, since it hasn't affected appreciation rates there, I
19 can't conclude that the Costco gas station, especially given
20 what I can determine to be zero impact on the proximate
21 properties in terms of visibility, hazards, all the rest of
22 the things that we've just been through, I can't conceive
23 that there's going to be any negative impact on the
24 appreciation of the properties that are in the Kensington
25 Heights proximate blocks.

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1 Q And you would assert that, am I correct, despite
2 the fact that the proposed Costco gas station is at least
3 three to four times as large as any of the gas stations in
4 your comparison study --
5 A Which is --
6 MR. GROSSMAN: Hold on one second. You said three
7 or four times as large. You mean in terms of --
8 MR. ADELMAN: I'm sorry, in terms of capacity, buy
9 and sold.
10 MR. GROSSMAN: -- volume of gasoline sold --
11 MR. ADELMAN: Volume.
12 MR. GROSSMAN: -- anticipated value of gasoline
13 sold in a year?
14 MR. ADELMAN: Precisely. Thank you for the
15 correction.
16 THE WITNESS: Thank you very much, which is
17 exactly why I chose six stations in proximity to each other,
18 because they have would have, in my opinion, an even more
19 negative impact together than the Costco station, which
20 would be a much better managed operation overall than the
21 six properties nearby. So, you know, my point is not Costco
22 is like any one of these stations. My point is that Costco,
23 in terms of scale, is probably not incomparable to the six
24 stations together and their impact on a really fairly tight
25 neighborhood.

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1 BY MR. ADELMAN:
2 Q That is a probability that you're assessing based
3 on your professional background, is that correct?
4 A Yes.
5 Q My last question, this will be the last question
6 that I've lost --
7 MR. GROSSMAN: And your last question was your
8 last question.
9 MR. ADELMAN: No. No. No. I'll have to make it
10 up. Ah, here we go. You may not allow this, Mr. Grossman,
11 but okay, I'll try.
12 MR. GROSSMAN: I'll try.
13 BY MR. ADELMAN:
14 Q Scientists do what are called thought experiments
15 all the time, and so I'd like to ask you a thought
16 experiment, and if you don't want to participate, that's
17 fine, but the fundamental --
18 A Ask me a what question? I'm sorry.
19 MS. ADELMAN: Thought.
20 MR. GROSSMAN: Thought experiment.
21 BY MR. ADELMAN:
22 Q Thought experiment --
23 A Okay.
24 Q -- a gedankenexperiment. Thought experiment.
25 A Sure.

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1 Q It's premised on the reality that for the
2 residents of Kensington Heights, the general market is not
3 the issue; it's a question of what the value of their home,
4 should they choose to sell it, would be.
5 MR. GROSSMAN: I'm sorry. I didn't get the
6 question there.
7 BY MR. ADELMAN:
8 Q The question is, do you agree that for a resident
9 of Kensington Heights living, for example, on Torrance
10 Court, the concern, if they try to sell their house, is not
11 what the overall market is but rather what they can get for
12 their house?
13 A Okay. So everybody is most concerned about what's
14 close to them: my wife, my children, my house. That's all
15 perfectly natural. Everybody should be concerned about
16 those things. That's, that's not the issue. The issue is,
17 you know, trying to make a -- trying to understand the real
18 estate market and is there any real evidence that, that
19 there's going to be a problem in selling a house or that it
20 would appreciate at a lower rate than other houses in
21 Montgomery County, those kinds of things. I can find no
22 evidence that anyone is going to have a problem, you know,
23 selling their house or, you know, getting a reasonable value
24 for their house based on, you know, general market
25 conditions. I don't see any reason that would indicate that

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1 those are going to be a problem.
2 Q Fine. Then I'll simplify my entire question by
3 simply saying, would you agree you cannot state with
4 certainty that a person on Torrance Court attempting to sell
5 their house now will be able to sell it for as much as they
6 hoped to sell it for if a potential buyer learns of the
7 incoming gas station?
8 A I'd say a couple of things. First of all, it's my
9 opinion, honestly, that the drama that's been given to this
10 case has -- may have, in the short run, have affected
11 certain buyers who might otherwise be interested in the
12 neighborhood. When somebody's, you know, making claims that
13 there are going to be tremendous problems, all the rest of
14 it, then I'd say certain buyers are certainly going to be
15 affected, buyers who might, in the short run, be sort of on
16 the bubble: should I buy here or should I not.
17 What we're talking about is, if this place, if
18 this Costco station gets built and given everything that I,
19 you know, have assumed in this report, if all those things
20 are true, that there's no negative externalities, then I'm
21 assuming that, that normal real estate, you know, practices
22 will take place, people will do just fine because they'll
23 see the advantage of living in Kensington Heights and
24 they'll see the advantage of, you know, being, taking
25 advantage of all the things that benefit the neighborhood

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1 now.
2 MR. GROSSMAN: Excuse me. Sir, is your phone
3 turned off now?
4 UNIDENTIFIED SPEAKER: Yes. Yes, it is. I
5 apologize.
6 BY MR. ADELMAN:
7 Q Does that mean that I've just become a negative
8 externality by virtue of my opposition?
9 A It's possible.
10 Q Thank you.
11 MR. ADELMAN: No further questions.
12 MR. GROSSMAN: Okay. Any further questions of
13 this witness?
14 MS. ROSENFELD: I do, yes.
15 MR. GROSSMAN: Oh, all right.
16 MS. ROSENFELD: Yes, I do.
17 MR. GROSSMAN: I thought we were so taken by
18 Dr. Adelman's last question that that was, that would be a
19 great stopping point.
20 BY MS. ROSENFELD:
21 Q Mr. Cronyn, in preparing your report, did you
22 review the zoning standards for the mall parcel?
23 A I'm sorry. Did I?
24 Q Review the zoning, the Montgomery County zoning
25 standards for the mall parcel?

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1 A I'm generally aware of commercial zoning. I
2 didn't go into the specifics. I was assuming that the mall
3 was being developed according to regulations, et cetera,
4 but --
5 Q And did you review the zoning standards for the
6 surrounding residential properties?
7 A Again, I'm assuming that it's residential zoning
8 and that properties have been developed, you know,
9 consistent with residential zoning in place.
10 Q And in preparing your report, did you review the
11 Wheaton Sector Plan for its recommendations regarding future
12 development of the mall parcel?
13 A I reviewed it, yes.
14 MR. GROSSMAN: The Wheaton CBD --
15 MS. ROSENFELD: CBD Sector --
16 MR. GROSSMAN: -- and Vicinity Sector Plan?
17 MS. ROSENFELD: Yes, that's correct.
18 BY MS. ROSENFELD:
19 Q And did you review it for recommendations
20 regarding future development within the general
21 neighborhood, the surrounding neighborhoods?
22 A Yes.
23 Q And what land use or zoning or other technical
24 documents or materials did you review to support your
25 findings with respect to use, peaceful enjoyment, or

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1 development, future development affecting the surrounding
2 properties?
3 A I didn't, I mean, I didn't use any particular of
4 those documents in drawing that conclusion. I didn't see
5 anything inhibiting any residential property nearby from,
6 you know, using their backyard or, you know, driving into
7 their driveway or anything like that. That's use, you know.
8 Development. I see development parcels in the
9 adjoining neighborhood. I was assuming that they would be
10 developed out as, you know, the economy allowed, et cetera.
11 Q Immediately, or almost immediately south of the
12 subject property is a vacant piece of property that's been
13 referred to in this case, I think, as the Mount McComas
14 property.
15 A Uh-huh.
16 Q Are you aware that rezoning was approved for
17 townhome development on that site?
18 A Not in particular, no.
19 Q Did you --
20 A It wouldn't surprise me necessarily, but --
21 MR. GROSSMAN: It wouldn't surprise me either. It
22 was my case.
23 MS. ROSENFELD: That's why I didn't think I had to
24 proffer.
25 BY MS. ROSENFELD:

