

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
November 14, 2013, commencing at 9:39 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
352(a)	Pages C-5, C-11, C-15, and C-20 from Exhibit 352	53
358(b)	Corrected version of Exhibit 358(a)	130
358(c)	Mark Adelman's graph of percent occupancy versus congestion	141
370	Larry Silverman's legal analysis on the admissibility of video recordings	13
371	Karen Cordry exhibits highlighted: (a) pages 1-8, highlighting 35 and above in the queue (b) pages 9-15, highlighting 28 and above in the queue (c) pages 16-24, highlighting 30 and above in the queue	260

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Steven Morrison	25			
By Ms. Rosenfeld			30	
By Mr. Goecke			33	
James Core				
By Mr. Goecke		39		118
By Ms. Rosenfeld				89
By Mr. Silverman				109
Mark Adelman	126			
By Ms. Rosenfeld			239	
By Ms. Harris			244	

P R O C E E D I N G S

1

2 MR. GROSSMAN: This is the 19th 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. That's Lot N, 631 Wheaton Plaza, Parcel

10 10, also known as Westfield Wheaton Mall, and is zoned C-2.

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

12 resumed on lots of dates. It was noticed to resume again

13 today. The next session has been noticed for Tuesday,

14 November 19. It will be here, in the second floor hearing

15 room of the Council Office Building, at 9:30 a.m.

16 My name is Martin Grossman. This proceeding is

17 conducted on behalf of the Board of Appeals. I'm the

18 Hearing Examiner and will take evidence and write a report

19 and recommendation to the Board of Appeals which will make

20 the decision in this case. Will the parties identify

21 themselves, please, for the record?

22 MR. BRANN: Erich Brann for Costco.

23 MS. HARRIS: Good morning. Pat Harris on behalf

24 of Costco.

25 MR. GROSSMAN: Ms. Harris.

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1 MR. GOECKE: Mike Goecke for Costco.
2 MR. GROSSMAN: Mr. Goecke.
3 MS. CORDRY: Karen Cordry for Kensington Heights.
4 MR. GROSSMAN: Ms. Cordry.
5 MS. ROSENFELD: Michele Rosenfeld for Kensington
6 Heights.
7 MR. GROSSMAN: Ms. Rosenfeld.
8 MR. SILVERMAN: Larry Silverman for Stop Costco
9 Gas, good morning.
10 MR. GROSSMAN: Mr. Silverman.
11 MS. ADELMAN: Good morning, Mr. Grossman. Abigail
12 Adelman for the Coalition.
13 MR. GROSSMAN: All right.
14 MR. ADELMAN: Good morning, Mr. Grossman.
15 Dr. Mark Adelman for the Coalition.
16 MR. GROSSMAN: Dr. Adelman.
17 MR. MORRISON: Steven Morrison, not for any side.
18 MR. GROSSMAN: Okay. Are you here, sir, to -- do
19 you wish to give testimony?
20 MR. MORRISON: Yes, sir.
21 MR. GROSSMAN: All right. And in the back row?
22 MS. DUCKETT: Eleanor Duckett, Kensington View.
23 MR. GROSSMAN: All right.
24 MR. CORE: And my name is James Core. I'm a
25 resident of Kensington Heights.

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1 MR. GROSSMAN: Mr. Core, welcome back.
2 MS. SHEARD: Good morning. Virginia Sheard,
3 Kensington View.
4 MR. GROSSMAN: Welcome back, also, to you,
5 Ms. Sheard.
6 MS. STATLAND: My name is Ann Statland. I'm a
7 Kensington resident and I'm an interested party.
8 MR. GROSSMAN: Okay. You don't wish to give
9 testimony today?
10 MS. STATLAND: No.
11 MR. GROSSMAN: Okay. Okay. And, sir, I'm sorry.
12 Let me get your name once again, sir.
13 MR. MORRISON: Steven Morrison.
14 MR. GROSSMAN: Is that Steven spelled with a v or
15 a ph?
16 MR. MORRISON: Yes. Oh, a v.
17 MR. GROSSMAN: Okay. Morrison. And what's your
18 address, sir?
19 MR. MORRISON: I put it on the outside. It's
20 13816 Vintage Lane, Silver Spring, Maryland 20906.
21 MR. GROSSMAN: All right. Okay. Let's deal with
22 a few preliminary matters here. Since our last session,
23 we've had some significant filings, e-mail exchanges,
24 Exhibits 357 to 369. 358 was an e-mail from Dr. Adelman,
25 enclosing his PowerPoint presentation on traffic impacts;

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1 359, e-mail from Pat Harris on November 15, objecting to the
2 volume of new exhibits introduced less than 10 days before
3 the next hearing date, and the response from me, indicating
4 I would consider any objections she might have at the
5 hearing; 360, an e-mail exchange between myself and Renee
6 Kamen of the technical staff regarding the supplemental
7 needs analysis and the question of the general neighborhood
8 as it's to be interpreted, because I wanted to make sure
9 that technical staff had a copy of any significant changes
10 that were made in that additional analysis. So that
11 supplemental analysis regarding needs had been submitted at
12 my invitation. Let's see, 361, November 11 e-mail from
13 Michele Rosenfeld, transmitting two articles and a summary
14 of the articles that may be used by Dr. Jison during her
15 testimony; 362, an e-mail sent on November 9, submitting
16 exhibits from Ms. Cordry; 363, another e-mail from
17 Ms. Cordry, submitting additional exhibits; 364, an
18 e-mail from Ms. Rosenfeld, sent on November 10, sending
19 electronic copies of Excel spreadsheets that may be used by
20 Dr. Cole during his testimony; 365, an e-mail from Abigail
21 Adelman on November 12, submitting seven articles that may
22 be referenced during her testimony; 366, an e-mail exchange
23 between myself and Ms. Cordry regarding exhibits not yet
24 submitted to the Hearing Examiner; 367, an e-mail from
25 Ms. Cordry, submitting pedestrian safety documents; 368, an

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1 e-mail from Dr. Adelman, submitting a spreadsheet to
2 accompany Slides 12 and 13 of his presentation; 369, an
3 e-mail sent November 13 with exhibits submitted by
4 Ms. Rosenfeld that Ms. Savage may reference during her
5 testimony. I think that's pretty much the list. There may
6 be some other if something came in last night that I haven't
7 seen. Dr. Adelman.
8 MR. ADELMAN: Mr. Grossman, it's not clear to me.
9 I sent you a minor revision of my testimony --
10 MR. GROSSMAN: I did receive that. I did in fact
11 receive that, and I'm not sure why it's not separately
12 exhibitized or at least not mentioned here. It may have
13 just been substituted. I'm not sure.
14 MR. ADELMAN: Okay. Just wanted to make sure that
15 you were aware of --
16 MR. GROSSMAN: Right, I did see it. Thank you.
17 Okay. All right. I also noticed that in reviewing the
18 September 20, 2013, and other transcripts, that there were
19 numerous entries entitled discussion off the record, and
20 since I rarely have a discussion off the record, I inquired
21 of Deposition Services what those entries meant. They
22 checked and informed me that they were discussions picked up
23 by the microphones, for example, between counsel and client,
24 not that they were stated to me or that I heard in the case.
25 I asked them to stop using that terminology,

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1 discussion off the record, because that has an implication
2 that I have said let's go off the record and there's been
3 some discussion, unless I announce that there's a discussion
4 off the record and then that would be specified as that.
5 Private discussions between counsel and clients or among
6 counsel that are not to me directly are not part of the
7 record and do not need to be referenced in the transcripts.
8 Does anybody have an objection to my arranging it that way?
9 (No audible response.)
10 MR. GROSSMAN: Seeing no hands, we'll go forward
11 with that, and they've agreed to do that. I did want to
12 mention it because I didn't notice it in the early
13 transcripts. Maybe I just didn't notice it, maybe there
14 are, but there was clearly in the one of September 20 and
15 some of the others.
16 Also, I noticed that the first two paragraphs of
17 the September 20, 2013, transcript on page 17 were
18 erroneously attributed by the court reporter to me, whereas
19 they were actually statements, continuing statement by
20 Ms. Cordry, and so I asked them to correct that, which they
21 have done. They submitted a corrected transcript. Usually,
22 if there are minor errors, you know, I'm not going to bother
23 to take any steps, and this one, there was an opinion
24 expressed regarding what was stated and I felt it would be
25 appropriate --

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1 MR. SILVERMAN: You don't have to correct that
2 one.
3 MR. GROSSMAN: -- for me to note that that was
4 Ms. Cordry's statement. But if you want to take a look at
5 it, it's the first two paragraphs on page 17 of the
6 September 20 transcript.
7 Okay. As I recall, the witnesses scheduled for
8 today, Mr. Core, cross-examination; Mr. Silverman was
9 continuing testimony and cross-examination; Ms. Cordry on
10 traffic and pedestrians; and a backup of Dr. Adelman
11 regarding traffic impacts. Am I incorrect in the way
12 I've --
13 MS. CORDRY: I think he's going --
14 MS. ROSENFELD: Dr. Adelman will be testifying
15 before Ms. Cordry.
16 MR. GROSSMAN: All right. Is that all right with
17 you, Dr. Adelman?
18 MR. ADELMAN: That's fine.
19 MR. GROSSMAN: All right. Now, Mr. Morrison is
20 here. Anybody have a suggestion of -- should we start out
21 with Mr. Morrison so that he doesn't have to remain the
22 whole day, but he's welcome to, of course, or --
23 MS. ADELMAN: Jim?
24 MS. ROSENFELD: Are you okay with that?
25 MR. GROSSMAN: -- or with Mr. Core? I don't want

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1 to inconvenience people. I just -- so we usually try to
2 make some, try to be flexible. Should we start out with
3 Mr. Core and just finish Mr. Core and end, because he's --
4 this is his second day here for this.
5 MR. CORE: I perhaps have a little more
6 flexibility than Mr. Morrison --
7 MR. GROSSMAN: Okay.
8 MR. CORE: -- but, Michele, what do you think?
9 MS. ROSENFELD: Oh, that's fine. I just, I was
10 just checking on your availability. Okay. And --
11 MR. GROSSMAN: All right. So you're agreeable to
12 that, Mr. Core?
13 MR. CORE: Sure. I'm happy to --
14 MR. GROSSMAN: All right.
15 MR. CORE: -- do whatever is good for, that
16 pleases the Hearing Examiner.
17 MR. GROSSMAN: Well, I'm pleased if you're all
18 pleased. How's that? All right. Thank you very much. I
19 appreciate your flexibility too. All right. Any other
20 preliminary matters that need to be discussed? Applicant?
21 MR. GOECKE: No.
22 MR. GROSSMAN: The opposition?
23 MS. ROSENFELD: Do you want to go first?
24 MR. SILVERMAN: Okay. Yes, we have a couple.
25 Some time ago -- I'll do it.

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1 MS. ADELMAN: Yes.
2 MR. SILVERMAN: Some time ago I sent a letter to
3 you about video testimony, but I don't think it ever made it
4 to the record, and it was just by e-mail; so it wasn't
5 signed. So I want to provide you hard copies of -- it's a
6 memorandum on the admissibility, probative impact, and
7 desirability of admitting video evidence. And I think you
8 guys have this.
9 MR. GOECKE: Thanks.
10 MR. GROSSMAN: Okay. So we'll get my
11 ever-lengthening exhibit list out here.
12 MR. SILVERMAN: And --
13 MR. GROSSMAN: And this will be Exhibit 370.
14 MR. SILVERMAN: And secondly --
15 MR. GROSSMAN: Hold on one second while I enter
16 this. 370 is -- so this is essentially a legal analysis; is
17 that what you're saying?
18 MR. SILVERMAN: Yes, that's right.
19 MR. GROSSMAN: All right. Silverman legal
20 analysis on the admissibility of -- you say on video?
21 MR. SILVERMAN: Video evidence, yes.
22 MR. GROSSMAN: Of video recordings. All right.
23 (Exhibit No. 370 was marked
24 for identification.)
25 MR. SILVERMAN: And --

1 MR. GROSSMAN: Hold on one second. I notice the
 2 case you site for the proposition that withholding video
 3 evidence from the trier of fact is reversible error --
 4 MR. SILVERMAN: Right.
 5 MR. GROSSMAN: -- but what the -- the quote that
 6 you give or the statement from the Adams case says it was
 7 reversible error to refuse to let the jury view video
 8 evidence that had been admitted into evidence. So that's
 9 not the question of whether it's to be admitted. That's the
 10 question of whether you let a jury view evidence that was
 11 admitted.
 12 MR. SILVERMAN: Yes. I guess I didn't say it very
 13 well, but my thought was that it indicates the probative
 14 value of video evidence.
 15 MR. GROSSMAN: All right. And what else did you
 16 have, Mr. Silverman?
 17 MR. SILVERMAN: Yes. During my cross-examination,
 18 Mr. Goecke indicated that, or suggested that Costco did a
 19 Phase I of this site. I wonder if I could get a copy of
 20 that. I just, I don't know if this is the right time to
 21 request it, but I just wanted to put it on the record, I'm
 22 looking for it and --
 23 MR. GROSSMAN: I'm sorry. Costco did a --
 24 MR. SILVERMAN: A Phase 1, where you look for
 25 possible chemical contamination of the site, which is a

1 common procedure, and he's -- I think Mr. Goecke said, would
 2 it surprise you to know that Costco did a Phase 1? It
 3 didn't really surprise me. I just would like to see it, if
 4 that's possible.
 5 MR. GROSSMAN: And, Mr. Goecke, do you have a
 6 response?
 7 MR. GOECKE: I don't have a copy of it here with
 8 me. We can talk to Mr. Silverman about that after the
 9 hearing.
 10 MR. SILVERMAN: Yes.
 11 MR. GROSSMAN: Okay.
 12 MR. SILVERMAN: Fine, thank you very much. And
 13 then one other thing. I hope it's appropriate. On the --
 14 MR. GROSSMAN: I hope it's appropriate too.
 15 MR. SILVERMAN: Oh, thank you. Costco has
 16 indicated very clearly that the trucks that take their goods
 17 to the warehouse are all equipped with clean diesel
 18 technology, but it's unclear to me whether or not the same
 19 is true of the trucks that deliver the gasoline. I think
 20 there was conflicting evidence. And I just wanted to
 21 suggest that, although obviously we don't think conditions
 22 will solve this case, I know you have to make conditions,
 23 and I would suggest that a condition of the case be that all
 24 the gasoline trucks be equipped with clean diesel, and I was
 25 wondering if Ms. Harris would be agreeable to that.

1 MR. GROSSMAN: All right. I'll give her an
 2 opportunity to respond.
 3 MR. SILVERMAN: Yes.
 4 MR. GROSSMAN: As I said, at the, at -- when all
 5 the evidence is in, I'm going to invite the parties to first
 6 consult with each other as to what conditions should be
 7 recommended should the Board of Appeals approve a special
 8 exception, then to give me their agreed-upon conditions and
 9 also ones that they could not agree upon that they desire so
 10 that can be reflected in the record.
 11 MR. SILVERMAN: Thank you.
 12 MR. GROSSMAN: But do you wish to respond to that,
 13 Ms. Harris?
 14 MS. HARRIS: Yes. Unlike the trucks coming from
 15 the depot that are making deliveries to the warehouse that
 16 Costco has a hundred percent control of, they don't have
 17 control over the delivery trucks coming from the gasoline
 18 distribution centers -- I'm sure there's a more technical
 19 term for that -- so I need to confer more with Costco, but
 20 my sense is that that may be a difficult condition with
 21 which to comply.
 22 MR. GROSSMAN: Okay. Do we have an idea, any
 23 evidence as to what percentage of those trucks that deliver
 24 gasoline as Costco's experience elsewhere, deliver fuel
 25 supply, are of the clean diesel variety? I'm going to give

1 -- you don't have to answer this second, just --
 2 MS. HARRIS: Okay. We'll look into that.
 3 MR. GROSSMAN: -- why don't you consult and see
 4 if --
 5 MS. HARRIS: Yes.
 6 MR. GROSSMAN: -- there is some indication of
 7 that, because as I recall the very early testimony here,
 8 there is a distribution system, that everybody gets their
 9 gasoline from one or two in the area and that you may not
 10 have control over that. I recall that being said.
 11 MS. HARRIS: Right.
 12 MS. ROSENFELD: And, Mr. Grossman, on that point,
 13 if I could just ask a follow-up question. Are there
 14 independent vendors, as well, that deliver goods to the
 15 warehouse? Or are all --
 16 MR. GROSSMAN: I think the best thing is let's
 17 have this in the evidence in some way --
 18 MR. GOECKE: Yes.
 19 MS. ROSENFELD: Okay. Okay.
 20 MR. GROSSMAN: -- rather than have counsel
 21 commentary alone. And on special --
 22 MS. ROSENFELD: Well --
 23 MR. GROSSMAN: -- exception proceedings, it is
 24 true that there's a special provision in the statute that
 25 says that an applicant is bound by not only the testimony

1 that they offer but also by the comments of counsel that are
2 relied on in the report or by the Board of Appeals.

3 MS. ROSENFELD: Now, just for the question, when
4 you get back on the topic of clean diesel, I'd like if you
5 could also let us know whether or not there are independent
6 vendors that make deliveries to the warehouse; if so, if you
7 have control over the type of engines in those delivery
8 trucks as well.

9 MR. GROSSMAN: Okay. All right. Any other
10 preliminary matters?

11 MS. ROSENFELD: I do, Kensington Heights.

12 MS. CORDRY: Yes. The only thing I would say is
13 367 was one e-mail. I actually tried to send you a couple
14 more, and they must have all bounced as well. But
15 everything that I think I'm going to introduce today was
16 given to Costco counsel 10 days in advance --

17 MR. GROSSMAN: Okay.

18 MS. CORDRY: -- and I apologize for not being able
19 to get it to you as well.

20 MR. GROSSMAN: I did receive, you did send some
21 others that were very large that I did receive, and then
22 some you had a -- I forget what the service is that you
23 used, an online service.

24 MS. CORDRY: Dropbox, yes, sir.

25 MR. GROSSMAN: Dropbox, and I got some things from

1 there. Whether I got everything, I don't know --

2 MS. CORDRY: And I do have --

3 MR. GROSSMAN: -- but Montgomery County's --

4 MS. CORDRY: Right.

5 MR. GROSSMAN: -- e-mail system is a bit
6 antiquated.

7 MS. CORDRY: Right. I do have for you a thumb
8 drive that has everything in a form that should be, not have
9 to crash anybody's e-mail box when you get that. So -- and
10 I do have things printed out today as well.

11 MS. HARRIS: Mr. Grossman, may --

12 MR. GROSSMAN: And to tell you how outrageously
13 antiquated it is, I tried to e-mail myself from my home
14 thing a picture of my new granddaughter and that bounced.
15 That's --

16 MS. HARRIS: She's too big.

17 MR. GROSSMAN: -- I tell you, 2 months old and you
18 can't even send an e-mail.

19 MR. CORE: It probably doesn't --

20 MS. HARRIS: May I comment on the --

21 MR. GROSSMAN: I'm sorry?

22 MR. CORE: I was going to say, it probably doesn't
23 want to allow something that cute through the e-mail system.

24 MR. GROSSMAN: That's it. Thank you. You win
25 now. Whatever you say now -- all right.

1 MS. HARRIS: I wanted to comment on the materials
2 that we received 10 days beforehand and then continually
3 received materials from Ms. Cordry within the 10-day period,
4 whittling it down to what actually she plans to use in
5 testimony; that the amount of materials that were initially
6 provided were, just 10 days before, were quite cumbersome --

7 MR. GROSSMAN: Voluminous, yes.

8 MS. HARRIS: -- quite voluminous, and then to
9 then, three days before the hearing, say, well, these are
10 the ones I'm going to use, it seems to place us at a,
11 somewhat of a disadvantage, where we have the burden of
12 reviewing all of it, not knowing exactly what she's going to
13 be testifying to. And, you know, an analogous situation
14 would be putting a 50-page report from Mr. Sullivan within
15 1,000 pages of documents and say, here, figure out what
16 we're going to be testifying to. So --

17 MS. ROSENFELD: And --

18 MS. HARRIS: -- we'd reserve the right, if we
19 could, I mean, we want to proceed as, you know, as
20 expeditiously as possible, but to the extent that there's --
21 and we want to proceed with cross-examination -- but to the
22 extent there are issues that we haven't fully been able to
23 evaluate, we want to reserve the right to cross subsequently
24 once we have a 10-day --

25 MR. GROSSMAN: All right.

1 MS. HARRIS: -- liberty.

2 MS. ROSENFELD: And if I could speak to that just
3 briefly.

4 MR. GROSSMAN: Yes, Ms. Rosenfeld.

5 MS. ROSENFELD: For example, the expert report
6 from Mr. Sullivan was, with the appendices, probably close
7 to a thousand pages in length, but we had no idea what the
8 direct testimony would be and what we would actually be
9 cross-examining on. You know, I think Ms. Cordry was more
10 than fair in trying to give them some idea, but she didn't
11 have any obligation to do that whatsoever. She could have
12 provided the 300 pages and said I'll talk about what I want
13 to talk about.

14 MS. CORDRY: In a --

15 MR. GROSSMAN: Well, I think there's some merit on
16 both sides here. You can, I mean, it's not unheard of in
17 the legal business that people bury things within large
18 submissions. And so we're trying to get to the truth here
19 and fairness, have fairness to both sides; so I understand
20 the objection. I'm not sure what the relevance is of --
21 some of the submissions were pedestrian paths in South
22 Podunk, Florida, or whatever the --

23 MS. CORDRY: Right. I --

24 MR. GROSSMAN: -- you submitted. You know, I'm
25 not sure what, you know, how that's really going to bear on

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1 what I would have to decide here or recommend here.
2 MS. CORDRY: I will say that the large bulk of
3 what I sent was a lot of photos. Those are keyed into the
4 observations that I gave them actually five days in
5 advance --
6 MR. GROSSMAN: Right.
7 MS. CORDRY: -- where I tied them back to the set
8 of observations, which would be, essentially would be
9 testimony I could give in saying here's the testimony,
10 here's the photo. So that was done. The rest of the
11 articles, I don't think most of them were all that
12 voluminous. I will be going through them as we go through,
13 and certainly, I expect to be here on the 19th as well. So
14 if we carry over and if they need any more time, that would
15 be, you know, I'm certainly amenable to that as well.
16 MR. GROSSMAN: We're going to set up a room for
17 you here. That's --
18 MS. HARRIS: And that's all that we ask and we
19 appreciate that.
20 MS. CORDRY: Certainly.
21 MR. GROSSMAN: Yes. And if there's an objection
22 that you raise, at the time you raise it, as to a fairness
23 issue, and I'll consider it at that point, after hearing
24 from both sides.
25 MS. CORDRY: Thank you.

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1 MR. GROSSMAN: Okay.
2 MS. ROSENFELD: Okay. Mr. Grossman, a couple more
3 things.
4 MR. GROSSMAN: Yes.
5 MS. ROSENFELD: First of all, Ms. Adelman does
6 have some exhibits that we'd like to go ahead and put in the
7 record.
8 MS. ADELMAN: No, I'll do it.
9 MS. ROSENFELD: What?
10 MS. ADELMAN: I'll do it for you.
11 MS. ROSENFELD: Okay, great.
12 MR. GROSSMAN: Why don't we wait until her
13 testimony, because I want to get to Mr. Morrison here.
14 MS. ROSENFELD: Okay. But we just want to make
15 sure that everybody has hard copies more than 10 days in
16 advance of her testimony. So --
17 MR. GROSSMAN: Okay. Well, can't you do that in a
18 half hour or whenever we're finished with Mr. Morrison?
19 MS. ROSENFELD: We could do that -- oh,
20 absolutely. Absolutely, sure.
21 MR. GROSSMAN: Okay. All right. Anything else as
22 preliminary matters?
23 MS. ROSENFELD: And the one other, also, was
24 housekeeping. I've gone through the documents that are
25 listed under, you know, Savage's, and it appears that not

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1 all of them that I thought had been sent over are listed in
2 the record. We can take care of that, again, at the --
3 MR. GROSSMAN: Okay. Yes. There was somewhat of
4 a blizzard of exhibits --
5 MS. ROSENFELD: Yes.
6 MR. GROSSMAN: -- and I'm not, if they didn't all
7 get in -- yes, I would expect parties to check the exhibits.
8 That's why I read them, the new, any substantive exhibits,
9 at the beginning of each hearing, to make sure the parties
10 know what we have recorded at least and, if there are things
11 missing, that they have an opportunity to bring that up and
12 make sure they're in the record.
13 Okay. Anything else, preliminary matter?
14 (No audible response.)
15 MR. GROSSMAN: All right. Then shall we proceed
16 to receiving Mr. Morrison's testimony?
17 (No audible response.)
18 MR. GROSSMAN: All right. Mr. Morrison, would you
19 be so kind as to step up to the hot seat?
20 MR. MORRISON: All right. Thank you. Is this the
21 hot seat?
22 MR. GROSSMAN: That's the hot seat.
23 MR. MORRISON: Okay. Thank you.
24 MR. GROSSMAN: All right. Can you state your full
25 name and address again for the record, please?

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1 MR. MORRISON: My name is Steven Morrison with a
2 v. My address is 13816 Vintage Lane, Silver Spring,
3 Maryland 20906.
4 MR. GROSSMAN: And, Mr. Morrison, would you raise
5 your right hand, please?
6 (Witness sworn.)
7 MR. GROSSMAN: All right. You may proceed.
8 DIRECT EXAMINATION
9 THE WITNESS: When I was before the Planning
10 Board, testifying in this matter, I was unequivocally for
11 the proposition that there should be a gas station at the
12 Wheaton Shoppingtown. I still favor it but with some
13 conditions.
14 My experience with this is that the -- I went to
15 the Gateway Overlook Shopping Center, which is in Howard
16 County on the eastern end of Columbia, on State Route 108,
17 and they have a 12-pump gas station there in Columbia, and
18 -- Costco does -- and within 300 feet of these 12 pumps
19 there, there are several -- there's a strip mall and there
20 are several businesses there, including Mamma Lucia's, which
21 is an Italian restaurant, and Trader Joe's, which is a
22 grocer that's in, these both are in Montgomery County as
23 well. And I asked the managers of each of those
24 establishments whether or not pollution was a problem for
25 them, being 300 feet from the, from these gas pumps, and

1 they indicated it was not; over several years, they had no
2 problem with, with air pollution affecting their businesses.
3 And I -- but they said there was a problem, and the problem
4 was that because the stations were so popular -- because the
5 stations were so popular, that parking in that area
6 sometimes was interfered with by the number of cars backed
7 up, waiting for the pumps.

8 Now, that's a 12-pump station, and there's only
9 one route, Route 108, that borders that particular, that
10 particular property. Here we have Georgia Avenue, Veirs
11 Mill Road, and University Boulevard all bordering the
12 particular shopping center. And I think that there is some
13 merit in the other side's view, not of pollution, but of
14 traffic that may be a problem here. This problem is -- and
15 there in Columbia there was, were 12 pumps. You need -- I
16 think to lessen the backup in this particular area, I think
17 you need a minimum of 16 pumps; otherwise, traffic within
18 the shopping center could be a problem.

19 I would like to suggest that there is one problem
20 that I didn't hear today being reviewed. By the way, as
21 background information, I'm the immediate past president of
22 our civic association. I was on the Midcounty --

23 MR. GROSSMAN: What civic association?

24 THE WITNESS: Layhill Civic Association. I was on
25 the Midcounty Citizens Advisory Board, I was on the

1 Permitting Services Advisory Board and recently left those
2 two positions, and I'm aware of the fact that in the near
3 past, I don't know exactly when, Wheaton Shoppingtown
4 applied for a waiver of some sort to reduce the number of
5 parking spaces in, in that -- required under law, and that
6 was granted by Permitting Services, unfortunately. There is
7 now congestion during business hours at almost all times in
8 the proposed parking area where -- adjacent to the proposed
9 gas station.

10 While I'm in favor of the gas station, I think
11 that you need to require Westfield Shoppingtown to increase,
12 to establish a multilevel garage at that point, to provide
13 more parking as a condition of providing -- of this station.

14 MR. GROSSMAN: There is actually a garage just to
15 the east of the warehouse, which --

16 THE WITNESS: I --

17 MR. GROSSMAN: -- from the testimony, is not, has
18 not been fully used.

19 THE WITNESS: That is true, but people park in the
20 west side -- if you have a drive-through over there. On the
21 west side, people park there and it is quite congested. I
22 mean, I've gone there and people were backing up, waiting
23 for a space to open, and it's just, it's just very
24 congested.

25 MR. GROSSMAN: Right. Are you suggesting that

1 there should be another garage added but occupying the space
2 or some portion of the space of the west parking lot?

3 THE WITNESS: Yes, but not, not necessarily -- not
4 the pumps, not where the pumps are supposed to go --

5 MR. GROSSMAN: Right.

6 THE WITNESS: -- but at least in that area where
7 cars are parked for, to get their tires changed by Costco.
8 There is a tire-changing garage there. People are parking
9 there for Target, and people are parking there for other,
10 you know, other things on that end of the mall and that is
11 causing some parking congestion. And I think that it would
12 be worse, there'd be an interference between the cars
13 waiting for the pumps and the cars waiting for the parking
14 in an already bad situation there. I don't see this as
15 being a problem for the traffic on the adjacent highways to
16 the shopping center. What I see is that this is going to
17 cause some congestion within the shopping center on that
18 particular side --

19 MR. GROSSMAN: Okay.

20 THE WITNESS: -- and I think it will exacerbate
21 it. So what I'm suggesting is that it's not an impossible
22 problem to overcome. It's not that this gas station
23 shouldn't exist. It's that you need to address the parking
24 problem on the west side of Costco in order to permit the
25 gas station there and that --

1 MR. GROSSMAN: All right.

2 THE WITNESS: -- and that there should be a
3 minimum of 16 pumps in order to avoid the, the interference
4 of, between parkers who want to go into the mall and people
5 who want to get gas.

6 MR. GROSSMAN: Okay.

7 THE WITNESS: That's the sum of my testimony.

8 MR. GROSSMAN: All right. And before
9 cross-examination begins, Mr. Morrison's suggestion that 16
10 pumps as a minimum raises a question in my mind. If the
11 Board of Appeals -- and I'm going to give you an opportunity
12 to, all to comment on this, but you don't have to do so now
13 -- but if the Board of Appeals were to decide on a condition
14 that would reduce for some period of time the amount of
15 gasoline allowed to be pumped in this station and if
16 Mr. Morrison is correct that the number of pumps you need
17 reduces, or an increase in the number of pumps reduces the
18 traffic or the queuing there, is there a way, and what is
19 that way, of restricting the amount of gasoline that is
20 pumped for some period of time without increasing a queuing
21 backup?

22 So what's the appropriate way if reducing a number
23 of pumps doesn't do it? Is it reducing a number of hours?
24 Is -- what is the way? Is it posting an electronic sign
25 that says: All pumps are full, just keep on going? What

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1 are the other -- I was thinking of something analogous to
2 what you see on garages now, number-of-parking-spaces-
3 available kinds of signs. What is the way of conditioning
4 it if the Board of Appeals were to -- so I'd ask you all to
5 consider that, and when you, and perhaps even talk to each
6 other, it's not against the rules, and if you don't do that,
7 but still suggest to me ways of dealing with that issue.
8 All right. Cross-examination. Let's start from
9 this end first. Anything from the Coalition?
10 MS. ADELMAN: No, sir.
11 MR. GROSSMAN: Kensington Heights?
12 CROSS-EXAMINATION
13 BY MS. ROSENFELD:
14 Q Mr. Morrison, there's been testimony in the case
15 that at the Columbia gas station they pump between eight and
16 nine million gallons of gas a year and at the Wheaton
17 station they're proposing to pump 12 million gallons of
18 gasoline a year.
19 A Yes.
20 Q Given the additional volume, do you think that the
21 16 pumps would be adequate to minimize traffic backup?
22 A I, I don't know, and frankly, you know, I can't
23 tell you. I'm not an expert on queuing versus number of
24 pumps and that sort of thing. I do know that there was, is
25 some backup at times in Columbia. I've seen it myself.

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1 Incidentally, by the way, just to correct myself, the
2 Columbia station at Gateway Overlook is known by the post
3 office as Elkridge. So there is that geographic -- the post
4 office calls it one thing, but the tax assessors call it
5 another.
6 The -- I can't tell you whether it is or not. It
7 may be that you need 20 pumps. What I'm suggesting is that
8 the interference between parking and the people waiting for
9 gas is a problem that needs to be addressed in that quadrant
10 and it's just not -- but the amount of gasoline is not, not
11 a real problem, I would suggest. From a pollution
12 standpoint, they don't experience it, to my knowledge, in
13 Columbia; but from a traffic and commercial standpoint, for
14 the sake of the businesses that are within the plaza, it's
15 something that needs to be addressed.
16 Q And the backup that you described, is the backup
17 onto 108, the entrance?
18 A No, it is definitely not. It's --
19 Q Where --
20 A -- within the shopping center.
21 Q It's within the shopping center itself.
22 A And it basically affects the parking lot used by
23 that strip mall that's basically 300 feet south of the
24 pumps.
25 Q And so at the Wheaton Plaza, Westfield Montgomery,

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1 if there were to be a backup from the gas station, where
2 would that backup -- would that be on the ring road, in your
3 view?
4 A It would be -- it could be either on the ring road
5 or it could be within that parking lot. I have no idea how
6 cars are going to line up in that thing, in that, in that
7 area. I'm not, you know, I'm not opposed to the station,
8 but you've got to, you've got to just think about how you're
9 going to handle the traffic that's going to, the incremental
10 traffic that's going to come in that area.
11 Q Well, let me ask the question a slightly different
12 way. So according to what you understand happens in
13 Elkridge, there are more cars waiting to get into the
14 queuing area than the queuing area can accommodate. Is that
15 a fair statement?
16 A I don't know what you mean by a queuing area.
17 There is -- I mean, I don't want to be evasive about this.
18 I just don't know what you mean by the queuing area. There
19 is some interference between the queuing and the parking,
20 and I would like to leave it at that.
21 Q Okay.
22 MS. ROSENFELD: I have no further questions.
23 MR. GROSSMAN: All right. Ms. Duckett, do you
24 have questions?
25 MS. DUCKETT: No, sir.

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1 MR. GROSSMAN: All right. Then the --
2 MS. SHEARD: No, sir.
3 MR. GROSSMAN: I'm sorry?
4 MS. SHEARD: No, sir.
5 MR. GROSSMAN: Oh, okay, Ms. Sheard. Thank you.
6 BY MR. GOECKE:
7 Q Just briefly, Mr. Morrison. If the gas station
8 only anticipated selling 10 million gallons of gas as
9 opposed to the 12 million that Ms. Rosenfeld suggested, do
10 you think that then would reduce the potential traffic
11 issues at the site?
12 A I'm really not a traffic expert. I don't want to
13 give an opinion where I have no basis for knowing what it
14 is. I can, you know, based on my own inquiries, testify
15 about the absence of pollution and the presence of traffic
16 as a commercial problem within that particular shopping
17 center.
18 Q Yes.
19 A How much gasoline would cause, how much selling of
20 gasoline would cause a problem is something I really have no
21 expertise on and would not be -- I suppose you could solve
22 the problem by saying you're limited to three gallons of gas
23 per time.
24 MR. GROSSMAN: Mr. Morrison, do you claim any
25 expertise in pollution, in air pollution?

1 THE WITNESS: Not really. I do, I have put in a
2 lot of volunteer hours doing environmental work and received
3 an environmental award from the County Council, but I have
4 not specially done any, any work in pollution other than,
5 you know, I've seen the county when it had some foul air.

6 MR. GROSSMAN: Right. The reason I ask is that
7 you've made a statement regarding pollution based on
8 statements made to you by others --

9 THE WITNESS: Yeah.

10 MR. GROSSMAN: -- in the area. Even aside from
11 the hearsay nature of those statements, nobody objected to
12 it, but I don't know that I can reach any conclusions about
13 pollution from the perceptions of some people who haven't
14 necessarily -- they may not realize what pollution they've
15 been exposed to; for example, carbon monoxide, which is
16 odorless, and so on. So I don't know that I can reach any
17 conclusions, and the geography of this station may be
18 completely different from --

19 THE WITNESS: I understand, yeah.

20 MR. GROSSMAN: -- from what you observed. So
21 these are matters, the pollution matters, in which we've
22 already received extensive testimony from the applicant's
23 expert and we expect to receive testimony from the
24 opposition thing, which would be more directly on point on
25 the pollution.

1 THE WITNESS: Let me just suggest one thing,
2 though, that the -- they never mentioned, these two store
3 managers never mentioned that they had to close or had to
4 curtail operations because of the gas station's fumes or
5 anything like that.

6 MR. GROSSMAN: I understand that.

7 THE WITNESS: So that was, that was the point I
8 was trying to --

9 MR. GROSSMAN: I understand. Okay. Any
10 additional cross-examination?

11 MR. GOECKE: Just one last question.

12 BY MR. GOECKE:

13 Q I did think that I heard you say, Mr. Morrison,
14 that you wanted 16 pumps for the volume of gas at the gas
15 station. Was that correct?

