

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  
:  
-----X

A hearing in the above-entitled matter was held on  
November 21, 2013, commencing at 9:40 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:

Patricia Harris, Esq.

Mike Goecke, Esq.

Lerch, Early & Brewer, Chartered

3 Bethesda Metro Center, Suite 460

Bethesda, Maryland 20814

For Kensington Heights Civic Association:

Michele Rosenfeld, Esq.

The Law Office of Michele Rosenfeld, LLC

11913 Ambleside Drive

Potomac, Maryland 20854

E X H I B I T S

Exhibit No.		Marked/Received
396	Aerial photograph of Freestate gas station at Veirs Mill Road and Kensington Boulevard	76
397(a)	Montgomery County Pedestrian Safety Heads Up in Parking Lots campaign	87
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C O N T E N T S

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By Ms. Harris		23		
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P R O C E E D I N G S

1  
2 MR. GROSSMAN: This is the 21st day of a public  
3 hearing in the matter of Costco Wholesale Corporation, Board  
4 of Appeals No. S-2863, OZAH No. 13-12, petition for a  
5 special exception pursuant to Zoning Ordinance Section  
6 59-G-2.06 to allow petitioner to construct and operate an  
7 automobile filling station which would include 16 pumps.  
8 The subject site is located at 11160 Veirs Mill Road, Silver  
9 Spring, Maryland, Lot N, 631 Wheaton Plaza, Parcel 10, also  
10 known as Westfield Wheaton Mall, and is zoned C-2.  
11 The hearing was begun on April 26, 2013, and  
12 continued up until today. It was noticed to resume again  
13 today. The next two sessions have been noticed for  
14 Thursday, December 5, 2013, and Friday, December 6, 2013,  
15 here in the second floor hearing room of the Council Office  
16 Building at 9:30 a.m.  
17 This hearing is conducted on behalf of the Board  
18 of Appeals. My name is Martin Grossman. I'm the Hearing  
19 Examiner, which means I will take evidence and write a  
20 report and recommendation to the Board of Appeals which will  
21 make the decision in this case. Will the parties identify  
22 themselves, please, for the record?  
23 MR. BRANN: Erich Brann with Costco. I apologize.  
24 MR. GROSSMAN: We caught you, didn't we?  
25 MR. BRANN: You did. You did.

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1 MR. GROSSMAN: You're not supposed to fall asleep  
2 until at least an hour into the hearing.  
3 MS. HARRIS: And he's been doing so well.  
4 MR. GROSSMAN: That's my practice anyway.  
5 MS. HARRIS: Good morning. Pat Harris for Costco.  
6 MR. GOECKE: Good morning. Mike Goecke for  
7 Costco.  
8 MS. CORDRY: Karen Cordry for Kensington Heights.  
9 MS. ROSENFELD: Michele Rosenfeld for Kensington  
10 Heights.  
11 MR. SILVERMAN: Good morning, sir. Larry  
12 Silverman for the Coalition, Stop Costco Gas.  
13 MS. ADELMAN: Good morning, Mr. Grossman. Abigail  
14 Adelman for the Coalition.  
15 MR. GROSSMAN: All right.  
16 MR. ADELMAN: Good morning, Mr. Grossman.  
17 Dr. Mark Adelman for the Coalition.  
18 MR. GROSSMAN: Good morning.  
19 MS. DUCKETT: Eleanor Duckett, Kensington View.  
20 MR. GROSSMAN: Ms. Duckett. All right. And I see  
21 we have a couple of other people in the audience here. Do  
22 we have any additional --  
23 MS. CORT: Yes. My name is Cheryl Cort. I'm with  
24 a nonprofit called Coalition for Smarter Growth.  
25 MR. GROSSMAN: Okay. And I'm sorry. What was

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1 your name again, ma'am?  
2 MS. CORT: Cheryl Cort.  
3 MR. GROSSMAN: Okay. And you, sir?  
4 MR. KATZ: I'm Seth Katz, Costco representative.  
5 MR. GROSSMAN: All right. Anybody else who wishes  
6 to be heard today?  
7 (No audible response.)  
8 MR. GROSSMAN: Okay. Let's --  
9 MS. ADELMAN: Mr. Grossman, if I could just get a  
10 bit of clarification. I believe you referenced this as the  
11 21st hearing, and I think we are the 22nd today, 22nd  
12 hearing.  
13 MS. ROSENFELD: I think it's the 21st.  
14 MS. ADELMAN: Twenty-first? Okay, my apologies.  
15 MR. GROSSMAN: Yes.  
16 MR. ADELMAN: The 11th was canceled.  
17 MS. ADELMAN: My apologies then.  
18 MR. GROSSMAN: This is actually kind of a zodiac  
19 moment because we're here for the 21st hearing on November  
20 21st. Now, occasionally they don't mate up and then it  
21 creates confusion in my mind, but here I can remember it.  
22 All right. Since our last session there were,  
23 following, significant filings and e-mail exchanges:  
24 Exhibits 391 through 395, received on November 19, 2013,  
25 materials from Ms. Rosenfeld in advance of Dr. Cole's

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1 testimony in which consisted of an EPA memo dated 6/29/10 --  
2 I won't read them all -- and an EPA memo of May 2013. There  
3 were also Exhibit 392, e-mails between Kathy Shen and the  
4 parties and the Hearing Examiner regarding her testimony on  
5 behalf of Freestate Petroleum; 393, more submissions by  
6 Ms. Rosenfeld, which I won't outline; same thing for 394.  
7 395 were e-mails exchanged between Mr. Silverman, the  
8 parties, and myself regarding preliminary matters which he  
9 wanted to take up in which he raised four questions, not the  
10 same four questions that are raised on Passover, but --  
11 All right. And the witnesses scheduled for today  
12 were the continuation of -- well, the beginning of the  
13 cross-examination by the applicant of Ms. Cordry,  
14 Mr. Sheveiko, Kathy Shen, Kathy Michels, and Mark Meszaros  
15 of Kenmont Swim Club, and I guess we can add Ms. Cort. I'm  
16 not sure where the parties want to fit Ms. Cort into this  
17 process. She's here now. Any suggestions?  
18 MS. ROSENFELD: Well, Mr. Meszaros will not be  
19 here today --  
20 MR. GROSSMAN: Okay.  
21 MS. ROSENFELD: -- and Ms. Harris and I had some  
22 communications. He is representing the Kenmont Swim Club --  
23 MR. GROSSMAN: Right.  
24 MS. ROSENFELD: -- and I don't represent the  
25 Kenmont Swim Club. When we spoke on Tuesday, I thought his

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1 testimony was going to be relatively straightforward, but he  
2 advised me that he thought it would be more lengthy than I  
3 expected. So we will --  
4 MR. GROSSMAN: It would be more lengthy than you  
5 expected?  
6 MS. ROSENFELD: Yes, and so I would --  
7 MR. GROSSMAN: You're trying to discourage me so  
8 early, before 10 o'clock in the morning?  
9 MS. ROSENFELD: No. Well, we will give them --  
10 Kenmont Swim Club will provide Ms. Harris and Mr. Goecke  
11 with their 10-day pre-hearing submission and identify their  
12 witnesses and the scope of their testimony, and he will come  
13 back.  
14 MR. GROSSMAN: In other words, they're calling  
15 additional witnesses in addition to Mr. Meszaros?  
16 MS. ROSENFELD: At the moment, I think it will  
17 just be Mr. Meszaros --  
18 MR. GROSSMAN: Okay.  
19 MS. ROSENFELD: -- but he told me that he had  
20 gotten additional information that the pool wanted him to  
21 discuss. So --  
22 MR. GROSSMAN: Okay. Anything from the applicant  
23 on this?  
24 MS. HARRIS: No.  
25 MR. GROSSMAN: Okay. And what about squeezing

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1 Ms. Cort into the --  
2 MS. CORDRY: I think it makes sense for her to go  
3 now. She's here. We have identified her in the past.  
4 Apparently there's some --  
5 MR. GROSSMAN: No, I know she was identified in  
6 the record.  
7 MS. CORDRY: Right. Right. I guess there was  
8 some confusion that since we didn't mention again that she  
9 -- we hadn't taken her off the list; so we thought she was  
10 still set for today. But in any case, she's here. I think  
11 it's relatively short and straightforward.  
12 MS. HARRIS: Yes, there's been a lot of juggling  
13 of the schedule, as you know --  
14 MR. GROSSMAN: Right.  
15 MS. HARRIS: -- and we were under the impression  
16 that the clarification that occurred at the end of the last  
17 hearing was in fact the witnesses that were going to appear.  
18 So we had not thought Ms. Cort would be testifying, but  
19 having said that, we certainly don't want to have to make  
20 her come back on another day; so that's fine.  
21 MR. GROSSMAN: Okay. So shall we proceed  
22 initially with Ms. Cort --  
23 MS. CORDRY: Yes.  
24 MR. GROSSMAN: -- after preliminary matters?  
25 MS. CORDRY: Yes.

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1 MR. GOECKE: Is there someone else who's available  
2 first or --  
3 MS. CORDRY: No. I think --  
4 MR. GROSSMAN: Well, we would go to the  
5 cross-examination of Ms. Cordry.  
6 MR. GOECKE: Of Cordry? Let's go with Ms. Cort.  
7 MS. HARRIS: Okay. Yes.  
8 MR. GROSSMAN: Okay. So we're -- you win,  
9 Ms. Cort.  
10 MS. CORT: Great.  
11 MR. GROSSMAN: All right. Any other preliminary  
12 or procedural matters? I'm sorry.  
13 MS. HARRIS: Just one other item. I thought --  
14 and maybe she was identified -- was the woman from Freestate  
15 going to be here?  
16 MS. CORDRY: Yes.  
17 MS. HARRIS: Okay.  
18 MS. ADELMAN: She has a scheduled time, does she  
19 not?  
20 MS. CORDRY: Yes. She e-mailed she'd be --  
21 MR. GOECKE: I thought she was going first.  
22 MS. CORDRY: She e-mailed that she would --  
23 MR. GROSSMAN: She e-mailed.  
24 MS. CORDRY: -- well, she e-mailed yesterday about  
25 10:30. So --

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1 MR. GROSSMAN: Right.  
2 MS. CORDRY: -- I mean, I think there's plenty of  
3 time to get Ms. Cort through, and then Ms. Shen should be  
4 here about 10:30. So --  
5 MR. GROSSMAN: Right. That was yesterday's  
6 e-mail.  
7 MR. GOECKE: Okay. I didn't see that.  
8 MR. GROSSMAN: And so I said, you know, she might  
9 have to wait if somebody was on the stand but we would, you  
10 know, try to arrange for her convenience. Also, there were  
11 -- in the e-mail exchange I mentioned, Exhibit 395,  
12 Mr. Silverman raised some questions. Do you wish to respond  
13 at this time to the questions he raised in Exhibit 395?  
14 MR. GOECKE: To Mr. Silverman's questions?  
15 MR. GROSSMAN: Yes.  
16 MR. GOECKE: I'm sorry. When was this submitted?  
17 MR. GROSSMAN: This was an e-mail of November 20.  
18 MR. GOECKE: Not at this time.  
19 MS. HARRIS: Well, we have one item that we can  
20 respond to: the request for the Phase I.  
21 MR. GROSSMAN: Yes.  
22 MS. HARRIS: We can send that via -- well, it's a  
23 400-page document. So I guess the question for you,  
24 Mr. Grossman, is do you want a hard copy as well as an  
25 electronic, excuse me, copy?

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1 MR. GROSSMAN: What exactly is in the Phase I  
2 study?  
3 MR. BRANN: It's a compilation of every report,  
4 any list. It's a -- Phase I is a broad brush, and they go  
5 through every list, for leaky underground storage tanks,  
6 anything like that, that might be an environmental hit. So  
7 it's about 35 pages of report, then 370-something pages of  
8 here are the documents we checked.  
9 MR. GROSSMAN: Okay.  
10 MR. BRANN: So we can forward that to you.  
11 MR. GROSSMAN: All right. My answer to your  
12 question is, I don't want it but it ought to be in the  
13 record if it's going to be supplied to the other side. The  
14 cartons are getting heavier and heavier and --  
15 MR. BRANN: Yes.  
16 MS. CORDRY: Perhaps --  
17 MR. GROSSMAN: -- but I think that if it's being  
18 supplied to the other side as part of this hearing, it ought  
19 to be in the record so that any reference to it would be  
20 understandable. So I'd like, yes, both an electronic copy,  
21 which may be too large to be e-mailed, so either on a disk  
22 or in one of these --  
23 MS. HARRIS: Drop boxes. Okay.  
24 MR. GROSSMAN: -- Dropbox type of programs.  
25 MS. HARRIS: And I assume from the opponents' side

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1 it's acceptable to just send the Dropbox link to you?  
2 MS. CORDRY: Sure. You don't have to send us a  
3 hard copy. We'll be fine.  
4 MR. SILVERMAN: Just be aware of what you ask for.  
5 MR. GROSSMAN: There you go. And, all right, I  
6 also indicated -- was there anything else that you are  
7 prepared to respond to at this time, Ms. Harris, or wish to  
8 respond to?  
9 MS. HARRIS: I don't believe so, not right now.  
10 MR. GROSSMAN: Okay. And I said I'd give you the  
11 opportunity, Mr. Silverman, to explain if I'm wrong in my  
12 understanding of Mr. Sullivan's testimony, which you  
13 suggested.  
14 MR. SILVERMAN: Well --  
15 MS. CORDRY: Actually --  
16 MR. SILVERMAN: Yes.  
17 MS. CORDRY: -- if I might address that, because I  
18 think this was really sort of what I was testifying.  
19 MR. GROSSMAN: You were.  
20 MS. CORDRY: One, I wanted to say, I don't believe  
21 I was trying to suggest in my testimony, I don't think I  
22 said that I was implying that Mr. Silverman was saying that  
23 the --  
24 MS. ROSENFELD: Sullivan.  
25 MR. GROSSMAN: Sullivan.