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1 Q Did your analysis include the potential impact on
2 valuation for those, those properties?
3 A No. I'd say, if anything, those properties would
4 bolster my case, that people are willing to rezone
5 properties and go ahead with development, you know, despite,
6 you know, any discussion of the Costco station. It seems to
7 me that bolsters the case for saying people are doing
8 business as usual.
9 Q And are you aware that the rezoning was approved
10 before the Costco station application was filed?
11 A I mean, not in particular, honestly.
12 Q And does that change your view --
13 A No.
14 Q -- change your conclusion? Okay. Did you
15 prepare --
16 MR. GROSSMAN: I'm not positive it was approved
17 prior to the original Costco application. I don't know. I
18 don't remember the exact timing, but --
19 MS. ROSENFELD: I understand it was.
20 MR. GROSSMAN: Okay. It may be. I just can't, I
21 just didn't want you to have an assumption of something that
22 was incorrect. I don't remember.
23 BY MS. ROSENFELD:
24 Q Did you also prepare an analysis in support of the
25 prior special exception application, Case No. S-2794?

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1 A Was it for a Costco gas station at this location?
2 Then, I guess, yes, I mean, and that was back -- what was
3 that, 10 years ago? When did we start this?
4 Q No. That was a report dated January 11th, 2012.
5 A Yeah.
6 MR. GROSSMAN: The question was how much we've
7 aged in the last few years, was the question.
8 MS. HARRIS: Or the last week.
9 BY MS. ROSENFELD:
10 Q Okay. In my questioning I'll just call the
11 January 11th, 2012, report the first report. And then you
12 subsequently prepared a report dated September 21, 2012,
13 which is the one that we've been talking about this
14 afternoon, I believe, correct?
15 A Correct.
16 Q Okay. And are you aware that the proposed
17 location of the special exception itself has changed from
18 your first report to the second?
19 A Which is why some of the measurement changes were
20 made, et cetera.
21 Q And in your second report, did you update any
22 specific facts related to the location, that those would be
23 the -- I'm assuming that's why the distance changed.
24 A The measurements, right. I mean, if the site
25 changed, then the measurements changed, which is reflected

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1 in the report.
2 Q But did any of your conclusions change --
3 A No.
4 Q -- over the course?
5 A As you said, most of the measurement changes were
6 not consequential.
7 Q I did not say that.
8 A Well, somebody said it. I'm sorry.
9 Q You state in the cover page to your report, which
10 is dated September 1, 2012, that the proposed gas station is
11 not detrimental to the economic value of surrounding
12 properties or the general neighborhood. Could you please
13 identify the boundaries of the general neighborhood that you
14 evaluated?
15 A I would say they would be similar to the map
16 Kensington Heights Proximity to Westfield Shoppingtown Mall,
17 be the, in particular, the blocks immediately adjoining the
18 mall from the Kensington Heights side.
19 Q And is there a map that has those specific
20 boundaries? I mean, can you identify specifically --
21 A Well --
22 Q -- what properties you looked at?
23 A So, again, if you look at the map here, it's got
24 the blocks that are most proximate to the mall. Those are
25 the blocks, as it was identified in the report, that are,

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1 you know, of greatest interest to me.

2 Q I'm sorry. What page are you referencing in your
3 report?

4 A So page 5 in the report: Proximity to Adjoining
5 Residential Properties.

6 Q Yes.

7 A North of McComas Avenue, 2800 block of Peregoy,
8 11900 block/odd side of Coronada, Faulkner Place, Melvin
9 Grove, Littleford Lane, Torrance Court -- those are the
10 focus of my analysis, and those are the ones pictured on the
11 map.

12 Q On page 4 of your second report and again on pages
13 5 and 6 and then again on page 12, you state that there was
14 a Montgomery Ward service center in operation through 2012
15 while all of the homes in your neighborhood, as you just
16 described it, were in existence, and you also stated that
17 based on your review of the tax records, none of the owners
18 of the adjoining properties, I think none of the original
19 owners of the adjoining properties are still in ownership.

20 A As far as I could determine.

21 Q And you say that virtually all current owners
22 purchased their homes, taking into account the mall's
23 proximity to their properties -- oh, but this language got
24 stricken, correct --

25 A Correct.

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1 Q -- understanding that an auto center? But you did
2 note several times that there was a -- understanding that an
3 auto service center was in operation, that remains in your
4 current report, doesn't it?

5 A It's a fact --

6 Q Okay.

7 A -- through 2002.

8 Q Which homes in your neighborhood were purchased by
9 their current owners after 2002?

10 A I don't have the list with me. I could search the
11 real estate records, if you wish, but you know, a number of
12 properties were certainly transferred between 2002 and 2011,
13 the time period of my report. It's saying, if I'm not
14 mistaken, page 9, there were 66 arm's-length sales over the
15 1994 to 2011 period on the blocks most proximate to the
16 shopping center, and I'm assuming that, you know, a good
17 number of those sales were post 2002.

18 Q So is it your position that property owners who
19 purchased after 2002 somehow factored the Montgomery Ward
20 facility into their purchase price?

21 A My larger point is that the mall is the major land
22 use that has been present for the past 50-plus years and,
23 and that's the issue as far as people are concerned. Again,
24 the reason I removed the Montgomery Ward service center was
25 at the request of planning but also because it really

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1 wasn't, in and of itself, you know, the most relevant piece.
2 I was trying to reinforce my argument that the shopping
3 center is the major land use that affects nearby properties.

4 Q But if I think I'm reading your current report
5 correctly, on page 4 you say: We note that there was a
6 full-service automobile repair center operated by Montgomery
7 Ward from 1960 up to approximately 2002. Again on page 5,
8 you note that the Montgomery Ward's auto center service was
9 in operation through 2002 while all homes were in existence,
10 and again, on page 2012 you reference that during most of
11 the years that the mall was in operation, a Montgomery
12 Ward's auto service facility was on the mall parcel. Is it
13 your position that property owners who purchased after 2002
14 somehow factored the Montgomery Ward facility into their
15 purchase price?

16 A So it's a fact, which I reported, that the service
17 station was there.

18 Q Yes.

19 A Clearly, if the service station wasn't there, then
20 people who bought a house didn't know and therefore that
21 wouldn't be part of their thought process.

22 Q Okay. So, to the extent that your report suggests
23 the Montgomery Ward service facility somehow factored into
24 purchase prices for people who bought after 2002, or they
25 factor in for any purchasers, it would only -- it would not

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1 apply to purchasers post 2002, is that correct? I think
2 it's a fair reading of your report that the Montgomery Ward
3 facility, in your view, influenced the purchase price
4 perhaps of some purchasers, is that correct?

5 A It might have. Again, the mall is the issue, not
6 the Montgomery Ward service station as such.

7 Q Well, I understand that, but in your --

8 A I understand that I repeated the fact.

9 Q -- in your 13-, in a 13-page report, you mentioned
10 it three times.

11 A Sure.

12 Q Okay. At the time that the Montgomery Ward
13 service center was open, do you know if that use was closer
14 or more distant to the southern boundary of the mall parcel
15 than the current special exception?