16 A I'm suggesting that with the amount of -- that in
17 Elkrige --

18 Q Yes.

19 A -- the density of population plus the density of
20 road traffic is much -- is less, is considerably less than
21 what it would be in Wheaton, which is bounded by, you know,
22 which is transverse by three state highways. And therefore
23 I think that you're going to have a higher demand, because
24 of the population density, than, and the traffic density,
25 than you would in Elkrige, Columbia, and therefore I

1 suggest that 16 pumps would be, or maybe even more, might be
2 what's needed for the proposed station. And, you know,
3 there are, as I remember in the Planning Board hearing --
4 and my memory may fail me -- but I remember the other side
5 testifying that there were over 20 gas stations in the
6 Wheaton area as it were, and you know, 20 more pumps in the
7 same area, more or less, is not going to, to my thinking, is
8 not going to materially make a difference in the larger
9 Wheaton community as far as whether or not there is
10 pollution or isn't pollution or is, you know -- I mean, it's
11 not a material, it's not a major change in the character of
12 the area, I think.

13 Q Thank you.

14 MR. GROSSMAN: Okay.

15 MR. GOECKE: No further questions.

16 MR. GROSSMAN: All right. Thank you very much,
17 Mr. Morrison, for coming down --

18 THE WITNESS: And thank you for --

19 MR. GROSSMAN: -- and sharing your views, taking
20 your time from your busy day, and you're more than welcome
21 to stay here for the entire hearing and watch the other
22 festivities, the mud wrestling --

23 THE WITNESS: Maybe I'll come back for the 20th
24 session.

25 MR. GROSSMAN: All right. All right. Thank you.

1 Actually, before we go on to Mr. Core, I should mention that
2 I've gotten a very appropriate season's greeting card here
3 for Hearing Examiner. It says -- sent to my home -- it
4 says: Hear better this season. I'm not sure if they know
5 it because I'm a hearing examiner, in the sense that I do
6 it, or because they think I, I'm just getting old and I need
7 some, my hearing, because I seem to be getting an increasing
8 number of these letters from Sound Hearing Centers,
9 et cetera. Anyway, thought I'd share that with you all.

10 All right. Mr. Core, would you be so kind as to
11 step forward?

12 MR. CORE: Good morning, sir.

13 MR. GROSSMAN: Good morning. Thank you for coming
14 back. I'll remind you that you are still under oath.

15 (Witness previously sworn.)

16 THE WITNESS: Yes, sir.

17 MR. GROSSMAN: All right. We left off with the
18 question of cross-examination. I forget. Did we proceed
19 with cross-examination up to the point of the applicant, or
20 did we not have any? Does somebody remember the answer to
21 that, or I have to go to the transcript to answer that?

22 MS. ROSENFELD: I have a transcript, and I think
23 we were --

24 MR. GROSSMAN: There might have been questions.

25 MS. ROSENFELD: Mr. Adelman did some

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1 cross-examination, and --
2 MR. GROSSMAN: Right.
3 MS. ROSENFELD: -- we were coming back on the
4 14th. I believe, as I recall --
5 MR. GROSSMAN: It was just the applicant.
6 MS. ROSENFELD: -- it was just the, it was just
7 the applicant and it was --
8 MR. GROSSMAN: Right.
9 MS. ROSENFELD: -- specifically to cross-examine
10 on the two exhibits that they've been provided.
11 MR. GOECKE: That was for Mr. Silverman.
12 MS. ROSENFELD: Okay.
13 MS. HARRIS: Yes, we had not crossed Mr. Core at
14 all.
15 MR. GROSSMAN: No, I don't think they crossed --
16 MR. GOECKE: Yes, we had not.
17 MS. ROSENFELD: Oh, okay.
18 MR. GROSSMAN: -- Mr. Core at all.
19 MR. GOECKE: But it looks like you had, Michele.
20 MR. GROSSMAN: Right.
21 MS. ROSENFELD: Yes, I did Mr. Core's direct
22 examination.
23 MR. GROSSMAN: Right.
24 MS. CORDRY: Yes. Yes. We called Mr. Core as a
25 direct --

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1 MS. ROSENFELD: We called him. He's our witness.
2 We conducted his direct examination.
3 MR. GROSSMAN: Right, and then Mr. Adelman,
4 Dr. Adelman asked him some questions, as I recall. So I
5 think that the only thing left is the applicant's
6 cross-examination.
7 MS. ROSENFELD: Right. That's -- Ms. Harris: I
8 think, given the amount of materials, I think it's better to
9 postpone cross-examination. Mr. Core will be coming back on
10 the 14th.
11 MR. GROSSMAN: Okay.
12 MS. ROSENFELD: So he's your witness.
13 MR. GROSSMAN: All right. Then let's proceed with
14 Applicant's cross-examination.
15 MR. GOECKE: Thank you.
16 CROSS-EXAMINATION
17 BY MR. GOECKE:
18 Q And, Mr. Core, do you have copies of the documents
19 that you testified about last time?
20 A I do.
21 Q Okay. And I'd like to direct your attention to
22 Exhibit 352. This is --
23 A Can you give me the title?
24 Q -- the National Center for Environmental
25 Economics, the LUST survey.

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1 A Yes.
2 Q And if you would turn to page 34, please.
3 MR. GROSSMAN: Page 34, did you say?
4 MR. GOECKE: I did.
5 MR. GROSSMAN: Yes. Oh --
6 THE WITNESS: Yeah.
7 MR. GROSSMAN: -- that's the only page that's in
8 the record, actually, of that exhibit. So that makes that
9 pretty simple.
10 MR. GOECKE: Okay. I thought that they submitted
11 both the excerpts and then submitted the full copy of that
12 report.
13 MR. GROSSMAN: If they did, it's under a different
14 exhibit number, because 352 has only cover and that page,
15 and I don't remember off the top of my head.
16 MR. GOECKE: Okay.
17 MS. HARRIS: Well, there was discussion about the
18 whole report and whether we in fact had copies of it and
19 then he provided it, and for some reason I thought --
20 MR. GROSSMAN: Is there an exhibit that has the
21 whole report --
22 MS. HARRIS: Yes, that's what I'm looking for.
23 MR. GROSSMAN: -- because the only one that's in
24 here -- 351 is photograph, and then 352 -- let me look at
25 the exhibit list. It's labeled as Excerpt from the NCEE

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1 Working Paper 10-9, August 2010, page 36.
2 MR. GOECKE: Okay.
3 MR. GROSSMAN: And I don't see it as a -- but if
4 you have questions from elsewhere in the report, if that's
5 the --
6 MR. GOECKE: I do, yes.
7 MR. GROSSMAN: Then let's mark the whole report
8 and --
9 MR. GOECKE: If we had multiple copies, that would
10 make it easier at this juncture, but --
11 MR. GROSSMAN: All right.
12 MS. HARRIS: Do you have an extra copy of your
13 full report?
14 THE WITNESS: It's not my report. It's the --
15 MR. GROSSMAN: Right.
16 MS. HARRIS: The LUST report?
17 THE WITNESS: I have my copy.
18 MS. HARRIS: Okay.
19 BY MR. GOECKE:
20 Q A full copy of it?
21 A Yes.
22 Q Okay.
23 MS. HARRIS: We can certainly -- we can't provide
24 it right now, but we can provide it either later in the day
25 or tomorrow.

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1 MS. ROSENFELD: Well --
2 MR. GROSSMAN: All right. Well, let's hear what,
3 let's hear if this becomes a problem. Let's proceed, and
4 then if there's a problem, Ms. Rosenfeld, we'll deal with it
5 then.
6 MS. ROSENFELD: And I was just going to suggest,
7 if you're going to be asking questions on the full report,
8 maybe we could just take a couple-minute break and run some
9 extra copies so you have a copy.
10 MR. GROSSMAN: Well, I don't know how extensive
11 that questioning is. So I don't know if I want to take the
12 time for a break until I hear what's going on. So let's ask
13 what questions you have.
14 MR. GOECKE: It's not extensive --
15 MR. GROSSMAN: Okay.
16 MR. GOECKE: -- but it is, I think, important.
17 MR. GROSSMAN: Okay. I would expect you to ask
18 nothing else under the important question.
19 MR. GOECKE: I hope so. Well, let's start with
20 what everybody does have.
21 BY MR. GOECKE:
22 Q On page 34 --
23 A Sure.
24 Q -- this is the chart that I think you relied upon
25 to support your testimony that a new gas station could

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1 reduce property values. Is that right?
2 A That's correct.
3 Q And if we look at this chart, there's a couple of
4 columns here. One of the columns -- the middle column says,
5 Percentage Responding Affirmatively.
6 A Yes.
7 Q And I take that to mean that it's the percentage
8 of survey responders who thought that, for example, if we go
9 down to gas stations, that it would have a negative effect
10 on property values. Is that how you interpret that?
11 A The data evidence is that 75 percent of those
12 responding affirmatively indicates that there is a discount
13 of \$3,300.
14 Q Okay. Well, that's an average premium --
15 A Correct.
16 Q -- or discount.
17 A Right.
18 Q Right. And so 75 percent think that but that
19 means 25 percent of the responders did not think there was
20 any detrimental effect of a new station on property values?
21 A I can't agree with that because I don't know what
22 the responses were for those other 25 percent. They could
23 have been neutral to no opinion --
24 Q Okay.
25 A -- so we can't make that supposition. We can

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1 state clearly that the data, based upon the survey groups,
2 indicate that of those that responded affirmatively, 75
3 percent, indicate that the data shows that there is a
4 discount, a negative economic impact on homeowners of
5 \$3,300.
6 Q Okay. And so then we agree that 25 percent of the
7 people either thought it was neutral or had a positive
8 effect on home values?
9 A Or perhaps had no opinion. It's tough to say what
10 those 25 percent would have said. I was not in the room.
11 The data indicates --
12 Q Okay. I think you've answered my question,
13 Mr. Core. And then the line above that for the row Gas
14 Station Opens Two Miles Away, 33 percent of the responders
15 thought that actually had a beneficial effect on property
16 values?
17 A That's correct, that's what the data shows.
18 Q Okay. And now is the part where I'd like to --
19 A Placing this in context --
20 MR. GROSSMAN: Go ahead.
21 THE WITNESS: -- if I may, two miles is quite a
22 distance, particularly -- it's just, it's quite a distance.
23 I mean, there's -- so 2,000, two miles, rather, is -- what
24 does that get us? Ten thousand five hundred and sixty feet
25 away? Five thousand two hundred and eighty feet in a mile.

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1 MR. GROSSMAN: Yes.
2 THE WITNESS: So that's a big difference than a
3 quarter of a mile, which is what? About 1,250 feet or
4 roughly?
5 MR. GROSSMAN: Well, actually, this statistic is
6 as to a half a mile.
7 THE WITNESS: A half mile, yeah, a half mile, so
8 about 2,000 feet, and in many cases, we're talking much
9 smaller distances. You know, bringing this closer to home,
10 we're talking about 200 feet from those properties that are
11 going to be built on Mount McComas. I'm about 600 feet
12 away. So I just want to place that in context.
13 BY MR. GOECKE:
14 Q But you agree, don't you, that it's not only
15 distance that might affect the property values in terms of
16 the distance between the new gas station and a home?
17 A No, I think there are a lot of variables that are
18 at play.
19 Q It could be the, how nice the gas station looks,
20 for example?
21 A Oh, no, I don't think that at all. I mean, that's
22 like putting lipstick on a pig. That just doesn't work.
23 You put --
24 MR. GROSSMAN: Let's try to avoid that analogy.
25 THE WITNESS: Okay. Sorry about that.

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1 MR. GROSSMAN: It's too fraught with political
2 implications.

3 THE WITNESS: I'm sorry. I apologize. Let me try
4 to find a more neutral way of saying you can't, you can't
5 gussy that up. That's like putting a --

6 MR. GROSSMAN: That's all right. I understand
7 your point.

8 THE WITNESS: Yeah.

9 BY MR. GOECKE:

10 Q So, in your opinion, an unkempt, derelict-looking
11 gas station will reduce property values the same as a
12 brand-new, clean, orderly gas station?

13 A No, that's not my point of view at all. I'm --

14 Q So it does matter then, the condition of a gas
15 station?

16 A I'm suggesting the presence of a gas station is
17 just a negative impact. And it's not an assertion. It's
18 based upon evidence that's done by esteemed academic Ph.Ds.,
19 doing research for our flagship state university, that have
20 no vested economic interest in this proceeding.

21 Q By the esteemed college, you're talking about the
22 handful of people in the focus group?

23 A No. I'm talking about the work that was done by
24 Drs. Alberini and Guignet. Forgive me, I can't pronounce
25 the gentleman's last name. Dr. Alberini runs the -- you can

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1 find this on their website -- is the professor that runs the
2 National Center for Environmental Economics. Dennis --
3 someone perhaps more proficient in French could pronounce
4 that for me. I'm presuming it's French. Guignet?

5 MR. GROSSMAN: Probably close enough.

6 THE WITNESS: Probably close enough. Was doing
7 his Ph.D. there at the time, and he now works for the EPA on
8 staff -- I found this on their website -- at the National
9 Center for Environmental Economics. So when I talk about
10 the esteemed academics, I'm talking about the research study
11 that they did when they were at the University of -- done by
12 the University of Maryland for the EPA.

13 BY MR. GOECKE:

14 Q Okay. You're talking about the survey study they
15 took?

16 A I'm talking about the study that they did, this
17 paper, the National Center for Environmental Economics --

18 Q Yes.

19 A -- yes, there was a survey component of it, but
20 this paper was done under contract for the EPA by
21 economists, by the Center, by the University of Maryland.
22 So, yes, I will stand by the fact that these are esteemed
23 Ph.D. economists, one of whom was so good that he got picked
24 up by the EPA to be on staff at the N-C double E.

25 Q Well, when you say that the survey was a component

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1 of it, in fact, the survey is what you're entirely relying
2 on for your assertion that a new gas station could reduce
3 property values, right?

4 A So that's one component of the evidence that I
5 found as a layperson, doing research on this. You have to
6 have a way of being able to work through these problems, and
7 one of the ways of working through these problems is to
8 aggregate data and use different ways of looking at things.

9 Q Okay. And you didn't do any independent research
10 on your own in terms of property values in the area?

11 A I did not. I'm not here as an expert. I'm here
12 as a layperson, trying to inform the discussions on this
13 particular topic. And in my research I found that our
14 flagship state university, the University of Maryland, under
15 contract with the EPA through the National Center for
16 Environmental Economics, did a study in the State of
17 Maryland, attempted to determine if people could make
18 reasonable assumptions about how their property values would
19 be affected by both improvements and neighborhood changes.
20 And they found, in aggregate, that there was a negative
21 effect on home values when gas stations open. That's how
22 people perceive it. Then we went on to --

23 MR. GROSSMAN: A negative perception.

24 THE WITNESS: A negative perception. And, in
25 fact, perceptions drive markets. So that's what I'm

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1 showing.

2 BY MR. GOECKE:

3 Q Okay. Well, that's a good point. That's a good
4 point, actually. So a negative perception but, in reality,
5 they didn't find any actual decrease in home values, did
6 they?

7 A They did not go ahead -- they did not do that type
8 of study. This study was to look at how people react to
9 changes in their neighborhood, and they found that 75
10 percent of the folks responded affirmatively that there was
11 some sort of negative impact, and they came up with a
12 quantification. That proves --

13 Q Right. I think --

14 A -- that gas stations have a negative impact --

15 Q I think you've answered my question.

16 A -- on home values.

17 MR. GROSSMAN: Once again, it's their perception,
18 and you said that the perception drives the reality here;
19 maybe that's the case. Is there, I can't recall, was there
20 evidence introduced that in fact the, by you, that the
21 actual values were negatively affected as opposed to the
22 survey of their perceptions?

23 THE WITNESS: So it wasn't part of this particular
24 study --

25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- but as we look at the Michigan
2 State University study, they actually did look at
3 transactions and that was the support for their data point,
4 which looked at about a \$6,000 change.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: No, I wish that we had the limitless
7 resources of the world's fifth largest retailer to quantify
8 this --
9 MR. GROSSMAN: You don't have to qualify your
10 answer. I think you answered my question.
11 BY MR. GOECKE:
12 Q But you did have the limitless resources of
13 Google, and you didn't find any study that actually
14 analyzed, except for your contention that the Michigan State
15 study applies, that there was any actual reduction in home
16 values based on new gas stations opening near properties.
17 A Okay. Given that I'm not paid staff, I'm a
18 volunteer, I think making limitless assertions of Google is
19 a cheap shot and, I think, is arrogant, Mr. Goecke. But I
20 would say that we researched; we found -- I found nothing
21 that says there's no effect. The only things that I found
22 indicated that there is a negative effect on home values.
23 MR. GROSSMAN: Okay.
24 BY MR. GOECKE:
25 Q Okay. And now I would like to reference some of

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1 the portions of this study that --
2 MR. GROSSMAN: And what are the page numbers that
3 you're going to reference, Mr. Goecke?
4 MR. GOECKE: I'm going to reference pages C-5 --
5 THE WITNESS: C-5?
6 BY MR. GOECKE:
7 Q Yes. C-11, C-15, C-20, and that's it.
8 MR. GROSSMAN: Okay. I'm going to take
9 Ms. Rosenfeld's advice here and break for a few minutes to
10 give you the opportunity to make copies of those pages,
11 enough for -- I guess 10 copies ought to do it here. I
12 don't even know if we need 10, but just so we make sure that
13 there are enough copies here.
14 MR. GOECKE: Okay.
15 MR. GROSSMAN: You can ask my staff.
16 MR. GOECKE: Okay, thank you.
17 MR. GROSSMAN: So we'll break for five minutes,
18 until 10:45.
19 (Whereupon, a brief recess was taken.)
20 MR. GROSSMAN: Ms. Harris, are you ready?
21 MS. HARRIS: Yes, we are.
22 MR. GROSSMAN: Okay. Both sides, everybody ready?
23 Mr. Core?
24 THE WITNESS: Yes, sir.
25 MR. GROSSMAN: Okay, good. Shall we mark these

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1 additional pages 352(a), Exhibit 352(a)?
2 MR. GOECKE: That's fine.
3 MR. GROSSMAN: And --
4 MR. GOECKE: And I think what we'll do,
5 Mr. Grossman, if we may, is submit the entire document after
6 the hearing, but just for convenience today, we just copied
7 the pages that we intend to ask questions about.
8 MR. GROSSMAN: Okay. How big is that document?
9 MR. GOECKE: It's not huge, but it's probably
10 about 40 pages.
11 MR. GROSSMAN: Okay. We are killing the forest
12 here, you realize?
13 MR. GOECKE: I know we are.
14 THE WITNESS: You know, you may get four digits on
15 your --
16 MR. GROSSMAN: Please, Mr. Core. I think you
17 mentioned that possibility the last time, or somebody did.
18 It's frightening to think about.
19 THE WITNESS: Well, if it offends you, it was
20 definitely somebody else.
21 MR. GROSSMAN: Right, fair enough. It doesn't
22 offend me; it frightens me.
23 THE WITNESS: Yes.
24 MR. GROSSMAN: All right. So this will be pages
25 C-5, C-11, C-15, and C-20 from Exhibit 352. All right. You

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1 may resume the cross-examination.
2 (Exhibit No. 352(a) was marked
3 for identification.)
4 MR. GOECKE: Sure, and I'm sorry, one more thing.
5 It might be helpful to have a few more -- the pages I've
6 handed out are the ones I'm going to ask questions about --
7 MR. GROSSMAN: Right.
8 MR. GOECKE: -- but because they're now taken out
9 of context, there are a few other pages that might be
10 helpful to provide as well.
11 MS. ROSENFELD: Mr. Grossman, I think having a
12 copy of the entire report in the record before the
13 questioning begins would be --
14 MR. GROSSMAN: Helpful?
15 MS. ROSENFELD: -- most appropriate and helpful.
16 MS. HARRIS: They produced the report.
17 MR. GOECKE: I don't disagree. We were just
18 trying to --
19 MR. GROSSMAN: Okay.
20 MR. GOECKE: -- minimize the inconvenience to your
21 staff and --
22 MR. GROSSMAN: All right. Do you have it all in
23 loosely? Can you proceed now with having it copied, without
24 -- now that you have the copies of these pages you're going
25 to ask questions from and --

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1 MR. GOECKE: I can proceed.
2 MR. GROSSMAN: -- continue the cross-examination
3 while my staff is doing that?
4 MR. GOECKE: Sure.
5 MR. GROSSMAN: Okay.
6 MS. ADELMAN: Mr. Grossman, these additional pages
7 are Exhibit 371? Is that correct?
8 MR. GROSSMAN: No. They're Exhibit 352(a). I
9 just took the --
10 MS. ADELMAN: 352(a).
11 MR. GROSSMAN: -- original exhibit since that'll
12 keep them all together with the original exhibit.
13 MS. ADELMAN: Thank you.
14 MR. GOECKE: It's more than 40 pages. This is how
15 thick it is. Let's do this: Let's --
16 MR. GROSSMAN: All right. Well, it's also tabbed,
17 which makes it not easy to copy.
18 MS. ROSENFELD: Perhaps you can continue the
19 cross-examination on the other two documents while that's
20 being copied and then resume cross-exam.
21 MR. GROSSMAN: Well, it's tabbed. They'd have to
22 take off all the tabs too.
23 MR. GOECKE: Yes. It's going to take a while.
24 MR. GROSSMAN: So let's just proceed with your --
25 THE WITNESS: It's on the Internet. You know,

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1 maybe you can just have someone print a copy.
2 MR. GROSSMAN: All right. Can we download it from
3 the Internet? Let's just go ahead with the
4 cross-examination.
5 MR. GOECKE: Okay.
6 MR. GROSSMAN: Go on.
7 MR. GOECKE: Okay.
8 BY MR. GOECKE:
9 Q So, Mr. Core, what I was hoping to ask you about
10 was some of the documents that are contained in the
11 appendices or exhibits of Exhibit 352, and if I could direct
12 your attention to page C-5, which is a summary of Focus
13 Group 1 in terms of the questions and answers that that
14 focus group discussed.
15 A Sure. Okay. I see the page.
16 Q And if you could go down to the fifth question --
17 A Okay.
18 Q -- it says: To what extent does a gas station
19 affect property values? Do you see that?
20 A I do.
21 Q And then the notation says: The general feeling
22 was that it doesn't, dash, you'll find gas stations
23 anywhere, comma, and there may be some benefits associated
24 with them. Did I read that correctly?
25 A Yeah, you did read that correctly.

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1 Q And the next question says: Let's talk about the
2 gas stations that -- let's talk about the gas station that
3 is nearest to your home. Does it affect your property
4 value, in the positives and negatives? Do you see that?
5 A I do see that.
6 Q And the response was that most respondent felt
7 that having a gas station nearby does not affect property
8 values. One, Wayne, added that having a gas station close
9 to you is a convenience. Susan thought the same until this
10 focus group. Did I read that correctly?
11 A You did read that correctly.
12 Q So according to Focus Group 1, there was a
13 consensus that gas stations do not negatively affect gas
14 stations, right?
15 A That is correct.
16 Q And that, in fact, one of the people, Susan
17 thought that until this focus group. Do you agree that that
18 implies the focus group changed her mind about how gas
19 stations might affect property values?
20 A So I wasn't in the room; so I can't comment on how
21 that particular participant dealt with the question or felt
22 about the question, but I'll respond, placing this in
23 context, with three points: one, these were the
24 observations of those individuals in that group. There were
25 more than two or three people in a group. So that may not

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1 be indicative of the entire universe of opinions.
2 Q Well, there were nine people in the group.
3 A Two, I would suggest that this was a rural group
4 when you place it in context, so not an urban environment
5 per se; so the distances were greater than -- were likely to
6 be more than, further, more than what we'll experience in
7 this community. And, three, I'll point out on page 29 --
8 because, again, I think it's important to have the entire
9 report in the record -- on page 29 you get an evolution of
10 how this study evolved. And I'll read, if I may: It's
11 important for us to understand whether people are capable of
12 assessing the impact of various factors on home values, and
13 so we first ask people to tell us if certain home
14 renovations are likely to affect the value and, if so, by
15 how much. We then ask people to consider changes in the
16 neighborhood, including a new school, a new gas station, and
17 a fast-food restaurant. And when you place the entire study
18 in context, you see that the survey instrument clarified
19 itself and evolved so that we could get solid data, so that
20 the researchers could get a data set that they were
21 comfortable with, and this is the important quote: Since
22 earlier groups suggested that a gas station may be an
23 amenity and a disamenity at the same time, we asked the
24 respondents to consider a gas station within one-half mile
25 and one within two miles of their home so that they could

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1 get -- well, okay, that's the end of the quote.
2 So placing it in context, I will acknowledge that,
3 one, those quotes that you read were the experiences of
4 those individuals; two, that they were likely rural; and,
5 three, the researchers acknowledged that there was some
6 dissidence in the process, so they clarified the questions
7 as they conducted the study.
8 MR. GROSSMAN: The study that's reflected on page
9 34 that was already in the record in Exhibit 352, how many
10 people are responding here? What's the total number of
11 people responding?
12 THE WITNESS: I'm sorry. I don't have the total
13 universe on that.
14 MR. GROSSMAN: Do you have some idea of the size
15 of the group that we're talking about? I mean, are we
16 talking about 10 people, or are we talking about a thousand
17 people? What are we talking about in terms of percent
18 responding?
19 THE WITNESS: I don't have that number.
20 MR. GROSSMAN: I guess it was earlier couched in
21 terms of focus groups. So --
22 THE WITNESS: Yes, it was a focus group component.
23 MR. GROSSMAN: So we could be talking about five
24 to 10 people?
25 THE WITNESS: Yeah --

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: -- that could be.
3 MR. GOECKE: On page 7, Mr. Grossman, which,
4 again, we'll submit, it says that for each of the focus
5 groups, the facilities were instructed to recruit such that
6 eight to 10 participants would attend each group --
7 THE WITNESS: Right.
8 MR. GROSSMAN: Okay.
9 MR. GOECKE: -- and the questions and answers on
10 C-5 relate to Focus Group 1, which had nine participants in
11 them.
12 MR. GROSSMAN: Right. And what about the ones on
13 page 34?
14 MR. GOECKE: It's a little unclear. It looks like
15 there were 50 total people surveyed, but it's not clear to
16 me what, you know, what those numbers are based on, whether
17 it's the entire group or subsets of the group or -- because,
18 as Mr. Core pointed out, it sounds like they changed the
19 questions over time; it sort of evolved.
20 MR. GROSSMAN: Okay.
21 BY MR. GOECKE:
22 Q One point, Mr. Core. You said you think it's
23 important to put the whole document in the record. Why then
24 did you not put the entire document in the record?
25 A I had a copy. I provided a copy when I was here

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1 last. So I don't know what happened to that.
2 Q Okay. Moving along to page C-11, we have some
3 more bullet points of summary impressions from the focus
4 group, and again, this is Focus Group 1.
5 A What page are we on, sir?
6 Q C-11. And if you go to the fifth bullet point
7 from the bottom of the page, one of the summary impressions
8 says that people can name pros and cons of being close to a
9 gas station, but the ability to buy gas and the convenience
10 suggest that for most of them being close, within a mile or
11 so, of a gas station is a plus. And then the next bullet
12 point says: People don't seem to associate proximity to a
13 gas station with any particular effect on property values.
14 Did I read that correctly?
15 A Yes, you did read those correctly.
16 Q Thank you.
17 A Was there a question?
18 MR. GROSSMAN: I guess the question was, did he
19 read it correctly.
20 BY MR. GOECKE:
21 Q You answered it.
22 A Okay.
23 Q Moving along to page C-15, the third question from
24 the bottom, it asked: What are the advantages of living
25 near a gas station? Do you see that?

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1 A What are the advantages?
2 Q Of living near a gas station.
3 A Right.
4 Q And then the answers there -- and if you'd bear
5 with me, I think this is Focus Group 2. Yes, this is Focus
6 Group 2 as set forth on page C-13 and that also identifies
7 nine participants. These respondents stated, one, gas; two,
8 auto service; and, three, other conveniences.
9 A Yes.
10 Q One respondent said three blocks is too close but
11 one mile is a good distance. Another said a nearby station
12 is desirable if clean and well lit.
13 A Right.
14 Q Did I read that correctly?
15 A You did read that correctly.
16 Q So these respondents have a different opinion than
17 you do about whether or not a clean and well-lit gas station
18 is more desirable than one that is unkempt and not well run?
19 A Great. So, again, I will acknowledge that those
20 are the perspectives of the individuals that participated in
21 that, and I don't think the quality of the, or the amenities
22 or the character of the gas station has ever been in
23 question. My point here is that any gas station on this
24 site being added after the fact is not desirable and will
25 have a negative impact on my home value. And as we go

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1 further down or -- did you want to continue?
2 Q Go ahead.
3 A Okay.
4 Q Do you have more to say?
5 A Yeah. No, I'm simply saying that -- and they also
6 say that three blocks is too close, and in some cases, this
7 gas station will be within three blocks of homes.
8 Q But the point is, it varies from person to person,
9 doesn't it?
10 A That is correct, and focus groups, when you're
11 able to work with that info and then you do some survey
12 data, and the data are that 75 percent of the respondents
13 believe that there'll be a negative impact, and they were
14 able to quantify it around the figure of about \$3,300.
15 Q But, again, this data is speculative; it doesn't
16 reflect actual market conditions anywhere?
17 A And nor did Cronyn's report.
18 Q So you agree that this doesn't reflect any actual
19 market conditions?
20 A No. I do believe that this reflects the
21 perceptions of individuals that were proven by the
22 researchers to be able to assess how improvements to their
23 homes affect the property value and how the changes in their
24 neighborhood affect the property value.
25 Q If you can turn to page C-20, please, the fourth

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1 bullet point --
2 A Yeah. Oh, did you want to read what are the
3 disadvantages of living near a gas station?
4 Q If you can just turn to --
5 MR. GROSSMAN: Well, he's asking the questions.
6 You can, if your attorney who called you wants to ask you
7 questions --
8 THE WITNESS: Okay. I'm sorry. I apologize, sir.
9 BY MR. GOECKE:
10 Q C-20, please.
11 A C-20.
12 Q Fourth bullet point from the bottom.
13 A Right.
14 Q And so these are more a summary of bullet points
15 of Focus Group 2, and I'll read that to you. It says: The
16 general consensus was that a nearby gas station would
17 decrease home values but only if within sight of a home.
18 This visual effect was also mentioned for cell towers and
19 small factories. And did I read that correctly?
20 A You did read that correctly.
21 Q And so, again, this focus group thinks that if you
22 can't see a gas station, it's not likely to decrease the
23 value of your home, right?
24 A That's what is in the report.
25 Q Okay.

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1 A I did check with the researcher who, Dr. Alberini,
2 and I asked her about that --
3 MR. GOECKE: Objection. Hearsay.
4 MR. GROSSMAN: Okay. I'll -- let's hear what he
5 said, and then we'll decide whether or not to allow it in.
6 What did this researcher say?
7 THE WITNESS: I asked her about a fence, and she
8 said she didn't recall that particular respondent, but there
9 was no indication that a fence would just be a game changer
10 and mitigate it. You know, not being able to see it is not
11 going to make it go away or its presence being unknown.
12 MR. GROSSMAN: All right. Yes, I'm going to
13 sustain the objection to that. I'm not sure that the actual
14 statement adds anything, one way or the other; but I can see
15 where it is, if offered to prove the truth of what's
16 asserted therein, objectionable hearsay. So I will sustain
17 the objection.
18 MR. GOECKE: Thank you. And, obviously, our other
19 concern was that it's not a fence; it's a wall --
20 MR. GROSSMAN: Right. I mean, it's --
21 MR. GOECKE: -- and there's the buffer zone and
22 the trees and there's lots of other criteria.
23 MR. GROSSMAN: There are lots of reasons why we're
24 not allowing it.
25 MR. GOECKE: Thank you.

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1 MR. GROSSMAN: While Mr. Goecke is looking, was
2 there any -- one of the issues that had been raised --
3 THE WITNESS: Sure.
4 MR. GROSSMAN: -- by various opposition members
5 was, in terms of critiquing other reports, was whether or
6 not there was error analysis. Was there any error analysis
7 done in this study indicated in the report that you've
8 relied on here?
9 THE WITNESS: So I'm not testifying as an
10 expert --
11 MR. GROSSMAN: No, I understand.
12 THE WITNESS: -- and I don't know how to answer
13 that question.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: So in terms of the research that
16 we've done, what we can find shows that there's a negative
17 effect on home values.
18 MR. GROSSMAN: Well, I'm talking about --
19 THE WITNESS: Yeah.
20 MR. GROSSMAN: -- the specific report we're
21 talking about here. I'm not addressing any other ones --
22 THE WITNESS: Sure. Yes, sir.
23 MR. GROSSMAN: -- because I, they're not in front
24 of me right at this second.
25 MR. SILVERMAN: Mr. Grossman --

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1 MR. GROSSMAN: Yes.
2 MR. SILVERMAN: -- if I, if we had the whole
3 report in front of us, we could, at some point, appropriate
4 point, answer that question, but without it it's really
5 difficult.
6 MR. GROSSMAN: Well, the report was introduced by
7 the opposition. So I can't, I can't fault the applicant for
8 not giving you a copy of the report. This was introduced by
9 you or by your side. All right. Go ahead, Mr. Goecke.
10 MR. GOECKE: Thank you.
11 BY MR. GOECKE:
12 Q Okay. Touching upon something you just brought
13 up, Mr. Cronyn's report, so again, even though you haven't
14 performed your own analysis, you do have several criticisms
15 of Mr. Cronyn's report, correct?
16 A Correct.
17 Q And one of them, you testified, is that his
18 methodology is flawed and lacking. Is that how you feel?
19 A Correct, I do.
20 Q And that's based in part on your opinion that
21 Mr. Cronyn should have done appraisals of actual properties?
22 A Correct.
23 Q Okay. And you testified that an appraisal model
24 is much more rigorous, that is, much more regulated, would
25 have been a much more helpful and accurate way of gauging

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1 the impact of the community here. What's your authority for
2 that opinion?
3 A What's my authority for that opinion? You know,
4 I'm not --
5 Q I mean, is that based --
6 A -- testifying on any authority. I'm testifying as
7 a homeowner, as a person that has -- as a reasonable
8 layperson who knows how, you know, the appraisal process is
9 done, you know, having been, purchased, bought and sold
10 homes, having seen those forms. You know what? That's a
11 reasonable expectation that a reasonable person could
12 have --
13 Q Okay. So this --
14 A -- and when I look at Cronyn's report, I don't
15 feel that he dealt with the situation that we're dealing
16 with here. We're talking about after the fact --
17 Q Okay. I think you've answered my question.
18 MR. GROSSMAN: Well, I'll let him finish. Go
19 ahead.
20 THE WITNESS: Thank you, sir. We're talking about
21 adding an extremely large gas station, the largest in the
22 county, multiple factors times the size of an average gas
23 station, after the fact, on a parcel next to a residential
24 neighborhood, and I did not see that dealt with in
25 Mr. Cronyn's report. So I don't see that that's relevant to

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1 what we're doing here.
2 MR. GROSSMAN: Okay.
3 BY MR. GOECKE:
4 Q Okay. You say you're very familiar with the
5 appraisal process. Tell us what an appraisal process
6 involves.
7 MS. ROSENFELD: Objection. He's not here to
8 testify on appraisals or what those standards are.
9 MR. GROSSMAN: No, I think it's a fair question.
10 I'll overrule it. I mean, he's talked about why an
11 appraisal process would be much more desirable than the
12 economic analysis provided by the applicant. That's a
13 perfectly legitimate question. Do you know what's a, what
14 does the appraisal process consist of?
15 THE WITNESS: Sure. No, I'm not a licensed
16 appraiser. I'm not a real estate agent. I'm just a fellow
17 that has bought and sold some homes. And with the appraisal
18 process, they have to go through and do inspections of the
19 property, they have to do inspections of the neighborhood,
20 they need to look at comps, they need to find situations
21 that are analogous to determine the value of the subject
22 property. And when you do that, you have to look at the
23 neighborhood, you have to look at roadways, you look at, you
24 know, characteristics of, you know, the housing stock, the
25 things that are nearby, things that are affecting, you know,

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1 generally, the neighborhood. So -- and it's, you know, it's
2 part common sense, but it's also more regulated because, you
3 know, our experience in this country, again, just testifying
4 as a layperson who is, you know, reasonably well educated,
5 you know, you go back to the housing boom and bust in this
6 country in the late '80s. There were some problems with
7 appraisals then. Things got more rigorous after the
8 Resolution Trust Corporation and the FDIC got involved,
9 after FIRREA in 1988. Okay. Then things got a little
10 tighter, you know, even in the last couple of years, because
11 of problems with appraisals. You know, so things are a
12 little more tighter, but generally speaking, it's a more
13 rigorous process.
14 MR. GROSSMAN: Well, they got a lot looser, did
15 they not --
16 THE WITNESS: They got looser --
17 MR. GROSSMAN: -- by 2006 and then --
18 THE WITNESS: Yeah. Then they got tightened.
19 These things are cyclical. These things are cyclical --
20 MR. GROSSMAN: Okay.
21 THE WITNESS: -- but, you know, you look at the
22 homes, you take some pictures, you assess what's in the
23 neighborhood, and then they come up with a judgment on what
24 it's worth --
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: -- and that's more rigorous and --
2 BY MR. GOECKE:
3 Q And they're -- I'm sorry.
4 A No, no. I'm --
5 Q Thank you. And so they're used to estimate the
6 value of a home at a given point in time, correct?
7 A Yes.
8 Q And not, they're not forward-looking; they're what
9 the home is worth today?
10 A Again, I, there's, I can't comment on the scope,
11 if they're -- my experience has been that it's for a
12 transaction. I do not know what other elements are facted
13 into an appraiser's requirements for determining value. I
14 don't know if appraisers are required to look at master
15 plans. I don't know if appraisers are required to pull and
16 look at permits for items that have been planned. I can't
17 comment on that. I can only comment on my experience.
18 Q Okay. So in your --
19 MR. GROSSMAN: Well, let me ask you the impact of
20 that question, because I'm not sure where that gets us. You
21 say that if you used an appraisal approach, that would not
22 be sufficiently predictive in the sense that an economic
23 approach is? Is that what you're suggesting in your
24 question?
25 MR. GOECKE: That is my suggestion, that -- as

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1 Mr. Core pointed out, one of the components of an appraisal
2 is to look at comparable sales: what sold in the
3 neighborhood, similar homes, recently. And so if the
4 testimony is that well --
5 MR. GROSSMAN: He seemed to have caused a certain
6 amount of dislocation outside of the hearing room by this,
7 his suggestion. All right. Go ahead. I'm sorry.
8 MR. GOECKE: It's okay. I have that effect from
9 time to time.
10 MR. GROSSMAN: All right.
11 MR. GOECKE: If we were to do an appraisal of
12 Mr. Core's home today, for example, it wouldn't capture any
13 effect, pro or con, of a gas station being nearby because it
14 doesn't exist. And so for Mr. Cronyn or anyone to do an
15 appraisal of these properties today, there wouldn't be any
16 reflection of --
17 MR. GROSSMAN: Right, clearly not of the
18 properties that are next to the site, but I guess if you
19 were doing what the, your expert's study, Mr. Cronyn's study
20 did, he looked at, he compared the economic analysis of what
21 he considered comparable situations.
22 MR. GOECKE: Yes.
23 MR. GROSSMAN: What if you did an appraisal
24 analysis in comparable situations -- would that not be
25 predictive?