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1 MS. CORDRY: I'm sorry, Mr. Sullivan, neither one  
2 of them.  
3 MR. GROSSMAN: We can accuse Mr. Silverman of a  
4 lot of things.  
5 MS. CORDRY: Yes. Mr. Sullivan was saying that  
6 the, that the temperature -- that the NO2 emissions, for  
7 instance, in the warehouse would be exactly the same as they  
8 were at the very highest point at one hour and one day at  
9 the loading dock. That was not my suggestion. What I was  
10 saying was, I think I was quoting pretty much exactly what  
11 he said, which was that, in general, the concentrations  
12 inside and outside the warehouse would be the same.  
13 Obviously, there are differing concentrations on the mall at  
14 different points --  
15 MR. GROSSMAN: Right.  
16 MS. CORDRY: -- but that there would be this kind  
17 of issue within the warehouse and therefore, if people are  
18 in the warehouse for any substantial period of time, if  
19 there are elevated levels on the mall, people in the  
20 warehouse will be exposed to them much longer than someone  
21 just in the queue. That was what I was saying, and I think  
22 -- I don't think I was taking him out of context in terms of  
23 making, taking his statement and extrapolating that point  
24 from it. So --  
25 MR. GROSSMAN: Right. I mean, I -- after you

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1 refreshed my recollection as to his having said that, my  
2 recollection was that it was in the context of, generally  
3 speaking, as you just said --  
4 MS. CORDRY: Right.  
5 MR. GROSSMAN: -- indoor levels would be similar  
6 to outdoor levels --  
7 MS. CORDRY: Right.  
8 MR. GROSSMAN: -- but not that -- and as I think  
9 was implied at one point -- that the NO2 levels experienced  
10 at the loading dock would be reflected inside directly and  
11 that the children coming from the Stephen Knolls School  
12 would somehow be exposed to that automatically if they were  
13 in the mall.  
14 MS. CORDRY: Okay.  
15 MR. GROSSMAN: So I just want to make sure that --  
16 MS. CORDRY: Okay. Okay.  
17 MR. GROSSMAN: -- so my understanding was that he  
18 was speaking in general terms --  
19 MS. CORDRY: Yes, that --  
20 MR. GROSSMAN: -- there, and I think that's  
21 everybody's understanding --  
22 MS. CORDRY: Right. Now, what --  
23 MR. GROSSMAN: -- but I think it was implied by  
24 Mr. Silverman's comment that I ignored the plain meaning of  
25 the --

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1 MS. CORDRY: Right.  
2 MR. GROSSMAN: -- of the witness's statement,  
3 which I don't do.  
4 MS. CORDRY: Okay.  
5 MR. SILVERMAN: Right.  
6 MR. GROSSMAN: Okay.  
7 MS. CORDRY: Yes, I just want to be clear that I  
8 wasn't taking it out of context and that there was really a  
9 statement there, and it was not in response to any of our  
10 questions. It was actually in response to Mr. Goecke's  
11 question, starting at a -- you know, there had been a  
12 recess, he came back, he asked that question, and that was  
13 the direct answer there. So that it was something that  
14 really had not been addressed until that point in the  
15 hearings that --  
16 MR. SILVERMAN: Yes. I suppose the point is we  
17 don't know what the air quality, in terms of NO2, is in the  
18 store.  
19 MS. CORDRY: Well --  
20 MR. GROSSMAN: The only thing we know is the  
21 presumption that Mr. Sullivan said, that they would be  
22 similar to --  
23 MS. CORDRY: Yes. Right.  
24 MR. GROSSMAN: -- in general, to outdoors. But  
25 anyway, you get no lunch today anyway as a result of --

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1 MR. SILVERMAN: There you go.  
2 MR. GROSSMAN: All right.  
3 MS. ADELMAN: Are the emissions that bad in the  
4 lunchrooms?  
5 MR. GROSSMAN: All right. Any other preliminary  
6 matters?  
7 MS. CORDRY: No.  
8 MR. GROSSMAN: All right. Then shall we proceed  
9 to Ms. Cort? Would you be so kind just to come forward and  
10 take the stand?  
11 MS. CORT: Here?  
12 MR. GROSSMAN: Yes, that would be great, or  
13 actually, if you could move this chair back a little bit so  
14 it doesn't block you. All right. Thank you. All right.  
15 Ms. Cort, would you state your full name and address and the  
16 organization on behalf of who you're testifying?  
17 MS. CORT: My name is Cheryl Cort, and my home  
18 address is 1438 Florida Avenue, Northwest, Washington, D.C.  
19 20009. I'm speaking on behalf of the Coalition for Smarter  
20 Growth. Would you like to hear our mission statement?  
21 MR. GROSSMAN: Not yet.  
22 MS. CORT: Okay.  
23 MR. GROSSMAN: Would you raise your right hand,  
24 please?  
25 (Witness sworn.)

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1 MR. GROSSMAN: All right. You may proceed.  
2 DIRECT EXAMINATION  
3 THE WITNESS: Thank you, Mr. Grossman. I'm here  
4 to testify on behalf of the Coalition for Smarter Growth.  
5 Our nonprofit organization works to ensure that  
6 transportation and development decisions in the Washington,  
7 D.C., region, including the Maryland suburbs, accommodate  
8 growth while revitalizing communities, providing more  
9 housing and travel choices and conserving our natural and  
10 historic areas.  
11 We want to express our opposition to the special  
12 exception request for the Costco automobile filling station,  
13 which is a large-scale gas station which will attract  
14 vehicle trips from outside the local area. We believe this  
15 proposal is wholly inconsistent with the 2012 Wheaton CBD  
16 and Vicinity Sector Plan and antithetical to our goal of  
17 promoting transit-oriented, pedestrian-friendly development  
18 within one-half mile of a Metro station. The Wheaton Sector  
19 Plan not only offers -- the Wheaton Sector Plan area not  
20 only offers high-quality Metrorail service but also  
21 extensive bus service and planned rapid bus service in the  
22 future. This concentration of transit services will include  
23 -- will increase the share of trips made by transit,  
24 encourage more walking, and reduce how much people need to  
25 drive in the area.

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1 As a regional organization, we advocate for  
2 well-designed transit-oriented/pedestrian-oriented  
3 development that focuses more housing and commercial  
4 activities with an easy walk of Metro stations and other  
5 high-quality transit services and historic downtowns. We  
6 seek to mitigate existing automobile-oriented uses in  
7 transit districts and prohibit new ones. Reducing  
8 automobile-oriented uses and their impacts are important to  
9 fostering a public realm and private development that better  
10 cater to pedestrians rather than prioritizing the movement  
11 of motor vehicles. Uses such as gas stations, automobile  
12 repair services, drive-throughs, and similar uses that  
13 attract motor vehicle use and encourage automobile-oriented  
14 designs, such as additional driveways, wider driveways,  
15 surface parking and curb cuts, should be minimized, reduced  
16 and, in some cases, prohibited --  
17 MR. GROSSMAN: So you would oppose any gas  
18 station?  
19 THE WITNESS: Correct.  
20 MR. GROSSMAN: Anywhere in the area?  
21 THE WITNESS: In the Wheaton Sector Plan area.  
22 MR. GROSSMAN: Okay.  
23 THE WITNESS: A new use. Obviously, there are  
24 existing ones, and they're grandfathered and they're  
25 accommodated.

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1 The proposed high-volume gas station is an  
2 unnecessary new automobile-oriented use that would detract  
3 from the county's and our efforts to create a more  
4 pedestrian-friendly environment around this Metro station.  
5 The plan specifically identifies existing  
6 auto-oriented uses as one of the key issues to be addressed  
7 through the implementation of the sector plan. The addition  
8 of a large-scale gas station would compound the  
9 automobile-oriented uses problem that's identified in the  
10 sector plan. We recognize that the site of the gas station  
11 is on the outer part of the mall property and plan boundary;  
12 yet we find that the proposed use is not a neutral use  
13 related to our goals to improve the pedestrian environment  
14 but, rather, a use actively degrades the pedestrian  
15 environment and works against sector plan goals.  
16 With such a large-scale gas station, additional  
17 vehicle trips will be attracted to the transit district from  
18 outside the local area simply for the purpose of refueling  
19 vehicles with cheaper gasoline. This regional automobile  
20 service use contradicts the sector plan's and our goals to  
21 reduce vehicle miles traveled. Introduction of a new  
22 large-scale gas station would directly oppose the plan's  
23 guidance to provide better pedestrian connectivity and  
24 support safe, secure, and appealing street-level activity.  
25 In an area like the Wheaton Sector Plan, we have

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1 found that the transition from automobile-oriented land uses  
 2 takes time but can be phased in order to create a more  
 3 transit-oriented and pedestrian-oriented place. The sector  
 4 plan accommodates the existing automobile-oriented regional  
 5 mall surrounded by surface parking but seeks to manage the  
 6 negative impacts to pedestrians by proposing pedestrian  
 7 access improvements, pedestrian-oriented street design  
 8 changes, and encouragement of redevelopment to more  
 9 pedestrian-friendly designs. Preventing new uses that would  
 10 further degrade the transit district is also an important  
 11 part of progressing towards a more pedestrian-friendly  
 12 Wheaton Sector Plan area. The large-scale gas station would  
 13 degrade the pedestrian environment by attracting additional  
 14 automobile trips to the area, force more automobile-oriented  
 15 designs in the public rights-of-way to accommodate  
 16 automobile-oriented uses. Preventing this kind of use also  
 17 promotes our goal to support greater use of transit, build  
 18 safe, walkable places, especially around transit hubs. For  
 19 these reasons we oppose the special exception application.  
 20 MR. GROSSMAN: How do you feel about the fact that  
 21 Costco and Westfield have agreed to add a pedestrian walkway  
 22 along the southern ring road if the special exception is  
 23 approved? How do you -- how do you factor that in with your  
 24 feeling that the gas station would discourage pedestrian use  
 25 or --

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1 THE WITNESS: Well, we think that the  
 2 automobile-oriented use, especially a large-scale gas  
 3 station, will significantly degrade the pedestrian  
 4 environment and it's a much more significant impact than any  
 5 mitigation measures like a pedestrian pathway --  
 6 MR. GROSSMAN: All right.  
 7 THE WITNESS: -- sort of moving us in the wrong  
 8 direction.  
 9 MR. GROSSMAN: Okay. All right.  
 10 Cross-examination, first from the Coalition?  
 11 MS. ADELMAN: No, sir.  
 12 MR. GROSSMAN: Kensington Heights?  
 13 MS. ROSENFELD: No. Thank you.  
 14 MR. GROSSMAN: And Kensington View?  
 15 MS. DUCKETT: No, sir.  
 16 MR. GROSSMAN: All right. Then from the  
 17 applicant.  
 18 MS. HARRIS: Thank you.  
 19 CROSS-EXAMINATION  
 20 BY MS. HARRIS:  
 21 Q Hi, Ms. Cort.  
 22 A Good morning.  
 23 Q You noted that uses such as gas stations,  
 24 automobile repair services, and drive-throughs and such  
 25 should not be permitted on -- should be discouraged or

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1 permitted on the mall property, is that correct?  
 2 A Correct.  
 3 Q And are you familiar with the C-2 zone?  
 4 A I know it's zoned C-2. I presume that's just a  
 5 commercial retail zoning that doesn't have a mix of uses  
 6 permitted.  
 7 Q But are you aware that all of those uses are in  
 8 fact permitted either by matter of right or special  
 9 exception in the C-2 zone?  
 10 A Yes, but -- well, I could assume that to be the  
 11 case. It's our position that those should not be permitted  
 12 this close to a Metro station and sector plan area.  
 13 Q So when the Council retained the C-2 zoning on the  
 14 site, I assume they were working against what your  
 15 objectives are?  
 16 A Well, I mean, if we look at the zoning rewrite,  
 17 we're looking at the -- it's the GR 2.5 designation, which  
 18 would actually introduce an element of mix of uses of up to  
 19 30 percent of housing into the GR designation, correct?  
 20 MS. HARRIS: Well, let me first note that I  
 21 thought the zoning rewrite, since it is prospective, is not  
 22 relevant in this case. That's what we've heard -- that has  
 23 been the response in connection with other witnesses.  
 24 MR. GROSSMAN: I would agree that I can't make any  
 25 assumptions about what the zoning rewrite will do since it's

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1 before the Council. They haven't acted on it. On the other  
 2 hand, you asked the question and the witness answered the  
 3 question. So --  
 4 MS. HARRIS: Okay. Let me --  
 5 MR. GROSSMAN: But --  
 6 MS. ROSENFELD: And --  
 7 MS. CORDRY: Mr. Grossman --  
 8 MR. GROSSMAN: Yes.  
 9 MS. CORDRY: -- if we could speak to that for just  
 10 a moment --  
 11 MR. GROSSMAN: Yes.  
 12 MS. CORDRY: -- in terms of the impact of that.  
 13 The special exception, in the first place, talks about the  
 14 likely development of the mall. So it certainly looks to  
 15 future developments, and this is not a start of this  
 16 process, the zoning. We're extraordinary far along in that,  
 17 number one. And, number two, I think it's also very  
 18 relevant to -- she's discussing what the Council in the  
 19 sector plan intended, and I think if you actually look at  
 20 the sector plan, the sector plan very clearly references  
 21 that ongoing rewrite program. So the assumption that that  
 22 was not part of what the Council was thinking about when  
 23 they left the C-2 zone in place while this rewrite was going  
 24 on I think is just a complete misreading of what the sector  
 25 plan says.

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1 MR. GROSSMAN: Well, I don't know that I'm going  
2 to engage in trying to second-guess or figure out what the  
3 Council had in mind for something they haven't yet enacted.  
4 The sector plan is in the record --  
5 MS. CORDRY: Right.  
6 MR. GROSSMAN: -- and speaks for itself. In  
7 fact --  
8 MS. CORDRY: Right. Right.  
9 MR. GROSSMAN: -- multiple copies are in the  
10 record and it speaks for itself. So, you know, I'll rely on  
11 what -- and it's a very recent sector plan --  
12 MS. CORDRY: Right. Right.  
13 MR. GROSSMAN: -- so I'll rely on what the sector  
14 plan --  
15 MS. CORDRY: Right.  
16 MR. GROSSMAN: -- says, but I'm not going to --  
17 the witness was asked a question, and she answered --  
18 MS. CORDRY: Right.  
19 MR. GROSSMAN: -- what her understanding is.  
20 MS. CORDRY: And the point was simply that the  
21 sector plan clearly references the zoning rewrite as  
22 something that will be taken into account with respect to  
23 that. So --  
24 MR. GROSSMAN: Yes, but I, as I said already, I'm  
25 not going to. I have enough with the sector plan and with

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1 the Planning Board's interpretation of the sector plan  
2 without trying to figure out what the Council will do in the  
3 zoning rewrite --  
4 MS. CORDRY: Right, but --  
5 MR. GROSSMAN: -- given, especially given all the  
6 testimony about what it ought to do that's going on almost  
7 as we speak, just --  
8 MS. CORDRY: Right, and our only point is, there's  
9 a suggestion that by not changing the C-2 zone at the time  
10 of the sector plan, there was a determination made that that  
11 was what it should stay forever and always and that that was  
12 what the Council intended, and what we're saying is that the  
13 sector plan clearly says there's a different time and a  
14 different place that we're going to look at that zone.  
15 MR. GROSSMAN: Well, forever and always is a long  
16 period of time --  
17 MS. CORDRY: Right.  
18 MR. GROSSMAN: -- and I'm not going to engage in  
19 that either.  
20 MS. CORDRY: Okay.  
21 MR. GROSSMAN: I'm just going to say, when you  
22 have a recent sector plan which, you know, recommends or  
23 authorizes the continuation of a particular zone, I think  
24 you have to accept that as what it is for the immediate  
25 future. That's the recent sector plan.