16 A My impression is it was a little bit farther away.
17 I don't have measurements.

18 Q And what firsthand knowledge do you have about the
19 operations of that --

20 A None.

21 Q -- service? Okay. And is it your position that
22 because that service center once operated on the mall
23 parcel, that the proposed gas station cannot have a
24 detrimental impact on the economic value of the properties
25 in the neighborhood?

1 A Again, the operation of a gas station, or of a
 2 service station that's been closed for 11 years doesn't
 3 affect my conclusions.
 4 Q Okay. You note on page 6 of your report that the
 5 Costco filling station is not a typical retail filling
 6 station, and you cite to such things as limited facilities,
 7 limited hours, low-key signage, as you describe it. Are you
 8 aware that another atypical feature of this particular gas
 9 station includes long queuing of idling vehicles?
 10 A You know, I've certainly seen, you know, a number
 11 of Costco gas stations, and I think queuing differs by time
 12 of day, all the rest of it, like any other gas station. I
 13 mean, the gas station that I go to, you know, often has at
 14 least some line at the pumps. So that's part of, you know,
 15 the Costco and normal gas station operations.
 16 Q Are you familiar with the report prepared by
 17 Mr. Guckert that notes somewhere in the order of 35 to 40
 18 vehicles queuing at peak times during the day?
 19 A I'm sure I reviewed the report. I mean, again,
 20 when you look at that and you look at how many pumps are
 21 available, those kinds of things, realistically, even at the
 22 peak times of day, that doesn't end up being many cars that
 23 are actually in any individual line or, you know, those
 24 kinds of considerations.
 25 Q Well, I would proffer to you that, to the

1 contrary, that there could be as many as 35 to 40 vehicles
 2 within the special exception area queuing. I'd proffer to
 3 you that testimony indicated that it could take as long as
 4 15 to 20 minutes for a particular vehicle to get from one
 5 end of the queue up to the gas line. Is that typical of the
 6 operation of the gas stations that you frequent?
 7 A Probably not, and again, I'm not an expert on
 8 Costco gas stations; so I'm not sure about the accuracy of
 9 that observation, but -- I mean, I'm sure that you were
 10 truthful in reporting. I'm not sure whether that's a fact
 11 or not.
 12 MS. HARRIS: And, Mr. Grossman, I just want to
 13 note that I don't believe any of our witnesses ever
 14 testified that it was a 15- to 20-minute wait. I believe
 15 that was an incorrect summary of the testimony that's been
 16 proffered.
 17 MR. GROSSMAN: I think there was testimony that --
 18 MS. ROSENFELD: I think --
 19 MR. GROSSMAN: -- at the peak time it could be up
 20 to about 35 to 40 vehicles and that if they advanced at a
 21 particular rate, it could -- I think that the math worked
 22 out to that 15 or 20 minutes if they advance at a certain
 23 rate. That's my recollection. That may be incorrect. I'd
 24 have --
 25 MS. HARRIS: Okay.

1 MR. GROSSMAN: -- to look back. It was some time
 2 ago. So I don't think it was that much off the mark as an
 3 assumption, but he's already answered the question, in any
 4 event.
 5 BY MS. ROSENFELD:
 6 Q Of the gas stations on Connecticut Avenue that you
 7 evaluated, how many of those gas stations had 16 pumps?
 8 A I'm sure that I reviewed it. I would doubt that
 9 any of them had 16 pumps. Again, the point that I made to
 10 Dr. Adelman before was that it's the cumulative effect of
 11 the six gasoline stations together that was more the issue.
 12 Q I understood the point that you made to him. My
 13 questions are along a slightly different line.
 14 A Sure.
 15 Q The gas stations that you reviewed, how many of
 16 them had long -- routinely have long lines of vehicles
 17 idling to get to the gas pumps?
 18 A I'm not aware of -- I didn't spend a lot of time
 19 surveying, you know, gasoline lines on Connecticut Avenue.
 20 Q So you don't know what average queues would be at
 21 those gas stations --
 22 A No.
 23 Q -- if any? How many of those gas stations are
 24 located within a regional mall parking lot?
 25 A I would say none.

1 Q Okay. How many gas stations in Montgomery County
 2 are located within a regional mall parking lot?
 3 A I wouldn't know that for a fact.
 4 Q Okay. It's been proffered, testified to by others
 5 in this case that this in fact would be the first. Assuming
 6 that that testimony is factually true, what basis would home
 7 buyers purchasing into the Kensington Heights community,
 8 what factual basis would they have to assume that a 16-pump
 9 gas station ultimately would be located within a regional
 10 mall parking lot?
 11 A I mean, I don't know that they would have any
 12 particular information one way or the other.
 13 Q I think, based on the trend line chart that you
 14 have in your report, it's clear that real estate values are
 15 not static, and your valuation includes a market analysis,
 16 as I understand it, that includes values through 2011, is
 17 that correct?
 18 A Correct.
 19 Q And your original report is dated January 2012.
 20 Have you updated your report to include home sales through
 21 the end of 2012?
 22 A My, well --
 23 MS. CORDRY: That's a yes-or-no question.
 24 THE WITNESS: -- the time for submission of
 25 documents and, you know, this process has gone on longer --

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1 BY MS. ROSENFELD:
2 Q Sure.
3 A -- than I think any of us had anticipated --
4 Q Myself included.
5 A There you go -- and I'd say, when I looked at the
6 January 2012, or the numbers that were available in January
7 2012, when I looked at them again and any intervening
8 numbers between January and September of 2012, I didn't see
9 that there was going to be substantially more information
10 available any, that would make the trend analysis, you know,
11 any better.
12 So there -- in the midst of a real estate
13 recession, there just were not the kind of robust sales
14 volumes that would be easier to track, and so I, you know,
15 kept the 2011 numbers just because, you know, again, it
16 seemed to be still, you know, representative of what was
17 going on in the marketplace.
18 Q So you did do some supplemental research, but it
19 didn't make any material changes to --
20 A Correct.
21 Q -- the conclusions in your trend lines at this
22 point?
23 A Correct.
24 Q Okay. I know this was covered by Mr. Adelman, by
25 Dr. Adelman, and I will just spend a moment on it. The

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1 conclusions that you reached about noise and hazards, I
2 believe you said both of those, you relied on other reports.
3 Your footnote in your report, Footnote 1 on page 7, says
4 that you rely on Mr. Sullivan's December '11, December 2011
5 report in reaching your conclusions. I just want to verify
6 that that, that is the document that you rely on, is that
7 correct?
8 A Yes. Yes.
9 Q Okay. You also say, you conclude that you don't
10 think that there will be any nuisance impact on the
11 adjoining properties because, quote, I think, that there
12 will be no rowdy, no, quote, rowdy, end quote, behavior. Is
13 that the full extent of your understanding of what might
14 constitute nuisance in real property terms?
15 A Well, I'd say you can look at all sorts of
16 different things in different categories here. Nuisance
17 behavior, you know, in terms of, you know, this kind of
18 analysis of negative externalities, it would be, is there a
19 situation where you're going to be drawing rowdy crowds or,
20 you know, nasty people in some way, those kinds of
21 situations; that would be nuisance behavior. I didn't see
22 that the Costco gas station was going to be anything other
23 than a relatively civil, you know, kind of place to do
24 business.
25 Q Okay. So, to the extent that factors such as