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1 MR. GOECKE: Well, I think what you would have to
2 do is you would have to have a baseline appraisal for a home
3 and then the gas station comes in and then you do another
4 appraisal. And so you have --
5 MR. SILVERMAN: Objection. Is he testifying as an
6 appraisal expert?
7 MR. GROSSMAN: No. He's answering my question,
8 Mr. Silverman --
9 MR. SILVERMAN: Okay. All right.
10 MR. GROSSMAN: -- which he can certainly do.
11 MR. SILVERMAN: Okay.
12 MR. GOECKE: And so there are so many variables
13 within each home in terms of was the kitchen updated, was,
14 you know, is it on a busy street, is it further down the
15 street. Even many homes on the same block can have a
16 variety of values. And so to get to that level of detail
17 between what effect a gas station had on each of these
18 properties would require a lot of data that just doesn't
19 seem to exist.
20 MR. GROSSMAN: Well, I don't know that it doesn't
21 exist. I guess you --
22 MR. GOECKE: In this hearing, I should say.
23 MR. GROSSMAN: Well, I mean, you've submitted an
24 economic analysis and not an appraisal analysis. I guess
25 I'll wait to hear if there is any other evidence from any

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1 source as to why or if an appraisal process is possible in
2 this kind of situation for comparative purposes and whether
3 or not it's superior to the economic analysis that was done
4 here. Okay.
5 THE WITNESS: So --
6 MR. GROSSMAN: There's not a question pending
7 before you at this point.
8 THE WITNESS: The economic --
9 MR. GROSSMAN: Well, there's not a question
10 pending before you right now.
11 THE WITNESS: Yes, sir.
12 MR. GROSSMAN: But I know you're a clever man and
13 you'll be able to work that answer in at some point, I'm
14 sure.
15 THE WITNESS: Well, that's a high compliment
16 coming from you, sir.
17 MR. GROSSMAN: Thank you.
18 BY MR. GOECKE:
19 Q Okay. Mr. Core, you also testified that
20 Mr. Cronyn's report is flawed because, in your opinion, it
21 minimizes the impacts of the mall. Is that right?
22 A Pardon?
23 MS. ADELMAN: Minimizes what?
24 BY MR. GOECKE:
25 Q Is one of your critiques of Mr. Cronyn's report is

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1 that it minimizes the impacts of the mall in your
2 neighborhood?
3 A I don't recall making that --
4 Q Okay.
5 A -- statement.
6 Q Okay.
7 A I believe, if I may, my main criticism with
8 Mr. Cronyn's report is, fundamentally, that it does not deal
9 with the situation that we're facing -- ex post facto, after
10 the fact, putting a mega gas station next to homes. Okay?
11 That's a, that is a major externality. That's a big deal.
12 That is going to drop the baseline. The economic analysis
13 assumed correctly that pretty much over time assets
14 appreciate. You know, that's generally how things work.
15 We're talking about changing the baseline.
16 So let's say I'm here now, right? The data shows,
17 okay, from the University of Maryland and, frankly, from
18 Michigan State University that when you open something like
19 this, it drops. Okay? So this distance here, that delta is
20 the negative economic impact on me and my neighbors. So
21 Cronyn's report didn't deal with that, didn't deal with the
22 after-the-fact change, fundamental change in the
23 neighborhood and its effect on my property value.
24 MR. GROSSMAN: Okay. See, I told you you'd work
25 it in.

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1 THE WITNESS: Well, I might have other points.
2 BY MR. GOECKE:
3 Q You've testified that you can hear trucks at the
4 mall. Is that right?
5 A Yeah.
6 Q Do you also hear traffic, not -- excluding
7 delivery trucks, just automobiles traveling by?
8 A You know, if the -- I love Harley Davidsons on the
9 ring road. I'm joking. Yeah, I hear, you know, like cars
10 and motorcycles that, you know, their exhaust systems maybe
11 quite aren't what they should be, or their mufflers, I
12 guess. So the answer is yes, and I wanted to provide that
13 specific context.
14 Q Okay. And so my understanding is that relying on
15 part of this traffic that's going to come to the Costco gas
16 station, you're saying that that additional traffic will
17 fundamentally change the mall. How can it fundamentally
18 change the mall if you can already hear the traffic that's
19 there?
20 A Yeah. You know, right now my experience is that
21 the mall is just a normal mall, is fine, there's some
22 traffic. You start adding a significant volume of traffic,
23 I think that changes the experience. And it's also bringing
24 a gas station in next to homes, and I just, I feel that's a
25 fundamental change. I don't want to, you know, be any -- I

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1 don't think I need to add any more words to that other than
2 the fact that you bring a gas station, a mega gas station
3 that's the largest in the county, with that type of traffic,
4 I think that's, I think that's a material change in what's
5 happening in my, you know, on my neighbor's property.
6 MR. GROSSMAN: I understand your point.
7 BY MR. GOECKE:
8 Q And so is it the gas station or the size of the
9 gas station?
10 A So I think it's a whole systems approach here.
11 You need to look at the fact that it's a gas station. Okay.
12 That's a problem to begin with --
13 Q Okay. So let me stop you there.
14 A -- it's a mega --
15 Q If I may. So a gas station would fundamentally
16 change the neighborhood, in your opinion, any gas station?
17 A I believe a gas station is a material change in
18 that part of the mall --
19 Q Thank you.
20 A -- so, yes, that's a big change. Then you add all
21 the traffic, all the non-inherent effects that the Planning
22 Board aptly and correctly identified.
23 Q But if a gas station didn't go there and some
24 other business --
25 MR. GROSSMAN: By the Planning Board, you're

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1 talking about the technical staff?
2 THE WITNESS: The technical study, forgive me,
3 sir.
4 MR. GROSSMAN: Right. Okay.
5 THE WITNESS: Again, I appreciate some forbearance
6 to being a layperson.
7 BY MR. GOECKE:
8 Q If another store or restaurant was placed there
9 instead of a gas station, that enterprise would generate
10 traffic as well, right?
11 A Yeah, that would generate some traffic. People
12 would drive in, they'd park, they'd transact their business,
13 and then they'd leave. It would not be this, effectively, a
14 stationary traffic jam on my neighbor's parcel, within -- I
15 just think that's a big difference. You've got, you're
16 going to have what, seven, eight, nine, 10 hours of traffic,
17 you know, queued up. That's a big difference. That's very
18 different than having some stores opening up: people drive
19 in; they transact their business; they leave.
20 Q Yes. When there's a traffic jam at the mall, are
21 you more likely to hear that than other days? I guess what
22 I'm asking is, can you hear a traffic jam at the mall?
23 A Not unless -- well, you know, when people start
24 hitting their horns, because everyone's so stressed out in
25 Montgomery County, yeah, you hear the horns, but I'm not

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1 sure I understand where you're going with this.
2 Q No, that's my question. Do you hear a lot of horn
3 honking in the mall?
4 A No.
5 Q Even when there's a lot of traffic?
6 MR. GROSSMAN: I didn't quite understand your
7 distinction between stores, where people come, they do their
8 business and they leave, and a gas station. I mean, I
9 understand your differentiation of a gas station from other
10 things but not in that context. I mean, people come to the
11 gas station, they do their business, and they leave --
12 THE WITNESS: Yes.
13 MR. GROSSMAN: -- just like a store. I don't
14 understand that distinction between gas stations and stores.
15 THE WITNESS: You know, I just think it's a, I
16 feel it's a, there'll be less -- I think there'll be less
17 activity. And --
18 MR. GROSSMAN: People arrive to a store, they
19 park --
20 THE WITNESS: They park. They're not --
21 MR. GROSSMAN: -- they shop, they leave.
22 THE WITNESS: They're not --
23 MR. GROSSMAN: People arrive at a gas station,
24 they --
25 THE WITNESS: They park. They're idling --

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: -- spewing fumes. Traffic is
3 spilling out onto the ring road.
4 MR. GROSSMAN: Okay. All right.
5 THE WITNESS: I believe those are different
6 conditions.
7 MR. GROSSMAN: I understand. Okay. Mr. Goecke.
8 BY MR. GOECKE:
9 Q Mr. Core, did you have a chance to review
10 Mr. Sullivan's report as it pertains to his noise study?
11 A I looked at it months ago, but I wouldn't say that
12 I reviewed it or that I'm here to testify on that.
13 Q Okay. But you're aware then that he concluded
14 there would not be any noise violations at the residential
15 properties near the mall?
16 A He concluded that there would be, as I understand
17 it, that there would be, like, no effect. But I just don't
18 see where that's actually credible or reliable because, if
19 you're bringing more tanker trucks into the area, that's,
20 those are things that we're going to hear. I definitely
21 hear those. I hear the tractor-trailers all the time. So,
22 you know what? He, I think he was just wrong on that point
23 too. I mean, it's just common sense. If you stand in, you
24 know -- I just think it's common sense. I hear them. More
25 trucks, you're going to hear it; that's more noise.

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1 Q Yes. You're talking about the tractor-trailers
2 delivering things to the warehouse or other sites on the
3 mall?
4 A Yeah. Those are the trucks that are going there
5 now, presumably.
6 Q Okay. All right. And what's your understanding
7 of how many gas deliveries there'll be to the gas station
8 each day?
9 A A couple an hour. I don't know. Why don't you
10 tell me?
11 Q Is that your understanding? Is that what you're
12 concerned about, a couple of -- a couple of deliveries per
13 hour?
14 A No. You asked me a question about can I hear
15 them, and I answered that affirmatively.
16 Q Right. Right. And then you're concerned about
17 the delivery -- the noise of the deliveries to the gas
18 station, right?
19 A Noise, traffic, idling, the whole systems, when
20 you look at the whole thing.
21 Q I understand, but right now I'm just focusing on
22 noise. And specifically, you're concerned about, part of it
23 is the noise from the delivery trucks, right?
24 A That's a, yes, part of it.
25 Q And your understanding is that there's going to be

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1 one or two delivery trucks per hour?
2 A No. I don't know what the actual number is.
3 Q Okay.
4 A Can I ask --
5 MR. GROSSMAN: Yes, sir. I'm sorry.
6 THE WITNESS: Okay. No, forgive me. I apologize,
7 sir. Now, I can say, you know, you start --
8 MR. GOECKE: One moment, please, Mr. Grossman.
9 MR. GROSSMAN: Sure. Take your time, Mr. Goecke.
10 THE WITNESS: How old is the granddaughter?
11 MR. GROSSMAN: Pardon me?
12 THE WITNESS: How old is the granddaughter?
13 MR. GROSSMAN: Oh, the one we just, I just
14 e-mailed is just a couple of months.
15 THE WITNESS: Great.
16 BY MR. GOECKE:
17 Q Mr. Core, you testified that you think if the
18 Costco gas station opens, it will devalue your home by at
19 least \$25,000. Do you stand by that opinion today?
20 A So that's what I testified to?
21 Q Yes. I'm just trying to get, was that an
22 arbitrary number, is that based on something, is that a
23 worst-case scenario? Where did you get that number from?
24 A That was my feeling.
25 Q Yes. And the surveys that you relied on, the

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1 average devaluation in the speculative surveys was much less
2 than \$25,000, wasn't it?
3 A Correct. We would also have to look at the
4 baseline for those to put those in context; so I would have
5 to perhaps do a little more analysis. So my home I
6 purchased for \$460,000 a couple of years ago. Homes are
7 currently going for about 429,000. I wish it had gone the
8 other direction. But these homes that are cited, as I
9 understand, okay, they're looking at counties in Maryland,
10 rural counties, okay, that the property values are less, and
11 anyone who's been to Michigan lately knows that property
12 values aren't quite so great up there in that, and when you
13 look at the numbers there, I think they're talking a lower
14 value on the property base. So if you're looking at 6,000
15 on a home that's 170,000, you start doing the math on it,
16 you probably get pretty close to my gut feeling.
17 MR. GROSSMAN: Okay.
18 BY MR. GOECKE:
19 Q Well, in the EPA study, they don't talk about a
20 baseline for home values at all, do they?
21 A Correct. Again --
22 Q So you can't compare your home to any baseline
23 because there is no baseline in those studies.
24 A So being a layperson, having traveled and visited
25 different parts of the country and different parts of the

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1 world, I'm not testifying as an expert. I'm testifying
2 about how I feel and what I think the effect could be on me
3 based upon data that's been done, research that's been done
4 by Ph.D. economists at the University of Maryland and
5 Michigan State University.
6 Q Okay. And you said that the home values in
7 Michigan are not great? Is that what you said?
8 A Yeah. Yeah.
9 Q Have you been to Michigan lately?
10 A A couple of years ago.
11 Q Okay. Are you aware that Michigan home prices are
12 actually increasing more rapidly than the national average?
13 A I was not aware of that. Again, we'd have to look
14 at baselines.
15 Q To do what?
16 MR. GROSSMAN: For comparison purposes. He's
17 saying that if you're starting out with a house that's
18 \$100,000, it's hard to compare the change in value to one
19 that costs \$400,000. I think that's his point.
20 BY MR. GOECKE:
21 Q And you're saying --
22 A So, at this point, I think we're just talking
23 about the fact that you seem to be agreeing that there's
24 going to be a negative effect on my home value, according to
25 this line of questioning. That's how I perceive it.

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1 MR. GROSSMAN: I don't know that your observation
2 is correct, but it's your observation.
3 THE WITNESS: Yes.
4 MR. GOECKE: Thank you.
5 BY MR. GOECKE:
6 Q Where in the Michigan State survey does it provide
7 the baselines for the home values, Mr. Core?
8 A I'm afraid I don't have that.
9 Q You don't have that exhibit, or you don't --
10 A Yeah.
11 Q -- have that answer?
12 A I don't have that answer.
13 Q Okay. But is it your understanding that there
14 were baselines involved in there?
15 A I don't know. I'd have to look back at it.
16 Q Okay. Because I thought you testified today that
17 they did provide baselines in that study and --
18 A No. I said I'd have to --
19 Q -- they measured actual depreciation.
20 A -- I'd have to see if there were baselines.
21 Q Okay. And the problem with that exhibit, which is
22 Exhibit 353, is that the pages are not numbered, but -- and
23 it's a PowerPoint presentation -- but, I mean, this is a
24 survey involved in this study as well, is it not?
25 A Survey with actually looking at sales transaction

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1 data, from what I understand.
2 Q Okay. If you would just take a moment to look
3 through it then and point me to the page where it talks
4 about actual sales transaction data. I think you'll find it
5 under the Royal Oak section.
6 A Okay.
7 Q And there's a series of slides that talk about
8 neighborhood characteristics and the sales price effect --
9 A Yeah. Could you --
10 Q -- but if there's, if you can find any baselines
11 in there, I'd be interested in seeing that.
12 A Okay. All right. So just before that page or
13 just -- so there's Royal Oak: Community Attributes and
14 then, going back from there, Royal Oak: Neighborhood
15 Demographics; Royal Oak: Building Attributes; and Royal
16 Oak: Case Study. There's a slide Royal Oak: Sales Info &
17 Lot Attributes, and it states: Study included 7,112
18 observations, home sales; then it gets into a statistical
19 item that I don't understand.
20 Q Yes, neither do I.
21 A Again --
22 MR. GROSSMAN: Well, I don't think there's a
23 question pending right now.
24 THE WITNESS: Okay.
25 MR. GOECKE: Well, I guess my point is this,

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1 Mr. Grossman, is that there's no -- as far as I can see,
2 there's no baselines provided in this study. And so we
3 don't know what the survey anticipated --
4 MR. GROSSMAN: Well, that's argument. Let's, if
5 you have a cross-examination question --
6 MR. GOECKE: Okay. Well, you asked if there's any
7 question pending, and I'm just trying to put it in context.
8 My question is simply, what are the baselines in the study?
9 And if there are none, there are none, and I'm just giving
10 him an opportunity to point that out if he thinks there are
11 any.
12 MR. GROSSMAN: All right. So, Mr. Core, are there
13 any baselines?
14 THE WITNESS: No, I don't see any baseline that
15 comes up with an average. They do -- I do not see an
16 absolute baseline.
17 MR. GROSSMAN: Okay.
18 MR. GOECKE: Okay. And if I may approach,
19 Mr. Grossman --
20 MR. GROSSMAN: Certainly.
21 MR. GOECKE: -- just to make this a bit more
22 efficient? I'm handing Mr. Core one of the slides --
23 THE WITNESS: Yeah.
24 MR. GOECKE: -- from that exhibit, Exhibit 353.
25 MR. GROSSMAN: Which slide?

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1 MR. GOECKE: It's entitled Royal Oak, colon,
2 Neighborhood Demographics.
3 THE WITNESS: Right.
4 MR. GOECKE: And it has two columns, one of
5 Neighborhood Characteristics and one that says, Sale Price
6 Effect.
7 MS. ROSENFELD: Did you say Neighborhood
8 Demographics?
9 MR. GOECKE: I did, yes.
10 MS. ROSENFELD: Okay.
11 MR. GROSSMAN: All right. So what was the
12 question?
13 BY MR. GOECKE:
14 Q The question is, of the neighborhood
15 characteristics, what neighborhood characteristic has the
16 greatest effect on a sale price?
17 A Increase in population with a
18 graduate/professional degree.
19 Q That's not the way I read it. I read that at the
20 bottom line, it says --
21 MR. GROSSMAN: Well, yes, that's -- you can't
22 argue with the witness.
23 MS. ROSENFELD: You can't testify.
24 MR. GOECKE: Okay.
25 MS. ROSENFELD: Objection.

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1 MR. GROSSMAN: Yes. Sustained.
2 MR. GOECKE: Okay.
3 BY MR. GOECKE:
4 Q Okay. So your answer is what? The percentage
5 increase in population with a bachelor's degree, and that
6 increases the sales price by \$883, correct?
7 A So I'm sorry. Can you restate the question?
8 Q Sure. Sure. Okay. At the bottom line on this
9 page, it says --
10 A Yes.
11 Q -- percent increase in population of ages 5
12 through 17, right?
13 A Yeah.
14 Q And it seems to suggest that the sale price effect
15 is a negative price effect of \$39,613, correct?
16 A Correct.
17 Q So what this study is showing is that nearly a
18 \$40,000 decrease in home values occurs when there's an
19 increase in children in the neighborhood, right?
20 A Correct.
21 Q Okay. Have you had your home --
22 MR. GROSSMAN: But hopefully not 2-month-old
23 children.
24 THE WITNESS: No.
25 MR. GOECKE: 5 to 17.

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1 MS. HARRIS: You're good.
2 MR. BRANN: 5 to 17.
3 MR. GOECKE: 5 to 17.
4 MR. GROSSMAN: I got it. I got it.
5 MR. BRANN: You're all right.
6 MR. GOECKE: They're good for 4 years and 10
7 months.
8 BY MR. GOECKE:
9 Q Mr. Core, have you had your home appraised
10 recently?
11 A No.
12 Q Okay. Are you aware of any values on your block
13 or your neighborhood decreasing since Costco announced its
14 plans to open a gas station at the mall site?
15 A I can't speak to that. I just know that it's, my
16 -- I can't speak to that in that particular time line.
17 MR. GOECKE: I have no further questions,
18 Mr. Grossman.
19 MR. GROSSMAN: Any redirect?
20 REDIRECT EXAMINATION
21 BY MS. ROSENFELD:
22 Q Mr. Core, we'll start with the Exhibit 353,
23 Building Prosperous Places.
24 A Yeah.
25 Q And I would like to go back to the Royal Oak Case

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1 Study, and on the first page of the Royal Oak Case Study --
2 A Yes.
3 Q -- would you take a look at that and tell me if
4 there is any information about whether or not properties
5 actually sold or were evaluated in this study?
6 A Could you show me what page you're looking at?
7 Okay. And the question is again?
8 Q Under Category 1 --
9 A Yes.
10 Q -- could you identify what's listed in Category 1?
11 A It says, All Sold Properties.
12 Q Yes. And does it identify what appears to be the
13 sales price of those properties?
14 A Yes, from 20,000 to \$844,000.
15 Q Okay. And so there was a range --
16 A Correct.
17 Q -- of housing prices? And Category 2 is broken
18 out as a separate subcategory of that.
19 A Correct.
20 Q Can you identify what that would be?
21 A It says, Workforce, and with prices less than
22 \$295,000.
23 Q And Category 3, Affordable, which prices?
24 A That is homes less than \$147,000.
25 Q And they're identified as what type of home?

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1 A Affordable homes.
2 Q Okay. So the baseline reflects that there was a
3 range of housing prices --
4 A Correct.
5 Q -- studied. Is that correct? And if you go to
6 the next page, which is called Royal Oak: Sales Information
7 & Lot Attributes --
8 A Yes.
9 Q -- on the first line, does it identify how many
10 home sales were actually studied?
11 A Yes. It indicates that there was 7,112
12 observations, home sales.
13 Q Okay. Thank you. And looking at the statistic
14 that Mr. Goecke just mentioned, the percent increase in
15 population aged 5 to 17 --
16 A Yes.
17 Q -- or the decrease of 39,000 and change, is one,
18 in your opinion, is one possible explanation for that type
19 of decrease the fact that it would, those homes would be
20 sold to young families with young children and perhaps
21 simply be in a lower income bracket generally?
22 A Yeah. There are a whole host of factors that
23 could be going in there, all these --
24 Q So we don't --
25 MR. GROSSMAN: Let's try to limit the -- it's a,

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1 although a redirect, it's still a direct. So you shouldn't
2 be leading the witness.
3 BY MS. ROSENFELD:
4 Q Does this --
5 MR. GROSSMAN: Not that much, anyway. Okay.
6 BY MS. ROSENFELD:
7 Q Does this identify the factors that might result
8 in that decrease in housing prices?
9 A No, it does not.
10 Q Thank you. And turning to Royal Oak: Community
11 Attributes --
12 A Yes.
13 Q -- where it says Community Characteristic --
14 A Yes.
15 Q -- under Sales Price Effect, the community
16 characteristic that I'd like to draw your attention to is
17 additional gas station within a quarter of a mile. Do you
18 see that --
19 A I do see that.
20 Q -- characteristic? And what is the sales price
21 effect that's reflected in this study?
22 A A decrease of \$6,052.
23 Q Okay. And is that an absolute number for each
24 sale?
25 A I do not believe that is an absolute. It would be

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1 an average.
2 Q An average?
3 A Yes. I --
4 Q So in some cases it could be less, and in others
5 it could be more?
6 A Could be more, yeah.
7 Q Are you familiar with the neighborhood as it's
8 defined for the special exception?
9 A I am familiar with the definition.
10 MR. GROSSMAN: Well, as it's defined by technical
11 staff, you mean?
12 BY MS. ROSENFELD:
13 Q I was just going to refer you to a chart. If I
14 were to refer you to Exhibit No. 159 --
15 A Yes, ma'am.
16 Q -- could you explain your understanding of the
17 neighborhood as defined by the Kensington Heights Civic
18 Association on this map?
19 A Yes. It would be this area here.
20 Q This area here, being the lighter --
21 A Correct.
22 Q -- I guess, lighter fuchsia --
23 A Yes.
24 Q -- alley?
25 A Yes.

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1 Q The larger perimeter --

2 A Correct.

3 Q -- that's reflected on this map? And is your home

4 located within that perimeter?

5 A Oh, it sure is, yeah.

6 Q And could you identify --

7 A I could.

8 Q -- for the Hearing Examiner where that is?

9 A Let's see. That's Torrance Court. I'm right

10 here.

11 Q Okay. So you are southwest of the Sears Outlet --

12 A Correct.

13 Q -- is that correct? Okay. And --

14 MR. GROSSMAN: You suggested that this is the

15 neighborhood as defined by Kensington Heights Civic

16 Association. Is that different from the technical staff --

17 MS. ROSENFELD: No.

18 MR. GROSSMAN: -- definition?

19 MS. ROSENFELD: No, it's not.

20 MR. GROSSMAN: Okay.

21 MS. ROSENFELD: It's the same.

22 MR. GROSSMAN: All right.

23 BY MS. ROSENFELD:

24 Q And do you know if the perimeter of the

25 neighborhood, the larger neighborhood, is within a quarter

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1 of a mile of the proposed gas station location?

2 MR. GROSSMAN: When you say the perimeter of the

3 larger neighborhood, what are you talking about?

4 MS. ROSENFELD: The technical staff neighborhood.

5 MR. GROSSMAN: Okay.

6 THE WITNESS: Yeah. So a quarter of a mile --

7 again, I'm a policy guy, not a math guy -- so we're talking

8 about, 1300 feet is a quarter of a mile. Is that, is that

9 correct?

10 MR. GROSSMAN: Approximately.

11 THE WITNESS: Yeah. Yeah. So a quarter of a mile

12 would be 1300 feet. You know, my house is about 600. The

13 school is 900. Gosh, going over here, you're going to go

14 quite a ways this way. It's going to have quite the effect.

15 BY MS. ROSENFELD:

16 Q Okay. At minimum, a substantial portion of the

17 staff -- the neighborhood as defined by technical staff is

18 within a quarter of a mile?

19 A Absolutely, yes.

20 Q Okay.

21 MR. GROSSMAN: I'm sure you weren't here for the

22 whole hearing. There are a number of definitions of the

23 neighborhood that have been proffered --

24 THE WITNESS: Yeah.

25 MR. GROSSMAN: -- the applicant suggesting it was

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1 just the mall area, technical staff suggesting a larger

2 area, which was depicted in Exhibit 159, and then there was

3 another neighborhood definition in terms of a market area

4 for a needs study --

5 THE WITNESS: Uh-huh.

6 MR. GROSSMAN: -- which was a drive-time area,

7 considerably larger than that. So that's why we're trying

8 to make sure that the record is clear as to which

9 neighborhood we're talking about.

10 THE WITNESS: Yeah.

11 MR. GROSSMAN: Thank you.

12 THE WITNESS: As I -- okay. I guess I can't say

13 anything.

14 MR. GROSSMAN: Go ahead.

15 THE WITNESS: Okay. You know, I think you got to

16 think about the neighborhood as, you know, the neighborhood,

17 you know, the people that live near or affected by what

18 happens. I mean --

19 MR. GROSSMAN: Well, I think that's what -- the

20 technical staff definition is saying that --

21 THE WITNESS: Yeah.

22 MR. GROSSMAN: -- is those, and that is the

23 general accepted definition of general neighborhood for land

24 use purposes, those who will be most directly affected --

25 THE WITNESS: Yeah.

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1 MR. GROSSMAN: -- by the site that is being sought

2 here. All right.

3 THE WITNESS: Great.

4 BY MS. ROSENFELD:

5 Q Mr. Core, currently what are the hours of

6 operation at the mall on Saturday and Sunday, if you know?

7 Do you know what time it opens?

8 A Well, I'm not much of a morning person, but I'm

9 figuring trade hours, 8:30, 9 o'clock. That area tends to

10 wake up a little -- it's like 9 o'clock.

11 Q And so before 9 o'clock or before the regular mall

12 opens, is there much traffic along the ring road or the

13 parking lot?

14 A No, not at all, not much at all.

15 Q And do you know what time the gas station is

16 supposed to open?

17 A Oh, isn't it supposed to open at like 6:30 or so,

18 7 o'clock, something like that?

19 Q And so would traffic going to the gas station

20 before the mall opens be a new phenomenon at the mall?

21 A Yes, that would be, that would be a different

22 condition.

23 Q And to the extent that there are gas tanker trucks

24 bringing, delivering gas in the morning, would that be

25 additional noise? What effect on noise do you think that

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1 might have?

2 A I think you'll hear, you will hear more -- people

3 that live adjacent to the property will hear more tanker

4 trucks. They'll hear, they'll hear that traffic.

5 Q There was a question that asked what would be the

6 effect if some other retail store were located at this, at

7 the location of the proposed special exception rather than a

8 gas station, perhaps a restaurant or a --

9 A Yeah.

10 Q -- retail. Are there characteristics of the gas

11 station, this gas station, that are distinct from the way

12 other retail stores function, and if so, could you describe

13 what those differences might be?

14 A Great. Again, a layperson, not an expert, I'm

15 certainly not working, you know, for a retail market or

16 something. I'm just speaking as a neighbor, but I think

17 what we have here is that there are very -- there are

18 distinct differences. What we're talking about here are

19 more traffic, queuing, emissions, and the presence of

20 underground storage tanks. The data shows that people don't

21 like gas stations and that they price that into home

22 transactions, and I can say from my experience that I would

23 not be amenable to buying a home right next to a gas, or you

24 know, near a gas station. But there are non-inherent

25 effects -- lots of traffic, lots of queuing -- as opposed to

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1 just drive into a store, parking the car, going in, doing

2 your business, having your sandwich, and leaving.

3 Q And can people walk to --

4 A We won't have, we won't have cars -- yeah.

5 Q And, for example, a Starbucks, can people walk to

6 Starbucks and experience a retail experience and --

7 A Oh, absolutely. In fact, one of the reasons why

8 we like living near the mall is we're able to walk to the

9 shops and walk to the restaurants.

10 Q And can people walk to the gas station and get gas

11 and leave with gas?

12 A No.

13 MR. GROSSMAN: Well, I guess you could if you had

14 a little --

15 MS. CORDRY: Well, a gas can.

16 MR. GROSSMAN: -- a little can.

17 THE WITNESS: Yeah.

18 MS. ROSENFELD: I don't know if that's a service

19 that Costco provides.

20 MR. GROSSMAN: And you could walk to the Starbucks

21 and get gas too. That's another story.

22 THE WITNESS: All right. Someone did make the

23 Mexican drink joke. So -- but, yeah, I think it's a very

24 different experience. You know, living near a place where

25 you can walk to shops and restaurants, that's a good deal.

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1 That's a positive.

2 MS. ROSENFELD: And, Mr. Grossman, I'm not sure

3 it's clear in the record whether or not you can buy gas,

4 fill gas tanks at Costco. I don't know if that's --

5 MS. CORDRY: Gas cans.

6 MS. ROSENFELD: Gas cans.

7 MR. GROSSMAN: Yes.

8 MS. ROSENFELD: I don't know. I don't think that

9 evidence is in the record.

10 MR. GROSSMAN: I don't think it's been mentioned,

11 but I've seen people do it at gas stations; so I assume that

12 one can do it if need be.

13 BY MS. ROSENFELD:

14 Q Turning --

15 MR. GROSSMAN: And that wouldn't affect whatever I

16 would recommend here. So it's not a --

17 MR. SILVERMAN: Right. Right. Right.

18 MS. ROSENFELD: I understand. I understand.

19 MR. GROSSMAN: It's an aside.

20 BY MS. ROSENFELD:

21 Q Turning to Exhibit 352(a) --

22 A Which is?

23 Q This is the L-U-S-T --

24 A Yeah.

25 Q -- study. And just generally, first, a couple of

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1 general questions, was this a survey of the potential impact

2 on home values of a regular neighborhood gas station, or was

3 it based on a mega gas station?

4 MR. GROSSMAN: By this, you're talking about just

5 the pages in C, or are you talking about the whole 352?

6 MS. ROSENFELD: The whole report. The whole

7 report.

8 MR. GROSSMAN: Okay.

9 THE WITNESS: So the question, as I read it,

10 focused on regular gas stations, not large fuel depots that

11 are massive --

12 BY MS. ROSENFELD:

13 Q And --

14 A -- and so there's a big difference.

15 Q And turning to --

16 MR. GOECKE: I'd like to object to the foundation

17 of that question, or the foundation of his answer, rather.

18 MR. GROSSMAN: Well, that's his perception. That

19 is that the study that he introduced, portions of which are

20 in Exhibit 352, were of ordinarily sized gas stations, not

21 of very large ones.

22 MR. GOECKE: Okay.

23 MR. GROSSMAN: He may or may not be correct -- and

24 you can point that out, one way or the other -- but that's

25 his perception.

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1 MR. GOECKE: Thank you.
2 MR. GROSSMAN: And you get to recross on the
3 redirect. So --
4 BY MS. ROSENFELD:
5 Q Looking at page C-5 --
6 A So should I clear my calendar for the rest of the
7 day?
8 MR. GROSSMAN: It depends on how long the redirect
9 is.
10 BY MS. ROSENFELD:
11 Q Looking at page C-5, the first question that
12 Mr. Goecke mentioned, to what extent does a gas station
13 affect property values, and he read the statement starting
14 with the general feeling was that it doesn't, is it your --
15 was this a summary of the entire, everybody that was the
16 subject of a focus group, or was that a summary of the
17 particular individuals of this one of the number of focus
18 groups?
19 A Yeah, on the earlier reports, I have to suggest
20 that this is the response of one or two people, not all the
21 participants. The study notes indicated there were some
22 very dominant participants offering remarks in the earlier
23 focus groups.
24 Q And looking at page C-11 --
25 A Yes.

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1 Q -- and it says: People can name the pros and cons
2 of being close to a gas station, but the ability to buy gas
3 and the convenience suggests that for most of them being
4 close, within a mile or so, of a gas station is a plus. Was
5 there any information in this report that you're aware of
6 that suggests that being closer than a mile has a different
7 effect?
8 A When we look at the report, as the report evolved,
9 they got tighter on the questions and they asked questions
10 that were more direct about distance. And the indication
11 is, when you get closer to a gas station, there's a larger
12 negative effect on home values.
13 Q Looking at page C-15: What are the advantages of
14 living near a gas station? Respondents stated, number one,
15 gas; number two, auto service; and, number three, other
16 conveniences. Do you understand Costco to offer any auto
17 service at its location?
18 A No.
19 Q And do you understand that it offers other
20 conveniences, such as a convenience store or air for your
21 tires?
22 A No, I'm -- and that it is only available to about
23 25 percent of the residents, because this is not a public
24 gas station, per se.
25 Q Okay. Below there: One respondent said three

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1 blocks is too close but one mile is a good distance. Would
2 you estimate that you are within three blocks of the
3 proposed gas station?
4 A Pretty close to three. I didn't count but pretty
5 close.
6 MR. GROSSMAN: Actually, he's already said he's
7 600 feet --
8 THE WITNESS: Feet, yeah.
9 MR. GROSSMAN: -- from the gas station. So
10 whether you break that down into blocks or not, it's not --
11 THE WITNESS: Yeah.
12 BY MS. ROSENFELD:
13 Q Mr. Goecke also raised the issue, the statement:
14 Another said a nearby station is desirable if clean and well
15 lit. Are there other characteristics of the gas station,
16 though, that factor into your view that it will have an
17 impact on your home values?
18 A Yeah. So I think the mere presence of a gas
19 station after the fact, that close to my home is just going
20 to drive down the home value. I think it's just a -- it's
21 just a negative right there. Okay. Then you take in what,
22 I guess, the land use folks call non-inherent effects and
23 that is the size, the amount of traffic. I think this is a
24 massive activity, and I believe that is going to have a
25 disproportionately negative effect on me and my neighbors

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1 and the people that live in my community --
2 Q The following --
3 A -- it's just commonsensical. It's huge.
4 Q The following question on page 16, C-15, what are
5 the disadvantages of living near a gas station, could you
6 read that response and tell me if that reflects your views
7 or not?
8 A Sure. So the disadvantages of living near a gas
9 station, as listed by the respondents in this study, are
10 crime, traffic, fumes, and noise. No one explicitly
11 mentioned potential leaks. All right. Traffic, fumes,
12 noise, and crime, and I'm concerned about those things.
13 Q Going back for a moment, well, actually -- yes,
14 going back --
15 MR. GROSSMAN: Do you think that this proposed gas
16 station would lead to additional crime?
17 THE WITNESS: No, I'm not worried about crime.
18 Forgive me. Maybe I'm more precise: traffic, fumes,
19 noise --
20 MR. GROSSMAN: Okay.
21 THE WITNESS: -- pollution.
22 BY MS. ROSENFELD:
23 Q Going back for a moment to Mr. Cronyn's report,
24 was there any -- did his report include any reports or
25 studies or articles in support of his conclusion that there

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1 would be no adverse impact on property values?
2 A I didn't see any literature or view or any other
3 supporting material to support the assertions.
4 Q And you testified that you did research to find
5 information on the potential impact on home values. Did you
6 find any study that showed no impact on home values?
7 A No, I didn't find anything.
8 Q Did you find any study that showed an increase in
9 home values?
10 A No. I found what I found and what I brought to
11 the conversation.
12 Q Again, just momentarily going back to Exhibit, I
13 believe it was 352, that differentiated between an amenity,
14 a gas station as an amenity and a gas station as a
15 disamenity --
16 A Correct.
17 Q -- what was the primary driving factor for people
18 distinguishing between whether it was an amenity or not?
19 A What page are you on?
20 Q Yes, I don't believe I have that page.
21 A Okay. Amenity? Okay. I guess I have to go back
22 to definitions here. So your question again was?
23 MR. GROSSMAN: What was the primary driving factor
24 that people distinguish a gas station between an amenity and
25 a disamenity? Was that correct?