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1 MS. CORDRY: But --  
2 MR. GROSSMAN: You can disagree. That's up to  
3 you.  
4 MS. CORDRY: Okay. I'm just --  
5 MR. GROSSMAN: That's my --  
6 MS. CORDRY: Right.  
7 MR. GROSSMAN: -- sense and how I've always dealt  
8 with sector plans; so -- go ahead.  
9 MS. HARRIS: Thank you.  
10 BY MS. HARRIS:  
11 Q Are you aware that the existing sector plan noted  
12 that the regional, the presence of the regional mall is one  
13 of the highlights of the Wheaton Sector Plan area?  
14 A I, I have, I see that it states that it's, the C-2  
15 zoning is confirmed for the remainder of the site that isn't  
16 put into CR in order to accommodate the mall.  
17 Q And were you aware that the mall has approximately  
18 183,000 square feet of additional development that it could  
19 build?  
20 A I'm sure it does. I'm not specifically aware of  
21 those numbers.  
22 Q And were you aware that the sector plan  
23 specifically says that previously permitted density should  
24 be accommodated -- would be permitted to be accommodated on  
25 such sites as the mall that have that approval?

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1 A My concern isn't about density; it's about the  
2 specific use of a high-volume gas station.  
3 Q In connection with your involvement in the  
4 Coalition of Smarter Growth, I assume you follow a number of  
5 sector plans, is that correct?  
6 A Yes.  
7 Q And so you're aware that in certain sector plans  
8 the Council on occasion specifically precludes certain uses  
9 in certain areas?  
10 A Yes.  
11 Q And are you aware that the predecessor to this  
12 plan in fact --  
13 MR. GROSSMAN: This plan, being the current sector  
14 plan?  
15 BY MS. HARRIS:  
16 Q Sorry, the 2012 Wheaton CBD Sector Plan actually  
17 specifically precluded auto-related uses in certain areas of  
18 the sector plan area?  
19 A I was not familiar with that.  
20 Q And given that the Council does have that ability,  
21 the Council could have, if they had wanted to, specifically  
22 precluded auto-related uses on the mall site, isn't that  
23 correct?  
24 MS. ROSENFELD: Objection. Hypothetical.  
25 MS. ADELMAN: Yes.

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1 THE WITNESS: I, I don't know in terms --  
2 MR. GROSSMAN: Well, hold on one second. Your  
3 objection is?  
4 MS. ROSENFELD: It's a hypothetical question.  
5 She's asking the witness to speculate as to what the Council  
6 might have, could have, would have, should have done.  
7 MR. GROSSMAN: Ms. Harris?  
8 MS. HARRIS: What I'm trying to show is that the  
9 Council has the authority and, in fact, has in the past  
10 precluded uses.  
11 MR. GROSSMAN: That's a legal argument.  
12 MS. HARRIS: Okay.  
13 MR. GROSSMAN: So the witness's answer really  
14 doesn't establish that one way or the other, and I'll  
15 sustain the objection.  
16 MS. HARRIS: Okay.  
17 BY MS. HARRIS:  
18 Q You are also familiar, I assume, in your role at  
19 the Coalition, of the various Metro station, Metro stations'  
20 areas within the metropolitan area, is that correct?  
21 A I'm familiar --  
22 Q You're familiar with the Metro station, various  
23 Metro stations within the metropolitan area?  
24 A Yes.  
25 Q And are you familiar with the Wheaton Metro

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1 station area?  
2 A Yes.  
3 Q Are you familiar with the fact that the largest  
4 number of commuters to that station arrived by automobile?  
5 A I was looking at the numbers today. Twenty-five  
6 percent arrive by walking and 25 by bus, and I would presume  
7 that the other half arrive by automobile.  
8 Q And those 50 percent of automobiles, the vast  
9 majority of them run on gasoline, is that correct?  
10 A Yes.  
11 Q And are you familiar with the fact that there's a  
12 900-car WMATA parking garage on the, immediately adjacent to  
13 the mall property?  
14 A Yes.  
15 Q If I understood your testimony correctly, you  
16 noted that the, your ideal development would be, in fact,  
17 mixed-use development on the mall property, correct?  
18 A The issue at hand is whether or not a special  
19 exception should be granted for a high-volume gas station.  
20 Q Right, but as I understood you, it's that that, in  
21 your mind, that gas station would preclude more desirable  
22 development such as mixed-use. Did --  
23 A Not necessarily. It's just --  
24 Q -- I misunderstand you?  
25 A -- it's a particularly negative use. It's a

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1 setback for the sector plan rather than a neutral use for  
2 the sector plan, for instance.  
3 Q And I believe in your statement and I believe you  
4 also said that the use degrades the pedestrian environment.  
5 A Correct.  
6 Q Are you familiar with the fact that, what's  
7 surrounding the special exception area?  
8 A It's a parking lot.  
9 Q And in your mind is a parking lot particularly  
10 pedestrian friendly?  
11 A No, but that's a more neutral -- say, for  
12 instance, the special exception was to add another service  
13 parking lot, for instance. It would not have the same  
14 impact in terms of generating new vehicle traffic than a  
15 high-volume gas station does. That's why we're particularly  
16 concerned about a high-volume gas station.  
17 Q And how many trips in fact does this gas, new  
18 trips to this site, does this gas station --  
19 A I'm not familiar with the exact number.  
20 Q But are you aware of the fact that the mall site  
21 itself has 6,000 parking spaces on it?  
22 A Yes.  
23 Q And that the people utilizing those 6,000 parking  
24 spaces in fact drive to the mall site?  
25 A I don't know what the utilization rate is of the

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1 service parking. Obviously, people can arrive on the mall  
2 by -- other than just driving to the mall, whether or not  
3 there's a parking space available.  
4 Q But those that are on the mall site that have  
5 driven to the mall site could utilize the proposed gas  
6 station, correct?  
7 A They could or adjacent -- or gas stations nearby.  
8 Q Yes. For the Costco customer, isn't it more --  
9 less vehicle miles traveled, in fact, to be able to use that  
10 gas station than to do what many Costco customers do, which  
11 is drive to Beltsville to get Costco gas?  
12 A Well, I think there's a number of gas stations in  
13 the area. So I don't, I don't know that this is premised on  
14 a shortage of gas stations in the area.  
15 Q No, but if your concern is vehicle miles traveled  
16 and if in fact the Costco customer wants to buy their gas at  
17 a Costco gas station, would you not agree that it's less  
18 vehicle miles traveled to be able to purchase your gas at  
19 the Wheaton Costco, if you're shopping at the Wheaton  
20 Costco, as opposed to driving to Beltsville?  
21 A Well, I don't know that we want to encourage  
22 long-distance travel for getting a tank of gas.  
23 Q And are you opposed to all new gas stations  
24 irrespective of the number of cars that they generate, trips  
25 that they generate?

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1 A I'm opposed to a gas station at this location  
2 because it's, of it being within the boundaries of the  
3 sector plan, adjacent to the Wheaton Metro station.  
4 Q So you would be opposed to any gas station on that  
5 site?  
6 A On that site, correct.  
7 Q Are you also opposed to other developments that  
8 would generate traffic?  
9 A It would depend on what the, what the use is.  
10 Obviously, this one is a, basically, a hundred percent mode  
11 share of driving as opposed to another use which might be  
12 able to take advantage of the wealth of transit service in  
13 the area.  
14 Q Would you agree with the statement that the very  
15 vast majority of people that come to a Costco drive to a  
16 Costco?  
17 A I imagine that most people arriving at Costco  
18 drive, but you know, there's a Costco adjacent to a Metro  
19 station in Virginia. I imagine a lot of people there also  
20 take transit there, but I don't know what the mode split is,  
21 specifically.  
22 Q Given that the Costco is a driving-oriented use,  
23 are you opposed to the Costco warehouse at the existing mall  
24 site?  
25 A In Virginia?

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1 Q No, in Wheaton.  
2 A Oh, in Wheaton. No. I think that, you know, over  
3 time, that big boxes are, big-box retailers are adapting to  
4 a more urban environment, a more multimodal environment, and  
5 we're hopeful that Costco can also adapt to a more urban  
6 environment, especially when it's located right at a Metro  
7 station.  
8 Q So you were not opposed to the Costco coming to  
9 the Wheaton Mall site and the --  
10 A No, not necessarily.  
11 Q -- number of trips that it generates, but  
12 you're --  
13 A Not necessarily. I didn't specifically examine  
14 that issue. This -- you know, we were specifically  
15 concerned about a high-volume gas station as particularly  
16 antithetical to the Wheaton plan intention and our goal of  
17 creating a more pedestrian-oriented environment.  
18 Q So you're opposed to some uses that may, a gas  
19 station use that may generate additional new trips, though  
20 you don't know how many, but you're not necessarily opposed  
21 to other uses that are high-generating traffic uses, is that  
22 right?  
23 A I would say we're opposed to the gas station, a  
24 high-volume gas station as a, basically, a hundred percent  
25 mode split for driving as opposed to other uses which may

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1 have a multimodal mode split.  
2 Q But if a Costco warehouse were 98 percent mode  
3 split, that's acceptable?  
4 MS. ROSENFELD: Objection.  
5 MR. GROSSMAN: Sustained. Anyway, I think, I'm  
6 not sure that the -- I think I understand what --  
7 MS. HARRIS: Okay.  
8 MR. GROSSMAN: -- you're getting at here, but it's  
9 not really relevant --  
10 MS. HARRIS: Okay.  
11 MR. GROSSMAN: -- or you've carried it far enough.  
12 MS. HARRIS: Okay. Okay. I have no other  
13 questions. Thank you.  
14 MR. GROSSMAN: Thank you very much --  
15 THE WITNESS: Thank you.  
16 MR. GROSSMAN: -- Ms. Cort, for coming down here  
17 and sharing your views and those of the Coalition. You're  
18 invited to and more than welcome to stay --  
19 THE WITNESS: Thank you so much.  
20 MR. GROSSMAN: -- for the future festivities here,  
21 but you're not required to, obviously. All right.  
22 MS. CORDRY: I believe this is Ms. Shen.  
23 MS. SHEN: Yes.  
24 MR. GROSSMAN: Ms. Shen?  
25 MS. SHEN: Uh-huh.

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1 MR. GROSSMAN: All right. Shall we proceed to  
2 Ms. Shen then?  
3 MS. ADELMAN: Yes.  
4 MR. SILVERMAN: Yes.  
5 MS. CORDRY: Fine with me.  
6 MR. GOECKE: Sure.  
7 MR. GROSSMAN: All right. Ms. Shen, would you be  
8 so kind as to step forward? Okay. Will you state your full  
9 name and address, please?  
10 MS. SHEN: Kathleen Lynn Shen, 13070 Wainwright  
11 Road, Highland, Maryland 20777.  
12 MR. GROSSMAN: And how do you spell your Kathleen?  
13 MS. SHEN: K-A-T-H-L-E-E-N.  
14 MR. GROSSMAN: And Shen is S-H-E-N?  
15 MS. SHEN: Yes.  
16 MR. GROSSMAN: All right. And you're here to  
17 testify on behalf of?  
18 MS. SHEN: Freestate Petroleum Corporation.  
19 MR. GROSSMAN: Okay. Would you raise your right  
20 hand, please?  
21 (Witness sworn.)  
22 MR. GROSSMAN: All right. You may proceed.  
23 DIRECT EXAMINATION  
24 THE WITNESS: Freestate management committee  
25 reviewed with the Freestate board of directors as what would

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1 be the outcome for Freestate, our Freestate location at  
2 11295 Veirs Mill Road in Wheaton, if Costco was allowed to  
3 put a gas station in at their new location, the mall,  
4 Westfield Mall. It was decided that if Costco ends up with  
5 a gas station, our location would be gone; it would only be  
6 a matter of time.  
7 MR. GROSSMAN: Your location. What location?  
8 THE WITNESS: The location at 11295 Veirs Mill  
9 Road.  
10 MR. GROSSMAN: Okay. You're saying that the new  
11 Costco station --  
12 THE WITNESS: If a new --  
13 MR. GROSSMAN: -- would drive your Freestate  
14 station --  
15 THE WITNESS: Out of business, yes.  
16 MR. GROSSMAN: -- at 11295 Veirs Mill Road out of  
17 business?  
18 THE WITNESS: Correct.  
19 MR. GROSSMAN: Okay.  
20 THE WITNESS: And this was found after a, you  
21 know, a management committee with Freestate and reviewed it  
22 with the board of directors of Freestate. They discussed it  
23 and this was their conclusion, that it would only be a  
24 matter of time if the special exception was granted for the  
25 gas station at the mall, and the reason being that we would

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1 not be able to compete with Costco, even if we had the same  
2 cost basis on the fuel, which Freestate believes that we, we  
3 pretty much get low-cost fuel. And the reason is we need to  
4 make a margin on our fuel sales to stay in business, and  
5 margins at this point in time are not that great, in the  
6 first place.  
7 Freestate also feels that, as though Costco shows  
8 irresponsible- and predator-type pricing, and this was based  
9 on the new store on NBC 4, on Channel 7 this past week in  
10 regard to the pricing of their Costco in Washington, D.C.  
11 The Costco was 2.99 per --  
12 MR. GOECKE: Objection. Hearsay.  
13 MR. GROSSMAN: Well, yes, I'm going to sustain  
14 that. I don't -- I can't, in fairness to the parties, I  
15 can't allow a repetition to be admitted for factual purposes  
16 of something that you've seen on TV that they can't  
17 cross-examine here. Now, some hearsay is permitted in this  
18 type of proceeding, but it has to be reliable and probative  
19 and I have to, oh, at all times, be fair to all parties. So  
20 don't tell us what you saw on TV.  
21 THE WITNESS: I understand. I'm saying this is  
22 what Freestate based their decision on. Part of their  
23 decision is based on the information that they've collected,  
24 that, you know, we've gone to several of the Costco gas  
25 stations, a lot of management was on the West Coast, and

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1 this is their feeling as to what will happen and that was  
2 why, but --  
3 MR. GROSSMAN: If they based it on --  
4 THE WITNESS: -- if I can't say that, that's fine.  
5 MR. GROSSMAN: Well, no. No. You actually just  
6 said it, and I don't object to, or I don't have a problem  
7 with the admission of the basis for the decision, erroneous  
8 or not erroneous. The question is whether or not you're  
9 attempting to introduce something you saw on TV into the  
10 record for the truth of the matter asserted therein.  
11 THE WITNESS: Sure.  
12 MR. GROSSMAN: So that's the, that's the question,  
13 and if that's not what you're doing, fine, but if you're  
14 attempting to introduce that as something for the truth of  
15 what's asserted in that television program, then that would  
16 not be fair to the other side.  
17 THE WITNESS: I understand that. I'm just --  
18 MR. GROSSMAN: Okay.  
19 THE WITNESS: -- and that's not what I'm trying to  
20 do. I'm just relaying what Freestate based their decision  
21 on --  
22 MR. GROSSMAN: Okay.  
23 THE WITNESS: -- one of the things, one of the --  
24 MR. GROSSMAN: Not from the TV program, I take it,  
25 or did they --

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1 THE WITNESS: No, but --  
2 MR. GROSSMAN: Okay.  
3 THE WITNESS: -- but when you -- you know, we have  
4 people with Freestate that see, been to the Costco, see what  
5 the pricing is, and this is their feeling and just, you  
6 know --  
7 MR. GROSSMAN: Okay. Well --  
8 THE WITNESS: -- this past weekend, but regardless  
9 with that --  
10 MR. GROSSMAN: Right.  
11 THE WITNESS: -- they feel that, that Costco shows  
12 irresponsible- and predator-type pricing --  
13 MR. GROSSMAN: Okay.  
14 THE WITNESS: -- meaning that they will put people  
15 out of business because of their pricing.  
16 MR. GROSSMAN: Okay.  
17 THE WITNESS: Our Freestate at Veirs Mill Road,  
18 11295 Veirs Mill Road, is on the track to do 282,456 gallons  
19 of fuel this month.  
20 MR. GROSSMAN: I'm sorry. What's the -- how much?  
21 THE WITNESS: Two hundred eighty-two thousand four  
22 hundred and fifty-six gallons of fuel this month.  
23 MR. GROSSMAN: Okay.  
24 THE WITNESS: Okay? We have done up to 450,000  
25 gallons at this site at different times, mostly in the '90s.