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1 noise or pollutants or dust or that kind of thing might
2 enter the adjoining properties, your analysis treats them
3 under the specifics of noise and --
4 A Hazards, odors.
5 Q -- hazards --
6 A Yeah.
7 Q -- and not to nuisance per se?
8 A Yep.
9 Q In your report you say that there will be 18,000
10 visitors to the mall on average during a weekday and some
11 other numbers on Saturday and 40,000 during the week during
12 holiday seasons. Testimony from Mr. Flynn that we received
13 suggests significantly higher numbers based on information
14 he received from Jim Agliata of Westfield Mall.
15 MS. ROSENFELD: Mr. Grossman, one moment, please.
16 MR. GROSSMAN: Sure.
17 MS. ROSENFELD: I don't remember the exhibit
18 number.
19 MR. GROSSMAN: Mr. --
20 MS. ROSENFELD: This was Mr. Flynn's July 3rd,
21 2013, memorandum. Oh, I'm sorry. It's July 3rd, not 13,
22 Exhibit No. 198.
23 BY MS. ROSENFELD:
24 Q Does your report address anything related to noise
25 arising from traffic or other sources at the mall?

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1 A Other than what you've already noted, I looked at
2 the other expert testimony, and they said that there would
3 not be any, you know, increment in noise, any substantial
4 increment due to the gas station alone for traffic,
5 et cetera.
6 Q If there were to be impacts within the
7 neighborhoods immediately surrounding the mall resulting
8 from overflow traffic generated by traffic coming to the
9 special exception, would that, in your view, contribute to a
10 potential nuisance in the neighborhood?
11 A I don't see how that's possible. Honestly --
12 Q I'm --
13 A -- there's no through streets. There's no way for
14 traffic from the Costco site to get into the neighborhood.
15 Q Well, there's more than one neighborhood. There's
16 the neighborhood to the south of the mall. There's also a
17 neighborhood to the northwest of the mall.
18 A Okay.
19 Q I would proffer that I think testimony will, that
20 will come in later, will make that case, and my question for
21 you is, should that be the case, would that constitute a
22 nuisance in your view?
23 A Again, you're dealing with a hypothetical.
24 Q And you're an expert and qualified to --
25 A In my --

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1 Q -- respond to hypotheticals.
2 A Yeah, and my judgment is that traffic, you know,
3 can't be diverted into the Kensington Heights neighborhood
4 just because the Kensington Heights neighborhood is really
5 separate from the mall, and it's divided from the mall for
6 all the reasons that we've talked about for the past couple
7 of hours. You know, when you're talking about general
8 traffic patterns that would go, you know, to the northwest
9 of, you know, the mall and things like that, I don't -- I
10 didn't look at those things because I looked at adjoining
11 property values, which was my task.
12 Q Okay. All right. Well, thank you. That answers
13 my question. When prospective home buyers --
14 MR. GROSSMAN: Ms. Rosenfeld, let me stop you for
15 one second. About how much longer do you think your
16 cross-examination will take?
17 MS. ROSENFELD: I would say probably half an hour,
18 tops.
19 MR. GROSSMAN: All right. Let me ask the court
20 reporter if she can stay late. Can you stay another half
21 hour?
22 THE REPORTER: (No audible response.)
23 MR. GROSSMAN: All right. Everybody else?
24 Mr. Scharman.
25 MR. SCHARMAN: I may have some questions, and

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1 depending on whether Ms. Rosenfeld gets into them -- if she
2 doesn't get into them at all, it could be somewhat
3 extensive; if she gets into them, which I think she will, I
4 may have none.
5 MR. GROSSMAN: All right. Well, I guess, let's go
6 on and see if she gets into them.
7 MS. ROSENFELD: Okay.
8 BY MS. ROSENFELD:
9 Q Do potential home buyers, when they're looking at
10 homes, make decisions not only on fact but on perception?
11 And to give you a more concrete example, do some people
12 simply refuse to buy a home because it's located near
13 high-tension power lines?
14 A Some people do. Many people do not.
15 Q Okay. And do other people simply refuse to buy
16 homes that are located next to highways?
17 A Some people do. Many do not.
18 Q And others refuse to purchase near gas stations?
19 A Sure.
20 Q Okay. And if there is a certain percentage of the
21 potential buying population, can that make it harder to sell
22 a home?
23 A In the hypothetical case, sure.
24 Q And could that go to the sales price of the home?
25 A I'd say, my experience, typically not. What I've

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1 found in talking to real estate home builders and other
2 people is that some people, for example, don't like, you
3 know, high-tension wires near them, great. Other people
4 like high-tension wires near them, because why? They've got
5 extra park land behind their house and, realistically
6 speaking, most of the time the value of the house isn't
7 impacted.
8 You have to find, as in any residential purchase,
9 you have to find the right buyer for the right house, and
10 you know, it's a relatively straightforward matter from
11 there. And people's preferences are all over the board.
12 The reality is that Kensington Heights as a neighborhood
13 sells and sells well because of its intrinsic qualities of
14 being in the middle of everything and, you know, being
15 connected as a nice Montgomery County residential
16 neighborhood near everything anybody could want.
17 Q Have you reviewed any empirical studies or
18 literature that evaluate the actual effect of gas stations
19 on home values?
20 A Gas stations as such, no. I've reviewed a lot of
21 different literature on every, I don't know, many other
22 externalities and their impact on values.
23 Q In conducting your analysis, did you make any
24 attempt to determine if there are actually any empirical
25 studies on that subject specific to gas stations?

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1 A I had my assistant research, you know, the
2 Appraisal Institute, you know, library, and again, I've
3 reviewed, I don't know, you know, probably 10 reports on
4 various kinds of externalities and their impacts on
5 residential values.
6 Q As a real estate agent, if you were to act as a
7 buyer's broker, do you have an obligation to ensure that the
8 buyer has full information about a prospective purchase?
9 A Within the law, sure.
10 Q And if you were representing a long-distance
11 buyer, would you have an obligation to advise that buyer
12 that the adjoining property would have a gas station if you
13 were selling a property after the gas station was built?
14 A I would have an obligation to inform them about
15 every relevant factor, you know, for them on the property.
16 Q And to a typical residential home buyer, would you
17 consider that a relevant factor?
18 A Sure.
19 Q Okay. In your chart on page 10 of your report,
20 the trend line, Mr. Grossman had noted that since 2010 the
21 sales prices along Connecticut Avenue have gone up markedly
22 higher than sales prices in the Kensington neighborhood, the
23 Kensington Heights neighborhood, and your response to him
24 was that, you said it was an isolated situation. I proffer
25 to you that Costco announced that the gas station, its gas

1 Costco have gas stations elsewhere in the United States?
 2 A I think I can say that --
 3 Q Safely, yes.
 4 A -- yes, that's true.
 5 Q And do you know if any of those existing gas
 6 stations are located near residential communities within
 7 some reasonable proximity?
 8 A I mean, I certainly don't know every Costco gas
 9 station in the U.S. I'm assuming that most of them are
 10 located, as this one would be, in a shopping center type of
 11 environment.
 12 Q And why would you make that assumption?
 13 A Because Costcos are located in shopping centers.
 14 So the Costco --
 15 Q And where did you --
 16 A -- usually has the gas station next to the Costco
 17 operation. They're in shopping centers, you know. So
 18 that's what's going on, the same as here.
 19 Q Regardless of where they might be located, whether
 20 within or without a mall, did you try to make any valuation
 21 analysis of residential properties adjoining a similarly
 22 sized Costco gas station to determine if there was an
 23 effect --
 24 A No.
 25 Q -- on properties, adjoining properties?