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1 MS. ROSENFELD: Yes, that's correct.
2 THE WITNESS: Yeah. Does it -- is it a
3 convenience, does it add value, or is it not a convenience,
4 it doesn't add value? I'm guessing on this one. This is
5 how I would answer the question, you know. You know, is
6 something an amenity? Is it good? You know, you think
7 about adding value, making the experience better. And then
8 a disamenity would be something that doesn't add value,
9 perhaps detracts from value --
10 MR. GROSSMAN: But I think she asked you, was
11 there a particular driving factor that made that
12 distinction, in your understanding?
13 THE WITNESS: In my understanding, in this report
14 I can't speak to what those respondents, how those
15 respondents dealt with it. I can speak to how I would feel
16 about it.
17 MR. GROSSMAN: All right. How about how you feel
18 about it --
19 THE WITNESS: I feel that it's --
20 MR. GROSSMAN: -- what's the particular driving
21 factor?
22 THE WITNESS: I think that it's a disamenity
23 because in my neighborhood it's going to increase traffic.
24 I think there's a real health risk, and it's going to take
25 away from, take away from our experience.

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1 MR. GROSSMAN: Okay.
2 BY MS. ROSENFELD:
3 Q One final set of questions on the issue of noise.
4 Do you, can you -- is there more traffic at the mall
5 property during the holiday season?
6 A Yes.
7 Q Do you hear more noise from traffic during the
8 holiday season than you do at other times of the year?
9 A A little bit, yeah. I hear a little bit, but yes.
10 Q Okay.
11 MS. ROSENFELD: I have no further questions.
12 MR. GROSSMAN: Okay. Dr. Adelman, did you have
13 any recross based on the redirect?
14 MR. ADELMAN: No -- no.
15 MR. GROSSMAN: Ms. Duckett?
16 MR. ADELMAN: No, sir. No, sir, I meant.
17 MS. DUCKETT: No.
18 MR. GROSSMAN: No? Okay. Then --
19 MR. SILVERMAN: Could I, with the Coalition, do
20 recross?
21 MR. GROSSMAN: Well, I thought Dr. Adelman did the
22 cross-examination for the --
23 MR. SILVERMAN: He --
24 MR. GROSSMAN: -- for the Coalition.
25 MR. SILVERMAN: He did. Well, not -- no, I don't

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1 think that's right. I think he did the direct. We --
2 MR. GROSSMAN: No, he didn't do the --
3 MR. SILVERMAN: -- switched back and forth.
4 MR. GROSSMAN: -- direct. The direct was done by,
5 by the, by Ms. Rosenfeld --
6 MR. SILVERMAN: Well, I --
7 MR. GROSSMAN: -- then it was cross-examination, I
8 think, by Dr. Adelman last time Mr. Core was here.
9 MS. ADELMAN: Oh, he's talking about previous --
10 MR. SILVERMAN: Previous.
11 MS. ADELMAN: -- when Jim was on the stand before.
12 MR. GROSSMAN: Right.
13 MR. SILVERMAN: Right.
14 MS. ADELMAN: Yes.
15 MR. GROSSMAN: Usually, it's one person from any
16 group gets to do the examination of a witness.
17 MR. SILVERMAN: Well, one person at any time, I --
18 MR. GROSSMAN: Well, it's not really at any time.
19 What's your question, Mr. Silverman?
20 MR. SILVERMAN: Just a few. I'll be real quick.
21 MR. GROSSMAN: Okay.
22 MR. SILVERMAN: Thank you.
23 RECCROSS-EXAMINATION
24 BY MR. SILVERMAN:
25 Q Focus groups, is it your sense that there's a

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1 science of focus groups?
2 A Is it my sense? Yeah --
3 Q Yes.
4 A -- I believe there's a scientific methodology
5 these things are worked through, but as in any social
6 experiment, you have to kind of work through the data, work
7 through the experience of those individuals, and then you
8 get to an outcome. And I --
9 Q As you --
10 MR. GROSSMAN: We've all seen some of the sitcoms
11 that have resulted from focus groups. So --
12 MR. SILVERMAN: That's true.
13 MR. GROSSMAN: -- we know that they have variable
14 benefits.
15 MR. SILVERMAN: This is true. This is true.
16 BY MR. SILVERMAN:
17 Q But Mr. Cronyn, do you recall him testifying that
18 he had been studying techniques of focus groups? Do you
19 recall that testimony?
20 A I don't recall that testimony.
21 Q Okay. All right. The, with regard to -- the
22 Hearing Examiner raised a question about errors, error,
23 notation of errors. Could you take a look in the Michigan
24 report at the Survey Summary? It's sort of, it's at the
25 end --

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1 A Sure.
2 Q -- it's the end of all the surveys.
3 A Okay. Yeah.
4 Q It's before the case studies.
5 MR. GROSSMAN: The Michigan report being Exhibit
6 353.
7 MR. SILVERMAN: Right.
8 THE WITNESS: Okay.
9 MR. GROSSMAN: Gesundheit.
10 THE WITNESS: Thank you.
11 BY MR. SILVERMAN:
12 Q Could you take a look at the first bullets, first
13 two bullets?
14 A Look at -- what am I looking at again, Larry?
15 MR. GROSSMAN: And what page are we looking at? I
16 can't --
17 MR. SILVERMAN: We're looking at, it's called
18 Survey Summary.
19 MR. GROSSMAN: Survey Summary? And --
20 MR. SILVERMAN: Yes.
21 MR. GROSSMAN: -- where is it in the report?
22 MR. SILVERMAN: It's at the end. It's towards the
23 -- it's at the end of the surveying part and before the
24 beginning of the particular cases.
25 MR. GROSSMAN: How far down into the --

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1 MR. SILVERMAN: I guess it is --
2 MS. ROSENFELD: About four-fifths of the way
3 through.
4 MR. SILVERMAN: Four-fifths of the way through,
5 yes.
6 MR. GROSSMAN: Four-fifths, okay. That's almost
7 80 percent, isn't it? See, I was a math major. It's after,
8 before the Royal Oak thing?
9 MR. SILVERMAN: Yes.
10 MR. GROSSMAN: I see Conclusions.
11 MR. SILVERMAN: Yes.
12 MR. GROSSMAN: Is it before Conclusions?
13 MR. SILVERMAN: Before --
14 THE WITNESS: Okay.
15 MR. SILVERMAN: -- I think there's, the page
16 before it has a lot of bars, red and blue and green.
17 MR. GROSSMAN: It would have been lovely if they
18 had numbered their pages --
19 MR. SILVERMAN: Yes, right.
20 THE WITNESS: Okay.
21 MR. GROSSMAN: -- in order to research a question.
22 I still haven't found it.
23 MR. SILVERMAN: I can hand it to you if you want,
24 if that's easier.
25 MR. GROSSMAN: Oh, that would be good. Thank you.

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1 MR. SILVERMAN: Yes, I think -- it's really a
2 quick question.
3 MR. GROSSMAN: Don't trip on any wires.
4 MR. SILVERMAN: Yes, right.
5 MR. GROSSMAN: Thank you. Okay.
6 BY MR. SILVERMAN:
7 Q Do you have it, Mr. Core? Do you have that?
8 A Yeah.
9 Q Okay. Could you tell me what that -- would you
10 look at the first couple bullets and just read them?
11 A Make sure I'm looking at the right one.
12 Q Right. Survey Summary, it says.
13 MR. GROSSMAN: Survey Summary.
14 THE WITNESS: Yeah. What do you want me to read?
15 BY MR. SILVERMAN:
16 Q The first two bullets.
17 A Survey Summary: Low sample sizes, results are
18 anecdotal and do not represent these groups across the
19 state.
20 Q Right. Would you say that that is -- would you
21 think it's correct to say that's a discussion of error
22 factors?
23 A You know, I'm not a statistician; so I can't
24 comment on this.
25 Q Okay. All right. The --

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1 MR. GROSSMAN: Well, Mr. Silverman --
2 MR. SILVERMAN: Yes.
3 MR. GROSSMAN: -- let me ask you this --
4 MR. SILVERMAN: Yes.
5 MR. GROSSMAN: -- doesn't that, isn't a sense of
6 that comment -- I presume that's referring to their own --
7 MR. SILVERMAN: Yeah.
8 MR. GROSSMAN: -- survey, correct?
9 MR. SILVERMAN: Yeah. Right.
10 MR. GROSSMAN: So they're saying that there's a
11 large error factor.
12 MR. SILVERMAN: They are, indeed. Well, you know,
13 I think you raised the question of errors. My -- one of the
14 major questions of this case is who the real scientists are,
15 and one indicia of the real scientists is the real ones talk
16 about error factors. And although this, I mean,
17 Ms. Rosenfeld suggested I not ask this because it sort of
18 goes against what we're saying, but on the other hand, it,
19 to me, it adds to the credibility of the report. That's the
20 only point I wanted to make.
21 MR. GROSSMAN: Okay. And the second one is that
22 many neutral/not sure responses. So that's also --
23 MR. SILVERMAN: Right.
24 MR. GROSSMAN: Their last comment is that even
25 though anecdotal, we think these responses help us to

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1 understand the barriers to and perceptions of placemaking.
2 MR. SILVERMAN: Yes.
3 MR. GROSSMAN: Right.
4 MR. SILVERMAN: Yes. I just want to suggest that
5 that kind of statement --
6 THE WITNESS: But that --
7 MR. GROSSMAN: It expressed their concerns about
8 it. This is not a -- when I asked about error analysis, I
9 was actually thinking more in terms of statistical --
10 MR. SILVERMAN: Right.
11 MR. GROSSMAN: -- standard deviations and that
12 sort of thing, but I --
13 THE WITNESS: Okay.
14 MR. SILVERMAN: But I think this is along the same
15 lines.
16 MR. GROSSMAN: -- but I understand your point.
17 MR. SILVERMAN: Yes, right.
18 THE WITNESS: It's important to place this in
19 context. I think Mr. Silverman, respectfully, is not
20 looking at this report in its entirety. There are two
21 components of this.
22 MR. SILVERMAN: Right.
23 THE WITNESS: The Royal Oak attributes that we
24 looked at were based upon, according to this report, 7,092
25 sales where they were able to look at survey, actual sale

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1 data. This survey data looked at how individuals, bankers,
2 public officials, and local government folks feel about the
3 concept of doing the charrette process, how they feel about
4 doing the neighborhood focus group-type process --
5 MR. GROSSMAN: Right.
6 THE WITNESS: -- not the data that I'm
7 illustrating or they are asserting, based upon 7,092 actual
8 sales in a community, that there's a negative effect on home
9 values. So this --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- survey data does not relate to
12 the home value data that is referenced in the other part of
13 the report.
14 MR. GROSSMAN: I'm glad you made that distinction.
15 That's --
16 MR. SILVERMAN: Yes.
17 MR. GROSSMAN: -- an important distinction.
18 MS. ADELMAN: Yes.
19 THE WITNESS: Yes.
20 MR. SILVERMAN: Right.
21 MR. GROSSMAN: Was there an error analysis in that
22 data collection?
23 THE WITNESS: I don't know.
24 MR. GROSSMAN: Okay. But I think that's a --
25 that's a very important distinction because I think this

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1 Survey Summary reference does --
2 THE WITNESS: Talks about something completely
3 different.
4 MR. GROSSMAN: Talks about something different,
5 but it does make you, you know, question that particular
6 survey results, but I'm glad you distinguished between the
7 two aspects of evidence that you were --
8 THE WITNESS: Yeah. So in a small community of
9 about 57,000 people, they looked at 7,000 sales --
10 MR. GROSSMAN: Right.
11 THE WITNESS: -- and they were able to draw the
12 conclusion that there was a negative effect on home value.
13 MR. GROSSMAN: I understand. I understand. Okay.
14 BY MR. SILVERMAN:
15 Q With regard to, if you know this, with regard to
16 future changes and their effect on appraisal values, in your
17 experience, your personal experience with real estate, do
18 you ever hear realtors or others talking about a future
19 school or a future development that might --
20 A Sure, all the time. I get some --
21 MR. GROSSMAN: I'm going to stop you, because --
22 MR. SILVERMAN: Okay. I'll stop.
23 MR. GROSSMAN: -- do you ever hear about people
24 talking about. I mean, that's --
25 MR. SILVERMAN: Well --

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1 MR. GROSSMAN: -- that's so fraught with
2 impermissible hearsay that --
3 MR. SILVERMAN: All right. Okay. I'm done.
4 Thank you very much.
5 MR. GROSSMAN: Hearsay, when I say -- ordinarily,
6 there are problems with hearsay. Administrative proceedings
7 such as this allow hearsay if it's otherwise reliable and
8 probative. That particular invitation to an answer, I
9 think, suggests a level of hearsay that would not be
10 reliable. So I'm going to not allow it.
11 MR. SILVERMAN: Okay, fine. Thank you.
12 MR. GROSSMAN: Okay. All right. So any recross?
13 MR. GOECKE: Just a few, Mr. Grossman.
14 BY MR. GOECKE:
15 Q Are you aware that there's a health club at the
16 mall?
17 A Yeah.
18 Q Do you know what time the health club opens?
19 A Yeah. The health, because I walk by it just about
20 every day, I think it opens at around 5:00 a.m. I'm not
21 there at 5:00 a.m.
22 Q Okay. So there's traffic going to the health club
23 in the early morning hours as well then?
24 A Oh, not much at all. It's -- they come in; they
25 park. It's -- when you're ready to come down, you can take

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1 a walk with me some time. That's how I walk. You know, I
2 leave --
3 MR. GROSSMAN: Let's be responsive to the
4 question.
5 THE WITNESS: Yeah.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: Yeah, there are cars.
8 BY MR. GOECKE:
9 Q And are you aware that most of the warehouse
10 deliveries occur between 4:00 and 8:00 a.m. at the mall
11 site?
12 A Yeah --
13 Q Okay.
14 A -- because I hear them.
15 Q So, again, the gas station opening at 6:30 a.m.
16 would not materially alter the traffic at the mall?
17 A I don't agree with that assertion.
18 Q Okay. Do you know how many gas station customers
19 are expected between, say, 6:30 and 8:00 a.m.?
20 A I don't know.
21 Q Okay.
22 A Any would increase the traffic.
23 Q Turning your attention to C-5 of Exhibit 352 --
24 A C-5?
25 Q -- in response to Ms. Rosenfeld's questions --

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1 yes, C-5 -- you said that it was just one or two people that
2 thought there might be some benefits associated with the gas
3 station. In reality, the answer to that question on C-5
4 says the general feeling of the focus group was that it
5 doesn't --
6 A Sure.
7 Q So it wasn't just one or two people; it was the
8 general feeling of that focus group, right?
9 A That is what the report says.
10 Q Okay. In contrast, it was only one person who
11 thought, on page C-15, only one respondent said that three
12 blocks is too close but one mile is a good distance?
13 A Sure --
14 Q Okay.
15 A -- and I think focus groups are a tremendous tool
16 to help understand public policy problems. And what we have
17 here is we have the perception of individuals and talk about
18 how they feel about it, but in aggregate, when you look at
19 the data, the data proves that there's a negative effect on
20 home values. So that's the advantage of being able to bring
21 in both qualitative and quantitative discussions into this
22 type of activity.
23 Q Yes. And you said in response to Ms. Rosenfeld's
24 question that you didn't find any study that found a gas
25 station could actually increase a property value, right?

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1 A That's correct.
2 Q But on page 34 of the LUST study, it says that a
3 gas station within two miles can have an increase.
4 A What page?
5 Q 34.
6 A Sure. Let's look at that. Sure, and we can see
7 -- oh, yes, right, and that is something that's within,
8 opens about two miles away, but in -- that's not relevant to
9 the situation that we're talking about. We're talking about
10 putting a gas station in ex post facto, adjacent to an
11 existing residential community. That's a very different
12 situation than talking about opening up a gas station in
13 rural Carroll County. So let's place this in context and
14 let's deal with the reality of what we're dealing with here.
15 Q Well, the context was that you said you didn't
16 find any studies that found a gas station can actually
17 improve home values, and you were wrong.
18 MR. GROSSMAN: Well, I think you've made your
19 point here. I understand.
20 MR. GOECKE: No further questions.
21 MR. GROSSMAN: Okay. All right. Thank you very
22 much, Mr. Core.
23 THE WITNESS: Thank you.
24 MS. ROSENFELD: Mr. Grossman, just one question on
25 recross.

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1 MR. GROSSMAN: There's no re-redirect --
2 MS. ROSENFELD: Well --
3 MR. GROSSMAN: -- okay? That's -- we've had
4 enough, I think.
5 MS. ROSENFELD: Okay.
6 MR. GROSSMAN: All right. Thank you very much --
7 THE WITNESS: Thank you.
8 MR. GROSSMAN: -- appreciate you taking your
9 time --
10 THE WITNESS: Thank you.
11 MR. GROSSMAN: -- to come down here and share your
12 views and your information with us. Okay. I guess we've
13 already had a few little breaks; so we don't have to take
14 another break now. Who's next on the agenda?
15 MS. CORDRY: Michele?
16 MS. ROSENFELD: That would be Dr. Adelman.
17 MR. ADELMAN: No. It would be Larry.
18 MS. ROSENFELD: Larry, that would be Larry. I'm
19 sorry. That would be Larry for cross-examination, yes.
20 MR. GOECKE: Actually, we decided to give
21 Mr. Silverman a pass. He's all done for today, unless he --
22 MR. GROSSMAN: No cross-examination?
23 MR. GOECKE: No cross-examination.
24 MR. ADELMAN: I'll resume myself. I need about 10
25 minutes to set up all my paraphernalia, Mr. Grossman.

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1 MR. GROSSMAN: You know, I was concerned a little
2 bit. I saw Ms. Rosenfeld brought in a box of something that
3 was large enough to contain a rack on which you could put a
4 hearing examiner. So I was a little concerned. Is that
5 your paraphernalia, Dr. Adelman?
6 MR. ADELMAN: No. Mine is up there, sir.
7 MR. GROSSMAN: Oh, I see.
8 MS. ROSENFELD: That's reserved for Ms. Cordry's
9 testimony.
10 MR. GROSSMAN: All right. So Mr. Silverman is
11 then done.
12 MR. SILVERMAN: Was this put into evidence, this
13 report?
14 MR. GROSSMAN: I can't see that far.
15 MR. SILVERMAN: Document 342, the CRC report.
16 MS. ADELMAN: The one that he was going to be
17 crossed on today.
18 MR. SILVERMAN: That I was going to be crossed on.
19 MR. GROSSMAN: Oh. Well, let me see. Well, you
20 said 342. Hold on a second. Let me see what it says.
21 MR. SILVERMAN: Yes. I think that's the number I
22 have here.
23 MS. ADELMAN: I have Exhibit 342 also.
24 MR. GROSSMAN: 342, received at hearing, CRC
25 Report A-79. Let me pull that, take a look here. You want

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1 to know if the whole thing was in? Is that what you're
2 asking?
3 MR. SILVERMAN: Yes, or if any part of it was in.
4 MR. GROSSMAN: Yes, I -- yes.
5 MR. SILVERMAN: I appreciate not being --
6 MR. GROSSMAN: CRC Report No. A-79. It looks like
7 -- I don't know if it's the whole thing, but it's a fat lot
8 of it.
9 MR. SILVERMAN: I think it's the whole thing.
10 MR. GROSSMAN: Okay.
11 MS. ADELMAN: I think the whole thing is in,
12 Mr. Grossman.
13 MR. GROSSMAN: Okay.
14 MR. SILVERMAN: So do we have, is there an
15 appropriate opportunity to comment on it? I was really
16 looking forward to this cross-examination, but do we have
17 any --
18 MR. GROSSMAN: I don't think that's the way it
19 works, though.
20 MR. SILVERMAN: Right. Okay. All right.
21 Dr. Cole will comment on it in his turn. Thank you.
22 MR. ADELMAN: Mr. Grossman, it's going to take me
23 about 10 minutes or so.
24 MR. GROSSMAN: Well, all right. Well, what's the
25 pleasure of the group here? Do you want to break for an

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1 early lunch, or do you want to just break for 10 minutes and
2 then continue with Dr. Adelman?
3 MS. HARRIS: Why don't we break for 10 minutes and
4 then --
5 MR. GOECKE: Ten minutes.
6 MS. HARRIS: -- come back since --
7 MR. GROSSMAN: Okay.
8 MS. HARRIS: -- it's too early for lunch.
9 MR. GROSSMAN: Too early for lunch. Okay.
10 MS. HARRIS: Yes. Thank you.
11 MR. GROSSMAN: Then we'll break until 20 after
12 12:00. We are recessed.
13 (Whereupon, a brief recess was taken.)
14 MR. GROSSMAN: Are we ready, Dr. Adelman?
15 MR. ADELMAN: I believe we are.
16 (Witness previously sworn.)
17 MR. GROSSMAN: All right.
18 THE WITNESS: Let's see. Can everybody hear me?
19 MR. SILVERMAN: Yes.
20 MR. GROSSMAN: I can hear you.
21 THE WITNESS: All right, fine.
22 MR. GROSSMAN: All right. Then let us proceed.
23 You are still under oath.
24 THE WITNESS: I realize that, sir.
25 MR. GROSSMAN: Okay. You may proceed.

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1 THE WITNESS: I'm thinking.
2 MR. GROSSMAN: Uh-oh. That scares me right there.
3 You're thinking of fractals.
4 THE WITNESS: No, I'm not thinking of fractals,
5 and this is an example of chaos theory --
6 MR. GROSSMAN: I see.
7 DIRECT EXAMINATION
8 THE WITNESS: I have a very simple job: to
9 present you some facts that we hope in the long run will
10 convince you to see things our way.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: Many of the slides that I have in
13 this file are clearly only of peripheral relevance; so I'm
14 going to skip through a lot of them very rapidly, and I'll
15 try to emphasize the points where slides make specific
16 facts/points. The only reason I show the title slide is to
17 remind you that this is, in essence, Part 2 of the two-part
18 testimony.
19 MR. GROSSMAN: Yes.
20 THE WITNESS: There's some overlap. I'll try to
21 avoid duplication. The second slide simply sets the broad
22 context. I believe you know that. So unless you have a
23 question, I'm just going to skip past the second slide.
24 MR. GROSSMAN: I'll leave it to you to present it,
25 and --

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1 THE WITNESS: Okay.
2 MR. GROSSMAN: -- I'll listen to any objections
3 that are noted.
4 THE WITNESS: Just a second. As usual, computers.
5 Fine. An overview. Do you have any questions about that,
6 Mr. Grossman?
7 MR. GROSSMAN: Well, are you asking me to read the
8 slide?
9 THE WITNESS: No. I know you've read this
10 before --
11 MR. GROSSMAN: Right. So --
12 THE WITNESS: -- and so I'm asking if you have any
13 questions for me.
14 MR. GROSSMAN: No. I'll tell you if I have any --
15 THE WITNESS: Fine.
16 MR. GROSSMAN: -- any questions. Just make your
17 presentation.
18 THE WITNESS: Okay. A concise --
19 MS. ROSENFELD: Excuse me just one moment.
20 Mr. Grossman, do you have a hard copy? If not, would it be
21 helpful for you to have a hard copy?
22 MR. GROSSMAN: I did not receive the hard copy --
23 MS. ROSENFELD: I have one --
24 MR. GROSSMAN: -- of this. I received --
25 MS. ROSENFELD: I do have a hard copy with me of

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1 the PowerPoint that's being shown with the redline. Would
2 that --
3 MR. GROSSMAN: Okay. Yes, that would be great.
4 Thank you.
5 MS. ROSENFELD: -- if that would be helpful to
6 you --
7 THE WITNESS: Oh, I apologize. That's right. I
8 brought you a hard copy of the original. I neglected to
9 bring a hard copy of the revised for which I apologize.
10 I'll bring copies for your office.
11 MS. ROSENFELD: And should we mark this as like
12 the same exact number in (a), because it's got the redline
13 in it?
14 MR. GROSSMAN: When you say the same exhibit
15 number -- oh, I see, because --
16 MS. ROSENFELD: This is the corrected, has the
17 corrected sheets in it.
18 MR. GROSSMAN: Okay. That's a good idea.
19 MR. GOECKE: Do you have another copy of the
20 corrected one, Michele?
21 MS. ROSENFELD: I don't. That's my only one.
22 MR. GOECKE: Yes.
23 MR. GROSSMAN: What was the -- okay.
24 MS. ADELMAN: And this is the second --
25 THE WITNESS: So I believe you have the original

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1 version, Exhibit No. 358, I think; and this, of course, is
2 the minor revisions one.
3 MR. GROSSMAN: Okay.
4 MS. HARRIS: When you get to the minor revisions,
5 will you note them, because we don't have --
6 THE WITNESS: They're all in red.
7 MS. HARRIS: They're in red?
8 THE WITNESS: They're in red.
9 MS. HARRIS: Okay, good.
10 MR. GROSSMAN: Hold on one second.
11 THE WITNESS: And, in fact, in the e-mail I sent,
12 I specified which pages had revisions.
13 MS. HARRIS: Yes.
14 MR. GROSSMAN: I think that, actually, they may
15 have printed out -- yes. Actually, my staff did print out
16 this. I don't know whether this was the -- what was the
17 corrected page so I can check to see whether --
18 THE WITNESS: Let's see. The first corrected page
19 is, page 2 has red down near the bottom. If we go back to
20 where I'm pointing now --
21 MR. GROSSMAN: Oh, I see.
22 THE WITNESS: Okay?
23 MR. GROSSMAN: And that's under notice,
24 presentation of our -- oh, I see. You have our argument,
25 and you say presentation of -- no. Okay. So the one that's

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1 in here is not the corrected one. So, all right, we're
2 going to call this Exhibit 358(b), because (a) is your
3 original --
4 THE WITNESS: Uh-huh.
5 MR. GROSSMAN: -- thing and that is the corrected
6 version. All right. 358(b), corrected version of Exhibit
7 358(a). Okay.
8 (Exhibit No. 358(b) was marked
9 for identification.)
10 THE WITNESS: Okay.
11 MR. GROSSMAN: Thank you, Ms. Rosenfeld. That's
12 helpful.
13 THE WITNESS: Moving on to Slide 4, I just want to
14 make a point that I'm talking specifically about facts that
15 are relevant to the incremental traffic impact if the gas
16 station is approved/goes into operation and the incremental
17 effect upon congestion -- as the consequences of congestion
18 that the approval of the gas station would have.
19 MR. GROSSMAN: Right.
20 THE WITNESS: Everything else is material that I
21 have to go through to get to the specific question of what
22 facts do we have about the incremental traffic impact as to
23 traffic as a nuisance, effect on public safety, effect on
24 public health.
25 MR. GROSSMAN: Right.

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1 THE WITNESS: And the first thing I'm pointing out
2 is that I wanted to present you some facts, whereas up until
3 now you've been presented no facts about specifically that
4 issue: the parking lot, the traffic in the parking lot, and
5 the impact of the traffic in the parking lot.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: I don't see any need to cover this
8 now. I'm assuming that you're going to reread all this when
9 you retreat to your office to ponder the --
10 MR. GROSSMAN: Probably not today, but --
11 THE WITNESS: I didn't mean today. I mean way
12 down the road. These two slides simply restate the elements
13 of the code, which you know far better than I will ever know
14 them, and I've bolded the word nuisance to make sure to
15 restate the notion that, in my mind, the definition of
16 nuisance is unfortunately vague. I realize it has to be.
17 Fine. Now, if you're looking at this, you realize
18 that I've substituted a lot of words to avoid putting in the
19 word to argue, because frankly, having reread the transcript
20 from last time, I realized that you use the word argue in a
21 different way than I use it. So I've tried to avoid using
22 the word argue.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: The problem is that I, as a
25 scientist, have a very difficult time separating and

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1 presenting facts from arguing what they mean. So I'll trust
2 you to interrupt me if you feel that I'm arguing.
3 MR. GROSSMAN: I'll trust the applicant to object
4 if they think that something is objectionable.
5 THE WITNESS: That's fine.
6 MR. GROSSMAN: I mean, hearings of this nature are
7 different from trials in the ordinary sense because we do
8 receive here not just what's considered testimony under oath
9 -- and the case law requires that our statements here be
10 given under oath -- are not restricted to just factual
11 assertions, and we do listen to people from the community
12 who come in and express their concerns and opinions and so
13 on.
14 So we're not as rigid as one might be ordinarily,
15 but there is clearly -- I mean, ordinarily in a trial in
16 which evidence might be more strictly restricted to factual
17 evidence, and then there's, separately, legal argument. So
18 we have a sort of hybrid situation in this type of
19 proceeding; so -- and I have been much more relaxed.
20 However, sometimes something is said, and if there's a
21 question as to whether or not that's a factual assertion or
22 an argument, there is a distinction there; however, we do
23 listen to people's opinions and concerns.
24 THE WITNESS: Fine. That, that relieved some of
25 my concern because I'm going to be making a number of

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1 assertions --
2 MR. GROSSMAN: Right.
3 THE WITNESS: -- which aren't factual --
4 MR. GROSSMAN: Right.
5 THE WITNESS: -- but I was concerned that you
6 would consider those to be arguments in the sense of the
7 argument coming at the end.
8 MR. GROSSMAN: I understand.
9 THE WITNESS: I read things too careful. Okay.
10 What I'm asserting is that the TIA is not relevant to the
11 specific assertions we're making. I'm not critiquing the
12 TIA.
13 MR. GROSSMAN: This is the applicant's traffic
14 impact analysis?
15 THE WITNESS: Exactly.
16 MR. GROSSMAN: And their supplemental traffic
17 impact analysis?
18 THE WITNESS: Exactly, that neither are relevant
19 to the specific issue that I'm talking about --
20 MR. GROSSMAN: Okay.
21 THE WITNESS: -- and that, in essence, I'm
22 presenting some facts against which you have no other
23 corresponding facts to judge.
24 MR. GROSSMAN: I understand your point.
25 THE WITNESS: I need to go into what a traffic

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1 impact analysis does or doesn't do. I suspect you know most
2 of this, but I'm not sure.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: So, first of all, as I see it, a
5 traffic impact analysis is done in order to determine to
6 what extent the proposed development -- in this case, the
7 gas station -- will stress the system, whether or not there
8 is a concern from the point of view of the Adequate Public
9 Facilities Ordinance.
10 MR. GROSSMAN: Right.
11 THE WITNESS: In this case, obviously, it's a
12 question of can the road network support the development.
13 MR. GROSSMAN: Right. That's usually the main
14 thrust of a traffic impact analysis.
15 THE WITNESS: Our concern is, of course, not about
16 the main traffic network outside the mall; it's about the
17 traffic network, if you will, inside the mall. The traffic
18 impact that -- the TIA presented no data, presented no facts
19 about the parking lot. From the point of view of the TIA,
20 that makes sense. The TIA is designed to determine to what
21 extent there will be an impact on the flow of traffic,
22 commuting traffic for the most part, to and from work at the
23 peak traffic hours a.m. and p.m. The State Highway
24 Administration is not concerned about parking lots. We are.
25 The supplemental traffic analysis also provided

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1 only limited information about the level of traffic going
2 into and coming out from the parking lot, but it is in no
3 way an extension of the traffic impact analysis. All the
4 parameters are different.
5 The point I want to make with this first bullet
6 point is that while the TIA did accomplish what it was
7 supposed to accomplish, which was to give planning staff
8 sufficient information to decide whether or not there should
9 be some mitigating steps taken with respect to preserving
10 adequate flow of traffic on the main roads, it wasn't
11 designed to address the issue we're talking about. It's my
12 understanding from discussions with planning staff that
13 there has never, at least in recent memory, been a case
14 where a special exception was denied based on problems with
15 the traffic impact analysis, and I'm not suggesting --
16 MR. GROSSMAN: I'm not sure that that's correct.
17 You say there's --
18 THE WITNESS: Okay. Then we'll --
19 MR. GROSSMAN: -- that there have been --
20 THE WITNESS: I heard, I heard them say it. So I
21 guess it's hearsay.
22 MR. GROSSMAN: You heard who say it?
23 THE WITNESS: I heard staff members say, planning
24 staff members, and if you wanted -- if it's important, you
25 could confirm that by asking --

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1 MR. GROSSMAN: Well, I don't know. It really
2 isn't important, I suspect. There certainly have been
3 traffic issues and concerns raised in connection with
4 special exceptions and with rezonings which have had an
5 impact on the reports that have been issued. I can't recall
6 off the top of my head about denials specifically based on a
7 traffic issue in any --
8 THE WITNESS: Well, I was, I was told that there
9 had not been one in recent memory --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- and you can confirm that if you
12 feel that's important.
13 MR. GROSSMAN: No.
14 THE WITNESS: I want to talk for a moment about
15 the scoping agreement. The scoping agreement is a, in
16 essence, a contract that's reached between planning staff
17 and whoever does the traffic impact analysis for the
18 applicant, and the scoping agreement, in general, sets forth
19 some parameters as to what should be measured. It's usually
20 a measurement of traffic going through major intersections
21 which are signalized. In this case --
22 MR. GROSSMAN: And usually at the entry point to a
23 special exception site as well.
24 THE WITNESS: In this case, 25 percent of all the
25 intersections studied were inside the mall, and they were

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1 inside the mall, as I understand it, because planning staff
2 wanted to assess the extent to which traffic in the mall
3 would be congested and whether that would have any impact
4 on, for example, pedestrian safety, pedestrians walking in
5 crosswalks.
6 The scoping agreement determined what
7 intersections will be studied. The applicant or the
8 applicant's -- Mr. Guckert was free to study other
9 intersections in addition to the ones that were put in the
10 scoping agreement, and he studied one additional point,
11 which I'll come to shortly. The scoping agreement did not
12 ask for any information about the parking lot. That would
13 have been very unusual, but it's the parking lot that is our
14 main concern.
15 Now, as to the critical lane volume methodology, I
16 don't profess to be an expert or even to have a very great
17 deal of expertise in traffic impact analyses, but I've read
18 the documents carefully and looked at the numbers. And to
19 my mind -- and I've confirmed this with a number of people,
20 including going on the web and looking -- the critical lane
21 volume methodology, while it's appropriate for all the
22 signalized intersections on the main roads, is not
23 appropriate for the kind of traffic and congestion that
24 occurs in this situation or will occur in this situation if
25 the application is approved, and I'm going to spend a good

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1 bit of time on that shortly.
2 MR. GROSSMAN: By the way, in addition to the
3 traffic impact analysis, the written analysis, there was
4 testimony from Mr. Guckert at some length, and he certainly
5 was asked about parking lot --
6 THE WITNESS: Absolutely.
7 MR. GROSSMAN: So there is testimony regarding
8 that through Mr. Guckert.
9 THE WITNESS: Absolutely.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: And I questioned Mr. Guckert, as you
12 recall, very carefully; and I am not, I'm not in any way
13 suggesting that Mr. Guckert was not forthright in his
14 answers. Mr. Guckert is an expert, but he's not an expert
15 in studying traffic complexity in a parking lot, or if he
16 is, his expression was, in essence, it's a parking lot and
17 congestion happens in parking lots. To my mind, that's the
18 opinion of an expert, but to my mind, it doesn't carry a lot
19 of weight because he didn't discuss in detail the
20 congestion, which is what I'm getting at.
21 MR. GROSSMAN: Okay.
22 MR. GOECKE: And just for the record,
23 Mr. Grossman, the record will speak for itself in terms of
24 what Mr. Guckert was --
25 MR. GROSSMAN: Yes.