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1 We have hit 325,000 gallons since 2000 but nowhere near what  
2 our facility is capable of pumping. Out of the 282,456  
3 gallons, we're projected to do 11,000 gallons of just  
4 ultra-low-sulfur diesel, and our --  
5 MR. GOECKE: I'm sorry. Can you repeat that  
6 number, please?  
7 THE WITNESS: Eleven thousand gallons of  
8 ultra-low-sulfur diesel.  
9 MR. GOECKE: And this is over what period of time?  
10 THE WITNESS: We're projected to do for this  
11 month --  
12 MR. GOECKE: Okay, thank you.  
13 THE WITNESS: -- of November. Our diesel sales  
14 have grown steadily at this location as well as our other  
15 locations, and we have seven locations. And our sales  
16 history varies as to the cost of gas that we can get, but --  
17 as our volume, key to our volume.  
18 The history of this location that we are at, at  
19 11295, Freestate management has been associated with this  
20 location since it was first built in the 1950s, when it was  
21 a Scot station. At that time, behind us was open fields.  
22 There were no homes or anything like that, a cross street,  
23 no homes; it was open fields. The houses were built behind  
24 the station sometime after facility opened. Then Scot sold  
25 the property to BP who changed the configuration of the

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1 property. They sold it to Crown. Crown then leased the  
2 property to an investment company in New York, and now PMG  
3 owns the lease, which we make payments to. So, you know --  
4 MR. GROSSMAN: What does PMG stand for?  
5 THE WITNESS: Petroleum Marketing Group.  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: So Freestate management has been in  
8 the business for 50 years and have seen -- in the business  
9 for that long. They've had Freestate since the early '80s,  
10 and we have our little niche. We're not here to satisfy a  
11 hundred percent of the people and we realize that. We're  
12 prepaid, cash only, and we just try to give them the best  
13 value for their money, but we also feel that, you know, we  
14 are responsible in the way we price our gas. We may be  
15 lower or at the same price as our competition, and we try to  
16 maintain that because we only -- we don't offer credit  
17 cards, or we don't accept credit cards. So that is one of  
18 our things, why we, you know, like to remain at a low price.  
19 And as I stated before, the margins we have now are not that  
20 great, and we feel as if Costco comes in there, we won't  
21 have any margins; therefore, we won't be able to stay in  
22 business at this location. I don't believe that it will  
23 affect our other locations, but that was their feeling.  
24 We also had a station at Layhill Road and Georgia  
25 Avenue that closed a year ago this time and for several

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1 reasons. Our lease expired and we considered the following  
2 as to whether we could renew the lease, because that was an  
3 option. We needed to spend a million to a million and a  
4 half to upgrade the facility with a non-performing use to  
5 make it, you know, what it needed to be for the MDE and the  
6 EPA, and considering the amount of money we would have to  
7 do, to spend, we were afraid that we would not be able to  
8 get that money back if Costco was allowed the special  
9 exception. So we decided to close and walk away, which we  
10 did.  
11 We're a small company and it's just in Maryland  
12 here. The majority of our stations are in Montgomery  
13 County, and we are really like, you know, old school. We  
14 don't have a lot of people, secretaries and all that thing;  
15 so our overhead is low and that's part of the reason why we  
16 can stay in business and offer, we feel like, the public,  
17 you know, a good deal on fuel, but we cannot compete with  
18 the likes of a Costco high-volume gas station.  
19 You know, as far as -- you know, I mean,  
20 basically, Freestate feels that if this special exception  
21 were granted for them, that the Freestate we have at Veirs  
22 Mill Road will be gone; it's only a matter of time.  
23 MR. GROSSMAN: Okay. All right. Does that  
24 complete your statement?  
25 THE WITNESS: Yes.

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1 MR. GROSSMAN: All right. Cross-examination from  
2 the Coalition?  
3 MS. ADELMAN: No, sir.  
4 MR. GROSSMAN: From Kensington Heights?  
5 MS. ROSENFELD: Yes.  
6 CROSS-EXAMINATION  
7 BY MS. ROSENFELD:  
8 Q You mentioned that you sell diesel --  
9 A Yes.  
10 Q -- at that location.  
11 A Uh-huh.  
12 Q Do you also provide air for filling tires at that  
13 location?  
14 A Yes.  
15 Q And is there a convenience store associated with  
16 the station?  
17 A A small, very, very small, limited items.  
18 Q Okay. But you do have certain goods available for  
19 purchase? For --  
20 A Very limited, but yes.  
21 Q For example, what could people get?  
22 A We have, we have sodas, candy, and maybe some  
23 chips and then, of course, motor oil and that's it.  
24 Q Okay. Okay. And you mentioned that you don't  
25 take credit cards, correct --

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1 A Correct.  
2 Q -- it's cash only?  
3 A Uh-huh.  
4 Q Do purchasers have to be a member of Freestate or  
5 a member of some particular club --  
6 A No.  
7 Q -- to purchase gas?  
8 A No.  
9 Q So you provide your services to any member of the  
10 public, is that correct?  
11 A Right. We ask that they prepay and have cash and  
12 that's all that we ask.  
13 Q Okay. And what days and hours do you operate?  
14 A We have, we have changed our hours due to, I  
15 guess, the lack of business in the early mornings, but we're  
16 open from 6:00 to 10:00 Monday through Thursday; Friday and  
17 Saturday, 6:00 to 11:00; and then Sunday, 7:00 to 10:00. So  
18 we were open until 11 o'clock all week long, but we cut that  
19 back to 10:00 during the week because of, the sales weren't  
20 what they used to be.  
21 MR. GROSSMAN: Did I get it right? So it's open  
22 6:00 to 10:00 Monday through Thursday --  
23 THE WITNESS: Uh-huh.  
24 MR. GROSSMAN: -- Fridays, 6:00 to 11:00; Sunday,  
25 7:00 to 10:00 -- Friday and Saturday, 6:00 to 11:00?

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1 THE WITNESS: Saturday opens 6:00 to 11:00.  
2 MR. GROSSMAN: And Friday too?  
3 THE WITNESS: Yes.  
4 MR. GROSSMAN: Okay. And then --  
5 THE WITNESS: And Sunday, 7:00 to 10:00.  
6 MR. GROSSMAN: Okay.  
7 BY MS. ROSENFELD:  
8 Q And you had said, I think, in the '90s your sales  
9 levels were about 450,000 gallons?  
10 A We have done upwards of 450,000 gallons before.  
11 Q And that's per month?  
12 A Yes.  
13 Q Okay. And you said there were times subsequent to  
14 that that you were at 282,000?  
15 A Well, that's what we're projected to do this  
16 month.  
17 Q This month, okay.  
18 A Okay? We have done up to 325,000 gallons since  
19 2000 at different times. You know, it depends on the time  
20 of year, the price of gas we can get, and just in general,  
21 that's what we've done, but we have not hit that 450 since  
22 the '90s.  
23 Q Okay. And do you have projections for the average  
24 monthly volume of sales that you would expect going forward  
25 if Costco did not build?

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1 A If they did not? Well, I -- you know, it's hard  
2 to say. I have a sales summary history. For -- like, in  
3 March of 2012, we did 304,000. February of 2013 we did 215,  
4 215,000. April we did 295 of 2013, and July of 2013 we did  
5 260. So it varies, depending on, really, the price -- what  
6 is the price of gas that we can get, you know, and of  
7 course, it's hard to compete with somebody who takes credit  
8 card when you only take cash, when you're at the same price.  
9 So that's why we try to maintain a lower price than our  
10 competitors which accept credit cards, because some people  
11 are just going to use their credit cards. So --  
12 Q And do you have any projections for going  
13 forward --  
14 A No.  
15 Q -- for example, in 2014 or 2015? Do you have any,  
16 any sense for where the sales market is headed?  
17 A Well, we do know that our diesel sales have  
18 steadily grown at this location. So we feel that there is  
19 room for diesel growth, but I can't tell you exactly or -- I  
20 mean, we would probably do the same we're doing now, I would  
21 suspect, but I can't say for certain what we exactly would  
22 do, although we expect diesel sales to grow and they have.  
23 Q And if you no longer provide, if your store  
24 closes, your station closes at that location, do you know  
25 the next closest gas station that sells diesel?

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1 A You know, I should but I don't. For sure, I know  
2 that our station in Wheaton that we closed down on Layhill  
3 Road and Georgia Avenue had diesel. So I am not really  
4 sure, and I should have checked that before I came, but I'm  
5 not really sure who has diesel.  
6 Q Are you generally among the lowest price gasoline  
7 in the Kensington area?  
8 A We try to be, yes. We try to be. That is our  
9 goal.  
10 Q When you evaluate prices, do you typically look at  
11 the prices in the local Wheaton/Kensington area or do you  
12 price based on, for example, gas prices in Beltsville or in  
13 Frederick, where --  
14 A We have a gas survey at each one of our locations,  
15 and it's done daily, sometimes twice a day, and we -- that  
16 is given to the appropriate management people with  
17 Freestate, and they dictate the pricing, but yes, we do  
18 survey just in the local area. We don't go outside of  
19 Wheaton. Like, the Bluebridge Shell we do and the Sunoco  
20 right next to us and probably down University Boulevard as  
21 well.  
22 Q And do you know if gas prices typically are higher  
23 or lower in the Wheaton area than they are in the Beltsville  
24 area?  
25 A I can't tell you about Beltsville.

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1 Q Okay. So if you, your station closes, then people  
2 who would want air for their tires or conveniences in the  
3 form of beverages and candy would need to travel farther to  
4 get those, is that correct?  
5 A Well, yes. I mean --  
6 MR. GROSSMAN: Well, she hasn't testified as to  
7 other alternatives that might be closer to where people  
8 live. So I'm not sure I understand that question.  
9 THE WITNESS: I think price drives --  
10 MR. GROSSMAN: Well, hold on one second.  
11 THE WITNESS: Sorry.  
12 MR. GROSSMAN: Hold on one second. So I don't --  
13 you were asking the witness, they'd have to drive further.  
14 How do you know what their starting point is? I mean --  
15 BY MS. ROSENFELD:  
16 Q You're not available to your current customer  
17 base. Would that be correct?  
18 A Correct.  
19 Q Okay. And so for customers who were  
20 price-oriented, your station would no longer be an option  
21 for them, correct?  
22 A Correct.  
23 Q You had mentioned that Freestate, the Petroleum  
24 Marketing Group -- I want to understand a little bit better  
25 the corporate organization. Does Petroleum Marketing Group

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1 own the lease or own the real property?  
2 A All I know is that Freestate, we have -- since we  
3 have obtained that property in '92 after going through the  
4 special exception, we have paid the lease to a, a group in,  
5 an investment company in New York City, and then they in  
6 turn sold it, the lease agreement, to PMG. So now that's  
7 who we're sending our check to. So I'm assuming that they  
8 do own the property because Freestate does not.  
9 Q Okay. So you have a lease interest in the  
10 property; you lease --  
11 A Yes.  
12 Q -- the property and operate the gas station?  
13 A Yes.  
14 Q And who built the station and the pumps?  
15 A Originally?  
16 MR. GROSSMAN: Why does that concern us?  
17 MS. ROSENFELD: I'm trying to understand  
18 Freestate's ownership interest and investment in the  
19 property itself.  
20 MR. GROSSMAN: I'm not sure why that concerns us  
21 either. I mean, how far afield --  
22 MS. ROSENFELD: Well, I don't --  
23 MR. GROSSMAN: -- do we need to go here? We  
24 understand that she, that Freestate leases the station from  
25 PMG. So --

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1 MS. ROSENFELD: Well, I think it's highly relevant  
2 because one finding that the Board of Appeals must make is  
3 that if the special exception is granted, that it will not  
4 be detrimental to the economic value of surrounding  
5 properties, and this certainly is a surrounding property.  
6 MR. GROSSMAN: Right, but I don't think your  
7 questions go to that. I don't see why your probing further  
8 on this goes to that. I'll let you ask the question, but I  
9 really think that you're going far afield as to anything  
10 that could possibly influence a finding in this case, but  
11 you can ask that question.  
12 MR. GOECKE: And it says property, not business,  
13 Mr. Grossman.  
14 MR. GROSSMAN: Right. Go ahead. I'm letting you  
15 ask your question, but let's not go into areas that are so  
16 peripheral that they really can't bear on this.  
17 MS. ROSENFELD: Well, let me ask the question a  
18 different way.  
19 BY MS. ROSENFELD:  
20 Q If Freestate is required to close this station as  
21 a result of the approval of the special exception, will  
22 Freestate suffer an economic loss as a consequence?  
23 A It always costs money to close a station, and  
24 we're responsible for moving the tanks in the ground and  
25 doing any, you know, we have an environmental consultant