1 A No. I tried to keep things to Montgomery County
 2 as much as possible so that everybody could feel that, you
 3 know, we were trying to be fair with the data. I didn't go
 4 outside of Montgomery County.
 5 Q If any externality results in a lower sales price,
 6 that is a negative effect, is that correct?
 7 A Sure.
 8 Q Okay. In your testimony, I believe, you also said
 9 that you did have some paired sales, is that correct?
 10 A No. That was the problem. Usually I do look for
 11 paired sales so that you can take subjectivity out of the
 12 analysis as much as possible. There were not a sufficient
 13 number of paired sales available so that I could make
 14 comparisons, you know, between the Kensington Heights
 15 proximate area and the Connecticut Avenue area.
 16 Q Maybe I misunderstand what a paired sale is.
 17 Could you --
 18 A A paired sale is when you have the same house
 19 that's being sold, you know, today and, let's say, 10 years
 20 ago --
 21 Q Yes.
 22 A -- so that you have, relatively speaking, the same
 23 house, the same lot, the same relationship to its
 24 neighborhood. You look at the value trends between, you
 25 know, the two transaction dates, and you use that in

1 addition to other paired sales in order to paint a picture
 2 of what the appreciation rate has been in a neighborhood.
 3 Q And did you say there were not enough or that
 4 there were not any?
 5 A There were certainly not enough. I don't have
 6 anymore the number of paired sales that were available.
 7 Q And going back just to Montgomery Ward for a
 8 moment and not to revisit the questions that I had before
 9 but for a different purpose, do you know if the auto center
 10 operated through a special exception approval, if it was
 11 allowed by right?
 12 A I have no idea.
 13 Q Okay. But the proposed gas station is not allowed
 14 by right, is that correct?
 15 MS. HARRIS: No. We're sitting here for this.
 16 THE WITNESS: This is why we're having a special
 17 exception hearing, I'm assuming.
 18 BY MS. ROSENFELD:
 19 Q That's right. Okay. Okay. But in reading your
 20 report, the suggestion seems to be not just with respect to
 21 that use but with respect to the overall operations of the
 22 mall -- the visitors, the traffic, the stores, everything --
 23 that purchasers in the Kensington Heights neighborhood
 24 understood that they were buying next to a regional mall and
 25 so they somehow should have understood that a 16-pump gas

1 station would be implicit in that.
 2 A I mean, you know, I can't be sure I'm going to
 3 wake up tomorrow morning. Nobody knows, you know, what's
 4 going to happen the next day. They know that they're buying
 5 next to a major regional mall. They know that, that there's
 6 at least the potential that that major regional mall is
 7 going to continue getting even more major. That's the way,
 8 you know, business goes. And so I'd say they have an
 9 intense use next to them, the existing homeowners. People
 10 who buy into the neighborhood -- and they will continue
 11 buying in -- will buy in because there's an intense use
 12 nearby, and they'll benefit from it.
 13 Q Would you consider a stadium or an arena to be a
 14 more intense use than what's there now?
 15 A I don't know.
 16 Q You don't know. What about a helistop or a
 17 heliport, which are --
 18 A Please --
 19 Q -- which are all permitted special exceptions in
 20 the C-2 zone.
 21 MR. GROSSMAN: Yes, but we can -- what about
 22 anything? I mean, let's -- I think you've gone far enough
 23 with this line, okay? We don't have to suggest --
 24 MS. ROSENFELD: Okay. To the extent --
 25 MR. GROSSMAN: There is no end to that line of

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1 questioning, what-about questioning.
2 MS. ROSENFELD: I understand that and that was the
3 extent of my questions, but --
4 MR. GROSSMAN: Okay.
5 MS. ROSENFELD: -- to the extent that his, that
6 the report suggests that a prospective purchaser --
7 MR. GROSSMAN: Well, let's not argue the --
8 MS. ROSENFELD: Okay.
9 MR. GROSSMAN: -- let's not argue the case now. I
10 mean, I'm just --
11 MS. ROSENFELD: Okay. All right.
12 BY MS. ROSENFELD:
13 Q Going back just briefly to your trend line --
14 which, as I understand it, really addresses whether or not
15 there will be a rate of appreciation if there's a gasoline
16 station -- you're saying there's no adverse effect because
17 these properties continue to appreciate, notwithstanding a
18 gasoline station, is that correct?
19 A Correct.
20 Q Okay. Now, if there is a decrease in the resale
21 prices as the result of a gas station, even if there is some
22 appreciation, that still would be a negative effect on
23 value, would it not?
24 A I'm sorry. I don't understand what your question
25 is.

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1 Q Let me ask one more time. We talked before about
2 the hypothetical where the only factor affecting value would
3 be the gas station if there was no change in market rates
4 and loan value, that hypothetical, assuming that
5 hypothetical. If there's an initial drop in value of, say,
6 10 percent in the resale price, even if that property
7 continued to appreciate at the same rate as other
8 properties, there still would be a decrease in value of that
9 property, would there not, long term?
10 A I'm sorry. You're saying if the property
11 decreased in value but then it appreciated in value. Where
12 are we? What's the question?
13 Q But appreciates at the same rate, it appreciates
14 at the same percentage rate as everything else in the
15 County --
16 MS. CORDRY: After the gas station --
17 BY MS. ROSENFELD:
18 Q -- but you don't then, it doesn't -- if everything
19 else appreciates at two percent and that appreciates at two
20 percent, it would have to really appreciate 12 percent over
21 and above to compensate, correct?
22 MS. CORDRY: Can I try the question? I think I
23 might have a little --
24 MR. GROSSMAN: No. Let's just --
25 MS. CORDRY: Okay. All right.

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1 MR. GROSSMAN: -- I really don't see the -- I
2 think you've gone along this line far enough. Let's just
3 move along to a different, different line, if there is a
4 different line.
5 MS. ROSENFELD: Frankly, that's the last question,
6 and --
7 MR. GROSSMAN: Okay. Ms. Duckett, did you have
8 something to say?
9 MS. DUCKETT: Yes.
10 BY MS. DUCKETT:
11 Q My name is Eleanor Duckett. I live in Kensington
12 View. I'm speaking for Kensington View. I have two
13 questions. You said that you were not too concerned about
14 the traffic impact because there was no way to get from the
15 gas station to Kensington Heights, is that correct? Am I
16 misphrasing you? I mean, I'm paraphrasing.
17 A No, no, no. I think -- I mean, that's reasonable.
18 People don't want to go over that cliff, you know, basically
19 is what I'm saying, yes --
20 Q So that's -- yes.
21 A -- to make it graphic, okay.
22 Q Okay. And you did not do a market analysis of
23 Kensington View at all, which is adjacent to but
24 confronting, on University Boulevard, confronting the mall
25 where the entry is to the mall?