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1 MR. GOECKE: -- qualified to testify in his expert
2 capacity, and this is Dr. Adelman's opinion or recollection
3 of that qualification.
4 MR. GROSSMAN: Right. I actually don't think he
5 was that far off the mark in characterizing what Mr. Guckert
6 said about parking lots, but in any event, go ahead. I
7 haven't read his testimony in a long time.
8 THE WITNESS: And actually that raises, thank you
9 for making that comment because -- and this is not a
10 criticism of the transcription mechanism. I think that,
11 frankly, the person doing the transcription or recording of
12 these hearings ought to get a gold star, but errors do creep
13 in; it's --
14 MR. GROSSMAN: Yes.
15 THE WITNESS: -- if you're recording all that. So
16 I, in fact, looked at the transcript of the
17 cross-examination of Mr. Guckert, and it did not show what I
18 specifically remembered. So I can't argue anything from the
19 transcript, but I know what I heard. So I'm expressing, I
20 guess, an opinion; and the record, when you look at it, you
21 will see, is quite vague. It's not clear on a couple of
22 particular points, and this is the point I want to get to
23 right now.
24 Now, I must say, when I came in this room, I
25 expected you to interrupt me on the first slide and tell me

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1 that it wasn't clear on how it was being relevant, that
2 didn't, didn't see that as being helpful, that you didn't
3 know what point I was going to.
4 MR. GROSSMAN: I apologize if I've been a little
5 hard on you in the past. I do want to hear things that are
6 -- I mean, part of my obligation here is to hear evidence
7 that is relevant --
8 THE WITNESS: Uh-huh.
9 MR. GROSSMAN: -- and sometimes I know that there
10 may be a lot of peripheral issues that have some bearing on
11 how people feel about one aspect or another of this case but
12 they may not be, given all the serious major issues that
13 there are in this case about which I have heard and am going
14 to hear much testimony, I don't want to be, waste too much
15 time on issues that I know that are not really going to have
16 any significant bearing on what I have to analyze. That's
17 my point. That's --
18 THE WITNESS: And I absolutely understand, but I
19 thought, since I was anticipating your saying to me where is
20 this all going, I thought I'd hand out something which
21 indicates -- first of all, where it's all going is to Slide
22 77. If you want to flip ahead, you can look at Slide 77 --
23 MR. GROSSMAN: All right.
24 THE WITNESS: -- but in addition, yesterday I
25 constructed a small graph. There's no substantial data in

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1 it. So with your permission, I just want to distribute it
2 so you can look at it.
3 MR. GROSSMAN: All right. Thank you. And we'll
4 call this --
5 THE WITNESS: You can call that Dr. Adelman's
6 Commonsense Graph. It was --
7 MR. GROSSMAN: That's --
8 THE WITNESS: -- it was deliberately hand-drawn so
9 as not to convey any suggestion that I thought it was
10 professional.
11 MR. GROSSMAN: We'll call this Exhibit 358(c),
12 and --
13 MS. CORDRY: Would this be your version of --
14 MR. GROSSMAN: -- I think I'll leave the
15 commonsense part of it out of the description because that,
16 that might be not an objective description. 358 --
17 MS. CORDRY: Is this your version of the Laffer
18 curve?
19 MR. GROSSMAN: And that's Laffer spelled with an f
20 and not an A-U-G-H, right?
21 MS. CORDRY: You can spell that, that curve any
22 way you want.
23 MR. GROSSMAN: Okay. Okay. So this is
24 Dr. Adelman's graph of percent occupancy versus congestion.
25 (Exhibit No. 358(c) was marked

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1 for identification.)
2 THE WITNESS: And I'll clarify that at the end, or
3 actually, I'll use it at a couple of points in the
4 discussion.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: The next slide, which is No. 12,
7 focuses on an inset that's in the lower right of page 13 of
8 the original TIA. I can pull that up if you'd like, or if
9 you have it handy, whatever you want, but I have on the
10 screen the inset.
11 MR. GROSSMAN: Okay. Let me ask you a question,
12 first, about your graph, 358(c).
13 THE WITNESS: Uh-huh.
14 MR. GROSSMAN: Percent occupancy of what?
15 THE WITNESS: Ah. It's either percent occupancy
16 of the traffic intersection or percent occupancy of the
17 parking lot, of using it two ways --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- but the primary meaning is
20 percent occupancy of the parking lot.
21 MR. GROSSMAN: And, also, your other axis, which I
22 guess is the y-axis --
23 THE WITNESS: Uh-huh.
24 MR. GROSSMAN: -- saying congestion or queuing --
25 THE WITNESS: Uh-huh.

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1 MR. GROSSMAN: -- do you consider them the same?
2 THE WITNESS: Well, I wouldn't have but I've been
3 -- I understand that you cannot admit any material from our
4 traffic expert, who is no longer in fact available in any
5 case, because he's not going to testify. So I'm simply
6 saying that I've been told by him and others that when
7 traffic people talk about the lines of cars at an
8 intersection, which I call congestion, they call it queuing.
9 So I put the word queuing and congestion --
10 MR. GROSSMAN: I see.
11 THE WITNESS: -- together. I'm not really sure
12 which the best word is.
13 MR. GROSSMAN: We have used queuing I think pretty
14 much exclusively to describe what's happening at the gas
15 pumps here. So let's talk about it --
16 THE WITNESS: Fine.
17 MR. GROSSMAN: -- queuing as with the gas pump --
18 THE WITNESS: Then I'm comfortable with that.
19 MR. GROSSMAN: -- and congestion as something
20 else. Okay.
21 THE WITNESS: Just so you know, though, I believe
22 Mr. Guckert might say that I was using the word congestion
23 inappropriately and I should be saying queuing.
24 MR. GROSSMAN: I won't let him sanction you too
25 vigorously.

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1 THE WITNESS: Okay. And that may be a distinction
2 without a difference, but I think it's important.
3 MR. GROSSMAN: Okay. And the slide that you have
4 up that you wanted me to look at is what number slide?
5 THE WITNESS: This slide speaks for itself. It is
6 in, the circle is taken by --
7 MR. GROSSMAN: No. What's the number of the
8 slide?
9 THE WITNESS: The number is No. 12.
10 MR. GROSSMAN: Twelve? Okay. Okay.
11 THE WITNESS: Okay?
12 MR. GROSSMAN: Yes.
13 THE WITNESS: Number 12, Slide No. 12 shows a
14 little circular inset which was in the lower right, is in
15 the lower right of page 13 of the TIA. It's labeled Costco
16 Gas. It consists of an inverted T, the vertical leg of
17 which is a dotted line. When I cross-examined Mr. Guckert,
18 I referred to it as an intersection, and I believe -- I
19 looked for this in the transcript and couldn't find it -- I
20 believe he replied that it was not an intersection because
21 of the dotted line. In any case, what it shows is no cars
22 going into the parking lot at the point where the Costco gas
23 station is to be constructed. But I want to make clear,
24 there were no counts taken of cars going into the parking
25 lot at that point because, when Mr. Guckert wants to say

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1 that there's zero, he puts a zero. So this inset shows that
2 there was no data collected or presented about cars going
3 into the parking lot at that point.
4 MR. GROSSMAN: I can't recall, but are you
5 suggesting that they can, once -- if this gas station is
6 permitted and constructed, that cars entering at the gas
7 station would be, should be considered part of those who are
8 going into the parking lot? Is that what you're saying?
9 THE WITNESS: Well --
10 MR. GROSSMAN: Or are they going into the gas
11 station?
12 THE WITNESS: They're going into the gas station,
13 but the only way they can exit the gas station -- the only
14 way they can exit the box is by going through the parking
15 lot.
16 MR. GROSSMAN: Right.
17 THE WITNESS: So, yes, cars going into that
18 specific point would be adding to the cars going into the
19 parking lot.
20 MR. GROSSMAN: I guess it all depends on whether,
21 also, whether they're captured on the way out of the gas
22 station in any numbers.
23 THE WITNESS: Captured?
24 MR. GROSSMAN: If you're concerned about counting
25 the numbers of cars going into the parking lot and they

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1 can't enter the parking lot until they leave the gas
2 station, it wouldn't matter if you didn't count them going
3 into the gas station as long as you counted them going out
4 of the gas station into the parking lot.
5 THE WITNESS: Precisely.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: Precisely. What I'm saying at this
8 point is that if you simply look at this insert and look at
9 the whole figure --
10 MR. GROSSMAN: Right.
11 THE WITNESS: -- which was called -- it was called
12 Exhibit 3 but that's confusing. Let's see. It was
13 Mr. Guckert's designation. Page 13 is Exhibit 3 of his
14 traffic impact analysis.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: If you simply look at the insert,
17 you would conclude that there's no traffic going into the
18 parking lot or, upon careful consideration, you'd say, well,
19 there's no traffic going into the parking lot at that point
20 on the ring road.
21 MR. GROSSMAN: Right.
22 THE WITNESS: Now, in fact, obviously everyone
23 knows that that's not the case. We've been looking at this
24 picture over here. I think that's Exhibit --
25 MR. GROSSMAN: Well, I don't know if that's not

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1 the case, because that's the point. If they are counted as
2 they're exiting the gas station and going into the parking
3 lot, then what you said is not correct.
4 THE WITNESS: Let me rephrase. If you simply look
5 at this inset, it would appear perhaps to some people to
6 suggest there are no cars going into the parking lot, and
7 what I'm saying is that we all know there are cars going
8 into the parking lot, not at this point perhaps --
9 MR. GROSSMAN: Right.
10 THE WITNESS: -- but going into the parking lot.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: Okay. And I have -- if I could
13 distribute this. This is, this handout is the table I
14 submitted to you, that's the table I submitted to you --
15 oops, can I have one copy since I know you're having this
16 all --
17 MR. GROSSMAN: All right. We'll call this Exhibit
18 -- well, this may have already -- I'm not sure. Was that
19 exhibitized already?
20 THE WITNESS: Yes, you exhibitized it already.
21 MR. GROSSMAN: Okay. What did I give it as a
22 number?
23 THE WITNESS: I'm sorry. I don't have my list of
24 exhibits.
25 MR. GROSSMAN: Okay. This is the spreadsheet to

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1 accompany Slides 12 and 13?
2 THE WITNESS: Exactly.
3 MR. GROSSMAN: Exhibit 368. Okay.
4 THE WITNESS: Uh-huh, exactly.
5 MR. GROSSMAN: All right.
6 THE WITNESS: Now, I have to back up a bit and
7 remind you of some of the details of the traffic impact
8 analysis. In essence, one first collects data on the cars
9 going through intersections that are in the scoping
10 agreement, plus any additional that the traffic impact
11 analyst wishes to study, prior to the start of the process.
12 Those counts were called the -- let me use the exact
13 wording. So those are referred to as the existing peak-hour
14 traffic volumes. And for this point the page 13 graphic
15 indicates there are no cars going in, no cars going out, and
16 a number of cars passing by, either heading west towards the
17 Valley View direction or east towards the Veirs Mill
18 direction, is a sum of 224.
19 MR. GROSSMAN: What are you looking at now?
20 THE WITNESS: That spreadsheet I just gave you.
21 MR. GROSSMAN: Oh, the spreadsheet? Okay. Okay.
22 THE WITNESS: There are two ways to assess -- oh,
23 the second stage involves making projections, not
24 measurements, projections of the number of cars that will be
25 going through the various intersections if all of the

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1 pending, approved pending developments for the general area
2 around the special exception site in fact go into operation
3 and that is referred to as the -- those are the combined
4 trips generated by the approved developments. And then one
5 adds to the existing traffic counts the combined trips to be
6 generated by all of the developments except for the proposed
7 development, S-2863, to generate what's called the
8 background counts.
9 MR. GROSSMAN: Right.
10 THE WITNESS: The background in this case is being
11 used in a very different way than it's used in other
12 contexts. So --
13 MR. GROSSMAN: Right, what's in the pipeline.
14 THE WITNESS: -- existing is what I would call
15 background, but the terminology is existing.
16 MR. GROSSMAN: Background is usually, in these
17 studies, usually refers to what's in the pipeline.
18 THE WITNESS: Exactly.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: When this study was done, the
21 background counts included the store. Obviously, since we
22 began this process, the store has opened. The counts for
23 the store then become either some correction to the existing
24 or we recognize that the background isn't quite the same as
25 what it was projected to be.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: In any case, I didn't show the inset
3 for page 19; that's the background counts. And the inset
4 shows for cars going in at this point, which I'm pointing to
5 now on Slide 12, are zero and cars going out are zero, and
6 if that inset is to be understood as the cars going
7 specifically into the point where the gas station will be,
8 then obviously that is correct. If, however, this inset is
9 meant to encompass all of the intersections or points of
10 ingress and egress in the vicinity of the gas station, it's
11 arguably inaccurate, because cars going to the store now, to
12 some extent, enter the parking lot from the southwest --
13 from the southern part of the ring road. That's not a major
14 issue.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: The next stage in the traffic impact
17 analysis, of course, is to do a further set of projections
18 which involve determining the traffic that will be brought
19 to the mall site if and when the mega gas station is
20 approved, built, and put into operation.
21 MR. GROSSMAN: Right.
22 THE WITNESS: That involves a number of
23 presumptions, based on previous methodology, as to how many
24 cars this sort of gas station will bring to the mall and
25 then putting them into categories: either cars that are

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1 coming to the mall only to shop at the gas station, cars
2 that are passing by for some reason, then stop to get gas --
3 MR. GROSSMAN: Right.
4 THE WITNESS: -- and cars that are already at the
5 mall, presumably to shop at the Costco store and therefore,
6 when they go to the gas station, either before or after
7 shopping at the store, they're not generating additional
8 trips. Roughly speaking, I believe the percentage is that
9 approximately 33 percent of all the cars projected to come
10 to the gas station, only 33 percent of those should be
11 assigned to the bin of new trips generated for the gas
12 station. And those are the counts that are reflected in
13 this inset. I'm now on page 13, Slide 13 of my
14 presentation. This inset is the same kind of inset -- it
15 was taken from page 26 of the TIA, and it shows that the
16 cars projected to go into the gas station and the cars
17 coming out are 147. To me, this is problematic because no
18 cars are going to come out of the gas station proper;
19 they're going to come out of other points adjacent to the
20 gas station, and therefore the --
21 MR. GROSSMAN: What do you mean by that? Why are
22 there no cars coming out of the gas station?
23 THE WITNESS: Because the gas station is one way.
24 MR. GROSSMAN: So they'll be, still be coming out
25 of the gas station.

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1 THE WITNESS: They're coming out of intersections
2 adjacent to the entrance of the gas station.
3 MR. GROSSMAN: I'm sorry, but I'm missing the --
4 can you explain that again, what you're saying?
5 THE WITNESS: Yeah. Let me try it again. Let's
6 see. Do I have --
7 MR. GROSSMAN: Which is the problematic figure
8 that you're talking about on Slide 13?
9 THE WITNESS: Specifically the number, the summary
10 -- if you look at Slide 13, there's, there are two numbers
11 with arrows coming from the gas station going out. One is
12 -- I'm looking at the p.m. peak hours, which are in
13 parentheses, and those numbers are 67 which will come out
14 from this domain and turn right to head towards the
15 University Boulevard side and 61 coming out at this point,
16 excuse me, 80 coming out at this point and heading towards
17 the Veirs Mill side. And the only point I'm making -- and
18 this is not central to my argument --
19 MR. GROSSMAN: Well, aren't there also -- there
20 are 80, it seems to me, going out northerly into the parking
21 lot. No?
22 THE WITNESS: No. No. Those are --
23 MR. GROSSMAN: What is that? What is --
24 THE WITNESS: -- those are heading out southerly
25 towards the ring road.

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1 MR. GROSSMAN: No. I mean on the right-hand side
2 of that, on that little, of the dividing line.
3 THE WITNESS: Those are going in, the 80 on the
4 right-hand side --
5 MR. GROSSMAN: No, they're -- I see it as the 48
6 going in --
7 THE WITNESS: Uh-huh.
8 MR. GROSSMAN: -- and maybe I'm misreading that,
9 but it looks like it's saying 61, parens, 80 going out, but
10 am I misreading that, you're saying?
11 THE WITNESS: No, I don't think you're misreading
12 that. I think I'm misstating it; so let me go back. First
13 of all, I'm focusing only on the numbers that are in
14 parentheses.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: Okay? Because those are the p.m.
17 peak hours.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: And what this graphic shows is that,
20 as to cars going into the point of this circle, 67 are going
21 in coming from the western side --
22 MR. GROSSMAN: Yes.
23 THE WITNESS: -- and 80 are going in coming from
24 the eastern side.
25 MR. GROSSMAN: What do those figures mean that are

1 on the right-hand side of the vertical dotted line?
 2 THE WITNESS: As I understand it, that -- those
 3 figures mean that 61 cars can be expected to enter the point
 4 in this inset in the a.m. and 80 cars can be expected in the
 5 p.m. peak hour. That's what those numbers mean.
 6 MR. GROSSMAN: No. I mean, I have to go back to
 7 look at the original TIA to --
 8 THE WITNESS: I can pull those up if you'd like.
 9 MR. GROSSMAN: -- know if I agree with you, but
 10 I'm not sure, just given a location on the page there,
 11 whether that indicates vehicles leaving the station or
 12 coming into the station, the one on the right-hand side of
 13 the dotted line.
 14 THE WITNESS: That's precisely my point and I want
 15 to make sure you understand. I'm going to get to the counts
 16 that I have presented you about this, but my point is that
 17 this inset has been used inconsistently and it's not clear
 18 whether the counts shown in this inset are counts going into
 19 a general vicinity on the, at the point where the parking
 20 lot meets the ring road or whether they're going -- or
 21 whether the counts are specific to cars that are going
 22 directly into the gas station to get fuel.
 23 MR. GROSSMAN: All right.
 24 THE WITNESS: In any case, the spreadsheet that I
 25 constructed is simply a tabulation, and it shows the

1 projection from the traffic impact analysis -- and, again, I
 2 can pull that up if you'd like; I have it loaded, be simple
 3 to do -- that in the p.m. peak hour, the number of cars
 4 going into the parking lot at this point, whatever this
 5 point is, are 147 and the cars going out from this point,
 6 whatever this point is, are 147 and that --
 7 MR. GROSSMAN: Right.
 8 THE WITNESS: -- the total number of cars going in
 9 or out, passing by, is 518. It's a simple summation.
 10 MR. GROSSMAN: Okay.
 11 THE WITNESS: Okay? Now, what I want to present
 12 as fact is what we know about the occupancy of the parking
 13 lot for this peak-hour condition, p.m. peak-hour condition,
 14 and that comes from numbers that are also in the traffic
 15 impact analysis, and I specified -- well, I didn't specify,
 16 excuse me. These would be in the upper inset, and so I
 17 better pull that document up.
 18 So now I'm going to the -- fine, and I'm going to
 19 reduce this somewhat; no, I don't need to. The upper left
 20 corner of this graphic, which is page 13 of the TIA, shows a
 21 series of five intersections which are the five
 22 intersections indicated in the center around the little
 23 circle labeled Site. So these are Intersections 16, 17, 18,
 24 19, and 20, as Mr. Guckert designated them.
 25 MR. GROSSMAN: Right.

1 THE WITNESS: And what I've done is to simply take
 2 the numbers from this display and put them in spreadsheet
 3 form. The top line of the spreadsheet shows the numbers
 4 taken from page 13. The second line shows the similar
 5 numbers taken from page 19; that's the background counts.
 6 And the third line shows the numbers taken from page 26,
 7 which is the total.
 8 MR. GROSSMAN: Yes.
 9 THE WITNESS: Okay? And if you look at the
 10 spreadsheet now, the number of cars that are coming from
 11 Intersection 16 and heading east and passing the point of
 12 that inset is greater than the number of cars passing the
 13 inset. The number, for example, for existing peak-hour
 14 traffic -- 227 minus 130 is 97 -- those are cars which
 15 started from Intersection 16, didn't reach the point of the
 16 inset and therefore must have entered the parking lot, or
 17 they drove off the ring road and crashed down into the
 18 neighborhood.
 19 All right. Similarly, if you look just to the
 20 right of that --
 21 MR. GROSSMAN: Or they could have parked on the
 22 ring road.
 23 THE WITNESS: They could have parked on the ring
 24 road. I think that's unlikely, but in any case, these are,
 25 these are the best estimate that can be made from the

1 numbers available. On the right side of that spreadsheet,
 2 I've done the same thing for cars coming from Intersection
 3 20 and heading west towards the point where the small inset
 4 indicates and that says that of the 179 that started from
 5 Intersection 20, which is 179, 94 passed that point where
 6 the gas station is supposed to be put, and therefore 85
 7 somehow didn't make it to the gas station. Okay?
 8 Similarly, the second and third lines are the same
 9 sort of numbers, and I just want to focus on the third line,
 10 which is from page 26. And it says that starting from
 11 Intersection 16, something like 287 cars that started from
 12 Intersection 16 didn't get to the point where the gas
 13 station will be placed. I would say, actually, that a large
 14 percentage of that number must have entered or must be
 15 projected to have entered the parking lot in the peak hour.
 16 MR. GROSSMAN: Okay. I'm not reaching any
 17 conclusions about that, but I understand your point.
 18 THE WITNESS: That's not my point. My --
 19 MR. GROSSMAN: Okay.
 20 THE WITNESS: -- point is to simply point out the
 21 facts.
 22 MR. GROSSMAN: Well, I don't know if they're facts
 23 or not. I'm just --
 24 THE WITNESS: All right. There's another way to
 25 look at the occupancy or the number of cars going into the

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1 parking lot, which, remember, is the central point of our
2 reason for raising this issue: how many cars are going into
3 the parking lot; what is the impact on congestion in the
4 parking lot of the additional cars coming into the parking
5 lot from the presence, if it's permitted, of the gas
6 station?
7 We've all been looking at that graphic on the
8 easel for some time now, and I have a blowup of a portion of
9 that graphic, and I simply counted the cars in that parking
10 lot. Now, that was taken in October of 2012, and we all
11 know it's a, it's a sample. It's a one-time sample of the
12 occupancy of the parking lot. We don't even know the time
13 of day, but I believe it was a Friday but I'm not certain.
14 And I actually counted the cars, which is a mind-numbing
15 exercise, but it came out to be about 330 cars. I gave up
16 because some of the pixelation was impossible to guess. In
17 any case, if you simply look at the parking lot, it appears
18 to be, ballpark, one-third full. The capacity of the
19 parking lot at that time was slightly in excess of 800.
20 There's been re-striping and so forth. This is a way of
21 stating factually that prior to this entire process
22 starting, at this point in time, the parking lot was
23 occupied approximately one-third. A one-third-full parking
24 lot would not be expected to be congested, to have any kind
25 of traffic flow problems.

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1 MR. GROSSMAN: Right.
2 THE WITNESS: For what it's worth, I also refer
3 you to, let's see, ah, to Exhibit 101, which I can pull up
4 if that would be helpful, or you can look at it yourself.
5 What would you prefer? That I show you --
6 MR. GROSSMAN: Well, what is 101?
7 THE WITNESS: Exhibit 101 is a picture, a graphic
8 that Applicant filed of the parking lot, taken on October
9 23rd, and it shows a somewhat lower level of occupancy. I
10 didn't bother counting those cars. I would estimate that
11 there --
12 MR. GROSSMAN: So what's your point about, about
13 that exhibit?
14 THE WITNESS: That the parking lot is not anywhere
15 near full --
16 MR. GROSSMAN: Okay.
17 THE WITNESS: -- at the number of times, the
18 number of data points that we have. So I'm telling you as a
19 fact that prior to the special exception process starting,
20 the parking lot was lightly used and therefore not
21 congested.
22 MR. GROSSMAN: Well, these were figures prior to
23 the opening of the Costco warehouse.
24 THE WITNESS: Precisely.
25 MR. GROSSMAN: Not prior to the special exception

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1 only. The special exception hasn't been approved yet.
2 THE WITNESS: Excuse me. Prior to the, prior to
3 the filing of the special exception application.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: Okay? And that's a, that is a fact;
6 that's the first fact.
7 MR. GROSSMAN: All right. I'm going to try those
8 dreaded words on you. Where is this all heading?
9 THE WITNESS: It's headed -- now you can pick up
10 the graph.
11 MR. GROSSMAN: Which graph?
12 THE WITNESS: The graph that I handed out.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: It's headed to the following
15 assertion, for which I'm going to provide more facts, that
16 since the store opened, we moved up that curve from a point
17 where the parking lot was rarely, if ever, fully occupied --
18 MR. GROSSMAN: Right.
19 THE WITNESS: -- to a point where the parking lot
20 is sometimes fully occupied. We don't have, we don't have
21 total data on that, but at many times, it's extremely
22 heavily used.
23 MR. GROSSMAN: Right, and I think there's other
24 evidence that has been testimonial evidence that's been
25 given to that effect.

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1 THE WITNESS: And I'm going to provide some
2 additional evidence.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: If the, if the gas station is
5 approved and allowed to open, the occupancy of the parking
6 lot will increase somewhat. It's already at maximum
7 capacity at some times. The number of times when it will be
8 at or near maximum capacity will increase, and if you look
9 at the curve, the point is that the congestion of a parking
10 lot is not a linear function of the occupancy. Put another
11 way, when you have very few cars, there's no congestion, but
12 as you approach capacity, the congestion increases steeply.
13 Every additional car creates a lot more congestion, a lot
14 more interrupted driving, people looking for parking spots,
15 et cetera. The congestion increases steeply.
16 MR. GROSSMAN: Well, yes, I have a question about
17 that. What makes you say that? What evidence makes you say
18 that this curve doesn't look like this but, rather, looks
19 just like a straight line?
20 THE WITNESS: I have searched the literature for
21 any kind of statement about it and can find none.
22 MR. GROSSMAN: So why did you draw the curve this
23 way, which shows a much steeper rise, almost geometric rise
24 towards the end, rather than just as a straight line from
25 zero going up? I mean, I guess we could all assume as a

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1 matter of common sense that congestion increases as a
2 percent of occupancy, but why is it --
3 THE WITNESS: Uh-huh.
4 MR. GROSSMAN: -- why is the curve -- what made
5 you draw the curve this way?
6 THE WITNESS: Observations that we made at the
7 parking lot, which I'm coming to.
8 MR. GROSSMAN: So it's your suggestion that each,
9 as you get -- as the parking lot gets fuller and fuller,
10 each additional car has a magnified impact, in effect?
11 THE WITNESS: Precisely.
12 MR. GROSSMAN: Okay. But you don't have a
13 scientific basis for that, just an, your own observational
14 view --
15 THE WITNESS: Right, and in --
16 MR. GROSSMAN: -- anecdotal -- okay.
17 THE WITNESS: Precisely, and in fact, there -- I
18 would assert there is no available literature, because I've
19 looked for it --
20 MR. GROSSMAN: Okay.
21 THE WITNESS: -- on this point, and in fact,
22 again, I can't introduce things that our traffic expert said
23 is testimony, but it might be helpful to you to know that
24 early on in this process I asked our traffic expert if there
25 was anything like a congestion index --

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1 MR. GROSSMAN: Right.
2 THE WITNESS: -- and he replied to me, that's a
3 very complicated question, which I didn't find helpful; so I
4 don't think that you'll find it helpful.
5 MR. GROSSMAN: Okay. Maybe chaos theory would be
6 applicable here.
7 THE WITNESS: It's possible, but I don't, I do not
8 want to go there.
9 MR. GROSSMAN: All right.
10 THE WITNESS: I'm trying to keep the points I'm
11 making to the barest minimum. We can skip this. It's a
12 summary slide, but I'll summarize. Applicant provided no
13 factual information about the occupancy of this parking lot.
14 I've provided you some factual information, which is that
15 the parking lot is occupied, was occupied, prior to the
16 filing of the special exception, somewhere in the range of
17 one-quarter to one-third. I do not have a definitive
18 number. One reason there's no definitive number is that the
19 counts available are not a complete scientific sampling of
20 the occupancy of the parking lot. The counts that are
21 available are either anecdotal or they're pictorial from
22 Google shots or they're what can be deduced from the
23 existing traffic volume counts that Mr. Guckert provided,
24 which were captured one time, one day, at one specific time.
25 MR. GROSSMAN: Okay. Before you go on --

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1 THE WITNESS: Uh-huh.
2 MR. GROSSMAN: -- I do want people to be able to
3 get lunch --
4 THE WITNESS: Okay. Want to break now?
5 MR. GROSSMAN: -- and maybe this is not a bad time
6 to do it. And it's about 1:30, and we'll come back at 2:15.
7 Does that make sense?
8 THE WITNESS: Fine.
9 MS. ADELMAN: Yes.
10 MR. GROSSMAN: All right. Then we're recessed
11 until then.
12 (Whereupon, at 1:27 p.m., a luncheon recess was
13 taken.)
14 MR. GROSSMAN: We're back on the record now. On
15 the tanker truck issue, I think that I had a recollection
16 that there was some testimony that there was a state
17 regulation regarding --
18 MR. GOECKE: Clean diesel.
19 MR. GROSSMAN: -- the tanker truck advanced
20 technology. That's my vague recollection. It just popped
21 into my --
22 MR. BRANN: I have asked Tim Hurlocker, our
23 expert, about it. His reply to me was all diesel is clean
24 diesel since 2007, and he's referring to the fuel, but he's
25 checking on, to see if there's a special regulation on the

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1 trucks. But --
2 MR. GROSSMAN: Yes. I just had this vague
3 recollection. It's back to April, I believe --
4 MR. BRANN: Yes.
5 MR. GROSSMAN: -- it might have been at the first
6 or the second --
7 MS. HARRIS: We trust your recollection.
8 MR. BRANN: One of the very -- it was probably the
9 very first hearing.
10 MR. SILVERMAN: That was said, sir, but the
11 regulation on trucks does not require everybody to redo
12 their existing trucks; truck engines last a long time.
13 They're encouraged to do it, and in some places, like the
14 Port of Los Angeles, they're required to do it, but they're
15 not required to do it here. So I think --
16 MR. GROSSMAN: Okay.
17 MR. SILVERMAN: -- the testimony is eventually
18 they'll all be in compliance but not, but not now. There's
19 plenty of old trucks that are still operating.
20 MR. GROSSMAN: Okay. All right. Well, you can
21 testify --
22 MS. ADELMAN: And school buses.
23 MR. GROSSMAN: -- or somebody, either side, can
24 testify on that point if it's not, not clear.
25 MR. SILVERMAN: Okay. All right. Well, maybe we

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1 can -- it's a matter of law; so maybe we can just give you
2 some kind of legal thing.
3 MR. GROSSMAN: Okay. All right, sounds fair. All
4 right, sir.
5 THE WITNESS: All right.
6 MS. ROSENFELD: Have fun, Larry.
7 MR. GROSSMAN: You're on the stage.
8 THE WITNESS: All right. Mr. Grossman, the way
9 I've organized this is that I'm covering points where I
10 think we differ from what Applicant has provided --
11 MR. GROSSMAN: Okay.
12 THE WITNESS: -- first, and then I'm moving on for
13 the bulk of the presentation to data facts that we're
14 presenting.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: Okay? We had a brief discussion
17 just a while ago about the question of congestion versus
18 idling --
19 MR. GROSSMAN: Yes.
20 THE WITNESS: -- and I agree with you absolutely
21 that the term idling in this context has been used
22 primarily, if not, exclusively in the context of the box, as
23 far as queuing in the box --
24 MR. GROSSMAN: Queuing.
25 THE WITNESS: -- and idling. This may be one of

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1 those cases where -- well, you said it better than I can say
2 it -- something like, well, what difference does it make
3 what you call it; it is what it is, something like that.
4 There were a couple of points --
5 MR. GROSSMAN: A rose is a rose is a rose.
6 THE WITNESS: A rose is a rose is a rose. Now,
7 what -- the point I want to establish for you to think about
8 is that congestion leads to cars moving slowly. If a car is
9 moving slowly, it is actually idling. Slow-moving cars move
10 slowly; they emit more gas; they're idling. Whether they're
11 in the queue at the box or in a line at an intersection, it
12 is operationally the same fundamental principle that the
13 cars are moving slowly. That's why I'm stressing the word
14 congestion and that's why I'm focused almost exclusively on
15 the parking lot and the portions of the ring road
16 immediately adjacent.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Okay.
19 MR. GROSSMAN: I mean, I buy that as a
20 proposition, but I'm not sure how you factor it in. How do
21 I factor it in without numbers that tell me that it is going
22 to increase congestion, pollution, or whatever, by any
23 specified amount?
24 THE WITNESS: I'm going -- that's where I'm,
25 that's where I'm going.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: Okay? And I don't delude myself
3 into thinking that I'm going to convince you, much less that
4 you're going to say, Dr. Adelman, you convinced me. I
5 understand that's way down the road.
6 MR. GROSSMAN: Feel free to delude yourself. I
7 mean, we all do. It's --
8 THE WITNESS: Well, I know. All right. Sometimes
9 I mislead myself. So this slide, which I'd just like you to
10 look at, that's a, that's a summary of the few points I've
11 made, and I don't have to read it. You can read it.
12 MR. GROSSMAN: Okay. What slide number is this?
13 THE WITNESS: This is Slide No. 14.
14 MR. GROSSMAN: Okay. And when you say the traffic
15 impact analysis, are you including the testimony of
16 Mr. Guckert, or are you just talking about his written
17 report --
18 THE WITNESS: I'm talking --
19 MR. GROSSMAN: -- when you use that term?
20 THE WITNESS: I'm talking about the TIA report
21 and --
22 MR. GROSSMAN: Because there was much said --
23 THE WITNESS: There was much --
24 MR. GROSSMAN: -- in testimony.
25 THE WITNESS: There was much said, but what was

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1 said in testimony was primarily -- I may be wrong about this
2 -- primarily about the impact on the roads outside the gas
3 station; to some extent, the ring road.
4 MR. GROSSMAN: Yes, there's a lot of ring road
5 testimony.
6 THE WITNESS: Right, but I'm focused on the
7 parking lot.
8 MR. GROSSMAN: There was testimony about that too.
9 I'm just saying --
10 THE WITNESS: There was a very limited amount of
11 testimony, and I would, I would respectfully request, which
12 I know you're going to do anyway, that you reread the
13 transcript, my having raised the point about how little was
14 actually said about the parking lot, and you will assess for
15 yourself. That's what --
16 MR. GROSSMAN: Right.
17 THE WITNESS: -- that's your job, obviously. I
18 don't have to tell you that.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Okay. So now I'm --
21 MR. GROSSMAN: Yes, I'm not sure that I agree with
22 the statement that the TIA addressed -- does not, not at
23 all, does not address the question of nuisance, because it
24 depends on what you mean by nuisance --
25 THE WITNESS: Precisely.

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1 MR. GROSSMAN: -- and so whatever you call it,
2 that's another one of those things. I think --
3 THE WITNESS: Uh-huh. Uh-huh.
4 MR. GROSSMAN: -- it does address that.
5 THE WITNESS: Uh-huh.
6 MR. GROSSMAN: Yes, I can't agree with your
7 not-at-alls, but go ahead.
8 THE WITNESS: Okay, that's fine. I can actually,
9 I can actually summarize this very quickly. I want to make
10 sure that you understand that, as I see it, the supplemental
11 traffic analysis that Mr. Guckert presented is in no way an
12 extension of the traffic impact analysis. They're, they're
13 apples and oranges. The data provided is useful. It gives
14 some information about traffic impact on the ring road, but
15 it can no way be -- as I see it, it can in no way be
16 considered a logical extension of the TIA. It's a separate
17 kind of data set.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: Okay? Now, I have to return to a
20 point I was trying to make last time about presentations
21 being misleading, and you'll remember that I distinguished
22 between something that's misleading in and of itself and the
23 question of intent. I'm not, I am -- absolutely not say
24 that Mr. Guckert was attempting to mislead you when he
25 presented the summary slide in the STA. I'm saying that, as

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1 I see it, the slide itself or the picture itself is
2 inherently misleading, and I wanted to make sure you
3 understand why I'm saying that, because you may remember
4 that when I was cross-examining Mr. Guckert, I made a very
5 long and elaborate statement to the effect that if you file
6 the kind of data I think you're going to file, then I may be
7 forced, as a scientist, to object and that seemed like a
8 very broad stroke. Well, the fact is that what happened was
9 that Mr. Guckert submitted data that I believed was useful,
10 but he didn't use it the way I would use it. So I'm going
11 to show you that.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: And he submitted it along with this
14 summary graphic that I ought to show you. So I'm going to
15 go to this slide. This is, this is Mr. Guckert's graph.
16 MR. GROSSMAN: Right. What slide is that?
17 THE WITNESS: This is not a slide. This is --
18 MR. GROSSMAN: Oh, you didn't make a slide? Okay.
19 THE WITNESS: Right. This is the, this is 128,
20 excuse me, this is Exhibit 128(b).
21 MR. GROSSMAN: All right. I have to dig that up
22 because --
23 THE WITNESS: Uh-huh.
24 MR. GROSSMAN: -- unless somebody has a copy of it
25 handy.

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1 MS. HARRIS: I have an extra copy.
2 MR. GROSSMAN: Okay. That would be great. Thank
3 you, sir. Okay.
4 THE WITNESS: Now, Mr. Guckert presented this
5 graphic, as I understand it, as an attempt to summarize for
6 you the data in his Exhibit 128(a), which is the actual
7 counts, and I'm not asserting he was attempting to mislead
8 you. I'm saying --
9 MR. GROSSMAN: I understand. You don't have to
10 keep saying any aspersions. You're just --
11 THE WITNESS: Fine. Okay.
12 MR. GROSSMAN: -- giving your view.
13 THE WITNESS: Then what this, what this graphic
14 does is to overlay in such a way that, to my mind, as I see
15 it, it's confusing. It's confusing because the boxes are
16 very hard to read. It's hard to figure out what numbers are
17 what. And more importantly and most importantly, while
18 Mr. Guckert presented all of his data, his numbers in terms
19 of CLVs --
20 MR. GROSSMAN: Right.
21 THE WITNESS: -- he chose to convert for this
22 graphic to LOS --
23 MR. GROSSMAN: Right.
24 THE WITNESS: -- level of service.
25 MR. GROSSMAN: Right.