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1 check the soil and also remove the pumps. And so when we  
2 closed our gas station in Wheaton, it was a chunk of money  
3 that we had to spend. It always costs more to close.  
4 Q And at this point in time, does Freestate earn a  
5 profit from its location at --  
6 MR. GROSSMAN: 11295.  
7 BY MS. ROSENFELD:  
8 Q -- 11295 Veirs Mill Road --  
9 A Yes.  
10 Q -- at that station?  
11 A Yes.  
12 Q If the station is forced to close, would you  
13 suffer detrimental economic impact as a result of that in  
14 the future, going forward?  
15 A You know, this location of ours does fairly well  
16 with value, selling gas; so it will definitely change the  
17 aspect of our company to lose a station. Now, the margins  
18 that we get on our gas varies, and sometimes it's not a lot,  
19 you know, and sometimes our other stations may pick up the  
20 slack from another station where they can get a couple more  
21 cents here. But to pay for all the overhead that you have  
22 at the gas station, you need to make certain margins, and  
23 Freestate makes their money on their gas; they don't make  
24 their money on anything else but their gas. Everything else  
25 is just there. You know, it's not an alternate profit

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1 center at any of our stations.  
2 MR. GROSSMAN: I'll have to tell you, I have a  
3 concern with trying to factor in that kind of issue into  
4 this analysis because I think it treads very close to the  
5 line as far as inhibiting the free market. It's different  
6 -- I think that there's a question that goes to the needs  
7 analysis of balancing the negatives and the positives and  
8 all of that and whether that could factor in as part of the  
9 needs analysis, but you've gone into a different area, which  
10 is that some competitor may cause less of a market for some  
11 other competitor, and I think that that would be a dangerous  
12 area for us to base any decision on. So --  
13 BY MS. ROSENFELD:  
14 Q Ms. Shen, one other finding that the Board of  
15 Appeals must make is that approval of the special exception  
16 will not be detrimental to the use of surrounding  
17 properties, and my question for you is this: The gas  
18 station at Layhill Road that you closed, what is the current  
19 condition of that property?  
20 A Someone else is putting a gas station there.  
21 Q Okay. And would you expect the same thing to  
22 happen at this location if it closed?  
23 A My opinion and Freestate's opinion is that if the  
24 Costco is granted a special exception for a high-volume  
25 gasoline station, it will be detrimental to the dealers'

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1 independence in this area, yes.  
2 Q And do you think it would be economically feasible  
3 for somebody to reuse this property as a gas station?  
4 MR. GOECKE: Objection.  
5 MR. GROSSMAN: Do you want to respond to that?  
6 What's the basis for your objection?  
7 MR. GOECKE: Foundation. How is she authorized to  
8 talk about what this property could or could not be used  
9 for?  
10 MS. ROSENFELD: But she testified that they've  
11 been doing market analysis on this property and the effect  
12 of the Costco gas station. I think she's qualified.  
13 MR. GROSSMAN: Yes, I'm going to overrule it,  
14 although obviously I'm going to consider the source and the  
15 absence that this witness has not been designated as an  
16 expert and so on, but I'll let her answer the question based  
17 on the evaluation of Freestate.  
18 THE WITNESS: Do you want to repeat the question  
19 for me?  
20 BY MS. ROSENFELD:  
21 Q Yes. In your opinion, would another gas station  
22 consider this a viable location to reopen a gas station?  
23 A Well, Freestate left. So that pretty much says it  
24 all. That's our feeling. That is how, you know -- this is  
25 how we do business, and we're not like anybody else out

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1 there really, but we feel like we couldn't do it, we  
2 wouldn't -- we feel it would be a hard way to go for the  
3 other surrounding gas stations. Let's just put it that way.  
4 Q Okay.  
5 MR. GROSSMAN: I mean, I don't know how that cuts,  
6 to tell you the truth. I don't know if it means that it  
7 would make room for a more pedestrian-oriented use or not or  
8 -- I just don't know how that question cuts. It does have  
9 an impact in terms of this assessment that the proposed  
10 station may not be fulfilling a need because it may have  
11 other impacts and that, you know, that has to be factored  
12 in, I suppose, but I don't know how your little area of that  
13 question can be factored in that way.  
14 MS. CORDRY: Well, I think it simply goes back to  
15 the question, if this station goes out, will we replace it  
16 or will we have a net loss of stations, which is, you know,  
17 the point we've been offering.  
18 MR. GROSSMAN: Right, but I mean, the suggestion  
19 may be that if there's not a station, that it may be  
20 something that would make Ms. --  
21 MS. HARRIS: Cort.  
22 MR. GROSSMAN: -- Cort happier, because it  
23 wouldn't be a vehicle-oriented use that would be there.  
24 So --  
25 MS. CORDRY: Right.

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1 MR. GROSSMAN: -- I don't know how to factor that  
2 in.  
3 MS. ROSENFELD: Okay.  
4 MR. GROSSMAN: Okay. Does Kensington View have  
5 any questions?  
6 MS. DUCKETT: No, sir.  
7 MR. GROSSMAN: Applicant?  
8 MS. HARRIS: May we take a five-minute break,  
9 because I want to set up the easel for the exhibit and I  
10 need to confer with my client about one item.  
11 MR. GROSSMAN: Sure.  
12 MS. HARRIS: Thank you.  
13 MR. GROSSMAN: All right. So we'll resume at  
14 10:45.  
15 (Whereupon, a brief recess was taken.)  
16 MR. GROSSMAN: While we're waiting for  
17 Mr. Silverman to come back, I wanted to mention to you --  
18 we're back on the record -- Ms. Adelman, you e-mailed me a  
19 list of the documents that you had forwarded to me, and --  
20 well, my first problem is, because my computer is sometimes  
21 finicky, it won't show me that list; it won't open that  
22 document. I don't know why. Probably later it will, but  
23 sometimes it does inexplicable things.  
24 MS. ADELMAN: Maybe it didn't turn around the  
25 right way or something.

1 MR. GROSSMAN: Well, I mean, having programmed  
 2 computers at one point or another in my life, I realize that  
 3 they always have a reason they don't or do do something but  
 4 it's not always easy to figure out. But, in any event, what  
 5 I was going to say is that when I view documents, as I  
 6 prepare my report, I try to do it electronically because  
 7 it's a lot easier and faster for me to do that than going  
 8 through the file. If the name of the document is not  
 9 obvious in the title of the document or in, you know, the  
 10 electronic title of it, then it's hard for me to figure out  
 11 what the document is. Having a list is helpful but not  
 12 nearly as helpful as having the document have a name that  
 13 somehow identifies what the document is. So --  
 14 MS. ADELMAN: We did do that last night.  
 15 MR. ADELMAN: We did.  
 16 MR. GROSSMAN: You sent me a list.  
 17 MS. ADELMAN: We sent you a list, just numbers for  
 18 102, 03, and then when we received your e-mail, we redid  
 19 that and --  
 20 MR. GROSSMAN: You redid the name --  
 21 MS. ADELMAN: -- included titles of the --  
 22 MR. GROSSMAN: You redid the names of the  
 23 document? I haven't seen that.  
 24 MS. ADELMAN: We put titles on the documents, yes.  
 25 On the list, it now has titles. It gives you the number and

1 then what --  
 2 MR. GROSSMAN: The list itself --  
 3 MS. ADELMAN: Yes.  
 4 MR. GROSSMAN: -- but not each document. What I'm  
 5 suggesting is that when you send me, electronically send me  
 6 documents, the name shouldn't -- the name of the document  
 7 shouldn't just be 01 SST or whatever. It should say --  
 8 MS. ADELMAN: True, and now it is not.  
 9 MR. GROSSMAN: -- it should say, Picture of Joe  
 10 Blow --  
 11 MS. ADELMAN: Oh, well, it will say --  
 12 MR. GROSSMAN: -- and then when I go through the  
 13 documents, if I, for -- it's just a lot faster for me --  
 14 MS. ADELMAN: I understand.  
 15 MR. GROSSMAN: -- to be able to figure out what  
 16 I'm looking at --  
 17 MS. ADELMAN: Yes.  
 18 MR. GROSSMAN: -- if I get documents in that  
 19 fashion.  
 20 MS. ADELMAN: Well, the first --  
 21 MR. GROSSMAN: So it's just to help me do it.  
 22 It's not, you know, certainly not illegal for you to do what  
 23 you did. I'm just saying it's faster for me if the document  
 24 -- the other thing is they can't, the names can't be too  
 25 long because, even though they're not restricted to eight

1 letters, as it used to be in the DOS operating system, it is  
 2 -- if they're too long, for some reason the computer won't  
 3 accept them. So --  
 4 MS. ADELMAN: What I sent to you, Mr. Grossman,  
 5 was, just for example, the first three, 01, now it says,  
 6 Map. 02 says, Air Quality. 03 says, Air Quality and  
 7 Health.  
 8 MR. GROSSMAN: Right on the document -- in the  
 9 file name or is it just on the list that you sent me?  
 10 MR. ADELMAN: Both.  
 11 MS. ADELMAN: Both.  
 12 MR. ADELMAN: Mr. Grossman --  
 13 MR. GROSSMAN: Okay. No, I haven't seen the new,  
 14 what you sent me -- the last e-mail I got only contained the  
 15 list. It didn't contain all the new documents.  
 16 MS. ADELMAN: I'll let the boss speak.  
 17 MR. ADELMAN: Mr. Grossman --  
 18 MR. GROSSMAN: Dr. Adelman.  
 19 MR. ADELMAN: -- if it would be helpful, I can  
 20 resend you the digital files, rename the number to  
 21 correspond to the list.  
 22 MR. GROSSMAN: That would be great. That would be  
 23 great. That's --  
 24 MR. ADELMAN: Fine, we will do that. I apologize.  
 25 MR. GROSSMAN: Okay, yes. Thank you. I mean,

1 that's the most helpful to me if I have something, but don't  
 2 make the titles too long because, as I say, then my computer  
 3 goes ack.  
 4 MR. ADELMAN: Well, I will rename the digital  
 5 files to match the list.  
 6 MR. GROSSMAN: Great. Thank you, sir, and that's  
 7 just in general --  
 8 MS. ADELMAN: That's what we did last night.  
 9 MR. GROSSMAN: -- that's, in general, what's the  
 10 most helpful. I have -- I mean, some submissions have come  
 11 in that way. Others have come in with some series of  
 12 letters: Exhibit X, Exhibit W. That, once again, it's more  
 13 difficult for me to find it quickly as I'm going through,  
 14 and I find that in preparing these reports, when you have  
 15 multiple hundreds of documents, a lot of them very thick,  
 16 it's faster for me to just look at it on my computer.  
 17 Okay. Are we ready for cross-examination --  
 18 MR. GOECKE: Shall we resume? Yes.  
 19 MR. GROSSMAN: -- continuing cross-examination?  
 20 This is the beginning of the applicant's cross-examination  
 21 of Ms. Shen.  
 22 MR. GOECKE: Thank you.  
 23 BY MR. GOECKE:  
 24 Q Good morning, Ms. Shen.  
 25 A Good morning.

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1 Q So you testified that Freestate's philosophy is to  
2 try to come up with the lowest price possible for its  
3 customers?  
4 A Based on us cash only, yes.  
5 Q Yes. And so you monitor your competitors' prices  
6 to try to determine what your prices are going to be?  
7 A Daily.  
8 Q You do that daily?  
9 A Yes.  
10 Q And then --  
11 MR. GROSSMAN: Sometimes twice a day.  
12 BY MR. GOECKE:  
13 Q And then adjust your price accordingly to compete  
14 with your, or with other stations in the neighborhood?  
15 A Depending on our cost.  
16 Q So it's possible that you could be driving  
17 customers from other stations to your station?  
18 A Well, the difference is, is that we're cash only.  
19 So we may just be .05 cheaper, but if you don't want to pay  
20 with cash, you -- you know, it's not like we're, you know,  
21 putting apples to apples here.  
22 Q Yes.  
23 A Our business model is different than pretty much  
24 everybody else. So, you know, we found our niche, and like  
25 I said, we're not trying to satisfy everybody. So that's

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1 just what it is.  
2 Q So you're saying your niche is the cash-only  
3 customer?  
4 A Yes, pretty much. That's all we take.  
5 Q Okay. And you agree that Costco does not accept  
6 cash payments?  
7 A No, I don't think they do. I'm not a Costco  
8 member --  
9 Q Okay.  
10 A -- so I'm not sure.  
11 Q But let's assume that Costco doesn't accept cash  
12 payments. Then wouldn't they be going after a different  
13 niche than what Freestate is going after?  
14 A Yes.  
15 Q Okay. And you say one of the reasons, generally,  
16 it's hard to compete with Costco is because, I think, in  
17 your words, they accept plastic?  
18 A Correct.  
19 Q And that's sort of what you're saying; it's a  
20 different business model?  
21 A It is a different business model, yes.  
22 Q Yes. And people, some people prefer to pay with  
23 plastic?  
24 A Yes, regardless of the price. That's the key  
25 there, the price. You know, we're able to stay in business

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1 because we can be most of the time at a lower price than the  
2 stations that take credit cards, but they also take cash --  
3 Q Yes.  
4 A -- so they're a different business model than us  
5 as well. So, you know, it's just, it's just different  
6 business models. Everybody's out there and has their own  
7 little, little niche, but we can't compete with you guys if  
8 you're going to be at the same price, taking only credit  
9 cards, and we're taking cash.  
10 Q So if Freestate were selling at a price cheaper  
11 than Costco, would they be able to compete with Costco then?  
12 A It depends on how much cheaper. We --  
13 Q Yes.  
14 A -- need to make margins. That is where  
15 Freestate's livelihood is, is what they pay for and what  
16 they sell it for. The difference is our profit. That's it.  
17 Q And some -- I'm sorry.  
18 A That's it.  
19 Q And some customers might prefer to go to Costco to  
20 pay with plastic, even if it's a bit more expensive?  
21 A Sure. That's what happens out there now: they go  
22 to Sunoco or -- you know, I see people in other gas stations  
23 all the time, not just Freestate. So, of course, it's up to  
24 each individual how they want to pay and how much they want  
25 to pay but, you know, of course.

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1 Q Right. They just might find it more convenient to  
2 pay with a credit card or debit?  
3 A Yes.  
4 Q And in the Freestate model, because you're paying  
5 with cash, are you required to then -- can you pay at the  
6 pump, or do you have to pay --  
7 A Prepay cash inside.  
8 Q Prepay cash inside. So you have to walk across  
9 the parking lot to get to the station to pay?  
10 A It's really not a parking lot. They're at the  
11 pump. So it's maybe, you know, 50 steps to 10 steps to get  
12 to the door.  
13 Q Okay. And the kiosk is in the middle of the  
14 pumps?  
15 A Yes. Yes.  
16 Q Okay. But you do have people walking around the  
17 station?  
18 A Yes.  
19 Q Yes. And that might be another reason why people  
20 would prefer to go to Costco over Freestate?  
21 A Well, most stations here are self-serve. So you  
22 got to get out of your vehicle regardless, and some people's  
23 gas tanks are on the side of their car; some people, you  
24 know, want to throw something away in a trash can. I mean,  
25 there's people walking all over the place all the time.