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1 MR. GROSSMAN: It's on the northern end.
2 MS. DUCKETT: Yes, northwest, yes.
3 MR. GROSSMAN: Right.
4 THE WITNESS: Yeah. I mean, I, when I was doing
5 my market research, I looked through your neighborhood. You
6 know, it's a nice neighborhood, but my task was to say
7 what's the impact on adjoining properties, and you know, so
8 therefore I focused on Kensington Heights, yes.
9 BY MS. DUCKETT:
10 Q Okay. So your answer is you did not do market
11 analysis on Kensington View, correct?
12 A Correct.
13 Q Okay, thank you.
14 MR. GROSSMAN: Well, in view of that question, let
15 me ask you, since you looked at Kensington View but didn't
16 do the analysis there, was there anything about the, about
17 the location of Kensington View or the other neighborhoods
18 that would make them more susceptible to being affected by
19 this proposed gas station than the Kensington Heights
20 neighborhood?
21 THE WITNESS: In my opinion, no. They're more
22 remote from the special exception, and again, traffic and
23 other kinds of impacts seem to be, over and above, you know,
24 what the mall is already doing, seem to be relatively
25 slight.

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1 MR. GROSSMAN: All right. Mr. Scharman, would you
2 come forward, please?
3 MR. SCHARMAN: I do have a few questions.
4 MR. GROSSMAN: All right. I think you should give
5 Mrs. Scharman a chance to ask the questions. It would be --
6 MR. SCHARMAN: She's seated.
7 MR. GROSSMAN: -- it would be fair.
8 MR. SCHARMAN: She's seated.
9 BY MR. SCHARMAN:
10 Q These relate almost entirely to your map of the
11 Kensington Avenue gasoline station locations.
12 A Sure.
13 Q And it's my understanding that your report had,
14 for lack of a better word, 82 data points of home sales.
15 A Correct.
16 Q And that was over an 11-year period of time,
17 correct?
18 A Eighty-two arm's-length sales, according to the
19 State Department of Assessment and Taxation. So, you know,
20 all transfers are not in there. Investor sales would not be
21 in there, for example. Family-to-family sales would not be
22 in there. Bulk sales would not be in there when an investor
23 was buying and selling three or four properties, those kinds
24 of things. These are, as defined by the State Department of
25 Assessment and Taxation, arm's-length open-market sales.

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1 Q Okay. And this is over a 17-year period, correct?
2 A Correct.
3 Q Do you have a list of those data points?
4 A I can get it for you, but I mean, I don't have it
5 with me now.
6 Q Well, I think it would be appropriate for that to
7 be added to the record, and here's the reason why: As I
8 look at your location of the gas stations and I look at the
9 lower left-hand side, I don't know what you call that,
10 scale, I guess you call it --
11 MR. GROSSMAN: Which page are you on?
12 MR. SCHARMAN: I'm on the map that I believe is
13 B --
14 MR. BRANN: Yeah, Connecticut Avenue.
15 MR. GROSSMAN: Okay. The Connecticut Avenue
16 gasoline station map.
17 MR. SCHARMAN: Yes.
18 MR. GROSSMAN: All right. You said the left-hand
19 side. That's why --
20 MR. SCHARMAN: I'm sorry --
21 THE WITNESS: The scale.
22 MR. SCHARMAN: -- the lower left-hand side,
23 there's a scale.
24 MR. GROSSMAN: Oh, I see, the scale legend, okay,
25 yes.

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1 BY MR. SCHARMAN:
2 Q And when I look at those gas stations and given my
3 knowledge of the neighborhood around those gas stations, I
4 would find it difficult to find more than 10 to 15
5 residences within 400 feet --
6 MR. GROSSMAN: Well, you'll have to --
7 MR. SCHARMAN: That's --
8 MR. GROSSMAN: -- you'll have to, when you take
9 the stand --
10 MR. SCHARMAN: That's why I'm asking if he could
11 produce his data points that support his report and his
12 conclusions.
13 MR. GROSSMAN: All right. But he said he does not
14 have them --
15 MR. SCHARMAN: With him.
16 MR. GROSSMAN: -- with him, and he's not required
17 to produce them, but it's some piece of evidence that could
18 be produced by the opposition, if they want to, in their
19 case.
20 MR. SCHARMAN: Well, is it possible for me to
21 subpoena them?
22 MR. GROSSMAN: Well, there actually is not a,
23 there is not -- there's a procedure for subpoenas, but the
24 witness is here. There really isn't a discovery process
25 per se in the land-use practice here.

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1 MR. SCHARMAN: Okay. I'll ask to be permitted --
2 I know that Wednesday was the day for public testimony.
3 MR. GROSSMAN: I'm not, by the way, I'm not
4 stopping them from producing it, and in fact, on many
5 occasions here, Ms. Harris has produced additional things at
6 the request of the opposition. So I'm not saying she can't.
7 MS. HARRIS: I need to confer with our consultant.
8 I'll get back to you.
9 MR. GROSSMAN: Okay. I'm just saying that I'm not
10 going to compel it, to produce additional material at this
11 point.
12 MR. SCHARMAN: No, I --
13 MR. GROSSMAN: Right.
14 MR. SCHARMAN: -- fully appreciate that. If it
15 will be proffered to me; if not, I can always -- if you'd
16 permit me to retake the stand to testify, because Wednesday
17 last was the --
18 MR. GROSSMAN: I will --
19 MR. SCHARMAN: -- day for public testimony.
20 MR. GROSSMAN: I will certainly do so,
21 Mr. Scharman. You've more than paid your dues here.
22 MR. SCHARMAN: Thank you. I'm sure everybody --
23 my experience is, when you get to 4:30 on Friday afternoon,
24 there isn't much going through anybody's mind at that point,
25 but --

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1 MR. GROSSMAN: Thank you.
2 MR. SCHARMAN: -- okay, I do appreciate --
3 BY MR. SCHARMAN:
4 Q One last question is, is there a reason why you
5 elected to omit the two gas stations that are north of the,
6 whatever the most northern gas station is that you have here
7 on your map?
8 A I was looking for a concentration of gasoline
9 stations just because -- and this was the tightest grouping.
10 I, you know, can look for gasoline stations, you know, all
11 along, you know, nearby roads, but you know, my attempt was
12 to give a reasonable analogy given the concentration of
13 stations.
14 Q You'll agree that there are two more stations --
15 A Sure.
16 Q -- within two-tenths of a mile?
17 A Sure.
18 Q Okay. And then on a different area, just real
19 quick --
20 A Sure.
21 Q -- did you make any evaluation of the value of the
22 Kensington Heights Recreation Association, which is the
23 Kenmont Swim & Tennis Club, which is to the southwest of the
24 gas station?
25 A Did I?

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1 Q Make any evaluation or determination of whether
2 the gas station would have a negative impact on the
3 valuation of the --
4 A I did not.
5 Q And was there a reason for that?
6 A Because my task was to look at residential
7 property values. It's not a residential property.
8 Q Were you aware that that membership has a
9 membership value?
10 A It's not a residential property.
11 Q Okay.
12 MR. GROSSMAN: All right. Any redirect?
13 MS. HARRIS: Briefly.
14 MR. GROSSMAN: Okay.
15 REDIRECT EXAMINATION
16 BY MS. HARRIS:
17 Q Mr. Cronyn, does the difference of 100 square feet
18 or, call it, 200 square feet in the size of the special
19 exception area affect your overall conclusions?
20 A No.
21 Q Are you aware that the Mount McComas property that
22 was rezoned, as was established, prior to the beginning of
23 the Costco case recently, within the period of the Costco
24 case, has obtained preliminary plan approval for the
25 residential development on the property?