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1 THE WITNESS: And I've explained in a few slides
2 -- and you can look at them; there are about four of them --
3 the reason why I think switching from CLV to LOS is
4 inherently misleading, because it leads to -- and I'm not
5 disputing that the level of service reported is A. I'm not
6 disputing that at all. I'm saying that one is looking at a
7 graphic in which there are a bunch of A's all around and, if
8 you don't think about it, the reaction is, anyone's
9 reaction, everything is all right, everything is A-okay.
10 Now, I can't read your mind; so I don't know how you are
11 reading this graph, but I want to point out to you that, as
12 I'm going to show you with data, everything is not at all
13 A-okay.
14 MR. GROSSMAN: All right. My recollection of his
15 testimony was that although they no longer use these
16 characterizations of A, B, and so on, level of service for
17 CLVs, they used to --
18 THE WITNESS: Uh-huh.
19 MR. GROSSMAN: -- use it in that analysis. Of
20 course, it's still used in other forms of traffic analysis,
21 but --
22 THE WITNESS: Uh-huh, precisely.
23 MR. GROSSMAN: You're saying -- what you just said
24 to me is that you don't disagree with the characterization
25 of level of service of A; you just think that connecting it

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1 with CLVs is misleading. Did I understand that correctly?
2 THE WITNESS: I'm saying, to be precise, switching
3 from the use of CLV in the data set to LOS for the graphic
4 is inherently misleading.
5 MR. GROSSMAN: But do you disagree with the
6 assertion that these are level of service A at these
7 denominated intersections?
8 THE WITNESS: Definitely not.
9 MR. GROSSMAN: Pardon me?
10 THE WITNESS: Definitely not.
11 MR. GROSSMAN: Not? You do not disagree?
12 THE WITNESS: I do not disagree at all. In fact,
13 what I'm going to go into now in some detail is why the use
14 of CLV is inappropriate for this kind, for these kinds of
15 intersections, not for external intersections or the
16 internal. I'm going to explain that in considerable detail.
17 MR. GROSSMAN: All right.
18 THE WITNESS: Okay.
19 MR. GROSSMAN: I mean, I have my own questions
20 about the, about critical lane volume analysis --
21 THE WITNESS: Uh-huh.
22 MR. GROSSMAN: -- for lots of other reasons over
23 the years, but --
24 THE WITNESS: Uh-huh.
25 MR. GROSSMAN: -- but what I'm not sure of is, if

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1 you are saying that the level of service A is a fair
2 characterization of the intersections in question, why does
3 it make a difference what you're about to tell me?
4 THE WITNESS: Ah, it makes a very great
5 difference. Think back for a second. The purpose of the
6 traffic impact analysis, which uses CLV methodology or one
7 of the other methodologies that are available, is to assess
8 the impact of the proposed development --
9 MR. GROSSMAN: Right.
10 THE WITNESS: -- on the major road network. For
11 the major road network, the CLV is an appropriate tool --
12 MR. GROSSMAN: Right.
13 THE WITNESS: -- because it characterizes at a
14 level that's satisfactory for planning staff to evaluate
15 what's going to happen. I'm saying that CLV analysis is not
16 appropriate for the kinds of intersections we're talking
17 about.
18 MR. GROSSMAN: I know, but I'll take that as a
19 given as to what you are asserting. What I'm saying is, if
20 you simultaneously admit that these intersections are
21 functioning at a Level A level of service, what difference
22 does the rest of it make?
23 THE WITNESS: I'm saying they're not functioning
24 at a Level A service. They're functioning at a Level A
25 service as defined by CLV --

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1 MR. GROSSMAN: Oh, okay.
2 THE WITNESS: -- slash LOS methodology.
3 MR. GROSSMAN: Okay. That's -- I didn't
4 understand you to make that distinction.
5 THE WITNESS: And thank you for asking questions.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: I'm having trouble using the right
8 words.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: I am not disputing that it's
11 appropriate to label that intersection with an A based on
12 using CLV methodology. I'm saying --
13 MR. GROSSMAN: Okay. You're just saying that CLV
14 methodology is not the best indicator --
15 THE WITNESS: Right.
16 MR. GROSSMAN: -- of the functioning of these
17 intersections and --
18 THE WITNESS: And I'm going to describe to you now
19 with our own data exactly what I mean.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: Fine.
22 MR. GROSSMAN: Fair enough.
23 THE WITNESS: Whoops, at least I'm trying to.
24 Okay. So now we're moving to the facts we are presenting,
25 saying essentially what I intend to say about both the TIA

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1 and the STA. Now, I'm focusing on facts we're presenting,
2 okay? I want to explain how we did this. We had, for a
3 number of reasons, concluded that Intersection 16 -- that's
4 the extension of Valley View to the ring road --
5 MR. GROSSMAN: Okay.
6 THE WITNESS: -- is a crucial intersection from
7 the point of view of the residents of our community, from
8 the point of view of anyone accessing the mall from the, in
9 the broader sense, the southwest.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: So we focused on Intersection 16,
12 and we did our own counts. Now, if you'll accept that I
13 know how to do a CLV, then I can move on to the actual data,
14 but I suspect that since I'm not an expert in TIA, you need
15 some sort of explanation of how we did the counts and how we
16 analyzed them.
17 MR. GROSSMAN: All right.
18 THE WITNESS: Okay. Okay. So this slide -- I'm
19 now on Slide 19 -- essentially says why we chose
20 Intersection 16 for analysis, and before I go on, I just
21 would like it if you'd just take a look at the elements of
22 Slide 19. I don't need to read them for you. You can read
23 them.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: Fine. Then I want to show you

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1 Intersection 16, and to make this simpler for everyone, what
2 I've done is produced copies of this figure, 16, and the
3 following page, excuse me, a page further down where we
4 actually show our data.
5 MS. CORDRY: Sorry. I had it turned off before.
6 THE WITNESS: So I'm going to pass out two copies
7 of pages from the testimony so you have them easily
8 accessible, so everyone has them accessible, okay?
9 MR. GROSSMAN: Okay.
10 THE WITNESS: Or I'm not. Our chair is going to
11 do it.
12 MS. ADELMAN: I'm in training.
13 THE WITNESS: And so that we're clear, you're all
14 getting a copy of Slide 20, which is the picture of the
15 intersection, and Slide, forgotten the number, the
16 spreadsheet.
17 MR. GROSSMAN: The spreadsheet, Exhibit 368.
18 THE WITNESS: And I want you to be clear where
19 we're looking. This is from the Google map that everyone --
20 this is from the Google map that everyone has been studying.
21 The dead center of this figure is the intersection No. 16.
22 The red X is where we sat to make our counts.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: So we were looking from an auxiliary
25 lot for Target to the west, down the extension of Valley

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1 View from University Boulevard, which is off to the left of
2 the picture, to the ring road, and we did counts of cars
3 coming to and going from that intersection. The question
4 mark on this slide is to indicate a specific intersection
5 that Mr. Guckert didn't include in his supplemental traffic
6 analysis. It simply wasn't included.
7 So I'm going to go on, but we're going to come
8 back to that intersection picture because what I want to
9 explain to you is the complexity of the actual traffic
10 pattern at an intersection that is not captured by the CLV.
11 So a lot of what I'm going to do is descriptive. Now, I
12 don't know how much weight you can place on descriptive
13 information. I'm a scientist who happens to spend a good
14 bit of his life describing things accurately, and in the
15 scientific literature, accurate descriptions are accepted as
16 data, as facts if they're reproducible.
17 So some comments about the CLV. In contrast to
18 what many people may think, I don't know what you think, the
19 CLV methodology is not terribly complex. It's actually
20 relatively simple addition/subtraction using an algorithm.
21 The algorithm is provided to all traffic analysts to use. I
22 am not a traffic analyst, but it was relatively easy for me
23 to use that algorithm in a very logical fashion, which I'm
24 now going to show you.
25 First of all, the next couple of slides simply say

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1 to you that you can find all of this information for
2 yourself on the website. I've also included the information
3 as attachments to this file, to the filing, and if anyone
4 wants, if you wish or someone else wishes, I'll explain what
5 I understand.
6 What we did, in essence, was to take one of
7 Mr. Guckert's data sheets and white out the numbers he had
8 entered and used it as a template to calculate the CLVs from
9 the numbers we accumulated. We were, in essence, parroting
10 him. He's the expert. I'm not disputing that. I'm not an
11 expert. I used his methodology, and to confirm that I was
12 doing it correctly, we did the double line. We actually
13 analyzed the data twice: once, I gave the spreadsheet
14 information to our chair and asked her to re-label all the
15 data sets --
16 MR. GROSSMAN: It's not fair because she's your
17 wife.
18 THE WITNESS: Well, but we don't always get along.
19 MS. ROSENFELD: She can still re-label.
20 MR. GROSSMAN: She can't be -- is this a version
21 of love is blind? Is that double-blind --
22 THE WITNESS: No. Actually, what it boils down to
23 is she doesn't believe anything I say, and in fact --
24 MR. GROSSMAN: Something I can --
25 THE WITNESS: -- in fact, it took about an hour

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1 for me to convince her why she should do it. So she
2 dutifully re-labeled all the data sets and read me the
3 numbers. I computed the CLVs, and then I asked her, okay,
4 which number corresponds -- we had two CLVs that were in
5 Mr. Guckert's files -- I asked her, give me the unscrambled,
6 unblind double line and tell me which data set that you
7 called blump (phonetic sp.) corresponded to this data set,
8 Mr. Guckert's, and she gave it to me, and I looked and I had
9 computed the same number Mr. Guckert had computed. Then I
10 went back and did the whole thing again myself and
11 determined that, again, I computed all the CLVs correctly.
12 So I'm coming to that.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: And the next couple of slides simply
15 show you -- first of all, this is Slide 23, and Slide 23 is
16 simply a very hard-to-read version of the State Highway
17 Administration instructions, which is appended as Appendix,
18 or Attachment, excuse me --
19 MR. GROSSMAN: It's Appendix E.
20 THE WITNESS: -- Attachment 2, yeah. So you have
21 it in two versions and it doesn't matter. It's a very
22 straightforward explanation of how to do a CLV.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: The next slide, which is Slide 24,
25 is simply a demonstration. On the left is Mr. Guckert, or a

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1 copy of Mr. Guckert's data sheet. This one was for the
2 intersection of the extension of Valley View with the loop
3 road for the existing traffic volume computation. On the
4 right is the same sheet with all of the numbers whited out.
5 MR. GROSSMAN: Right.
6 THE WITNESS: Okay? And I have copies. If you
7 want, I have copies of all the data sheets, which can be
8 filed. I prefer not to kill more trees, but if you wish,
9 I'll file them all.
10 MR. GROSSMAN: Well, tell me what conclusion you
11 reached --
12 THE WITNESS: Fine.
13 MR. GROSSMAN: -- that --
14 THE WITNESS: Let's jump to the gun. So I'm going
15 to skip all the actual stuff and show you the spreadsheet,
16 which you have in front of you. This is now Slide 30. So
17 if you'll go to Slide 30.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: Okay. And if you'll look at what's
20 labeled Sets 1 and 2.
21 MR. GROSSMAN: Right.
22 THE WITNESS: And just track over to the next to
23 the last column -- ignore for the moment the last column --
24 the CLV. Those are the CLVs that we calculated. They're
25 identical to what Mr. Guckert calculated for his data sets.

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1 So, in other words, our methodology worked. Now, lines 3
2 through 12 are data that we collected at the intersection.
3 MR. GROSSMAN: What's the meaning of the
4 asterisks --
5 THE WITNESS: Ah.
6 MR. GROSSMAN: -- in Row 2?
7 THE WITNESS: I'm glad you asked. I forgot. The
8 data, that's a -- that is data that was provided as part of
9 the -- how do I say this? Give me a second. Ah, it's a
10 data set in which Mr. Guckert projected the counts that
11 would be found at the intersection in question if and when
12 the store opened. So it's from the --
13 MR. GROSSMAN: If and when the?
14 THE WITNESS: Store opened.
15 MR. GROSSMAN: The warehouse or the --
16 THE WITNESS: The warehouse, right.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Okay? And the reason I put
19 asterisks is because it's presented as though these were all
20 real counts. They're not. They're a combination of actual
21 counts --
22 MR. GROSSMAN: Right.
23 THE WITNESS: -- with projected counts. In my
24 mind, that's not appropriate. I don't know how to say it
25 otherwise.

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1 MR. GROSSMAN: Well, that's the way a CLV analysis
2 is done.
3 THE WITNESS: I understand. I understand, just
4 pointing it out, because frankly, what I want you to see is
5 that the CLV analysis, while it may be appropriate for the
6 major roads, is, as I see it, not appropriate for the
7 intersections which we're concerned about, which is
8 primarily the parking lot, which, by the way, is a maze of
9 intersections, and all the intersections adjacent to the
10 parking lot from the ring road.
11 Now, if you look at the data sets 3 through 12,
12 those are actual counts that we made. Two of them, 3 and 4,
13 were made before the store opened. The dates are given,
14 April 8th and 9th. We did no store counts on Monday or
15 Tuesday. And the numbers that we found are not terribly
16 different from the numbers that Mr. Guckert measured from
17 the baseline data or the numbers he projected for after the
18 store opened. The error in this I'll get to in just a
19 moment. Rows 5 through 12 are counts we made after the
20 store opened. Most of them were made on a Monday and
21 Tuesday. There's one that was made on a Wednesday.
22 I want to say this carefully. I want to address
23 the issue of accuracy and therefore credibility of data.
24 It's a very important point. The bottom line is that we
25 come out with a number that's 15 percent higher than what

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1 Mr. Guckert projected, okay? I want to give you some
2 feeling of how accurate that is, which I've done with a
3 standard deviation. So it's 795 with a standard deviation
4 of 49, whereas he projected 682.
5 MR. GROSSMAN: Yes.
6 THE WITNESS: Now, I can't presume to decide for
7 you whether a 15 percent difference is significant from your
8 perspective. I'm simply saying it's a 15 percent
9 difference.
10 One of the major points I want to make is that
11 we're dealing with a series of incremental changes, and if
12 errors occur in the various steps of the calculation, they
13 tend to be cumulative -- not always, I'm not asserting that,
14 but you have to consider, I believe, that the errors may be
15 additive. Therefore, the uncertainty of the final
16 calculation becomes more questionable; the credibility issue
17 comes in.
18 Let me explain this in a way that may help. A
19 scientist thinks about credibility in terms of three sorts
20 of things. The first is what I'm going to call precision;
21 that is to say, how accurate was the count? Now,
22 Mr. Guckert's equipment is vastly superior to anything --
23 well, I presume, vastly superior to anything we could do.
24 We did hand counts. His precision, I presume, is one
25 percent or better. Our precision, I can estimate, was

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1 better than five percent, but I can't give you a number.
2 There's no way because, physically, it was impossible for us
3 to have multiple people doing the same count simultaneously.
4 However, Mr. Guckert's projections are based on a one-time
5 measurement, one time -- that's what's required by a TIA --
6 and a projection, one number. There's no way of telling
7 whether, if that number had been re-measured for the
8 one-time -- a one-time count of existing traffic at that
9 intersection, it would differ. Now, based on our
10 observations, it certainly will differ from day to day;
11 there's some variability. So the question becomes one of
12 reproducibility, which is a part of the issue of the overall
13 accuracy of data, versus precision, in which I freely
14 acknowledge that, in all probability, Mr. Guckert's are more
15 precise than ours.
16 Secondly is reproducibility. Mr. Guckert provided
17 one count. We've provided, well, two before the store
18 opened, four and -- eight after the store opened, and you
19 see the standard deviation, which says to you that our
20 counts are pretty reproducible. It's -- the error is 49 out
21 of 795. So that's roughly, ballpark, 50 out of 800. So
22 it's, ballpark, six or seven percent reproducibility, which
23 is not bad.
24 But lastly, and perhaps most important, is the
25 whole issue of how random is the sample; that is to say,

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1 from day to day, how reproducible will the counts be? Now,
2 obviously, we know there's a whole range of realities. The
3 counts of any of these intersections are going to be higher
4 on heavy-volume days, on the holidays, for example; they're
5 going to be lower on certain days where people are out of
6 town, traveling, whatever. There's a range of counts that
7 could be taken around --
8 MR. GROSSMAN: They're also going to be higher
9 shortly after the store opens --
10 THE WITNESS: Precisely. Precisely.
11 MR. GROSSMAN: -- for some period of time.
12 THE WITNESS: For some period of time. In fact,
13 you'll see that our counts, after the store opened, extend
14 for about a month and there's really not an obvious trend
15 downward. Now, could we have missed that trend? Certainly,
16 we could have, but we didn't see it. I've actually -- no,
17 won't go there. What I'm saying is that we've collected
18 more data sets than Mr. Guckert presented; that the level of
19 precision of our individual counts is probably lower than
20 his; the level of reproducibility, based on the statistics
21 I'm showing you, is pretty good from my point of view.
22 MR. GROSSMAN: So let's say your figures are
23 correct. Let's say --
24 THE WITNESS: Uh-huh.
25 MR. GROSSMAN: -- they're more accurate than the

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1 reading that Mr. Guckert took.
2 THE WITNESS: Uh-huh.
3 MR. GROSSMAN: Where does that get me?
4 THE WITNESS: That's the question I'm raising for
5 you. I can't tell you that, partly because I feel, I feel
6 that you've essentially said I can't argue the conclusion.
7 If I can argue the conclusion, then I'll tell you where it
8 gets you.
9 MR. GROSSMAN: All right. Go ahead.
10 THE WITNESS: Thank you. I think, I think a 15
11 percent error is pretty significant because we're talking
12 about projection, projection, projection, and at what point
13 in your mind does a projection become insufficiently
14 accurate to, upon which to base your conclusion?
15 MR. GROSSMAN: No, but I'm -- let's say I take
16 your figures as correct.
17 THE WITNESS: Uh-huh.
18 MR. GROSSMAN: Where does that get me in terms of
19 analyzing --
20 THE WITNESS: So that says to you, that says to
21 you that the traffic is significantly higher at the
22 intersection 16 than was projected. And I'm going to
23 provide more data about why --
24 MR. GROSSMAN: So that's my question. So what is
25 the significance of the projection being 15 percent lower

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1 than is, than actuality would indicate? What's the impact
2 on the functioning of the mall and its impacts on the
3 surrounding area? That's what I'm interested in.
4 THE WITNESS: I understand. We have to go back to
5 that curve that I showed you and the question of whether or
6 not -- where we are on that curve.
7 MR. GROSSMAN: The curve whose shape you
8 essentially made up, though.
9 THE WITNESS: That's right, but in fact --
10 MR. GROSSMAN: So --
11 THE WITNESS: -- in fact, if you want me to, I'll
12 dig through the literature and I'll find a curve that
13 approximates that curve. That curve, whether or not the
14 actual curvature is accurate is not the point. The point is
15 that the increase in congestion in a parking lot or at an
16 intersection is not a linear function of the amount of
17 traffic at the intersection or cars driving around the
18 parking lot.
19 MR. GROSSMAN: Well, I don't know that it's not.
20 That's the point. The curve, the shape of the curve tells
21 me whether it's a linear function or not, doesn't it?
22 THE WITNESS: Not really. I think, at some point
23 -- you are the judge, and I --
24 MR. GROSSMAN: No. I mean, I'm asking you. You
25 made an assertion. I'm asking you --

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1 THE WITNESS: I'm not making an assertion, but I
2 think, if you step back, you will say you have observed
3 yourself -- you didn't, you didn't make a site visit, and I
4 frankly understand, I believe, why you didn't make a site
5 visit, and I concur with not having made a site visit -- but
6 you, yourself, have observed parking lots. You have to
7 factor in your knowledge as a person when you make
8 decisions. I think that it's obvious, and if I want to go
9 into complexity theory, I'll go into complexity theory, but
10 I don't think that's productive. It'll just involve us in
11 an argument that's pointless. Let's say I made the
12 assertion and move on, because I don't think that I can say
13 it any more clearly than I said it.
14 MR. GROSSMAN: Well, here's what I'm trying to get
15 at. I'm going to have to analyze what the impact is on the
16 community.
17 THE WITNESS: Uh-huh.
18 MR. GROSSMAN: If these intersections are
19 functioning well, what -- my question would be, what
20 difference does a 15 percent greater amount make than was
21 estimated on the functioning of the intersections or the
22 functioning of the parking lot. You've given me an
23 assertion that it makes an increasing amount of difference
24 the more congested it gets, but you haven't told me really
25 whether that 15 percent is going to really make a

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1 significant difference in the operation of these
2 intersections or the impact on the surrounding community.
3 So all of this is very nice, but the real question for me is
4 what is the impact, what probative value does it have on the
5 issues that are before me.
6 THE WITNESS: Right.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: And, in fact, that's precisely the
9 question I wanted you to ask. Now let me describe --
10 MR. GROSSMAN: I've fallen into the trap. Now --
11 THE WITNESS: Absolutely.
12 MR. GROSSMAN: -- get me out of the trap.
13 THE WITNESS: I am not going to mislead you,
14 Mr. Grossman. I am attempting, by placing that sign over
15 there, to force you to see things as I see them.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: It's an example of subliminal,
18 what's the word, brainwashing --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- and it's deliberate. I'm not,
21 I'm not going to hide it. I want you --
22 MR. GROSSMAN: Well, then it's not subliminal.
23 THE WITNESS: -- to see things as I see them, and
24 now I'm going to tell you how we see things at that
25 intersection.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: Remember, this is now the new
3 baseline. We're now talking about what has happened since
4 the store opened.
5 MR. GROSSMAN: Right.
6 THE WITNESS: Now, have we collected data all
7 through the summer? No, we haven't because, frankly, it is
8 -- I can't think of a good word.
9 MR. GROSSMAN: Boring.
10 THE WITNESS: Boring, that's a good word, boring,
11 tedious, and when you're all done with all the work, you end
12 up with one number. Now, I won't read this. I would ask
13 you to look at Slide 32 afterwards, when you're having a cup
14 of coffee, for example, or some time down the road, and
15 think about the points I've raised in this slide. I am not
16 asserting that the points in Slide 32 are probative. I'm
17 asserting that if you think about them, it may change your
18 reasoning as to what is probative and that's all I want to
19 do.
20 MR. GROSSMAN: Well, what I'm asking you is,
21 you've given me what you consider an appropriate,
22 appropriate considerations on how to evaluate this. What
23 you haven't told me is what your conclusion is, numbers-wise
24 or otherwise, from all of this. What are your conclusions,
25 other than the bland conclusion that, gee, I don't want this

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1 gasoline station? What are your --
2 THE WITNESS: Actually, that's not my conclusion.
3 Frankly --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- to be very honest, I don't care
6 about the gasoline station. I tried to tell you that last
7 month.
8 MR. GROSSMAN: Well, you did say you don't live
9 close to it, and so on. I understand.
10 THE WITNESS: Frankly, it doesn't matter to me,
11 really, honestly.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: I mean, I'm being totally honest.
14 It doesn't matter to me. Either way, although it's totally
15 irrelevant, I stopped shopping at Westfield; I stopped
16 shopping at Costco in 2010. It really doesn't matter to me.
17 MR. GROSSMAN: Well, when I said you don't want
18 it, I mean, you're opposed to the special exception.
19 MS. ADELMAN: Yes.
20 MR. GROSSMAN: So whether or not it matters to
21 you, you're opposed. So that's, you've given me that --
22 THE WITNESS: Fine.
23 MR. GROSSMAN: -- but you haven't told me yet what
24 the actual impact is of all of this analysis.
25 THE WITNESS: I'm getting there, but --

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: -- perhaps, perhaps this is --
3 MR. GROSSMAN: Give me the bottom line first and
4 then work backwards. How's that? What's the bottom line --
5 THE WITNESS: Fine. The bottom --
6 MR. GROSSMAN: -- of what exactly the impact is?
7 THE WITNESS: The bottom line of this is that when
8 -- if and when the gas station opens, an already crowded
9 parking lot, with a congested ring road, will be made worse.
10 That worsening will approach the point, not quite, of
11 gridlock, not quite --
12 MR. GROSSMAN: Okay.
13 THE WITNESS: -- and at that point, we'll have a
14 large number of cars that are moving around very slowly.
15 MR. GROSSMAN: And what are the figures that you
16 have that demonstrate that that, you will be approaching
17 gridlock?
18 THE WITNESS: Numbers. Well, obviously, I have no
19 numbers because I don't have projections. I can't, I can't
20 project the future. Mr. Guckert used projections that are
21 accepted projections for a classic traffic impact analysis,
22 and I'm saying that the classic traffic impact analysis is
23 not appropriate for the parking lot and, because of that,
24 because of that, any underestimate goes unnoticed. There is
25 no number. There is no number. You can't predict, you

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1 can't predict chaos. That's the definition of chaos: you
2 can't predict it.
3 MR. GROSSMAN: Yes, but chaos theory says you can
4 predict it. That's the point of it, isn't it?
5 THE WITNESS: Actually, not quite, and that's --
6 MR. GROSSMAN: Statistically, but in any event, I
7 don't --
8 THE WITNESS: -- that's aside, right.
9 MR. GROSSMAN: -- I don't want to get into --
10 THE WITNESS: Right. Let's not go there, please.
11 MR. GROSSMAN: I guess, I guess the point that I'm
12 making is, in order to effectively apply in my analysis what
13 you're suggesting, I have to have a little bit more than
14 surmise. I do have an estimate from a traffic expert as to
15 what he thinks the impact is going to be --
16 THE WITNESS: Uh-huh.
17 MR. GROSSMAN: -- and how he thinks things will
18 function thereafter.
19 THE WITNESS: Uh-huh.
20 MR. GROSSMAN: What I have from you is a challenge
21 to some of that methodology and the extent to which it's
22 applicable. What I don't have from you -- and I'm saying, I
23 know there is other evidence here of people who've observed
24 congestion in the parking lot, and I suppose there's no
25 doubt that bringing more traffic there is -- and there is

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1 going to be some incremental amount, increase in traffic --
2 is going to create more people in the parking lot, but I
3 don't have from you anything yet that I think I can rely on
4 to establish numbers which will somehow lead me to believe
5 that it's dysfunctional in the sense that you are implying
6 it is --
7 THE WITNESS: Well, then let me --
8 MR. GROSSMAN: -- or more than implying, stating
9 it.
10 THE WITNESS: Fine. I want to move on to -- I'll
11 come back to that point. Let me go on to a description of
12 the actuality, actuality of the intersection, okay?
13 MR. GROSSMAN: Okay.
14 THE WITNESS: So, I'd like you --
15 MR. GROSSMAN: Are you talking about Intersection
16 16?
17 THE WITNESS: Yes. I'd like you to look at that
18 graphic, the picture, which was Slide --
19 MR. GROSSMAN: You mean Slide 20?
20 THE WITNESS: Slide 20.
21 MR. GROSSMAN: Yes.
22 THE WITNESS: And I want you to listen to me as I
23 describe what one observes at the intersection. Now, I'm
24 telling you from the get-go that there's no way to put any
25 number on this. If you can only decide -- in your mind, if

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1 you can only decide on a number, I don't have a number to
2 give you.
3 MR. GROSSMAN: It's not the only thing that I can
4 -- I would look at all the evidence here; so -- and a pure
5 number is not the only thing. And there's case law that
6 tells me that I can consider evidence other than the pure
7 CLV type of analysis in determining traffic. So I will
8 consider that evidence. I'm saying that for -- to be able
9 to reach any conclusions about the final impact that you
10 apparently have reached, I'd need something more from you
11 than you're apparently willing to give me or able to give
12 me.
13 THE WITNESS: It's probably more able than
14 willing. I would give you anything I could give you. Could
15 we just step back for a second? Remember, the job I'm doing
16 today is a very small part of the overall case-in-chief. I
17 don't for a minute think, although it would be nice to
18 think, that you're going to decide this case based on my
19 argument about the TIA. I mean, it would be wonderful if
20 you did, but it's not going to happen. My, as I see it, job
21 is to show you that the TIA and the supplemental traffic
22 analysis does not provide the substantive information --
23 MR. GROSSMAN: Right.
24 THE WITNESS: -- that you can use as probative.
25 MR. GROSSMAN: So you're essentially saying

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1 there's a failure of proof on the part of the applicant
2 because they've used essentially CLV analysis?
3 THE WITNESS: Actually, that's not the only thing.
4 I'm saying two things. I'm saying that but that's
5 secondary. I'm saying, if you'll let me describe the
6 traffic at this intersection and if you --
7 MR. GROSSMAN: I will.
8 THE WITNESS: -- accept the description is
9 worthwhile, then I can --
10 MR. GROSSMAN: I will certainly let you describe
11 the --
12 THE WITNESS: Fine.
13 MR. GROSSMAN: But I think you do have to
14 understand in all of this that there's a tremendous volume
15 of information coming in in this hearing.
16 THE WITNESS: Uh-huh.
17 MR. GROSSMAN: I do not expect, when I write my
18 report, to go through an analysis on paper of each and every
19 point that you make, because that would make an unusable
20 report. I expect to pick out the things that I consider are
21 truly influential on what I would recommend, and those are
22 the things that would appear in my report.
23 So that's why I try to have you keep in mind, you
24 know, the concept of what is really, when I say relevant,
25 those things that will bear on the final issues before me,

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1 not necessarily all of the little subsidiary nice points
2 that you can raise from a scientific analysis. It's not
3 that I don't value those in my own way, but in terms of what
4 I can effectively include in a report analysis, they may be
5 beyond the scope of that, just because they won't really
6 lead to the end point. That's all I'm saying. Now, go
7 ahead and continue and tell me --
8 THE WITNESS: Fine.
9 MR. GROSSMAN: -- what your intersection --
10 THE WITNESS: Okay. I'd like you to picture
11 yourself sitting in a car or truck at the X. You are
12 looking at --
13 MR. GROSSMAN: Do I have to be in a truck? Can I
14 just be in a car?
15 THE WITNESS: You can be in a car. I was saying
16 truck because my truck puts me up higher; you have a
17 better --
18 MR. GROSSMAN: All right.
19 THE WITNESS: -- better view. There are six lanes
20 at this intersection.
21 MR. GROSSMAN: Right.
22 THE WITNESS: Okay. Let me describe what happens
23 to cars traversing the intersection, either through or
24 turning, for each of the six lanes. I'll do it briefly.
25 The first point is this intersection has far more cars

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1 turning than passing through. The CLV is designed to assess
2 the impact of whatever development on intersections where
3 the number of cars passing through the intersection is
4 considerably greater than the number of cars turning. What
5 does that mean in terms of this intersection?
6 Let me start from the intersection -- let me start
7 from the lane that is closest to the question mark. That's
8 the lane in which cars coming from the special exception
9 site to the intersection are when they want to traverse the
10 intersection to continue on the ring road. Those cars do
11 not go through smoothly. They stop and they have to watch
12 for cars coming in from the two lanes that are coming from
13 University Boulevard. If you sit there and watch, you'll
14 see that they spend a lot of time going forward a bit and
15 trying to figure out what's going to happen a lot. The
16 dwell time in that intersection is significantly greater.
17 My estimate, a factor of two or three than the dwell time of
18 a car going through a typical intersection, such as the one
19 at University Boulevard.
20 MR. GROSSMAN: Well, I'm not sure that you have a
21 scientific basis for asserting that there is a delay time of
22 a factor of one or two or three, or whatever you said,
23 greater at that intersection than another. You're telling
24 me that there's -- you anecdotally have viewed an
25 intersection someplace else, and in your mind, you've made a

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1 comparison that this intersection, you think it's a little
2 bit longer. I don't know how significant that is.
3 THE WITNESS: Okay. Then I'll stay away from the
4 significance and just continue the description --
5 MR. GROSSMAN: Well, I don't want -- I mean, I
6 want you to make whatever observations you want to make.
7 I'm just --
8 THE WITNESS: Fine.
9 MR. GROSSMAN: -- suggesting to you that I don't
10 know that I can reach any global conclusions from your
11 having seen another intersection and thinking that that,
12 what you called a normal intersection, is faster.
13 THE WITNESS: Not a normal intersection, an
14 intersection for which CLV is appropriate.
15 MR. GROSSMAN: Oh, I thought you used the term
16 normal. I -- or ordinary -- I forget which term you used.
17 THE WITNESS: Okay. I'm sorry. If I did, I
18 apologize. I misstated. Let me keep this very brief. Cars
19 passing through this intersection have to stop and wait to
20 see what's happening to, well what's the behavior of cars in
21 a number of other lanes. They don't simply stop, observe
22 that there's nothing oncoming, and go; and that affects
23 every single lane of the six lanes, even the cars that
24 approach from the north and turning right to exit the mall.
25 MR. GROSSMAN: Is this intersection controlled by

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1 traffic devices?
2 THE WITNESS: No.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: It's controlled only by stop signs
5 and by human behavior. Now, this is purely anecdotal. Our
6 chair and I sat in that truck and did those counts, and our
7 first reaction was, my God, how come there aren't a million
8 accidents? And the answer was quite simple: people are
9 very careful; they're moving very slowly. Does it work?
10 Yeah. Is it a nuisance? Yeah. It's particularly a
11 nuisance for the pedestrians who are crossing the various
12 crosswalks. And what I'd like you to look at on this
13 picture is the fact that there are four crosswalks for
14 pedestrians; plus there's an adjacent crosswalk that people
15 coming from the Giant parking lot over at the store must use
16 to traverse if they wish to go to the Target lot.
17 MR. GROSSMAN: Right.
18 THE WITNESS: And the cars that are turning, for
19 example, left from the access road onto the ring road to go
20 in the northern direction have not only to watch out for
21 pedestrians at the crosswalk that's immediately at the
22 intersection but also the pedestrians crossing at the
23 crosswalk to Target.
24 MR. GROSSMAN: How many additional cars per minute
25 are going to be added to this intersection if the gas

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1 station is approved? See, my recollection of Mr. Guckert's
2 testimony is that really a very small number are going to be
3 added to any given intersection here, even during the peak
4 hours. So of what moment is your observation --
5 THE WITNESS: The peak --
6 MR. GROSSMAN: -- about what's going on?
7 THE WITNESS: The peak hours a.m./p.m., the trip
8 that -- the weekday a.m./p.m. traffic hours, peak hours of
9 business --
10 MR. GROSSMAN: I use it even during the peak hours
11 because that's presumed to be the highest level of general
12 traffic. It's the highest, the peak hour during the peak
13 period of the morning or evening. So I'm presuming that to
14 be the time in which there'll be, in general, the most
15 traffic at that intersection --
16 THE WITNESS: No.
17 MR. GROSSMAN: -- and it may or may not be the
18 case, but the question is, what additional amount of traffic
19 will be added by the proposed gas station if it's approved?
20 And the testimony, as I recall, from Mr. Guckert is that
21 it's a small number at any given intersection, and --
22 THE WITNESS: It almost certainly is. The
23 question is, how small is small enough --
24 MR. GROSSMAN: Okay.
25 THE WITNESS: -- that the, that the --

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1 MR. GROSSMAN: And I'm asking you, does your
2 evidence indicate to me that it'll be a larger number than
3 Mr. Guckert indicated or that it'll have, really, more
4 significant impact, and if so, what is that evidence,
5 because that's really the question, isn't it?
6 THE WITNESS: How much more would it have to be to
7 be evidentiary from your point of view?
8 MR. GROSSMAN: Well, I don't know. This is your,
9 this is your opportunity to tell me why it's an impact.
10 THE WITNESS: Fine. Well, let me go to the
11 spreadsheet for just a minute. And I appreciate your
12 patience.
13 MR. GROSSMAN: Sure.
14 THE WITNESS: Hang on. There is -- so I'm jumping
15 way ahead. I now have to go to Mr. Guckert's a moment.
16 Okay. We're talking now about -- are you talking about the
17 ultimate value for the projected counts, or are you talking
18 about the value for the intersection now that the warehouse
19 store is open?
20 MR. GROSSMAN: Yes, I mean, including the
21 warehouse because --
22 THE WITNESS: Fine.
23 MR. GROSSMAN: -- the warehouse is part of what's
24 operating now.
25 THE WITNESS: Fine.

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1 MR. GROSSMAN: So I'm trying to know if your
2 numbers tell me that there's a significant increase in
3 traffic from the proposed gas station beyond what
4 Mr. Guckert is projecting at any given intersection and what
5 that amount is.
6 THE WITNESS: Right. I've told you one thing,
7 which is that our counts of the intersection, done in a way
8 that almost precisely mirrors Mr. Guckert's --
9 MR. GROSSMAN: Right.
10 THE WITNESS: -- projections, say that he was 15
11 percent low.
12 MR. GROSSMAN: Yes, I understand that, but that
13 doesn't -- other than that, is there a projected figure that
14 you have for the number of trips that are going to be made
15 for the gas station that is significantly different at any
16 of these intersections and will significantly affect their
17 functioning? And while you're thinking about that, would
18 you prefer if I just shut up and let you present whatever
19 you want to present rather than interacting with you on
20 this?
21 THE WITNESS: No. Actually, I'd prefer that you
22 ask questions because it's the only way I can refine my
23 argument. For me to --
24 MR. GROSSMAN: All right.
25 THE WITNESS: -- just present this stuff without

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1 you asking questions --

2 MR. GROSSMAN: Because I don't want to be an

3 impediment to what you want --

4 THE WITNESS: No.

5 MR. GROSSMAN: -- I'm trying to get to a point

6 that, to bring you to an area that really is something that

7 could affect my analysis of it, but --

8 THE WITNESS: Uh-huh.

9 MR. GROSSMAN: -- if you would like, I will just

10 listen and be less interactive on it.

11 THE WITNESS: The last thing I want is for you to

12 simply listen. I want questions. That's the only way that

13 a scientist can, I can't use the word, discuss a complex

14 issue. Okay. So let me go back to the slides and cut to

15 the chase, as they say. I'd like you to look at the

16 spreadsheet, which is page 45, which -- let's see. Page 45,

17 I didn't give you a copy of that.

18 MR. GROSSMAN: Okay.

19 THE WITNESS: So page 45 of the --

20 MR. GROSSMAN: Okay.

21 THE WITNESS: -- testimony. All right?

22 MR. GROSSMAN: Yes.

23 THE WITNESS: These are all numbers derived from

24 the supplemental traffic analysis that Mr. Guckert provided,

25 okay?