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1 Q How many attendants do you have on site?  
2 A That depends on the time of day. From when we  
3 open until, depending on the location, sometimes a second  
4 person comes in at 9:00 and works until 5:00, and then  
5 they're -- then someone is by themselves after 5:00 p.m.  
6 Q And what are their responsibilities while they're  
7 on site?  
8 A Well, everybody at our locations are all A-, B-,  
9 or C-certified as per the law, you know, for the operator  
10 training. So they all know how to handle any situation that  
11 may arise, a spill, a leak, an emergency situation. They've  
12 all been trained in that and certified, every employee that  
13 we have.  
14 MR. GROSSMAN: You said ABC? Not alcohol, not  
15 beverage --  
16 THE WITNESS: It's, no, operator training course.  
17 MR. GROSSMAN: Okay.  
18 THE WITNESS: There's either A, B, or C --  
19 MR. GROSSMAN: Okay.  
20 THE WITNESS: -- and it's a course that the MDE  
21 has said that you have to have in the State of Maryland to  
22 operate a gas station; all your employees have to have this.  
23 So they're all certified to take care of anything that  
24 should arise.  
25 Now, the other thing that is a concern for us is

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1 safety with our employees, and at our Veirs Mill location,  
2 there is the kiosk and then inside the kiosk there's a  
3 push-through drawer so the customers don't have access to  
4 the employee, to rob or what have you, and that's -- that  
5 change was done back in the '90s when a man in July came  
6 dressed as Abraham Lincoln, and we had a slide window, and  
7 he jumped through the window, trying to rob the attendant.  
8 So, you know, Freestate, of course that's our main thing, to  
9 keep our employees safe. So at dark, at all of our other  
10 locations, there's a push-through drawer that you have to go  
11 through --  
12 BY MR. GOECKE:  
13 Q Yes.  
14 A -- and if there's an emergency that arises, we  
15 would call, you know, 9-1-1, the fire department, whatever,  
16 that need to be, although we have had employees go outside  
17 and help other customers, but we don't recommend that  
18 because it's not the nice good world that we live in all the  
19 time and there's no sense in taking a risk to have somebody  
20 hurt, killed, or just be robbed. So --  
21 Q In other words, it could be unsafe for your  
22 employees to help?  
23 A Sure, it could be, yes.  
24 Q And so the policy is not to assist people?  
25 A Dark times.

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1 Q When it's dark.  
2 A Daylight times we help our customers as much as we  
3 can. Dark times is a different story.  
4 Q Okay. Right. And so the attendant spends most of  
5 his or her time inside the kiosk?  
6 A Well, during the day, when there's two people  
7 there, you know, they're out, sweeping the lot, cleaning the  
8 pumps, checking things out outside, for sure. There's  
9 always, you know, we try to keep our -- I mean, if anybody  
10 knows, that location over there is spotless --  
11 Q Yes.  
12 A -- the manager does a wonderful job of keeping the  
13 grounds clean; the pumps are clean. So just dark hours is  
14 when we don't want them to be out there. Daylight hours  
15 they're out doing what they need to do and assist customers  
16 if they need it, you know, stock, you know, and do all the  
17 other things that you do when you run a gas station.  
18 Q Do you think the cleanliness of the Freestate  
19 station helps attract customers?  
20 A I think it doesn't hurt, for sure.  
21 Q Yes. I mean, do you agree that customers prefer  
22 to go to a gas station that looks well kept?  
23 A I don't know about the customers. I do.  
24 Q Fair enough.  
25 A So --

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1 Q Fair enough. In addition to the state-required  
2 training for your attendants, does Freestate provide or  
3 require attendants to have any additional training?  
4 A We have, or I have managers' meetings at least  
5 once a month to go over any pertinent information that may  
6 come up or that we feel needs to be addressed and, as well  
7 as, those managers can bring anything up to us. The MDE  
8 inspectors have said that we have some of the best records  
9 around. So Freestate prides themselves on, you know, the  
10 things that we do with the MDE and having our employees up  
11 on what's going on and how to handle situations.  
12 Q And when you say some of the best records around,  
13 what does that mean?  
14 A Our, we have to -- you know, there's laws in  
15 Maryland. You have to keep a daily inventory record --  
16 Q Yes.  
17 A -- and you have to have -- we have Simplicity,  
18 which is Veeder-Root, Gilbarco/Veeder-Root. Our tanks and  
19 our lines are monitored 24 hours a day, and you know, all  
20 those records need to be kept. Maintenance records need to  
21 be kept.  
22 Q Thank you. Have you ever had any spills at this  
23 station?  
24 A What do you mean by spills?  
25 Q Well, we've heard some testimony about the

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1 difference in the industry terminology between large and  
2 small spills. So why don't we start with large spills.  
3 A Right. Large spills at this location here, no,  
4 we've not.  
5 Q Yes. And what would you characterize as a small  
6 spill?  
7 A When a customer overflows their tank; you know,  
8 the cutoff cuts off, and they keep click, click, click,  
9 clicking, and it spits out --  
10 Q Yes.  
11 A -- so it's not a big spill. One man at another  
12 location had a hole in his, the line to his gas tank, and it  
13 was just coming out on the ground from his --  
14 MR. GROSSMAN: That's never good.  
15 THE WITNESS: Right. You know, so, you know,  
16 there's -- one thing I've learned in the 30 years that I've  
17 been doing this that anything can happen --  
18 BY MR. GOECKE:  
19 Q Yes.  
20 A -- and something new always does. So our people  
21 are trained to handle that.  
22 Q How do your people know when there's a small  
23 spill?  
24 A Well, our stations pretty much can see what's  
25 going on from their viewpoint, and if there's two people

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1 there, they're outside, doing whatever; they see it. If  
2 not, a customer will come and tell us.  
3 Q Yes.  
4 A In the State of Maryland, a customer is  
5 responsible at a self-serve gas station for the way they  
6 dispense their fuel as well.  
7 Q You have a station in Beltsville, correct?  
8 A No.  
9 Q Did you have a station in Beltsville?  
10 A No.  
11 Q What's your closest station to Beltsville?  
12 A Probably, I don't know whether it would be our  
13 Laurel location or our Burtonsville location.  
14 Q And do you consider that to be in the same market  
15 as the Costco Beltsville station?  
16 A No.  
17 Q What about in Manassas, Virginia -- do you have a  
18 station that's in the same market as Costco there?  
19 A No. All our stations are in Maryland.  
20 Q So you're not affiliated with the Freestate  
21 stations that are in Virginia?  
22 A They're not the same -- they're not Freestate  
23 Petroleum Corporation if there are Freestates in Virginia.  
24 Q You testified that when a station closes down,  
25 it's a very involved process.

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1 A Yes.  
2 Q And have you had to close stations down before?  
3 A We just closed the station at Wheaton, in Wheaton,  
4 on Layhill Road and Georgia Avenue, a year ago at this time.  
5 Q Yes. And, again, what does that process involve?  
6 A Well, with our, with our lease, we had a long-term  
7 lease with the people, which we could have renewed but we  
8 chose not to, was that we had to be responsible for removal  
9 of the tanks, the lines, and the pumps, the pump islands.  
10 So we took everything out, cleaned the building out.  
11 Q So, obviously, this is something that Freestate  
12 takes seriously?  
13 A Yes, it is.  
14 Q And you comply with all the federal or state laws  
15 that might apply?  
16 A Yes, we do --  
17 Q Yes.  
18 A -- we do. We do comply with all federal and state  
19 laws, including the ADA laws.  
20 Q And you take efforts not to leave behind any  
21 environmental contamination or other problems?  
22 A That's correct. The MDE comes in and soil-samples  
23 and checks before they will release you from a property.  
24 Q Is it fair to say that this location sells around  
25 or above 3.3 million gallons of gas a year?

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1 MR. GROSSMAN: Which location? You referred to  
2 the, you were just talking about the Georgia Avenue/Layhill  
3 station.  
4 THE WITNESS: That's fair, yes.  
5 BY MR. GOECKE:  
6 Q We have an exhibit up here, 159. Would you mind  
7 showing us where the Freestate location is?  
8 MR. GROSSMAN: The one on Veirs Mill Road that  
9 you're discussing mostly?  
10 MR. GOECKE: The one on Veirs Mill Road. Thank  
11 you, Mr. Grossman. And I'm going to pass out a Google Earth  
12 photograph.  
13 BY MR. GOECKE:  
14 Q So you're pointing to the north portion of Exhibit  
15 159, a little bit off center, on Veirs Mill Road, a little  
16 bit left of -- do you know what these are?  
17 A We think they're water towers.  
18 Q A bit to the east of the water towers. And I'm  
19 handing you, Ms. Shen, a Google Earth picture of the  
20 Freestate location. Does this --  
21 A Uh-huh.  
22 Q -- does this accurately depict what you think  
23 the --  
24 A Uh-huh, yes.  
25 Q -- station might look like from the sky?

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1 A Yes.  
2 Q Okay.  
3 MR. GROSSMAN: What is, when you say this --  
4 MS. ADELMAN: Which, yes, which is the one, Mike?  
5 MR. GROSSMAN: -- what's the station?  
6 MR. GOECKE: Sure. Sure. Sure.  
7 BY MR. GOECKE:  
8 Q Why don't you show, or tell us, Ms. Shen.  
9 A I don't know what you're talking about. I mean --  
10 MR. GROSSMAN: What's the station on this --  
11 BY MR. GOECKE:  
12 Q Where the Freestate location is located on here.  
13 Is it, it's to the -- in the center?  
14 MR. GROSSMAN: Let's mark it as an exhibit so  
15 we --  
16 THE WITNESS: It is --  
17 MR. GROSSMAN: Hold on one second --  
18 THE WITNESS: Okay.  
19 MR. GROSSMAN: -- Ms. Shen, please, if you would.  
20 This will be Exhibit 396, which is aerial photo of Freestate  
21 station at Veirs Mill, and what's the road that is at that  
22 intersection? Veirs Mill and what?  
23 THE WITNESS: Well, we say Veirs Mill and  
24 University. These small roads I'm not sure what the names  
25 are.

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1 MR. GROSSMAN: All right. Well, where is the  
2 station on this exhibit?  
3 THE WITNESS: To the left of the large-car parking  
4 area --  
5 MR. GROSSMAN: Okay.  
6 THE WITNESS: -- and it's -- you see a big open  
7 area and then --  
8 MR. GROSSMAN: Yes.  
9 THE WITNESS: -- a brown rectangle? That is --  
10 MR. GROSSMAN: Right.  
11 THE WITNESS: -- the top of the canopy.  
12 MR. GROSSMAN: Okay. So the brown rectangle is  
13 the top of the canopy?  
14 THE WITNESS: Yes.  
15 MR. GROSSMAN: Okay. So, Mr. Goecke, if you don't  
16 mind, I'm going to actually draw an arrow on your exhibit --  
17 MR. GOECKE: Please do.  
18 MR. GROSSMAN: -- to that brown rectangle and say,  
19 Freestate Station Canopy. And the major road that I'm  
20 looking at there to the left or southwest -- I assume that  
21 north is pointing up, is that correct?  
22 MS. HARRIS: Yes.  
23 MR. GOECKE: Yes.  
24 MR. GROSSMAN: Okay. So I'll also put, I don't  
25 see a north arrow on here --

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1 MR. GOECKE: Correct.  
2 MR. GROSSMAN: -- so I'll put one on. So to the  
3 southwest of the station, what's that road?  
4 THE WITNESS: The four-lane road?  
5 MR. GROSSMAN: Yes.  
6 THE WITNESS: Veirs Mill Road.  
7 MR. GROSSMAN: Okay. So I'll write Veirs Mill on  
8 here too. And what's the smaller road just to the north of  
9 the station?  
10 THE WITNESS: I'm not sure.  
11 MS. DUCKETT: Kensington Boulevard.  
12 MR. GROSSMAN: Ms. Duckett says it's Kensington  
13 Boulevard. Does anybody have a different idea?  
14 MS. HARRIS: I think she's correct.  
15 MR. GROSSMAN: Okay. All right. So I'll write  
16 that on here just so we know where we're talking about.  
17 Okay. Now, what was your question, Mr. Goecke?  
18 (Exhibit No. 396 was marked  
19 for identification.)  
20 MR. GOECKE: Sure. I'm sorry. Did we give a  
21 number to this?  
22 MR. GROSSMAN: Yes, Exhibit 396.  
23 MR. GOECKE: Thank you.  
24 BY MR. GOECKE:  
25 Q I've got a few questions on this, Ms. Shen. In

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1 the area surrounding the gas station, how many cars can you  
2 accommodate at any given time?  
3 A I don't know the number of cars, but we've done  
4 450,000 gallons at this location without --  
5 Q In a month? I'm sorry. In a month?  
6 A In a month.  
7 Q Yes.  
8 A Without blocking Veirs Mill Road.  
9 Q So despite all those sales, you didn't create any  
10 traffic hazards?  
11 A They were all up on our lot.  
12 Q There was no traffic nuisance?  
13 A Correct. That's what happens when you pay cash.  
14 Q Meaning?  
15 A You know, before the customer-activated terminals,  
16 you know, became the thing that everybody had, you go --  
17 Q Right.  
18 A -- you come in, you pay cash, pump your gas, and  
19 you leave. There's no, you know, dealing with the credit  
20 card situation.  
21 Q I'm confused. Are you saying it's quicker to pay  
22 in cash?  
23 A Yes.  
24 Q But you have to walk to the kiosk to pay.  
25 A Well, that's fine and I know what you're saying.