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1 A No, but it wouldn't surprise me.
2 Q And you say it wouldn't surprise you because why?
3 A Because I think that the developers, the builders,
4 the eventual buyers see the value in the Kensington Heights
5 neighborhood and they're happy to proceed.
6 Q In your opinion, would a purchaser have a
7 realistic expectation about additional development occurring
8 on the mall parcel and particularly the southern portion of
9 the mall parcel?
10 A Yes.
11 Q And would this affect their decision-making in
12 terms of purchasing a property?
13 A It could, but by and large, you know, people buy
14 into Kensington Heights because they want to be conveniently
15 located to a lot of good things, and you know, if you add
16 more good things to the shopping mall, well, so much the
17 better, for most people.
18 Q And from what you've learned, based on the
19 consultants' reports about the lack of impacts from the gas
20 station, in your opinion, would the, would the -- if the gas
21 station doesn't go forward and the property remains, that
22 portion of the mall remains a parking lot. Do you see any
23 difference in how that may affect values? Actually, let me
24 withdraw that question. I'm sorry.
25 You testified that with respect to Chart 1 and the

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1 trend line, that, I believe you said that Costco could have
2 been a factor in terms of the trend line, is that right?
3 A Correct.
4 Q But earlier you also testified that the -- and I'm
5 using your term -- the drama associated with this case could
6 very well have a, could play a part, is that correct?
7 A Correct.
8 Q Can you further elaborate on that?
9 A Well, I'd say a home purchase is something that's
10 important to people and, when there's a lot of, as I said,
11 drama in the atmosphere, then I'm sure that some people, you
12 know, could say, well, I'm looking at Kensington Heights or
13 I'm, and I could look at other neighborhoods, or I'm looking
14 at this block in Kensington Heights and I'm maybe going to
15 look at a different block in Kensington Heights. Again,
16 everything is a very personal decision when you get down to
17 the decision where you want to, you know, buy a home, and
18 some people are going to be spooked, especially when --
19 during 2010/2011, it was a buyer's market. People are going
20 to say, okay, maybe I'll -- some people would say, maybe
21 I'll go elsewhere.
22 Q And your opinion if in fact the gas station gets
23 constructed and if in fact, as the reports have indicated,
24 that there's no adverse impact on the surrounding
25 neighborhood? Can you reiterate what your conclusions are

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1 in terms of the effects?
2 A I believe that it's not going to have any
3 impact --
4 MS. ROSENFELD: Asked and answered.
5 MS. CORDRY: Yes.
6 MS. ROSENFELD: Asked and answered.
7 MR. GROSSMAN: I will sustain that objection.
8 Reiteration is not --
9 MS. HARRIS: Okay.
10 MR. GROSSMAN: -- within the purview of this
11 procedure.
12 MS. HARRIS: Especially at 5:20 on a Friday.
13 MR. GROSSMAN: How about 5:35?
14 MS. HARRIS: Okay. I have no other questions for
15 him.
16 MR. GROSSMAN: Any recross?
17 MS. ROSENFELD: No, thank you.
18 MR. GROSSMAN: Seeing no hands, all right, thank
19 you, Mr. Cronyn. You are released.
20 THE WITNESS: It's been a pleasure, Mr. Grossman.
21 MR. GROSSMAN: The pleasure was ours. Now, we do
22 have a couple of additional exhibits that were filed but I
23 haven't yet marked as exhibits. So let's do that before we
24 depart since they are in my possession here. And that would
25 be, let's see, we have an aerial photograph and that will be

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1 Exhibit, I guess we're up to 244, an aerial photograph of
2 neighborhood. And then -- that's 244 -- and then I'll say
3 245(a) will be landscape master plan, and let's see, what's
4 the date on this one?
5 (Exhibit No. 244 was marked
6 for identification.)
7 MS. HARRIS: It doesn't have a date?
8 MR. BRANN: They're not dated, but you can use
9 whatever date you want, today's date or --
10 MR. GROSSMAN: Well, why don't we, we'll just
11 say -- this is 8/2. So revised 8/2/13?
12 MR. BRANN: Yes.
13 MR. GROSSMAN: That's 245(a). And 245(b) is
14 landscape sections --
15 (Exhibit Nos. 245(a) and
16 245(b) were marked for
17 identification.)
18 MS. HARRIS: (B) is the landscape sections?
19 MR. GROSSMAN: Yes.
20 MS. HARRIS: Okay.
21 MR. GROSSMAN: And that's also revised 8/2/13.
22 And (c), Exhibit 245(c) --
23 MS. ROSENFELD: 244 or 245?
24 MR. GROSSMAN: 245. 244 was the aerial photograph
25 of the neighborhood.

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1 MS. ROSENFELD: Oh.
2 MR. GROSSMAN: 245(c) is landscape section and
3 elevation, once again, revised 8/2/13, and I think that's
4 it, actually.
5 (Exhibit No. 245(c) was marked
6 for identification.)
7 MR. WILLARD: Oh, there's the L1.0 --
8 MR. GROSSMAN: Pardon me?
9 MR. WILLARD: There's L1.01 --
10 MR. HARRIS: Well --
11 MR. GROSSMAN: I couldn't hear you, sir.
12 MS. HARRIS: No, he, he earlier did those --
13 MR. WILLARD: Okay, great.
14 MS. HARRIS: -- L1.01 to 1.05.
15 MR. GROSSMAN: Yes.
16 MS. HARRIS: Mr. Grossman --
17 MR. GROSSMAN: Yes.
18 MS. HARRIS: -- at the beginning of the hearing, I
19 had asked a couple of scheduling questions, and we -- and
20 the opponents had indicated that after the break they would
21 get back to us. And so before the day ends, I want to make
22 sure that we have a response on those.
23 MS. ROSENFELD: Forgot what they were.
24 MS. HARRIS: One was getting their list of
25 witnesses by August 9th, the order of witnesses.

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1 MR. GROSSMAN: Okay.
2 MS. ROSENFELD: I think we'll be able to do that.
3 We'll pull together a telephone call so that we can get back
4 to you.
5 MS. HARRIS: And then you'll e-mail both me and --
6 MS. ROSENFELD: And then we'll e-mail you, that's
7 right.
8 MS. HARRIS: And please make sure to include Mike
9 Goecke as well --
10 MS. ROSENFELD: Of course, okay.
11 MS. HARRIS: -- because of vacation schedules.
12 And then the second thing was the request to put on
13 whoever's going to be testifying for needs on either the
14 time that's available on the 9th, the 16th and, at the very
15 latest, the 20th so that Mr. Flynn can begin his journey.
16 MR. GROSSMAN: All right. So --
17 MS. ROSENFELD: We've said before that we will,
18 we're not prepared to start our case until their
19 case-in-chief is finished, but we certainly would be willing
20 to have Ms. Cordry testify out of order. She would not
21 ordinarily have been the first witness that we would
22 present. What we would like to do, though, is have her
23 testify only on need and then have her return to the stand
24 later in the case for the other topics that she will be
25 testifying about.