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1 MR. GROSSMAN: Right.

2 THE WITNESS: So all of the numbers come from his

3 data. For a variety of reasons, we didn't attempt to

4 collect all the numbers. I'm accepting his numbers as

5 valid.

6 MR. GROSSMAN: Right.

7 THE WITNESS: I'd like you for the moment to

8 totally ignore the right-hand side of the spreadsheet, the

9 Through Traffic at Intersection.

10 MR. GROSSMAN: Okay.

11 THE WITNESS: It's complicated by a number of

12 ambiguities; so that I'm not really sure how valid those

13 numbers are. I think they're close, but I don't want to get

14 into that because that's not the major point. I want you to

15 focus on the left-hand side --

16 MR. GROSSMAN: Okay.

17 THE WITNESS: -- where you have In Left, In Right,

18 Out Left, Out Right, Total of In/Outs.

19 MR. GROSSMAN: Right.

20 THE WITNESS: And I don't want you to spend your

21 time looking at the various lines. I want you to look down

22 at the sums. And what the sums tell you is that

23 approximately 5,400 cars enter or leave the parking lot at

24 the intersections that Mr. Guckert characterized, which is

25 roughly 540 per hour.

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1 Now, I want to make sure, because I skipped over

2 one slide, that you look at Slide No., my God, 43. Slide

3 No. 43 is my version of a summary sheet. This, Slide 43, is

4 an aerial view that Applicant provided, and I've used it

5 because for my purposes it's clearer. I've put a number of

6 numbers on that slide. The numbers three, four, five, six,

7 seven, eight, those are the numbers that Mr. Guckert

8 assigned to the intersections at which he collected data --

9 MR. GROSSMAN: Right.

10 THE WITNESS: -- counts, okay? The question marks

11 are intersections that he did not count. I'm not making any

12 assertion about why he didn't count them. He just didn't

13 count them, and I'm going to tell you that because he didn't

14 count them, the numbers in the spreadsheet are in fact an

15 underestimate of the number of cars going into and out from

16 the parking lot.

17 MR. GROSSMAN: Well, for example, the three that

18 you have just to the south --

19 THE WITNESS: Uh-huh.

20 MR. GROSSMAN: -- of the warehouse --

21 THE WITNESS: Between the seven and the eight.

22 MR. GROSSMAN: Yes. That's a -- I'm sorry. What

23 does it say on the sign right there --

24 THE WITNESS: That's --

25 MR. GROSSMAN: -- right above the question mark

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1 there?

2 THE WITNESS: The question mark -- the question

3 marks mark intersections. Those three are intersections

4 with the underground, well, not underground, above-ground,

5 under-the-building parking that's available at the

6 southernmost portion of the warehouse store.

7 MR. GROSSMAN: So those question mark locations

8 are access to the parking lot. Is that the idea?

9 THE WITNESS: Correct. Well, they're access to

10 a --

11 MR. GROSSMAN: Or the garage.

12 THE WITNESS: -- call it an additional parking

13 area.

14 MR. GROSSMAN: They're not entry points onto the

15 ring road from outside; is that -- if I understand that

16 correctly, the way you have question marks.

17 THE WITNESS: Well, they are. They are. The

18 question mark is the point where a car that chooses to park

19 under that southern end of the building goes in or, when it

20 chooses to leave, comes out. It's an intersection.

21 MR. GROSSMAN: I see what you mean. So they're

22 cars that are already, for the ones that are there already,

23 are already in --

24 THE WITNESS: Uh-huh.

25 MR. GROSSMAN: -- they've entered into the whole

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1 neighborhood through some other intersection, correct?
2 THE WITNESS: Precisely. Precisely.
3 MR. GROSSMAN: So they would have already been
4 counted, wouldn't they have been?
5 THE WITNESS: No.
6 MR. GROSSMAN: Well, if they're in there, how did
7 they get in without being counted?
8 THE WITNESS: Ah, and that's, that's the problem.
9 What you have -- the reason I told you not to look at the
10 right side of the spreadsheet, don't go there yet is that
11 because there are a number of other intersections, they're
12 not counted at all. One has to infer -- let me, let me
13 just --
14 MR. GROSSMAN: No. I mean, you're telling me that
15 those are cars in there that should be counted as they --
16 THE WITNESS: Yes.
17 MR. GROSSMAN: -- let's say, as they exit onto the
18 ring road.
19 THE WITNESS: Precisely.
20 MR. GROSSMAN: But how did they get into the
21 underground garage?
22 THE WITNESS: Well, they obviously came either
23 from Intersection 20 or Intersection 16.
24 MR. GROSSMAN: They came through a numbered
25 intersection, right?

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1 THE WITNESS: Not one of these numbers, no.
2 MR. GROSSMAN: No, but they came through a
3 numbered intersection.
4 THE WITNESS: Correct.
5 MR. GROSSMAN: So they were counted at that point.
6 THE WITNESS: They were counted at those
7 intersections, but their traverse was not counted. I know
8 this is --
9 MR. GROSSMAN: Well --
10 THE WITNESS: Cars coming from Intersection 16 are
11 accurately counted in the data set --
12 MR. GROSSMAN: Right.
13 THE WITNESS: -- except, except, you notice the
14 question mark up at the upper left --
15 MR. GROSSMAN: Right.
16 THE WITNESS: -- that's an intersection. It's
17 actually the intersection that we use routinely to go park
18 in the Target lot and do our counts. The cars there were
19 not counted. And, actually, I think in the picture -- yeah.
20 If you look closely in the picture, you can actually see a
21 car which has somehow gotten into the drive aisle to the
22 west of the Target store and is now entering the drive aisle
23 which could be accessed by Intersection 3. That's a
24 one-time picture that shows you that some cars do use that
25 other intersection, the one that's a question mark.

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1 My only point is, for this data -- the data of
2 traffic coming from Intersection 16 and going into the
3 parking lot is underestimated. How much? I can't say, but
4 the numbers that Mr. Guckert provided say that at the peak,
5 excuse me, the 10-hour interval that he counted, which was a
6 Saturday, I believe, something in the range of 5400 cars
7 came to the mall and went into the parking lot from the west
8 side, from the University Boulevard side, which is 540 cars
9 going in per hour, and some additional number came from the
10 east side. And depending on the accuracy of those other
11 counts, which I can explain to you if you want to know, the
12 total number of cars going into the parking lot is somewhere
13 in the range of, somewhere in the range of 10,000 for the
14 full 10-hour period or 1,000 per hour.
15 MR. GROSSMAN: Right.
16 THE WITNESS: One thousand cars going into the
17 parking lot, which presently has approximately 790, I
18 believe, spots, of which 350, I have the numbers that
19 Ms. Harris provided -- let's say that the number of spots
20 that are available to Costco patrons will be 350, and there
21 are at least 500, possibly as many as a thousand cars
22 already going into the parking lot every hour at peak
23 business times and that number will increase. That's
24 another way of saying what you already know from pictorial
25 information: the lot is already very, very heavily used;

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1 it's already congested. Whatever number of cars are brought
2 to that lot incrementally, which, if I recall, is estimated
3 to be approximately 1100 cars in the peak hours, add to the
4 congestion that already exists.
5 I'm not attempting to tell you I have new numbers.
6 I've told you the one -- the one set of new numbers we do
7 have shows that Mr. Guckert's estimate is 15 percent low,
8 and I'm telling you that -- well, I'll show you shortly why
9 I believe the projections for cars being brought to the
10 special exception site by the gas station are, they have not
11 been appropriately accurately projected because the
12 projections are based on comps, comparable gas stations
13 which are not comparable.
14 MR. GROSSMAN: All right. And why are the
15 comparable gas stations not comparable?
16 THE WITNESS: Let's move on. I'm glad you asked
17 the question. Oh, although this is probably -- no, it's not
18 irrelevant. Would you take a look at Slide 47?
19 MR. GROSSMAN: Okay.
20 THE WITNESS: This was my projection, based on my
21 experience, of what the parking lot would look like after
22 the Costco store opened, at what I estimated to be a
23 slightly more than average time, below peak hours but
24 frequently occurring. My projection was in fact spot on.
25 My projection was based on simply my observations of other

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1 parking lots at other situations. And the only point of
2 showing you this slide is to say that the credibility of my
3 projection is shown by this. In fact, most people would say
4 the parking lot that they experience now that the store is
5 open is more crowded than this.
6 I filed this filing, that's 87(b), I filed that
7 back in -- well, actually, it was filed with the Planning
8 Board; then I filed it with you, first in February and then
9 in March. These are the photographs of the situation -- no.
10 I'm going to show you some photographs, but the point is
11 that my projection was in fact extremely credible; in fact,
12 I'd say it was spot on.
13 MR. GROSSMAN: When you say projection, what is
14 the projected part of this photograph? It's a photograph.
15 THE WITNESS: Ah. What I've done is to take the
16 photo that you've been looking at all this time, 159, I
17 believe it is --
18 MR. GROSSMAN: Yes.
19 THE WITNESS: -- and simply do a cut and paste. I
20 cut out a little box of cars and positioned them --
21 MR. GROSSMAN: I see.
22 THE WITNESS: -- in the lot the way I expect
23 people will behave.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: Now, as you know --

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1 MR. GROSSMAN: So you filled up the parking lot
2 with cars?
3 THE WITNESS: Right, but I didn't fill it up.
4 It's conservative. If you look, you'll see that I left a
5 lot of spaces. In fact, I was attempting to provide a
6 conservative estimate, a projection, if you will.
7 MR. GROSSMAN: Did you also take into account the
8 area that I -- as I understand, will be filled in and used
9 for parking spaces that's now covered with dirt or grass?
10 THE WITNESS: I deliberately did not at that time
11 because in -- when I did this projection, which is many
12 months ago, it was not clear what was going to happen.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: But it actually doesn't matter
15 because I'm not asking you to count the cars and determine
16 that there are -- pick a number. I'm not saying to you that
17 there's 742 cars and the lot has space for 790 and therefore
18 I proved to you that it was going to have whatever the
19 percentage is, 87 percent of the total. What I'm showing
20 you the projection for is the simple assertion that one can,
21 using careful reasoning and observation, make a projection
22 which is very accurate, in fact, I would argue,
23 astonishingly accurate. It says that we saw what the
24 parking lot would be like when the store opened, very
25 clearly.

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1 MR. GROSSMAN: I'm not saying that the parking lot
2 is not part of what I have to consider here. It's part of
3 the neighborhood, but do you think that this case should be
4 decided based on the possible increase in congestion in the
5 parking lot as distinguished from potential impacts on the
6 neighborhood -- pollution, traffic, whatever it may be --
7 that is claimed here? Do you really think that that is in
8 any way a controlling issue?
9 THE WITNESS: Remember what I said before: I
10 don't know how you're going to decide this issue. I view it
11 as a set of overlapping issues, and what I've said in the
12 concluding slide -- which is 77, I believe -- is that if and
13 when the gas station opens, the lot will be still more
14 congested; the congestion has the following effects: number
15 one, many more cars idling --
16 MR. GROSSMAN: Right.
17 THE WITNESS: -- which is the equivalent of
18 queuing, putting out additional emissions, which goes to the
19 air quality issue, about which I'm not an expert, about
20 which --
21 MR. GROSSMAN: Right.
22 THE WITNESS: -- Dr. Cole is going to testify. I
23 said, secondly, that the congestion in the parking lot will
24 cause a problem as to public safety. One of the slides that
25 I have in here, which I can show you, is a flier put out by

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1 Montgomery County government that, in essence, says 22
2 percent -- I believe that's the number -- of all accidents
3 that pedestrians have occur in congested parking lots, and I
4 got that in here. And the third thing I'm saying is that,
5 that the very fact of the congestion is a nuisance, an
6 inconvenience. And if you'll allow me to finish up, I will
7 go to the notion that congestion -- that the congestion
8 which is focused in the parking lot spills out onto the ring
9 road and, in fact, out at Intersection 16, out to University
10 Boulevard, and has an impact downstream or upstream,
11 depending on how you view it.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: Am I arguing the health issues? No,
14 I'm not. I'm not --
15 MR. GROSSMAN: I understand and I think I
16 understand your point. Okay.
17 THE WITNESS: Okay? Let's see. I think we're
18 almost done. Fine, a couple of pictures. This is reality.
19 This is Slide No. 51, okay?
20 MR. GROSSMAN: Okay.
21 THE WITNESS: And that is a picture taken by
22 Mr. Sheveiko, who climbed up a tree, literally.
23 MR. GROSSMAN: How is he doing, by the way?
24 THE WITNESS: His back is not -- he's okay but not
25 great. He took this picture, as you can see, Saturday, June

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1 15th, at 2:00 p.m. and that picture shows a lot that's full.
2 That's the whole point: it's full; it's full already. Now,
3 I could show you a thousand pictures of the lot being full.
4 Applicant could show you a thousand pictures of the lot
5 being nearly empty. The question you have to decide -- and,
6 again, I'm not trying to be helpful in that. I'm trying to
7 complicate your life --
8 MR. GROSSMAN: Thank you.
9 THE WITNESS: -- deliberately. I'm trying to --
10 MR. GROSSMAN: That's my wife's job.
11 THE WITNESS: -- I'm trying to say to you this
12 isn't simply a parking lot; it's a parking lot which is
13 already congested a significant amount of time.
14 Now, the last couple of slides that I want to
15 spend your time on are these two, this one and the next;
16 then I'll go back. Let me describe the reality of how
17 congestion plays out. Now, first, the overarching issue for
18 all of us is the health aspect -- congested cars moving
19 slowly, emitting whatever comes out of the tailpipe, adding
20 to the emissions from the cars in the queues in the box.
21 MR. GROSSMAN: You said for all of us. I don't
22 know if you're including me in this, because --
23 THE WITNESS: No, no, no. I mean, I mean for all
24 of us in opposition.
25 MR. GROSSMAN: All right. Okay.

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1 THE WITNESS: I'm sorry. For all of us --
2 MR. GROSSMAN: Because compatibility is an issue
3 with me too. It's not just -- there are other issues.
4 THE WITNESS: I'm saying that for those of us
5 who've been spending all these months with you in this --
6 MR. GROSSMAN: Pleasantly, whiling away your time.
7 THE WITNESS: I wanted to say, we really have to
8 stop meeting this way. For most of us who have been here,
9 presenting or questioning or sharing or whatever, the main
10 issue is the health issue, and I'm not speaking to that
11 other than to assert that the congestion leads to more
12 emissions, and the question of what those emissions do or do
13 not do is for others in the opposition to speak to. I'm not
14 going --
15 MR. GROSSMAN: Right. Hopefully you will have
16 some evidence from somebody which will tell me,
17 quantifiably, what additional amount of pollution, if any,
18 there would be from any added congestion --
19 THE WITNESS: I believe --
20 MR. GROSSMAN: -- and what, if any, health effects
21 that might have.
22 THE WITNESS: And I believe that that's precisely
23 where Dr. Cole will be appearing before you --
24 MR. GROSSMAN: All right.
25 THE WITNESS: -- and a number of other people

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1 speaking to the health issues, okay?
2 MR. GROSSMAN: Okay.
3 THE WITNESS: That's not my job.
4 MR. GROSSMAN: Right.
5 THE WITNESS: Right. So I'm leaving that aside.
6 Now I'm focusing -- I said my piece about the air emission
7 stuff.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: I want to focus on the public
10 safety/nuisance aspect with these couple photos. Let me
11 describe this. You've been to crowded parking lots.
12 Everyone has been to crowded parking lots. The more crowded
13 the parking lots get, the more erratic the behavior of the
14 drivers. Drivers tend to want to get close to the store.
15 That's --
16 MR. GROSSMAN: I don't know if I accept the
17 proposition that the more crowded they are, the more erratic
18 drivers. Go ahead.
19 THE WITNESS: Well, let me describe two
20 observations that I made. You can decide if it's erratic or
21 not. I visited that parking lot sometime after the store,
22 the warehouse store opened, and I was simply walking. I was
23 going to meet someone for coffee at Panera, as it happens,
24 and they -- it was more convenient for them; so I broke my
25 vow of whatever and went to the, went to the parking lot.

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1 And much to my astonishment, as I was walking along from
2 where I had parked, which was a long way from Panera, a car
3 emerged from a cross straight lane, which is a pedestrian
4 lane, and the car drove down that lane as though it was a
5 drive aisle. And so I asked someone -- and this, I guess
6 this is hearsay -- I asked someone if they --
7 MR. GROSSMAN: If you're offering it to prove the
8 truth of what they stated to you, it's hearsay.
9 THE WITNESS: Okay. It's hearsay, and you will
10 decide whether or not it's valid. This person told me, with
11 some degree of embarrassment, that they in fact had done the
12 exact same thing. Number two, the photos that show --
13 MR. GROSSMAN: It's hearsay, but I don't think it
14 makes a difference --
15 THE WITNESS: Okay.
16 MR. GROSSMAN: -- because if --
17 THE WITNESS: The cars, the cars that go to the
18 mall and park in the lot, many of them, the ones that are
19 going to the Costco store and many of the people, about 37
20 percent, I think -- it's either 30 or 37 percent of the
21 people who go to the gas station are also customers of the
22 store. I keep flip-flopping the numbers back and forth, but
23 okay.
24 MR. GROSSMAN: Yes. I get the idea, some percent.
25 THE WITNESS: Okay. People -- it is reasonable to

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1 assume that some people will go to the store, because it's
2 convenient to go to the store and the gas station. I
3 presume that one reason Costco wants to open the gas station
4 is to attract more people to the store. That's not the only
5 reason, obviously. People who shop at that store emerge
6 from the store for the most part with carts laden with lots
7 of material. They're extra-wide carts; parking spaces are
8 extra wide. People go to their cars with those carts.
9 Contrary to what one would like to think, people very often
10 bring their cart around to the back of the car and stand
11 there, unloading the cart.
12 MR. GROSSMAN: Right.
13 THE WITNESS: The drive aisles are sufficiently
14 narrow, even though they're wide, that that blocks cars
15 moving past. I've experienced that. I think you could
16 simply take a poll, even though this is not a plebiscite,
17 and find hundreds of people who would say to you, yes, I've
18 observed that I couldn't move because someone had their cart
19 behind their car and --
20 MR. GROSSMAN: Yes, but that's just describing
21 parking lots in general. I'm just --
22 THE WITNESS: Precisely, but at some point,
23 however the curve shape is or isn't accurate, there's no
24 question about the -- excuse me. I don't believe there can
25 be a question about the fact that at some point, if a

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1 parking lot gets completely full, the congestion is worse.
2 And, if you add to that congestion by having cars entering
3 the gas station one way and exiting one way -- and that's a
4 very important point: cars going into the gas station
5 cannot go out from the gas station except by going into the
6 parking lot, turning one way or the other, and going back
7 out. They're adding to the congestion. They're adding to
8 the congestion of an already congested parking lot.
9 MR. GROSSMAN: Right. Do you think that maybe if
10 we accept everything you say as factual, that maybe that's a
11 justification for imposing a condition that would somehow
12 require Costco to effectively encourage people to use the
13 garage to the east, rather than the parking lot, in a way
14 that would relieve that extra congestion that you're talking
15 about.
16 THE WITNESS: Mr. Grossman, thank you. That was
17 the question I was hoping you'd ask.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: And you'll remember that I had asked
20 you the reciprocal question a number of times, and to my
21 mind, you haven't provided a clear answer, because -- you
22 haven't provided a clear answer. The answer to your
23 question is, of course Costco could attempt to do that.
24 MR. GROSSMAN: Right.
25 THE WITNESS: They've already demonstrated how

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1 they will attempt to do that, but this comes to the question
2 of human nature. People prefer to park on open parking lots
3 rather than --
4 MR. GROSSMAN: Right.
5 THE WITNESS: -- parking garages. That's a
6 reality.
7 MR. GROSSMAN: Right, but marginally, you can
8 effect that.
9 THE WITNESS: You can effect it marginally with
10 appropriate -- I don't want to say policing. Let's say
11 enforcement. I'm not sure what the word is.
12 MR. GROSSMAN: How about incentives?
13 THE WITNESS: Incentives. Well, okay, at some
14 point, at some point -- and this is a question that I've
15 tried to raise with you a number of times -- if you, if you
16 recommend approval of this gas station with a large number
17 of conditions, I think -- you may disagree; you're the judge
18 -- I think at some point you must logically consider whether
19 those conditions can be enforced -- I'm not sure what word
20 to use -- and it's a point I've raised multiple times. It's
21 a very foggy issue, but I think -- I don't know how you can
22 reach the decision you must reach without considering that,
23 and I'm not simply talking about something as trivial as
24 whether or not Costco can in fact guarantee that an
25 attendant will appear within, pick a number, two minutes

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1 after congestion.
2 MR. GROSSMAN: But there are ways of measuring
3 the, how crowded a parking lot is, as you've demonstrated
4 with your own pictures.
5 THE WITNESS: Uh-huh.
6 MR. GROSSMAN: You can have Mr. Sheveiko climb the
7 tree once his back heals. In any event, I would expect that
8 if, in fact, the Board of Appeals were to approve this
9 special exception, that the neighborhood would also be doing
10 monitoring, in effect --
11 THE WITNESS: Uh-huh.
12 MR. GROSSMAN: -- to complain if there are, if
13 conditions are being violated.
14 THE WITNESS: Right.
15 MR. GROSSMAN: So that would be one of the things
16 that can be done. There can be pictures taken that would
17 demonstrate whether or not parking lots are full. There are
18 DPS employees, people that do inspections each year to
19 ensure that conditions are being carried out. So there are
20 enforcement mechanisms.
21 THE WITNESS: There are enforcement mechanisms,
22 and you'll remember that I've asked you this question
23 repeatedly. When I first spoke to planning staff -- who, by
24 the way, were extremely helpful -- I asked them that precise
25 question, and their answer was, our job involves the

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1 following: if there's an enforcement mechanism on the
2 books, we must assume that it's effective. And I said, but
3 you know they're not. And they said, it's not our job to
4 assess whether they're effective; if it's on the books, we
5 must assume, as professionals, that it's effective. And
6 I've been asking you this question: Must you, as the judge
7 and jury on this matter, make the same assumption?
8 MR. GROSSMAN: Well, I'll say -- I'll answer very
9 clearly, yes and no.
10 THE WITNESS: Thank you.
11 MR. GROSSMAN: Yes, there's an enforcement
12 mechanism in the books. There's an agency charged with that
13 enforcement. We may become part of the process. The Board
14 of Appeals maybe becomes part of the process if it's
15 necessary. I mean, violation notices can be issued for
16 violations of the conditions, and special exceptions can be
17 revoked. And there's a very strong incentive, when you have
18 a large investment in a special exception, as Costco would
19 have in this kind of an operation, that they follow the
20 rules and not have their, their special exception revoked.
21 So I think the possibilities for enforcement in
22 this kind of case are very good because you have -- not only
23 the agency is charged with it, but you have an active
24 neighborhood to complain if things are not taken care of and
25 you have a highly motivated special exception owner if one

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1 is issued here. So, yes, I think that enforcement can be
2 accomplished in this kind of case.
3 THE WITNESS: Well, then let me move on to my last
4 couple of slides with the following statement: My
5 experience is that enforcement mechanisms in most areas,
6 including Montgomery County, do not work --
7 MR. GROSSMAN: Okay.
8 THE WITNESS: -- and that very often residents of
9 a neighborhood come to accept that. They make do. It's a
10 nuisance, but they make do. And once this gas station is
11 built, if it's built, I don't know what it means to say
12 you're going to enforce it. Does that mean cutting down the
13 number of hours, requiring more attendants, constructing
14 more parking garages? I don't know what that means in
15 reality. I don't know what you picture that means.
16 MR. GROSSMAN: Well, it depends on what the
17 conditions are and what conditions are being violated. So I
18 don't think -- I think you're getting well ahead of where
19 you can go at this point.
20 THE WITNESS: Fine. Okay. Well, thank you. I'd
21 move to the last couple of slides. That's Slide 56, which
22 is the flier from Montgomery County government. I've
23 already told you what it says.
24 MR. GROSSMAN: All right.
25 THE WITNESS: We've covered this. Ah, okay. A

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1 couple of points as to what Applicant overall has asserted
2 or not, and this is to finish up a point I raised initially
3 in Part 1, and I'll cover it very quickly. I'm now on Slide
4 61. We're almost done.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: And I'm calling attention, with the
7 yellow stippling, to the five intersections with the ring
8 road, excuse me, excuse me, the five intersections by which
9 people can enter the mall who want to go to the gas station.
10 And you may recall that early on I protested that there was
11 an error in the land use report as to how many intersections
12 there were on University.
13 MR. GROSSMAN: Right, five versus four versus --
14 THE WITNESS: Okay. And more recently, I
15 protested that, in the first part of my testimony, that to
16 say there are two intersections on University Boulevard is
17 actually true but actually misleading, because those
18 intersections funnel cars to Intersection 16. There's no
19 way except reaching -- go into Intersection 16 to reach the
20 site, the site at which the mega gas station is proposed to
21 be placed.
22 Similarly -- and now I can just skip over the
23 slides -- similarly, the three intersections with Veirs Mill
24 by which people can come into the mall are not in fact three
25 independent paths to the gas station if it's built, because

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1 all cars coming in those three intersections must go
2 Intersection 20 and then proceed to the gas station. So
3 there are two points of access to the gas station, not five.
4 That goes to the question of how much congestion there will
5 be on the ring road. It's not five intersections. It's not
6 five points of access. It's two.
7 MR. GROSSMAN: And which are the two that you say
8 are the two points that they must go through to get to the
9 gas station?
10 THE WITNESS: They must go through what I've been
11 calling Intersection 16, the intersection of Valley View --
12 the intersection of the ring road with Valley View extended
13 and the intersection 20, that's the number that Mr. Guckert
14 gave it, which is the intersection off of -- oh, God, I'm
15 losing words. Here, can I just point to it on this screen?
16 This intersection right here. I'm on Slide --
17 MR. GROSSMAN: Well, actually, that doesn't
18 explain for the record what you're talking about --
19 THE WITNESS: Oh, okay.
20 MR. GROSSMAN: -- and I can't actually see the
21 pointing. So --
22 THE WITNESS: It's the intersection of -- oh, God,
23 help me.
24 MS. CORDRY: It's the intersection with the WMATA
25 lot, across from the WMATA lot, where you come in there to

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1 the, by the Wendy's.
2 MR. GROSSMAN: Okay.
3 MS. CORDRY: That intersection there I believe is
4 what you're referring to.
5 THE WITNESS: That's the intersection, yeah; yes,
6 that's the intersection we're talking about.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: Okay. So I'm done with that point,
9 and now moving on to the last point, which you -- which I
10 alluded to when you asked me to provide you some evidence.
11 We touched on this very briefly. What we have observed is
12 that Intersection 16 is now more congested, already. Many
13 times -- I don't have a statistic -- many times that
14 intersection behaves in such a way that cars queue up, I
15 don't know any other word to use, line up down, down the
16 Valley View extended to University Boulevard. Because of
17 the --
18 MR. GROSSMAN: How many car lengths would you say
19 are queuing up?
20 THE WITNESS: How many car lengths?
21 MR. GROSSMAN: Yes.
22 THE WITNESS: I've observed as many as 20,
23 possibly more.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: The important thing is, though, the

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1 effect that the queuing has on people driving to the
2 intersection of University and Valley View, and this has to
3 be described in words. There are two ways to approach the
4 mall: from northeast or the southwest. Cars coming to the
5 mall from the northeast make a left turn. There are
6 actually two left-turn lanes. They're very long stacking
7 lanes, and they were, they were constructed that way
8 because, when Westfield applied for the approval to make the
9 large expansion some time ago, the TIA process led to what
10 it's supposed to do, which is a mitigating activity, which
11 was to reconfigure the road so that there were two left-turn
12 lanes and very long stacking lanes.
13 Now, if you go into those left-turn lanes and you
14 get close to the corner, you can see Valley View. And I
15 know, because I've watched it, because we stood at Drumm, a
16 significant -- how many? I don't know. I can't, I could
17 not conduct the kind of counts that I think you want. A
18 significant number of people seeing the queue or the line or
19 the congestion in Valley View extended in fact get out of
20 the left-turn lane, drive down University to Drumm, execute
21 a U-turn and come back.
22 Drumm is one of the major gateways to the
23 community, and it's been a source of concern for -- well, I
24 was president of KHCA back in the '90s. So it was a concern
25 then. Because of the site lines, also spelled out in the

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1 slides, fundamentally, any congestion at University and
2 Valley View spills over, down towards Drumm. And while
3 technically Drumm is just -- the intersection of Drumm and
4 University is just outside the neighborhood as defined by
5 planning staff; it's very close.
6 The spillover at University and Valley View leads
7 to two things: one, cars that make that U-turn and want to
8 go back to go to the northeast and go in the Valley View
9 entrance by the right-turn lane, they add to stacking in
10 that right-turn lane, stacking of cars that are waiting to
11 get into the Valley View extended, and we have observed
12 stacking in that way. We've observed the stacking spill
13 over far enough that the stacking is actually impeding the
14 traffic in the right lane of through traffic. How much? I
15 cannot give you a number, but it's a reality. It's a
16 reality that I want you to consider.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: And then lastly, and then I'm done.
19 Okay. This goes to the question of whether or not the gas
20 stations that were used for, as comparables are or are not
21 valid. And so, fine, I'm now going to pictures that we
22 filed way back. This is OZAH 90, and I'm going down to,
23 fine, I'm going down to three aerial photos.
24 MR. GROSSMAN: Are these in your slides?
25 THE WITNESS: They're not in slides. This is OZAH

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1 90.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: Okay? And you have them, and if you
4 want, I can --
5 MR. GROSSMAN: Well, I would just --
6 THE WITNESS: Fine. Okay.
7 MR. GROSSMAN: -- I'll look at the picture.
8 THE WITNESS: The point about all of these -- I'm
9 showing you Costco at Beltsville, whoops, Costco at
10 Beltsville; Costco at Gateway, about which you've heard
11 comment; Costco at Warminster, which I believe was a
12 referenced gas station used in determining, I'm losing it,
13 but I believe it was in determining the pass-by rate that's
14 acceptable. In any case, I could show you many other
15 pictures. The point of each of these pictures -- and
16 perhaps the most useful is the one at Costco Gateway. I've
17 labeled where the gas station is -- it's the upper center,
18 very near the top -- and I labeled where the store is. And
19 the point is that the store and the gas station are
20 separated by a very significant distance. I mean, it's at
21 least a factor of 10, if not more, than the distance between
22 the proposed gas station at Westfield Wheaton and the gas
23 station/store situation at Costco Gateway. What does that
24 mean? That means any congestion in the gas station area has
25 almost no effect on congestion in the parking lot around the

1 Costco store. They're separated by what is essentially a
2 main road. I mean, it's not a, it's not a superhighway, but
3 it's a main road.

4 We've sat at Costco Gateway and observed, and the
5 traffic in the gas station, queuing or not, has no impact on
6 the traffic in the parking lot around the store. The
7 projections, the parameters for projections that are used by
8 a traffic impact analyst to estimate the number of cars that
9 will be coming to the gas station, specifically to come to
10 the gas station, are based on numbers acquired from other
11 gas stations which are in no way comparable to the situation
12 that's projected for the Costco Wheaton store if it opens.
13 They're simply apples and oranges.

14 MR. GROSSMAN: Are you saying that the projections
15 of how many cars will come to the Costco station are not
16 comparable? Or are you saying the number of cars that will
17 leave the station and enter a parking lot are not
18 comparable?

19 THE WITNESS: I'm saying that the, that the
20 percentage of cars that are, that should be considered to be
21 pass-by and -- the three categories are cars that come to
22 the gas station independently, they're new trips --

23 MR. GROSSMAN: Right.

24 THE WITNESS: -- cars that come to the gas station
25 because they pass by on a road --

1 MR. GROSSMAN: Right.

2 THE WITNESS: -- and the third is cars that come
3 to the gas station because they've already gone to the store
4 or they're going to go to the store. I'm saying that the
5 numbers that are estimated for those ratios are, they're
6 based on comparison with gas stations that are not -- gas
7 station/store combinations that are not comparable. What's
8 the quantitative effect?

9 MR. GROSSMAN: Well, I'm not even sure I
10 understand why those differences that you pointed out
11 between the stations would affect those numbers.

12 THE WITNESS: Because it affects what percent of
13 the total patronage of the gas station is assignable as new
14 trips. Presently, Costco's --

15 MR. GROSSMAN: But I'm not sure why the
16 differences that you point out would make a difference in
17 the numbers of new trips versus pass-bys versus, you know,
18 trips of people who are already there. I don't understand
19 why the location near the parking lot or not near the
20 parking lot makes a difference as to those, that breakdown.
21 People who are already there could use either one. People
22 who are making new trips will make new trips to either
23 regardless of those facts. People who are passing by would
24 still be passing by. I don't understand why that, those
25 distinctions make a difference --

1 THE WITNESS: It makes a difference, it makes a
2 difference two ways. First, it goes to the question of how
3 much congestion the addition of the gas station adds to the
4 congestion in the parking lot. The congestion issue is the
5 foremost issue for me now, today, here.

6 MR. GROSSMAN: Right.

7 THE WITNESS: The Costco gas station at Gateway,
8 no matter how busy it is, has no impact on congestion in the
9 parking lot for the store, zero -- well, I can't say zero;

10 essentially, nil. The congestion of the Costco gas station
11 in Westfield Wheaton, if it's built, will have a direct
12 impact because every car leaving that gas station leaves by
13 going into the parking lot and every car entering that gas
14 station enters by the ring road, which is the very road --

15 MR. GROSSMAN: I understand that this could have
16 more impact on parking lot congestion for those reasons, but
17 I'm not sure I understand why that changes the numbers of
18 pass-bys versus new trips versus existing customers. I --
19 but, in any event, go ahead.

20 THE WITNESS: Fine. Okay. And I cannot give you
21 a number; so I can't say that --

22 MR. GROSSMAN: It's not the numerical that I'm
23 asking. I just don't understand why those particular
24 differences would actually result in a difference in the
25 parking lot congestion. What results in a difference in the

1 parking lot congestion is that this particular station would
2 be right in the parking lot, whereas there may be some
3 differences, and cars would have to leave into the parking
4 lot in this particular setup, whereas maybe in some of the
5 others they don't.

6 THE WITNESS: I believe I could make the argument,
7 but I think, I think you'd regard it as too much of a
8 stretch; so I'm not going to go there.

9 MR. GROSSMAN: Okay.

10 THE WITNESS: Back to -- I believe we're just
11 about done. Oh, this is actually a somewhat important point
12 because it goes to the question of how the numbers of cars
13 that will come to the gas station is arrived at, and I
14 can't, I can't answer this question. I'm asking you to
15 consider that there's an inconsistency in the reporting by
16 Applicant of the patronage of the store. By that, I mean
17 the numbers don't match up with the numbers that were
18 reported in the land use report. And this is something that
19 I raised --

20 MR. GROSSMAN: This had been raised before.

21 THE WITNESS: Right, and it wasn't clarified, to
22 my mind. I don't --

23 MR. GROSSMAN: Well, they haven't had their
24 rebuttal case yet. I presume they'll clarify that issue.

25 THE WITNESS: Okay. In that case, I think we're

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1 about done. There is a summary slide, and I will read it
2 with your permission.
3 MR. GROSSMAN: Sure.
4 THE WITNESS: First of all, because of the siting
5 of the mega gas station and its mode of operation, traffic
6 congestion in the immediate vicinity will increase greatly,
7 thus creating a nuisance and additional risk to public
8 safety. The increased congestion slash complexity of the
9 traffic flow increases the extent to which vehicles are
10 moving very slowly or idling, and I'm talking about in the
11 parking lot or, rather, in the parking lot as the center of
12 the impacted area. Idling and slow-moving cars release
13 large amounts of vehicle exhaust. The exhaust will increase
14 air pollution. Air pollution creates health risks. I'm
15 done.
16 MR. GROSSMAN: All right. Thank you. And
17 although I realize that you were called by the Stop Costco
18 Gas Coalition, I think since you're under oath, I might let
19 your wife have an opportunity to cross-examine you. All
20 right.
21 THE WITNESS: Can I say that this is inherently
22 unfair?
23 MR. GROSSMAN: You're right, unfair. All right.
24 So does KHCA have any questions of this witness?
25 MS. ROSENFELD: Very briefly.