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1 If you take your credit card and you use it at the pump, at  
2 the customer-activated terminal, that may be a different  
3 situation --  
4 Q Right.  
5 A -- but people pay in cash; we get people in and  
6 out of our station quickly.  
7 Q Yes.  
8 A I'm telling you, we did not have, we have not had  
9 any traffic. Montgomery County Police have not come to us  
10 with complaints about blocking traffic at any time since  
11 we've been in this location as a Freestate.  
12 Q The neighbors have never complained?  
13 A No.  
14 Q You've never received any citations for --  
15 A No.  
16 Q What about for noise?  
17 A No.  
18 Q Do you know the distance from the Freestate  
19 property to the homes to the north of the Freestate?  
20 A I'm not sure of the distance, but like I said, we  
21 were there first. The gas station was there before any  
22 homes were there.  
23 Q Yes.  
24 A All those people built their homes there, knowing  
25 there was a gas station there, because it's been a gas

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1 station since the '50s.  
2 Q So they voluntarily moved there, you're saying?  
3 A Yes.  
4 Q Do they ever complain to you about the gas  
5 station?  
6 A No. We, to get the special exception, because  
7 Crown lost, I guess, its use, we had to go through a special  
8 exception. We have a fence surrounding the property and  
9 extensive landscaping.  
10 Q How high is the fence?  
11 A I don't believe in -- I believe in Montgomery  
12 County it's not supposed to be any more than six foot three  
13 or six four, can't be any taller than that.  
14 Q Yes.  
15 A I could be wrong with that, but I know there's --  
16 it's right around that.  
17 Q And so the six-foot fence provides an aesthetic  
18 barrier?  
19 A Yes.  
20 Q And, I guess, reduces the noise of it?  
21 A I believe it does, but to be honest with you,  
22 you're on Veirs Mill Road. That road is a busy road and  
23 produces its own noise. So --  
24 Q So the traffic on Veirs Mill is much louder than  
25 anything that would be generated by the gas station?

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1 A Yes.  
2 Q Is the gas station a noisy operation, in your  
3 opinion?  
4 A No, it's not.  
5 Q Even when you're selling 450,000 gallons --  
6 A No.  
7 Q -- of gas in a month?  
8 A No, uh-huh. People come get their gas and leave.  
9 I mean, it's a very simple thing --  
10 Q Yes.  
11 A -- something that everybody hates to do, but you  
12 know, you have to. So they come and leave.  
13 Q What about odors from the gas station -- do  
14 neighbors ever complain to you about odors?  
15 A No, but like I said, they moved in there, knowing  
16 there was a gas station there. So --  
17 Q Yes.  
18 MR. GOECKE: One moment, please.  
19 MR. GROSSMAN: Sure.  
20 MR. GOECKE: No further questions.  
21 MR. GROSSMAN: Okay. I know this is irrelevant,  
22 but just as a point of privilege, why did Abe Lincoln try to  
23 rob your station? Did we ever find out?  
24 THE WITNESS: They, they -- it was on, I think,  
25 America's Most, one of those crazy videos, because we have a

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1 video camera, and -- Craziest Robberies or whatever. He  
2 didn't get anything. Because of the way we run our  
3 business, we keep the cash to a minimum, but he just wanted  
4 to rob us, and I guess it was in July; so he thought people  
5 wouldn't suspect him, I guess, walking around in his Abe  
6 Lincoln suit.  
7 MR. GROSSMAN: They wouldn't notice --  
8 THE WITNESS: Right. So --  
9 MR. GROSSMAN: -- the hat.  
10 MS. HARRIS: He's not identifiable.  
11 MR. GOECKE: Blends in.  
12 THE WITNESS: They did catch him, though. So --  
13 MR. GROSSMAN: All right. Well --  
14 THE WITNESS: Can I just make a summary real quick  
15 of just one statement?  
16 MR. GROSSMAN: Well, no, there really isn't an  
17 option for that --  
18 THE WITNESS: Okay.  
19 MR. GROSSMAN: -- because then we'd have to  
20 allow --  
21 THE WITNESS: Okay. That's fine.  
22 MR. GROSSMAN: -- further cross-examination.  
23 THE WITNESS: Okay.  
24 MR. GROSSMAN: But --  
25 MS. ROSENFELD: Well, actually, I was going to ask

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1 if I could ask just a couple of follow-up questions.  
2 MR. GROSSMAN: Well, you had your  
3 cross-examination opportunity. It's not a --  
4 MS. ROSENFELD: I understand.  
5 MR. GROSSMAN: What's the area in which you want  
6 to follow up?  
7 MS. ROSENFELD: I just wanted her to identify a  
8 couple of features on the map and --  
9 MR. GROSSMAN: Okay.  
10 BY MS. ROSENFELD:  
11 Q Looking at Veirs Mill Road and the station --  
12 A Uh-huh.  
13 Q -- can vehicles exit the station and make a left  
14 onto Veirs Mill?  
15 A No. They have to make a right.  
16 Q Okay. And is there extensive pedestrian traffic  
17 crossing the driveway entrance to your gas station?  
18 A Probably more pedestrian traffic in the front than  
19 in the back.  
20 Q And what do you describe as the front?  
21 A Where the, where you pull into the station --  
22 MR. GROSSMAN: On Veirs Mill Road?  
23 THE WITNESS: -- right off Veirs Mill Road,  
24 because there's a bus stop at that little triangle to the  
25 west of the station and there's also another bus station,

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1 the east, on Veirs Mill Road. So people do walk to get to  
2 the bus stations.  
3 MS. ROSENFELD: Thank you.  
4 MR. GROSSMAN: Okay. Any further questions as a  
5 result of those questions?  
6 MR. GOECKE: Just one.  
7 BY MR. GOECKE:  
8 Q How many means of ingress and egress do you have  
9 at this station, and how do people get in and out?  
10 A There's only one way to get in: off of Veirs Mill  
11 Road, and the same way to get off and that's going westbound  
12 on Veirs Mill Road.  
13 Q Thank you.  
14 MR. GROSSMAN: Okay. I thank you very much,  
15 Ms. Shen, for coming down here and sharing your views and  
16 those of Freestate Petroleum.  
17 THE WITNESS: Thank you.  
18 MR. GROSSMAN: And, once again, you're welcome to  
19 stay and watch the festivities as well --  
20 THE WITNESS: Okay.  
21 MR. GROSSMAN: -- it's a public hearing. Nobody  
22 ever takes me up on that invitation. I don't know. What is  
23 it? We don't even have --  
24 MR. GOECKE: And we never hear from them again.  
25 MR. GROSSMAN: -- Blue Lagoon has seemed to drop

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1 out too. I can't -- how can I mug for the camera if there's  
2 no camera?  
3 MS. CORDRY: I believe they will be resuming with  
4 us --  
5 MS. ADELMAN: They will.  
6 MS. CORDRY: -- but I think they are tied up right  
7 now.  
8 MS. ADELMAN: They're actually out of the country  
9 right now.  
10 MR. GROSSMAN: They're recuperating from one of  
11 the earlier hearing dates?  
12 MS. ADELMAN: Well, they had Dr. Adelman yesterday  
13 or the day before. They'll be back in December.  
14 MR. GROSSMAN: All right. We won't allow that  
15 comment, Dr. Adelman. All right. Who is our next witness?  
16 MS. CORDRY: I guess that puts, puts me up.  
17 MR. GROSSMAN: I guess that puts you back on the  
18 stand.  
19 MS. CORDRY: Right. So if we could just take a  
20 couple minutes and get everything all set up, video-wise and  
21 so forth.  
22 MR. GROSSMAN: All right. Then we'll come back at  
23 25 after 11:00 for the resumption of the cross-examination  
24 of Ms. Cordry.  
25 MR. GOECKE: Is Ms. Michels or Mr. Sheveiko, are

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1 they still planning to testify today, do we know, or --  
2 MS. ADELMAN: Yes.  
3 MS. ROSENFELD: Yes.  
4 MS. ADELMAN: Mr. Sheveiko is. I don't know  
5 about --  
6 (Whereupon, a brief recess was taken.)  
7 MR. GROSSMAN: We are back on the record and --  
8 for Applicant's cross-examination of Ms. Cordry on traffic  
9 and pedestrian matters.  
10 MS. CORDRY: Perhaps I might -- perhaps I should  
11 have brought this up as a preliminary matter, but it relates  
12 to my testimony. I think I had mentioned on Tuesday that  
13 the county was going to be starting its next pedestrian  
14 parking lot safety campaign today, and I was able to  
15 download late last night the materials they had for that.  
16 I've given the Costco people the copies of that. I'd like  
17 to go ahead and introduce those.  
18 MR. GROSSMAN: What are those that we're talking  
19 about?  
20 MS. CORDRY: Okay. What we have is the -- let me  
21 just give you a copy, and I can describe what they are  
22 there. There is the statement by County Executive Ike  
23 Leggett, discussing these new educational materials and the  
24 county program, a bit that they're doing on this; the, sort  
25 of, cover page on the new website piece, dealing with Heads

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1 Up in Parking Lots, which is the theme of that campaign;  
2 references to the various materials they have, their  
3 educational materials; a copy of the, I think -- I forget  
4 what they call this card exactly. They call it a Tip Card.  
5 So that's one set of documents that are from the website,  
6 and the other is a document they put together, describing  
7 what they are currently doing in -- both what they have  
8 found in terms of problems and what they're trying to do in  
9 terms of studies and changes and improvements and so forth.  
10 MR. GROSSMAN: Okay. Any objection to having  
11 these join the crowd of other documents in this regard?  
12 MR. GOECKE: Well, we just received these a few  
13 moments ago, but we have no objection.  
14 MR. GROSSMAN: Okay. All right. So Exhibit  
15 397(a) is Montgomery County Pedestrian Safety -- is this the  
16 plan or this is just --  
17 MS. CORDRY: The rest of that is --  
18 MR. GROSSMAN: This looks like --  
19 MS. CORDRY: These are --  
20 MR. GROSSMAN: -- Heads Up.  
21 MS. CORDRY: Well, this is the, sort of the cover  
22 page, so to speak, on the part of the website that is  
23 dealing with this new campaign, and then the other pieces  
24 are other parts of what is on that website --  
25 MR. GROSSMAN: Okay.

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1 MS. CORDRY: -- discussion, indicates the various  
2 materials that they have, they are using for --  
3 MR. GROSSMAN: 397(a) will be Montgomery County  
4 Pedestrian Safety Heads Up in Parking Lots campaign --  
5 MS. CORDRY: Right.  
6 MR. GROSSMAN: -- and (b) will be, 397(b) is  
7 Montgomery County description of safety initiative?  
8 (Exhibit Nos. 397(a) and  
9 397(b) were marked for  
10 identification.)  
11 MS. CORDRY: Yes, I think that would be fair,  
12 pedestrian safety initiative, yes.  
13 MR. GROSSMAN: Okay.  
14 MS. CORDRY: Reducing Collisions in Parking Lots  
15 and Garages is the title of that.  
16 MR. GROSSMAN: Okay.  
17 MS. CORDRY: Okay. And just among points of note  
18 in there is their discussion of how many accidents they do  
19 know of, of cars in parking lots, their point that they  
20 really don't know how many collisions go unreported in  
21 parking lots, various efforts they're going to make in terms  
22 of engineering, enforcement, and education to try to reduce  
23 the challenge of pedestrian safety in parking lots, the note  
24 that unlike public roads -- and this would be on page 3 of  
25 397(b) -- it says: Unlike public roads, engineering

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1 solutions may be very limited, and there are no enforceable  
2 traffic laws on private property. Other constraints include  
3 lack of data on best engineering practices and effectiveness  
4 of education.  
5 So it has several strategies there in terms of  
6 trying to identify more research, trying to have  
7 partnerships to have voluntary actions by parking lot owners  
8 to do something in lieu of enforceable public laws, and then  
9 conduct detailed analyses of pedestrian parking lot  
10 collision data to try to determine why we are seeing these  
11 increases --  
12 MR. GROSSMAN: Okay.  
13 MS. CORDRY: -- actually, a couple more  
14 strategies, but all of that is set out in here. There are  
15 also a couple of public safety announcements they have done  
16 on this campaign --  
17 MR. GROSSMAN: Okay.  
18 MS. CORDRY: -- which each one is like 30 seconds.  
19 I put them on the thumb drive that I have available for you.  
20 Shall we show those?  
21 MR. GROSSMAN: You mean their public safety  
22 announcements?  
23 MS. CORDRY: Yes.  
24 MR. GROSSMAN: What will they add to any of this?  
25 I mean, we know that the county is concerned about this from

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1 what you have introduced. How do their additional ads add  
2 to this at all?  
3 MS. CORDRY: Well, I think, again, they underscore  
4 the importance that the county puts on trying to reduce  
5 these issues and being very concerned and that the county is  
6 very definitely of the opinion that parking lots are not  
7 safe places to be walking around but they are danger zones  
8 and that these are areas that need to have very careful  
9 attention paid to what's going on in them.  
10 MR. GROSSMAN: All right. My only problem is that  
11 I want to, you know, have a record that whoever reviews this  
12 after me can have the same evidence essentially available to  
13 them, and things that are difficult to read in the record  
14 are difficult for others to access. So that's one of my  
15 concerns, and if it's not going to add anything beyond what  
16 has already been established, I think it's probably  
17 inadvisable. Does anybody want to opine on that?  
18 MR. SILVERMAN: In the U.S. Supreme Court case  
19 dealing with video evidence --  
20 MR. GROSSMAN: Yes.  
21 MR. SILVERMAN: -- for the first time in history  
22 Justice Scalia actually gave us a citation to a website,  
23 which was a court-created website, to show the video, and  
24 Justice Breyer, who concurred, remarked on that fact. So  
25 that I think even very conservative people are trying to

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1 create records a little bit more reflective of technological  
2 advances.  
3 The other thing which is of interest to me is the  
4 fact that it's good to know what, not just the statistics  
5 and the background, but it's sort of good to know what the  
6 public is, what message is being sent to the public by the  
7 county.  
8 MR. GROSSMAN: Yes, but that's why we have these  
9 releases that are in the record, showing the county's  
10 concern, and that these are, you know, releases to the  
11 public. So I'm not sure what it adds. I'm not going to  
12 absolutely preclude it unless there's an objection that I  
13 sustain on it, but I just say, was it -- is it really going  
14 to add something here or just make another thing that people  
15 won't be able to hear?  
16 MR. GOECKE: And I'm sorry. I was distracted for  
17 a moment, Mr. Grossman, but you're referring to just these  
18 two latest --  
19 MR. GROSSMAN: I'm not --  
20 MS. CORDRY: No.  
21 MR. GROSSMAN: -- no, I'm not referring to these.  
22 I'm referring to --  
23 MR. GOECKE: The video?  
24 MS. CORDRY: The public -- and I think --  
25 MR. GROSSMAN: -- a public service announcement.