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1 MR. GROSSMAN: And do you, on the question of
2 whether or not the opposition should -- we don't have
3 directed verdicts here. So there isn't the issue of the
4 opposition putting on a portion of their case before the
5 applicant finishes. Is there any relationship between what
6 would remain of the applicant's case and your needs witness
7 to create an issue for you?
8 MS. CORDRY: I'd have to think about that in terms
9 of --
10 MR. GROSSMAN: Okay.
11 MS. ROSENFELD: Yes.
12 MS. CORDRY: -- everything here seems to relate to
13 everything. I mean, I am here in September. I can do the
14 days. I think we'd still prefer, to the largest extent
15 possible, to have our case go after their case.
16 MR. GROSSMAN: And I would agree with you.
17 Ideally, we always do that, but we often have exceptions
18 when it's necessary. We don't --
19 MS. CORDRY: Well, let's put it this way --
20 MR. GROSSMAN: -- want to leave any days partially
21 occupied here, is all. We want to get through this -- for
22 all, the benefit of all concerned, the most expeditiously we
23 can do this lengthy process, the better we are.
24 MS. CORDRY: Well, one of the things, too, is when
25 I would be prepared for this, because I also --

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1 MR. GROSSMAN: Right.
2 MS. CORDRY: -- have to help prepare for the
3 witnesses, and preparing my own testimony for this is a
4 major thing. So I would much prefer to have a specified
5 date specified for mine. I had not expected, for instance,
6 that Mr. Flynn was going to testify when he did, and I was
7 up until 3:30 in the morning preparing for Mr. Flynn. So I
8 would not like to do that for my own testimony and have
9 somebody on, you know, Day X say, okay, you're now going to
10 be, you know, filling in, you know, tomorrow or something
11 like that. So --
12 MR. GROSSMAN: Right. I think that, once again, I
13 think the best thing to do is offline, we have time now,
14 between now and the next hearing date, which is September 9,
15 for the parties to communicate -- by telephone is perhaps
16 easier than e-mail back and forth -- and see if you can work
17 out some arrangement. Any arrangement on those days that is
18 good for the parties is good for me.
19 MS. CORDRY: I will be as flexible as I can.
20 Let's put it that way.
21 MS. HARRIS: And just following up on one thing
22 you said, Mr. Grossman, because if I look at the lineup for
23 September 9th, it will be Mark Willard --
24 MS. ROSENFELD: Yes.
25 MS. HARRIS: -- and then Dr. Chase --

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1 MS. ROSENFELD: Right.
2 MS. HARRIS: -- and then, so it's very likely --
3 MR. GROSSMAN: And the only one left after that --
4 MS. HARRIS: Is David Sullivan on the 16th.
5 MR. GROSSMAN: Right.
6 MS. HARRIS: So I think it's likely, one, that
7 there may be time on the 9th that's open --
8 MR. GROSSMAN: Right.
9 MS. HARRIS: -- and then potentially the 16th
10 after David. So I think it's likely, if we're trying to
11 fill spaces --
12 MR. GROSSMAN: After Mr. Sullivan on the 16th
13 would be the opportunity for the opposition --
14 MS. ROSENFELD: Yes.
15 MR. GROSSMAN: -- to begin their case, in any
16 event. So --
17 MS. ROSENFELD: Right.
18 MS. HARRIS: Right. Right.
19 MR. GROSSMAN: So I think the real question --
20 MS. HARRIS: So the question is --
21 MR. GROSSMAN: -- was the 9th. So let's see if we
22 can have a backup -- and we may not get to that backup --
23 but a backup opposition witness at that point --
24 MS. HARRIS: Okay, with the understanding that it
25 would be Karen --

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1 MR. GROSSMAN: -- so we have something. You might
2 also bring Mr. Scharman into that --
3 MS. CORDRY: Maybe so, maybe not.
4 MR. GROSSMAN: -- consideration. He may want to
5 add to his testimony at that point.
6 MR. SCHARMAN: I'd be more than happy to.
7 MR. GROSSMAN: Mr. Scharman says he'll be happy to
8 fill half the day if we ask.
9 MS. ROSENFELD: So what I --
10 MR. SCHARMAN: No, five minutes.
11 MR. GROSSMAN: Okay.
12 MS. ROSENFELD: But what I hear are two questions,
13 actually. One is, when could Ms. Cordry appear to testify
14 on need, and perhaps if not her, you're looking for another
15 witness to perhaps fill in on the 9th? Is that what I'm --
16 MR. GROSSMAN: Yes. It sounds to me like the only
17 day that might have some space is -- and I'm not sure we
18 will because I'm not sure that --
19 MS. HARRIS: Given our pace.
20 MR. GROSSMAN: -- Mr. Willard and Dr. Chase will
21 not fill up the whole --
22 MS. HARRIS: Well, you should really ask that
23 question of the opponents given the track record.
24 MR. GROSSMAN: Well, how long is your --
25 MS. HARRIS: I mean, I think Mr. Willard's direct

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1 testimony will take 40 minutes.
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: And I think Dr. Chase's, maybe 40
4 minutes to an hour, max.
5 MR. GROSSMAN: Yes. I suspect the
6 cross-examination of Dr. Chase may be, even though his
7 report might have been short, but I think the
8 cross-examination may be long.
9 MS. HARRIS: We are fully anticipating that.
10 MR. GROSSMAN: So you may not have this issue on
11 the 9th. We could have --
12 MS. HARRIS: True, that' true.
13 MR. GROSSMAN: -- some backup witness. And when
14 was Mr. Flynn not available again?
15 MS. HARRIS: If need be, he can make it on the
16 20th, but after that he is not available.
17 MR. GROSSMAN: Okay. So the 16th would be a day
18 that you could do that in?
19 MS. HARRIS: Yes.
20 MR. GROSSMAN: And maybe that --
21 MS. HARRIS: Oh, we could put --
22 MR. ADELMAN: How long will Mr. Flynn be
23 unavailable?
24 MS. ROSENFELD: But you're saying he's available
25 on the 20th?

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1 MS. HARRIS: That's not his preference because --
2 MS. CORDRY: It's the 9th, the 12th, the 16th? We
3 also have the 16th?
4 MS. HARRIS: Yes.
5 MR. GROSSMAN: The 16th is a day perhaps --
6 (Discussion off the record.)
7 MR. GROSSMAN: So, okay, I think we can --
8 reasonable people can work these things out.
9 MS. ADELMAN: How long is Mr. Flynn going to be
10 unavailable, Pat?
11 MS. HARRIS: You don't want to know.
12 MS. ADELMAN: Why?
13 MS. HARRIS: Until January.
14 MS. ADELMAN: Whoa.
15 MS. CORDRY: That's quite a trip.
16 MR. GROSSMAN: We won't ask you what he's doing.
17 MS. ADELMAN: Headed for the --
18 MS. HARRIS: Oh, it's very exciting.
19 MR. BRANN: He's riding a motorcycle through South
20 America down to the tip of Chile.
21 MR. GROSSMAN: Wow. All right. Well --
22 MS. ADELMAN: Oh, I was close. I was close.
23 MR. GROSSMAN: All right. So we won't --
24 MS. ADELMAN: All right. That takes care of that.
25 MR. GROSSMAN: Okay. Is there any other

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1 post-preliminary matter, post-iminary matter we need to
2 discuss?
3 MS. HARRIS: No.
4 MR. GROSSMAN: If not, then, you know, feel free
5 to contact me by e-mail if there's some controversy or thing
6 that has to be worked out in the interim.
7 MS. HARRIS: Thank you.
8 MS. ROSENFELD: Okay, thank you.
9 MR. GROSSMAN: If not, we will see you -- have a
10 good August -- we'll see you on September 9th.
11 MS. ROSENFELD: Great. You as well. Thank you.
12 MS. HARRIS: Thanks.
13 MR. GROSSMAN: All right. Thank you.
14 (Whereupon, at 5:47 p.m., the hearing was
15 adjourned.)
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C E R T I F I C A T E
DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:
Petition of Costco Wholesale Corporation
Special Exception No. S-2863
OZAH No. 13-12

By:

Wendy Campos, Transcriber

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