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1 CROSS-EXAMINATION
2 BY MS. ROSENFELD:
3 Q Dr. Adelman, could you go back to the slide that
4 shows the Gateway station?
5 A Yes. Just a minute. I think this is Gateway.
6 Just a second.
7 Q That's the slide.
8 A Yeah, that's Gateway, yeah.
9 Q Yes. That's the slide I was looking for.
10 Mr. Grossman asked you about the distinction between new
11 trips versus pass-by trips. New trips that are going to the
12 gas station at Gateway, can you show what -- how they would
13 enter and how they would leave that location?
14 A The, if I understand the question, the gas station
15 is here, and they would enter via this road here, which I
16 think is Marie Something Drive.
17 MS. CORDRY: Marie Curie.
18 UNIDENTIFIED SPEAKER: Marie Curie Drive.
19 THE WITNESS: Marie Curie Drive. Does that answer
20 the question?
21 BY MS. ROSENFELD:
22 Q And so at least for whatever percentage of trips
23 that are gas only, would they ever enter the parking lot for
24 the warehouse at the Gateway location?
25 A If they're, if they're going for gas only, I can't

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1 conceive of how they would enter the parking lot. They'd be
2 making a turn into a parking lot for no apparent reason, so
3 no.
4 Q And, in your opinion, does that differ from the
5 situation for gas-only trips as would occur at the Wheaton
6 station?
7 A Yeah, absolutely. That's, that's essentially my
8 point, that someone coming to the proposed mega gas station
9 at the Wheaton, at the Westfield Wheaton Mall, going to the
10 gas station only, has to exit the gas station into the
11 parking lot, even if that person, even if the person driving
12 that vehicle does not intend to shop at Costco warehouse or
13 any other store. There is no way for a person going to the
14 gas station, as proposed in S-2863, to exit the gas station
15 other than to go into the parking lot.
16 MR. GROSSMAN: I understand that point. I mean, I
17 thought what you were saying is that these situations were
18 not comparable because somehow the different situations
19 would change the number of pass-bys versus the number of new
20 trips, et cetera. What you were saying is that they're not
21 comparable because, in the proposed situation in Wheaton,
22 the pass-bys would have to also exit into the parking lot,
23 which changes the congestion factor --
24 THE WITNESS: I'm actually saying --
25 MR. GROSSMAN: -- in the parking lot.

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1 THE WITNESS: I'm actually saying both. The
2 first, about exiting the gas station into the parking lot,
3 is definitively clear. The second, as to a possible change
4 in the allocation of the trips to the gas station being
5 different for a gas station like this and the proposed --
6 MR. GROSSMAN: Yes, that's the one I don't follow,
7 but that's --
8 THE WITNESS: That's, that's the one I understand
9 you don't buy, and I didn't attempt to separate.
10 MR. GROSSMAN: Okay. But I understand the point
11 you were making, Ms. Rosenfeld.
12 MS. ROSENFELD: I have no other questions.
13 MR. GROSSMAN: Okay. And I don't see anybody here
14 from Kensington View Civic Association. I think you wore
15 them down; so they left. So do you want to take a little
16 break before we do the cross-examination?
17 MS. HARRIS: Please.
18 MR. GOECKE: Yes, please.
19 MS. HARRIS: Thank you.
20 MR. GROSSMAN: Okay. We'll take a five-minute
21 break.
22 (Whereupon, a brief recess was taken.)
23 MR. SILVERMAN: Mr. Grossman, can I ask you a
24 question?
25 MR. GROSSMAN: Certainly, Mr. Silverman?

1 MR. SILVERMAN: This thing about conditions and so
2 forth, could you give us some examples of projects that are
3 subject to such fundamental conditions as anti-congestion
4 that were stopped or -- is there any example?

5 MR. GROSSMAN: I don't understand what you mean,
6 such as anti-congestion.

7 MR. SILVERMAN: Well, you suggested that you could
8 impose conditions of some sort that might reduce congestion,
9 so on, and you said if they, and if they don't follow the
10 conditions, you can, there's an enforcement mechanism. I
11 was just wondering if you could give us any actual examples
12 in Montgomery County where -- I'm not talking about
13 conditions, you have to have your lights on at a certain
14 time, but conditions about your really basic operations,
15 which --

16 MR. GROSSMAN: Well, you can take a look at, first
17 of all, take a look at any Board of Appeals resolution
18 regarding -- any special exception will have conditions on
19 it.

20 MR. SILVERMAN: Right.

21 MR. GROSSMAN: Take a look at the ones involving
22 gas stations and they'll have conditions, and some of them
23 will involve congestion issues. This particular situation
24 will probably involve more difficult questions of how the
25 conditions will be framed, but I don't see why there

1 couldn't be conditions. There's pretty broad authority in
2 the Board of Appeals to impose conditions, as needed, to
3 protect the community. So I don't see why something
4 couldn't be framed that would, that would protect the
5 community if, in fact, the Board decided to grant the
6 special exception.

7 MR. SILVERMAN: Yes. I keep thinking of
8 Ms. Sheveiko's testimony about the noise and so forth, and
9 I'm just wondering if there's an example perhaps of a
10 special exception that was revoked or --

11 MR. GROSSMAN: My office, generally, has not been
12 involved in revocation proceedings. There are revocation
13 proceedings and special exceptions do get revoked, but
14 usually it's handled by the Board of Appeals. They don't
15 usually refer that to my office. I don't think I've been
16 involved in one directly that I can think of off the top of
17 my head. So they handle -- they have their own hearing
18 process for that, usually. But you could check with
19 Katherine Freeman, the executive director of the Board of
20 Appeals, and she may be able to refer you to some revocation
21 proceedings, okay?

22 All right. Are you ready to begin --

23 MS. HARRIS: Yes.

24 MR. GROSSMAN: -- cross-examination?

25 MS. HARRIS: Yes. Thank you.

1 MR. GROSSMAN: Proceed.

2 BY MS. HARRIS:

3 Q Mr. Adelman, prior to this case --

4 A Doctor.

5 Q Doctor, I'm sorry, my apologies.

6 A Uh-huh.

7 Q Dr. Adelman, prior to this case, did you have any
8 familiarity with CLVs?

9 A Absolutely none.

10 Q But you're somewhat familiar with them now, is
11 that correct?

12 A Somewhat --

13 Q Okay.

14 A -- I'm not an expert.

15 Q Okay. And are you aware that up to a thousand
16 CLVs equates to a level of service A?

17 A I don't know the exact number, no, but that sounds
18 reasonable.

19 Q The evaluations that you walked through early on
20 in your testimony, I believe your counts were done in April
21 and May, is that correct?

22 A Correct.

23 Q And you were here when Mr. Brann testified that
24 typically the Costco warehouse has a, what we would refer to
25 as a surge period that lasts approximately 90 days?

1 A I heard that testimony, yes.

2 Q So you would agree that your April and May counts
3 occurred during that surge period?

4 A I would agree that we made the counts in April and
5 May.

6 Q Okay. Which was during that 90-day surge period?

7 A I can't address the accuracy of the assertion that
8 there's a 90-day surge period.

9 Q But your counts occurred within 90 days of the
10 store opening?

11 A Certainly.

12 Q Okay. And you indicated that your CLV
13 calculations were approximately 15 percent higher than what
14 Mr. Guckert had calculated?

15 A Well, I said that the average of our
16 determinations was exactly 15 percent higher than
17 Mr. Guckert's estimate, which was a single estimate.

18 Q And I believe you also testified that you are
19 aware that there are day-to-day variations in counts,
20 correct?

21 A Yes. We observed them.

22 Q And that those counts could vary as much as 10 to
23 15 percent on any given day?

24 A I believe that's accurate. I'm not certain, but I
25 believe that's accurate.

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1 Q And the number that you calculated even with that
2 15 -- the number that you calculated was in fact less than a
3 thousand, is that correct?
4 A Yes.
5 Q Okay.
6 A There may have been one that was a thousand, but
7 I'm not, not sure. I believe they were all less than a
8 thousand, yes.
9 Q So that even under your counts, which were 15
10 percent higher, the intersection continues to operate at a
11 level of service A, is that correct?
12 A To the extent that CLV methodology is appropriate
13 for evaluating that kind of intersection, it operates on a
14 level that CLV, converted into LOS, says is Level A.
15 Q And are you familiar with the method that
16 Montgomery County Park and Planning and the state uses to
17 measure congestion?
18 A Do you mean other than the traffic impact
19 analysis? Well, I don't understand the import of the
20 question. Could you clarify it?
21 Q Let me frame it a different way. Are you aware
22 that the CLV is in fact the method that Montgomery County
23 Park and Planning and the state all use to measure
24 congestion?
25 A On major roads, at signalized intersections, yes.

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1 MR. GROSSMAN: As part of that question, there are
2 other methodologies that are used in appropriate
3 circumstances. Critical lane volume is not the only
4 methodology --
5 MS. HARRIS: Correct.
6 MR. GROSSMAN: -- that's used. So --
7 MS. HARRIS: Correct. We recognize that.
8 MR. GROSSMAN: -- I just don't want your
9 assumption in the question to be inaccurate.
10 MS. HARRIS: No, I agree.
11 MR. GROSSMAN: That is generally speaking,
12 correct --
13 MS. HARRIS: Right.
14 MR. GROSSMAN: -- that the critical lane volume is
15 the analysis used, but I've seen delay analysis and queuing
16 analysis, and so on --
17 MS. HARRIS: Right, I understand that, yes.
18 MR. GROSSMAN: -- used in cases, and I've required
19 them on occasion in cases where I thought it appropriate.
20 BY MS. HARRIS:
21 Q Moving on to Exhibit 51, if you could turn to
22 that, please.
23 A Sure. Just a second. Do you mean Slide 51?
24 Q Yes. Thank you.
25 A Sorry. Just a second. Yes.

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1 Q And I believe you used this, you showed this slide
2 to show that the lot is full, is that correct?
3 A Correct.
4 Q And that there's a certain level of congestion
5 that you see here that you would expect to see in the future
6 at the mall site, is that right?
7 A On certain days, at certain times, yes.
8 Q Okay. Can you see several empty spaces on Slide
9 51?
10 A I see one, possibly two. I see possibly three.
11 I'm not sure. I wouldn't call that several, but yes, I see
12 some empty spaces.
13 Q And the view is only of a portion of the parking
14 lot, is that correct?
15 A Correct.
16 Q Right. And do you see any, although it's hard to
17 see in the photo, but is there any indication that cars are
18 circling the drive aisles, looking for parking spaces?
19 A I'm not aware how a single photo would capture
20 that, no.
21 Q Do you see an inordinate number of cars in the
22 drive aisles?
23 A Could you define inordinate?
24 Q Do the drive aisles look fairly free and clear of
25 cars?

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1 A I see two cars in a drive aisle, one entering the
2 drive aisle. The tree obscures the drive aisles to the left
3 of the field, and the picture was not taken -- this picture
4 wasn't taken to show cars in the drive aisles. The
5 subsequent pictures do, but in this picture, several, three
6 I see.
7 Q But it was a random shot taken of the parking --
8 A Precisely.
9 Q -- lot at a given point in time.
10 A Precisely.
11 Q And cars in the ring road, how many do you view
12 from that photo?
13 A I see, I see, in this picture, two that are
14 obvious.
15 Q Two?
16 A Well, there's a bit of, well, I'm -- excuse me.
17 There's a dark car heading west, and there's the tail of
18 what I believe is a white car, which I presume is heading
19 east. I'm not, I'm not sure. It could be parked, and I
20 just -- so I can't say.
21 Q Can you see congestion in this photo?
22 A Congestion can only be shown by taking a picture
23 of an intersection on a road that has a lot of cars in it.
24 In this photo, no.
25 MS. HARRIS: Thank you. I have no other questions

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1 for Dr. Adelman.
2 MR. GROSSMAN: All right. Any redirect?
3 MS. ROSENFELD: No. Thank you.
4 MR. GROSSMAN: Well, it's actually not your --
5 MS. ROSENFELD: That's right. Actually, it's not
6 my witness.
7 MR. GROSSMAN: I looked at you. I'm sorry to
8 mislead you by a look.
9 MS. ROSENFELD: That's okay.
10 MR. GROSSMAN: Any --
11 MS. ADELMAN: No, I have no, no questions.
12 MR. GROSSMAN: Okay. All right. I think that's
13 it then. Unbelievable, right, Dr. Adelman? Thank you very
14 much for taking your time to do such a complete analysis of
15 this. I appreciate it. Okay. Gee, we have plenty of time
16 left here.
17 MS. HARRIS: Let's keep rolling.
18 MR. GROSSMAN: Who's our next witness?
19 MS. ADELMAN: Karen.
20 MS. CORDRY: I thought we weren't going to start
21 until next time, but I guess I can start.
22 MR. GROSSMAN: We shouldn't let any time get
23 wasted.
24 MS. ROSENFELD: Well, we did have a little bit of
25 housekeeping, and you know, I thought it would be helpful to

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1 review witnesses. I mean --
2 MR. GROSSMAN: Well, we did have one thing --
3 MS. ROSENFELD: What -- I'm sorry.
4 MR. GROSSMAN: -- I know that Mrs. Adelman
5 indicated that she had some --
6 MS. ROSENFELD: It's --
7 MR. GROSSMAN: -- documents she wanted marked.
8 I'm not sure --
9 MS. ROSENFELD: And --
10 MR. GROSSMAN: -- she's familiar with the rule
11 that after your husband testifies, you're not allowed to
12 introduce any additional documents.
13 MS. ROSENFELD: And --
14 MR. GROSSMAN: Are you familiar with that rule?
15 MS. ADELMAN: Are you making that up as you go
16 along, Mr. Grossman?
17 MR. GROSSMAN: Yes. I've been accused of that
18 before.
19 MS. ROSENFELD: Well, I guess my question is, it's
20 20 minutes before 5:00, and we need to set up a screen for
21 Ms. Cordry's testimony, and --
22 MR. GROSSMAN: You can't use the screen that's up
23 there?
24 MS. ROSENFELD: -- we'll be using that big box
25 over there.

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1 MR. GROSSMAN: Oh, the big box.
2 MS. ROSENFELD: Yes, the big box, which is not a
3 torture device.
4 MR. GROSSMAN: Well, I'm very glad to hear that.
5 Well, first of all, what about the -- well, you could do
6 that while Ms. Adelman is --
7 MS. ADELMAN: Well, Mrs. Adelman couldn't wait; so
8 she just handed it in to your office. So it's all set.
9 MR. GROSSMAN: Oh, you just -- okay. All right,
10 fair enough.
11 MS. ROSENFELD: And I did hand out hard copies of
12 some documents from Donna Savage, and they're not, they
13 don't appear to be solely identified in the --
14 MR. GROSSMAN: Exhibit list?
15 MS. ROSENFELD: -- in the exhibit list. Should I
16 just follow up directly with your office? I have --
17 MR. GROSSMAN: Sure.
18 MS. ROSENFELD: -- given a full set of hard copies
19 to Ms. Cordry and Mr. --
20 MR. GROSSMAN: With Sara Behanna-Moseley.
21 MS. ROSENFELD: Okay.
22 MR. GROSSMAN: She's generally tracking it. Ellen
23 can do it too, but generally speaking, she's, Sara is
24 handling it.
25 MS. ADELMAN: Mr. Grossman, I have lined up a

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1 witness for the 19th at 9:30. So --
2 MR. GROSSMAN: Who's that?
3 MS. ADELMAN: That's a woman called Sam Campbell.
4 She's a parent.
5 MR. GROSSMAN: Sam, did you say?
6 MS. ADELMAN: Sam, yes.
7 MR. GROSSMAN: Like Sam, Samantha?
8 MS. ADELMAN: No, it isn't. It's an acronym for
9 something. I don't know what.
10 MR. GROSSMAN: You don't know what?
11 MS. ADELMAN: No.
12 MR. GROSSMAN: Okay. That's for the 19th?
13 MS. ADELMAN: Yes, at 9:30.
14 MR. GROSSMAN: All right. Who else are we going
15 to have on the 19th?
16 MS. ADELMAN: Well, Karen will be on the 19th.
17 MR. GROSSMAN: Well, I was giving her 20 minutes
18 to finish up. All right. So Ms. Cordry --
19 MS. ROSENFELD: We're looking for -- we have some
20 additional exhibits. Here it is. Here they are.
21 MR. GROSSMAN: Mr. Brann, let me return this to
22 you. I have a copy buried somewhere in my files.
23 MR. BRANN: Thank you.
24 MR. GROSSMAN: Thank you.
25 MS. ROSENFELD: And, Mr. Grossman, this --

1 MR. GROSSMAN: Yes.
 2 MS. ROSENFELD: -- this is for Karen's testimony.
 3 MR. GROSSMAN: Okay. This is?
 4 MS. CORDRY: These actually go back to the
 5 discussions we were having last time about the queuing, and
 6 if you remember, I was talking about the Elkridge study and
 7 how many cars were expected to be in line there and so
 8 forth. And --
 9 MR. GROSSMAN: Given the spacing and --
 10 MS. CORDRY: Right. And I wasn't sure if that had
 11 gotten in -- I think some part of this was actually in one
 12 of our exhibits, but I wanted to come back, put this in, and
 13 I just -- and I did two variations on this to illustrate the
 14 point I was making.
 15 MR. GOECKE: Wait. These are new documents, or
 16 what are we getting?
 17 MS. CORDRY: No. This is, this is a document that
 18 was the -- this is your all's queuing study of Elkridge,
 19 going back to April of 2012. It was in our -- it was one of
 20 the exhibits to the needs study report at one point. What
 21 I've done here is I took that document, and all I did was
 22 highlight how many additional cars would be in line,
 23 overflowing the queuing, under two assumptions: one, that
 24 you started to overflow at 28 cars in the queue and the
 25 other at 30. So it's a document with some markups on it, is

1 basically what it comes down to.
 2 MR. GROSSMAN: Well, I can't recall -- well, I
 3 guess, the relevant question here is --
 4 MS. CORDRY: So I'd like to just put this in as --
 5 MR. GROSSMAN: -- was this, was some form of this
 6 document presented when you were being cross-examined on
 7 this issue?
 8 MS. CORDRY: Okay. Well, this document was put in
 9 originally as part of our needs study, which was put in in
 10 April.
 11 MR. GROSSMAN: So this very document is already
 12 in, you're saying?
 13 MS. CORDRY: Well, the document without the
 14 additional markings on it was in before.
 15 MR. GROSSMAN: By additional markings, you're
 16 talking about --
 17 MS. CORDRY: Okay. What I'm saying is --
 18 MR. GROSSMAN: -- some highlights, you mean?
 19 MS. CORDRY: Exactly. What I'm saying is that
 20 there are --
 21 MR. GROSSMAN: Okay.
 22 MS. CORDRY: -- this is simply three versions of
 23 the same document, and it is their document, to begin with.
 24 MR. GROSSMAN: Well, but why do I need a third
 25 version of the same document?

1 MS. CORDRY: Okay. Simply to indicate that --
 2 okay. If you turn back to -- so what I'd like to do is just
 3 have this marked as a separate exhibit. It could be
 4 Exhibit, an A and B, with A, which is about the one, page 9,
 5 starts with the word -- and if you go back to page 13, let's
 6 say, under Mr. Guckert's analysis that indicated that unless
 7 you had 35 cars or more, you would not be spilling out, his
 8 front page says there was only 15 out of 360 observations
 9 where autos queued, waiting for gas, exceeded the 34 spaces
 10 that he believed was available within the gas station. So
 11 on page 13, for instance, the ones that I have marked with
 12 just the black highlighting, because it was hard to see when
 13 I was doing the yellow highlighting, those are two places
 14 where it was 35 cars there, and those are the only two that
 15 were marked on his sheet as he originally did it.
 16 What I have done is gone through and simply
 17 highlighted every place that had 28 cars or more, which, as
 18 you can see from the next couple of pages, could indicate
 19 that if you start overflowing at 28, which was my
 20 observation, that it was quite possible that you were
 21 overflowing at 28, 29, 30 cars and so forth, far less than
 22 35. You begin to see that instead of one or two
 23 observations, you have -- well, on page 14 you have more
 24 than half of that hour there, and the same thing with page
 25 15. Most of that, those two hours, would be counted as

1 overflowing cars.
 2 So that it's just -- I could just say that, but
 3 it's a lot easier to see with the highlighting what
 4 difference it makes if you say that the number is not 35 but
 5 what the kind of number that, upon both my observation and
 6 Mr. Core's observation, that you started having overflows at
 7 numbers much lower than 35 cars.
 8 MR. GROSSMAN: Okay. And that was -- so you've
 9 highlighted every one which was above --
 10 MS. CORDRY: There were two variations.
 11 MR. GROSSMAN: Was it 28 and above or --
 12 MS. CORDRY: Right. On No. 28, I'm sorry, on the
 13 variation A, which starts on page 9, I highlighted
 14 everything from 28 on up.
 15 MR. GROSSMAN: Okay.
 16 MS. CORDRY: And on Variation B, which starts on
 17 page 16, I highlighted everything from 30 up.
 18 MR. GROSSMAN: And --
 19 MS. CORDRY: So obviously, with 30, there are less
 20 highlighted but still, you know, many, many more occasions
 21 than on, than with the 35. And the other thing that I
 22 highlighted on there, there were just a number of, kind of,
 23 anomalous readings on the individual lane readings. If you
 24 look at the queuing diagram, it's indicating eight cars for
 25 the first two lanes, five cars for the next two lanes, and

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1 four cars for the other two lanes, and yet, if you look back
2 on some of these individual readings, some of them were much
3 higher than that. So I can only assume that it's some kind
4 of artifact with the way his computer-reading system was
5 being done. It does --
6 MR. GROSSMAN: Well, hold on one second.
7 MS. CORDRY: Okay.
8 MR. GROSSMAN: Let me go back to --
9 MS. CORDRY: All right.
10 MR. GROSSMAN: -- pages 1 through 8.
11 MS. CORDRY: Okay, 1 through 8.
12 MR. GROSSMAN: What did you highlight on 1 through
13 8?
14 MS. CORDRY: Okay. 1 through 8 I didn't highlight
15 anything. You can --
16 MR. GROSSMAN: Well, I see highlights on page --
17 MS. CORDRY: Okay. Those were original
18 highlightings. Those were the ones, as this was originally
19 presented, where they highlighted anything from 35 on up.
20 MR. GROSSMAN: Oh, I see. Okay. All right.
21 So --
22 MS. CORDRY: Actually, I did go back through it
23 and highlight those just to make them more visible there,
24 but those are the ones that they had originally highlighted,
25 which are the limited number of observations where there was

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1 at least 35 cars in queue, and I think 41 was the highest
2 number that they observed during that time period.
3 MR. GROSSMAN: The 1 through 8 is highlighting 35
4 and above or above 35?
5 MS. CORDRY: Thirty-five and above --
6 MR. GROSSMAN: Okay.
7 MS. CORDRY: -- because 34 is, if you add up the
8 numbers in his diagram there, they add up to 34.
9 Thirty-four was the assumption of what you could get in
10 within the queuing area without spilling back and blocking
11 traffic.
12 MR. GROSSMAN: Okay. And so I have, Cordry
13 exhibit highlighting: (a), pages 1 through 8, highlighting
14 35 and above in the queue; pages 9 through 15, highlighting
15 28 and above in the queue; (c), pages 16 to 24, highlighting
16 -- how many would you say? Thirty and above?
17 MS. CORDRY: Thirty. Thirty and above.
18 MR. GROSSMAN: Thirty and above.
19 MS. CORDRY: And I'm sorry. What number is that,
20 what exhibit number?
21 MR. GROSSMAN: That's Exhibit 371.
22 (Exhibit No. 371 was marked
23 for identification.)
24 MS. CORDRY: 371, okay.
25 MR. GROSSMAN: All right.

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1 MS. CORDRY: And just to point out the example of
2 what I'm saying, if you look at page 13 on the very bottom
3 there, the third column of lane numbers, one up from --
4 MR. GROSSMAN: Page 13?
5 MS. CORDRY: Yes. Yes.
6 MR. GROSSMAN: Okay.
7 MS. CORDRY: One up from the bottom, if you squint
8 really hard, that's showing a 10 there.
9 MR. GROSSMAN: Yes.
10 MS. CORDRY: And that's in a lane that is shown as
11 holding five cars. So I don't know where that, how you get
12 that 10 number, but as I say, since I understand this was
13 done with -- if I understood Mr. Guckert's testimony, this
14 was done with cameras and with computer counting and things
15 like that. It may have had its own way of interpreting
16 spillovers and where it placed them into lanes and so forth.
17 But there's a lot of very anomalous numbers on there, which
18 just indicates, again, that this computerized counting has
19 its own little quirks, to say the least.
20 MR. GROSSMAN: Okay. I don't know how to -- we're
21 just putting in an exhibit number here. So I don't know how
22 to, I've written enough -- I'm already going to get yelled
23 at for how long this exhibit label is.
24 MS. CORDRY: Right. Okay. Right.
25 MR. GROSSMAN: All right.

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1 MS. CORDRY: So I don't know if you want to
2 consider that additional, this additional testimony what I'm
3 giving, but this is what, you know, why I'm putting the
4 exhibit in and what the point of it is.
5 MR. GROSSMAN: Okay. All right. Any objection to
6 this exhibit?
7 MR. GOECKE: No.
8 MR. GROSSMAN: Okay.
9 MR. GOECKE: I mean, I will just note, once again,
10 I know your concern is pages; our concern is getting these
11 things in advance notice --
12 MR. GROSSMAN: Right, I know, but --
13 MR. GOECKE: -- and she's going to say it's the
14 same document, it's just got highlighting, but it still
15 requires analysis and time and preparation. And again --
16 MR. GROSSMAN: Right.
17 MR. GOECKE: -- it seems like we're getting daily
18 submissions here within the 10 days before hearings.
19 MR. GROSSMAN: Right. I think that this is a fair
20 -- it is a document that was your own document, and the fact
21 that she happened to note that it indicated certain things I
22 don't think should be held against her in terms of timing.
23 So I don't have a problem.
24 MS. HARRIS: Is Ms. Cordry going to testify to
25 this once you get --

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1 MS. CORDRY: Well, I already --
2 MR. GROSSMAN: She's already testified about
3 the --
4 MS. HARRIS: But, okay, so when we cross, I mean,
5 when we -- based on what she's just said in introducing this
6 as evidence, will we have the ability to cross-examine her
7 on that?
8 MS. CORDRY: I have no objection --
9 MR. GROSSMAN: Sure.
10 MS. CORDRY: -- when we come back next week --
11 MS. HARRIS: Okay.
12 MS. CORDRY: -- no, next time, that if you want to
13 ask me how I highlighted the numbers, that's fine. I mean,
14 I don't -- I think, as I said, this was something that I
15 talked about this exhibit. I discussed what was here. I
16 thought it was in the record already. In one sense it is,
17 but I wanted to pull it out, put it in here, and then put
18 the highlighting on it. So --
19 MR. GROSSMAN: Okay. We got it. All right.
20 Anything else?
21 MS. CORDRY: Not for this exhibit, no. And you
22 got your copy and you got yours. Okay.
23 MR. GROSSMAN: Right.
24 MS. ROSENFELD: And, Mr. Grossman, I did want to
25 go over --

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1 MR. GROSSMAN: Yes, ma'am.
2 MS. ROSENFELD: -- where I think we are with
3 witnesses for next --
4 MR. GROSSMAN: Okay.
5 MS. ROSENFELD: -- for November 19th.
6 MR. GROSSMAN: That's a good idea.
7 MS. ROSENFELD: As Ms. Adelman mentioned, Sam
8 Campbell, who is an individual, has indicated she would like
9 to come in and testify.
10 MR. GROSSMAN: All right.
11 MS. ROSENFELD: Ms. Cordry, of course, will be
12 here to testify. We also had Dr. Breyse available to
13 testify, and the 19th is the only day that he is available.
14 So we'd like him to testify in the morning, if he could.
15 And --
16 MR. GROSSMAN: Hold on one second. Ms. Harris.
17 MS. HARRIS: Was he on the original 19th list,
18 because we need to check with our experts to make sure
19 they're available on the 19th? I thought he was --
20 MR. GOECKE: I don't think he was.
21 MS. ROSENFELD: I think he --
22 MS. HARRIS: I think he was on the 21st.
23 MR. GOECKE: Yes.
24 MS. ROSENFELD: Okay.
25 MS. HARRIS: So, I mean, if our experts can be

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1 available, but if they cannot be, I think that presents a
2 problem.
3 MS. ROSENFELD: Okay. If you could let me know --
4 MS. HARRIS: We will.
5 MS. ROSENFELD: -- because in checking the dates,
6 that was the date that he's available.
7 MS. HARRIS: Because the last, the sheet that you
8 handed out on the 21st had him testifying on the -- or the
9 sheet you handed out on October 21st had him testifying on
10 November 21st.
11 MS. ROSENFELD: We did. We did have him on the
12 21st, that's correct, but having checked with his schedule,
13 he was not available on the 21st, I don't believe.
14 MS. CORDRY: Yes, his schedule changed, I believe.
15 MS. HARRIS: And does he have any additional
16 reports, or do we have his reports?
17 MS. ROSENFELD: You have his report in the record.
18 There's nothing --
19 MS. HARRIS: Okay.
20 MS. ROSENFELD: -- additional in writing that he's
21 provided.
22 MR. GROSSMAN: Who else is -- is anybody else on
23 the agenda?
24 MS. ROSENFELD: Oh, there's also an individual
25 named Kathy Michels, and she's with --

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1 MR. GROSSMAN: Kathy with a K or a C?
2 MS. CORDRY: K.
3 MS. ROSENFELD: And she's not being called as a
4 witness by the, by Kensington Heights or by the Coalition.
5 She did express an interest in testifying, and she's with --
6 I forgot.
7 MS. CORDRY: Well, she works with a group called
8 Green Wheaton, but she's not appearing here as Green
9 Wheaton. She is appearing here on her own behalf, I
10 believe. She's going to talk about idling issues, I
11 believe.
12 MR. GROSSMAN: Okay.
13 MR. GOECKE: And I'm sorry. Do we know what
14 Ms. Campbell is going to be testifying about?
15 MS. ROSENFELD: Her son --
16 MS. ADELMAN: She's a parent of a student at
17 Stephen Knolls School.
18 MS. ROSENFELD: And part of the reason for some of
19 these changes, Donna Savage had been on our list to testify
20 on the 19th, and because of the health of her mother, she
21 will not be available on the 19th. And so we have moved her
22 to the 21st, and in the interest of not -- trying to keep
23 full days of witnesses. So we've had to --
24 MR. GROSSMAN: Right.
25 MS. ROSENFELD: -- move some witnesses around.

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1 MS. HARRIS: And how about --
2 MR. GROSSMAN: When is Dr. Jison going to be? On
3 the 21st?
4 MS. ADELMAN: No, no. She'll be last.
5 MS. ROSENFELD: We expect right now she'll
6 probably be December 5th. November 19th we're looking at
7 Sam Campbell, and we would like her to go first because we
8 expect her son will be with her and --
9 MR. GROSSMAN: I don't think anybody has a problem
10 with that, accommodating --
11 MS. ROSENFELD: Okay. And --
12 MR. GROSSMAN: Is that -- okay.
13 MS. ADELMAN: She's at 9:30.
14 MR. GROSSMAN: Okay.
15 MS. ADELMAN: Yes.
16 MS. ROSENFELD: And Dr. Breyse and Kathy Michels,
17 if they could go in the morning, because they're not people
18 who are here.
19 MR. GROSSMAN: Well, let's find out about the
20 availability of the applicant's witnesses.
21 MS. ROSENFELD: Okay. Even if Dr. Breyse cannot
22 testify that day, we would have Kathy Michels, we would hope
23 Mr. Sheveiko and, of course, Karen Cordry.
24 MS. CORDRY: And mine will be relatively lengthy.
25 Again, I would expect that would probably fill out that day.

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1 MR. GROSSMAN: What's the correct spelling of
2 Mr. Sheveiko's first name, because I've seen it spelled two
3 different ways? Is it --
4 MR. SILVERMAN: His father is here.
5 MS. ADELMAN: Here's his father.
6 MR. GROSSMAN: Oh, all right. Mr. Sheveiko.
7 MR. SERGEY SHEVEIKO: S-H-E --
8 MS. CORDRY: No, no.
9 MR. GROSSMAN: No, no, I'm talking about his first
10 name.
11 MR. SILVERMAN: His first name.
12 MR. SERGEY SHEVEIKO: Oh, first name, Dan.
13 MS. CORDRY: The whole thing. The whole thing.
14 MR. SERGEY SHEVEIKO: Ah, whole thing, Danila,
15 D-A-N-I-L-A.
16 MR. GROSSMAN: Okay. D-I -- D-A-N-I-L-A?
17 MR. SERGEY SHEVEIKO: D-A-N-I-L-A.
18 MR. SILVERMAN: Danila.
19 MR. SERGEY SHEVEIKO: Danila.
20 MR. GROSSMAN: Okay. All right. All right.
21 Any --
22 MS. HARRIS: And is he still going to -- what's he
23 going to be testifying on?
24 MS. ROSENFELD: He's the past president of
25 Kensington Heights. So he's talking some about the, just

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1 general background of the project, and he also is testifying
2 as a neighbor, as, in effect, an adjoining property owner.
3 MR. GROSSMAN: Why did I think he was the current
4 president?
5 MS. ADELMAN: No. Karen is now the current.
6 MS. CORDRY: Because he now --
7 MS. ROSENFELD: Because of the passage of time.
8 MS. CORDRY: We had our election.
9 MR. GROSSMAN: In the fullness of time, as we say.
10 MS. ADELMAN: Yes.
11 MS. CORDRY: In the fullness of time, we had our
12 election last month, and I, for reasons that I'm not quite
13 sure I can fathom, agreed to become president. I'm no
14 longer treasurer.
15 MR. GROSSMAN: All right. Well, congratulations
16 on your elevation.
17 MS. CORDRY: Although I still have signatory
18 authority on the checkbook until I sign that over on
19 Saturday.
20 MR. GROSSMAN: Okay. All right. So we have Sam
21 Campbell. We have Ms. Cordry, possibly Dr. Breyse --
22 Breyse or Breyse?
23 MS. CORDRY: Breyse.
24 MS. ADELMAN: Breyse.
25 MR. GROSSMAN: Breyse, Kathy Michels, who we'll

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1 also squeeze in whenever, and Mr. Sheveiko. Is that --
2 MS. HARRIS: Yes. I mean --
3 MR. GROSSMAN: Okay.
4 MS. HARRIS: -- with the condition that our
5 experts are available --
6 MR. GROSSMAN: Right.
7 MS. HARRIS: -- for Dr. Breyse. And then can we
8 go through the 21st since that's just the next --
9 MS. ROSENFELD: Sure.
10 MS. HARRIS: -- two days later?
11 MS. ROSENFELD: We've also been contacted by
12 Cheryl Cort, Coalition for Smarter Growth, and she is
13 available to testify that day. They've provided written
14 testimony. Again, she's not being called as a witness of
15 either organization. And if she can testify at 9:30, she's
16 asked that that be accommodated.
17 MR. GROSSMAN: That's Karen?
18 MS. ROSENFELD: Cheryl, C-H-E-R-Y-L, Cort.
19 MR. GROSSMAN: All right. C-H? What was the rest
20 of it? I'm sorry.
21 MS. CORDRY: E-R-Y-L.
22 MS. ROSENFELD: Y-L. Cheryl --
23 MR. GROSSMAN: Oh, Cheryl?
24 MS. ROSENFELD: -- with a C, Cort, C-O-R-T.
25 MR. GROSSMAN: Okay. And she's the Coalition?

1 MS. ROSENFELD: For Smarter Growth.
 2 MR. GROSSMAN: Okay. Yes, she's the one that
 3 already submitted --
 4 MS. ROSENFELD: They've already submitted written
 5 testimony.
 6 MR. GROSSMAN: Right.
 7 MS. ROSENFELD: And then we would hope that Donna
 8 Savage is available that day.
 9 MR. GROSSMAN: Okay.
 10 MS. ROSENFELD: And Dr. Cole.
 11 MS. HARRIS: You had on your list of the, from the
 12 October 21st that Karen Cordry was going to be testifying
 13 about home values.
 14 MS. ROSENFELD: At this moment, we're keeping her
 15 as a possibility for home values. I'm not certain that
 16 she's going to testify on that or not.
 17 MS. CORDRY: Can we do it on December 5th, because
 18 I think we'll be plenty full up on the 21st?
 19 MS. ROSENFELD: And then following Dr. Cole, it
 20 would be Abigail Adelman and Dr. Jison, and I'm not about to
 21 project what date that might actually happen.
 22 MR. GROSSMAN: You're not going to make me
 23 dethrone my predecessor as to having conducted the longest
 24 hearing, are you?
 25 MS. ROSENFELD: I sure hope not.

1 MR. GROSSMAN: I really don't seek that crown.
 2 MS. ROSENFELD: I certainly hope not.
 3 MR. GROSSMAN: All right.
 4 MR. SILVERMAN: She did all right.
 5 MS. ADELMAN: Was that Francoise?
 6 MR. GROSSMAN: Yes, Francoise. All right.
 7 Anything else that we need to handle today? We have one
 8 minute left, Ms. Cordry.
 9 MS. CORDRY: I would respectfully decline the one
 10 minute if that would be appropriate.
 11 MR. GROSSMAN: She pleads the something amendment,
 12 the Ninth Amendment.
 13 MS. CORDRY: Yes, something like that.
 14 MR. GROSSMAN: All right. Nothing else then?
 15 MS. ADELMAN: No, sir.
 16 MR. GROSSMAN: All right. Then we are adjourned
 17 until the 19th of November.
 18 MS. ROSENFELD: Thank you.
 19 MR. GOECKE: Thank you.
 20 (Whereupon, at 5:00 p.m., the hearing was
 21 adjourned.)
 22
 23
 24
 25

1 C E R T I F I C A T E
 2 DEPOSITION SERVICES, INC., hereby certifies that
 3 the attached pages represent an accurate transcript of the
 4 electronic sound recording of the proceedings before the
 5 Office of Zoning and Administrative Hearings for Montgomery
 6 County in the matter of:
 7 Petition of Costco Wholesale Corporation
 8 Special Exception No. S-2863
 9 OZAH No. 13-12
 10
 11 By:
 12
 13
 14 Wendy Campos, Transcriber
 15
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