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1 MS. CORDRY: Basically, what's in the kind of --  
2 the kind of issues that we see in the parking lots with  
3 drivers, pedestrian interactions, distractions, and so  
4 forth, as being exactly the problem.  
5 MR. GROSSMAN: Well, let's play one and see what  
6 we're talking about.  
7 MS. CORDRY: Okay, sure.  
8 MS. ROSENFELD: Well, yes, and I'd like to --  
9 MS. CORDRY: They're 30 seconds each. So --  
10 MR. GROSSMAN: Okay.  
11 MS. ROSENFELD: I'd like to suggest that assuming  
12 that there's spoken words during the course of the public  
13 service announcement, that will, of course, be transcribed  
14 and become part of the record.  
15 MR. GROSSMAN: Okay, good point.  
16 MS. CORDRY: Yes.  
17 MR. GROSSMAN: This app can't open. Now, that  
18 sounds like my computer.  
19 MS. CORDRY: Well, we'll come back to that after  
20 the break. I'll see what the resolution issue is, but --  
21 MR. GROSSMAN: Okay.  
22 MS. CORDRY: -- we can deal with -- they're each  
23 30 seconds long, and they each deal with, as I say, the  
24 distracted driver, the distracted walker, the interactions  
25 of pedestrians, and so forth. So --

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1 MR. GROSSMAN: Oh, all right.  
2 MS. CORDRY: All right.  
3 MR. GOECKE: If I may add just one more comment to  
4 this discussion. I think, obviously, videos may be  
5 admitted, but they do create a cumbersome record. I think  
6 the issue for us is whether or not they're probative,  
7 whether or not they're going to help the Hearing Examiner  
8 resolve any issues of fact in this matter, and if they're  
9 not probative and if they're not relevant to help that  
10 inquiry, then --  
11 MR. GROSSMAN: Yes. Well, I mean, the overall  
12 relevance of this point is that there's been an assertion  
13 made by the applicant that, you know, there are parking lots  
14 and people negotiate parking lots, and I think the  
15 opposition is trying to establish the fact that parking lots  
16 are dangerous for pedestrians and that's the relevance.  
17 Now, whether or not a public service announcement really  
18 goes beyond what has already been introduced, that's a whole  
19 nother question, but in any event, let's get to the  
20 cross-examination.  
21 MS. CORDRY: Okay.  
22 MR. GOECKE: And one other notation --  
23 MR. GROSSMAN: Yes.  
24 MR. GOECKE: -- again, this is another document or  
25 video we haven't received 10 days in advance.

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1 MS. CORDRY: Well, as I said, this wasn't created  
2 until last night. So -- because I checked the website on  
3 Tuesday. It wasn't there. I checked yesterday and it was.  
4 So --  
5 MR. GROSSMAN: Right. I think it -- I mean,  
6 frankly, we haven't heard it yet, but I suspect, if it just  
7 essentially reflects what's in 397(a) and (b), it's not  
8 going to help you or hurt you beyond what any of these other  
9 documents have come in, or nor will it surprise you, but  
10 let's hear the testimony, or the cross-examination,  
11 Mr. Goecke, or who's doing the cross-examination?  
12 MR. GOECKE: I am.  
13 MR. GROSSMAN: Okay. You may proceed.  
14 MR. GOECKE: Thank you.  
15 (Witness previously sworn.)  
16 CROSS-EXAMINATION  
17 BY MR. GOECKE:  
18 Q Ms. Cordry, I'd like to start by talking to you  
19 about --  
20 MR. GROSSMAN: But you can take that off the  
21 screen, because I find that distracting.  
22 THE WITNESS: Okay. Let me see. Let me try this.  
23 Yeah.  
24 MR. GROSSMAN: There you go.  
25 THE WITNESS: There you go. Okay.

1 BY MR. GOECKE:  
 2 Q Okay. So I'd like to start by talking to you  
 3 about the visits you took to the mall --  
 4 A Yes.  
 5 Q -- to observe the traffic conditions there.  
 6 A Yes.  
 7 Q And you prepared a document called Costco  
 8 Observations, which is Exhibit 377, in which you've listed  
 9 the dates, the times, and your comments, I guess, about what  
 10 you observed --  
 11 A Right.  
 12 Q -- while you were there.  
 13 A Right.  
 14 Q Is it fair to say that the purpose of these visits  
 15 was to get an accurate assessment over what conditions look  
 16 like at the mall?  
 17 A Yes. I was trying to observe what the mall would  
 18 be like after this warehouse opened, yes.  
 19 Q And specifically, you're trying to identify  
 20 potential problems that exist at the mall?  
 21 A I think it's fair to say, yes.  
 22 Q Okay. And so some of the times you decided to go  
 23 there when you thought it might be most crowded?  
 24 A Generally, no. I generally would be there, most  
 25 -- as I say, quite a few of the observations were simply I

1 was walking up in the morning time to see what the traffic  
 2 would be like on the ring road in the morning when the  
 3 station would be open and the warehouse wasn't. Other times  
 4 it would generally simply be when I had some other reason to  
 5 be going to the mall; I would be going to the grocery store  
 6 or so forth. As -- I'm probably like most people: I go  
 7 most of the times when other people go. So most of the  
 8 times were relatively busy times, but I wasn't necessarily  
 9 picking out the busiest time to go there.  
 10 Q Could you characterize how many of these visits,  
 11 you know, in terms of percentage or number, how many of  
 12 these visits were to observe conditions and how many of them  
 13 you were going to the mall anyway?  
 14 A Well, I would certainly say all the ones in the  
 15 early morning hour were ones where I was, the ones, you  
 16 know, when I was walking along the ring road, and so forth,  
 17 to examine the traffic there, I think -- all of those, I  
 18 would say, were just to observe the traffic there. On the  
 19 rest, I'd really have to look back. I couldn't give you any  
 20 particular estimate. At least sometimes I was going up  
 21 there just to observe traffic, but again, since I do work,  
 22 since I work downtown, since I leave my house about 8:00 and  
 23 I don't get back until usually about 7 o'clock, the times  
 24 that I have available to view it are, generally will either  
 25 be the evening or on the weekends, which does tend to be a

1 busy time. So --  
 2 Q Yes. And then you would record your notations  
 3 how? You would write notes as you were walking along, or  
 4 when you got back home, you would write them down, or --  
 5 A Generally, I would make a notation. I'd have a,  
 6 you know, just a notebook, and at home I made some notes,  
 7 and I transcribed them into this, this form here.  
 8 Q So whatever you remembered after your visit you  
 9 would transcribe?  
 10 A Right.  
 11 Q Yes.  
 12 A And the other thing, of course, was, the reason I  
 13 took a number of photos and videos was simply because that  
 14 was also of assistance to me and then being able to recall  
 15 what I had seen, because I could look back at the photo and  
 16 say, okay, I could see, yes, two trucks here. And I --  
 17 oftentimes, some of the video I'd take was fairly short  
 18 video but just to show that the truck was idling so it would  
 19 remind myself that that was not just a truck, that was an  
 20 idling truck.  
 21 Q Yes. Yes. And so there's about, I count, 64  
 22 visits from when you began on April 11th until September  
 23 7th. Does that sound about right to you?  
 24 A I think there's, actually, probably some more  
 25 observations after September 7th but that could be. I never

1 tried to count them up individually.  
 2 Q Yes. You go to the mall frequently?  
 3 A Well, certainly I, because of where I live, I walk  
 4 through the mall and can certainly see things at various  
 5 times. I go probably at least once a week, oftentimes to go  
 6 to the grocery store or other aspects of being in the mall  
 7 area.  
 8 Q Yes. And based on living there and, I guess, also  
 9 what you've heard in these hearings, do you agree that most  
 10 of the truck deliveries occur in the morning?  
 11 A I think in the morning and in the evening. It's  
 12 my understanding they also occur from about 7:00 to 10:00,  
 13 and although I get there much less frequently in the  
 14 evening, I have certainly seen trucks there in the evening  
 15 as well.  
 16 Q So in your morning visits to the site, that was  
 17 one of your focused -- the trucks that were there?  
 18 A Certainly I was, I was observing whether trucks  
 19 were there, where they were, whether they were idling or  
 20 not, that sort of thing.  
 21 Q Yes. And it's part of your testimony, isn't it,  
 22 that Mr. Sullivan may have underestimated the contribution  
 23 of emissions from idling trucks at the mall?  
 24 A I would certainly say that my testimony was, yes,  
 25 there are times when his assumptions, I have seen trucks

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1 that have exceeded his assumptions.  
2 Q Okay. Would you play Video 2 for us, please?  
3 MR. GROSSMAN: Who took that photo of you?  
4 THE WITNESS: Not a --  
5 MR. GROSSMAN: It's about your hair.  
6 THE WITNESS: I know. I know, not a great shot.  
7 Okay. Let's see, Video 2.  
8 BY MR. GOECKE:  
9 Q And this is on the first --  
10 MR. GROSSMAN: This is Slide --  
11 BY MR. GOECKE:  
12 Q -- this was, it was identified as Video 2 on the,  
13 on the drive we got. This is from the initial submission  
14 you gave to us that -- and it was later culled down. It's  
15 the one where you spoke to the driver.  
16 A Okay.  
17 MR. GROSSMAN: Oh, I don't think that's ever been  
18 -- that hasn't been displayed for me at this point.  
19 MR. GOECKE: It has not been displayed for you in  
20 this hearing, that's correct.  
21 MR. GROSSMAN: Okay. Okay.  
22 THE WITNESS: Okay. This one?  
23 BY MR. GOECKE:  
24 Q Please.  
25 A What did we do with the screen resolution? We

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1 were doing fine before. Let me try the screen resolution,  
2 and what it -- perhaps if you can ask your question, I can  
3 see if I can do this while we're --  
4 MR. GROSSMAN: Well, let's proceed the way he  
5 wants to proceed.  
6 THE WITNESS: Okay. No, I was just trying to see  
7 if there's anything I --  
8 MR. GROSSMAN: Right.  
9 THE WITNESS: -- while I'm trying to -- I thought  
10 we were fine before on this. I'm not sure why we're having  
11 the screen resolution problem. This was all fine the last  
12 time we did this; so I'm not -- wait a minute, screen  
13 resolution. Okay, hold on a second. Let me do this. Yeah,  
14 let's see if that'll work.  
15 MR. GROSSMAN: By the way, Ms. Cordry, you have  
16 the thumb drive for me that you --  
17 THE WITNESS: I do.  
18 MR. GROSSMAN: -- mentioned the last time?  
19 THE WITNESS: Yes. Yes, I do.  
20 MR. GROSSMAN: Will you make sure to give that to  
21 me?  
22 THE WITNESS: Yes. Right here.  
23 (Whereupon, the videotape referred to was played.)  
24 MR. GROSSMAN: What slide is this on, if it's on a  
25 slide?

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1 THE WITNESS: This is not on a slide.  
2 MR. GROSSMAN: Okay.  
3 BY MR. GOECKE:  
4 Q And can you tell us what you're observing at this  
5 point?  
6 A Okay. This is a truck that I heard. It was  
7 sitting there in the area, in the parking lot area.  
8 Q And it sounds like it's on?  
9 A I'm sorry?  
10 Q The truck sounds like it's idling at this time?  
11 A It sounded initially like it was idling, which is  
12 why I was observing it. It's close to the area that I've  
13 mentioned as Area C. It certainly was making quite a loud  
14 noise, and it was there for quite some time. So I went over  
15 to observe whether it was idling or not, and I --  
16 Q So you videotaped it to record the noise that it  
17 was making?  
18 A Among other things, just to determine where it  
19 was, whose truck it was, you know, the identifying number,  
20 and so forth. This was just at the very beginning when I  
21 was starting to identify some of these things, so yes.  
22 Q Do you remember what day this was taken on?  
23 A Video 2 would have been on April 17th.  
24 Q Was the warehouse open that day?  
25 A Yes. I believe the warehouse opened, I believe on

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1 April 10th. Certainly, in terms of the noise that the  
2 neighborhood would hear, this is, this is undoubtedly well  
3 audible --  
4 MR. GROSSMAN: Do you know if this was a truck  
5 delivering something to Costco?  
6 THE WITNESS: It was in the Costco area. I  
7 believe I did ask him about whether it was going to Costco.  
8 I can't remember for positive. It is a different trucking  
9 company than their main trucking company, but I think I  
10 asked him that, but I don't remember for sure.  
11 MR. GROSSMAN: Okay. How long is this video?  
12 THE WITNESS: This went on, I don't know, probably  
13 about four or five minutes or so, but you know, five  
14 minutes. At some point, he came back and I asked him about  
15 the truck and whether it was idling or not, and he indicated  
16 that he actually had a generator.  
17 BY MR. GOECKE:  
18 Q Do you know what time of day this is? I'm sorry.  
19 I'm sorry. I'm sorry. Let's listen.  
20 A This looks like this would have been about --  
21 Q Let's listen.  
22 A Okay.  
23 MR. GOECKE: The conversation is what I was hoping  
24 for you to hear, Mr. Grossman.  
25 MR. GROSSMAN: Yes, I don't think the, I don't

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1 think the court reporter can hear it either. Can you make  
2 it louder?  
3 THE WITNESS: I don't think I can make it much  
4 louder that -- oops.  
5 MR. GROSSMAN: And maybe rewind to the beginning  
6 of the conversation.  
7 THE WITNESS: Basically, as I recall, in the  
8 conversation I asked --  
9 BY MR. GOECKE:  
10 Q No. Can you rewind to it so we can hear it?  
11 MR. GROSSMAN: No, no. Can you rewind to --  
12 THE WITNESS: Okay. Oh, I'm sorry.  
13 MR. GROSSMAN: -- the beginning of the  
14 conversation and --  
15 THE WITNESS: I'm sorry. Yes, of course.  
16 Ms. Cordry: So the trucks aren't going to be  
17 idling while they're here, and I noticed your truck is  
18 sitting here, idling, or how long have you been sitting  
19 here?  
20 Truck Driver: About a half an hour but the truck  
21 is not idling, it's the generator.  
22 Ms. Cordry: What's that doing?  
23 Truck Driver: For internal climate control.  
24 Ms. Cordry: It's making a lot of noise.  
25 Truck Driver: Handles the interior temps so you

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1 won't have to idle the truck.  
2 Ms. Cordry: Uh-huh. Okay. How long do you stay  
3 here?  
4 Truck Driver: Excuse me?  
5 Ms. Cordry: How long do you stay here with that  
6 running?  
7 Truck Driver: Not long. What is, what position  
8 do you hold?  
9 Ms. Cordry: I'm a neighbor.  
10 Truck Driver: You're a neighbor?  
11 Ms. Cordry: Yeah.  
12 Truck Driver: Oh.  
13 Ms. Cordry: Do you actually go to Costco, or do  
14 you go to one of the other stores here?  
15 Truck Driver: Costco.  
16 Ms. Cordry: But you can't get in there to drop  
17 off the load?  
18 Truck Driver: Not yet.  
19 BY MR. GOECKE:  
20 Q If you would pause it there, please.  
21 (Whereupon, the videotape was paused.)  
22 BY MR. GOECKE:  
23 Q You know, I think it was still difficult to hear,  
24 but maybe I can --  
25 MR. GROSSMAN: Right.

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1 BY MR. GOECKE:  
2 Q -- I can tell you what I think was said, and you  
3 can --  
4 A Okay.  
5 Q -- you can tell me if that's correct or not. In  
6 your -- that was the truck driver that you had a  
7 conversation with?  
8 A Yes, that was the truck driver, yes.  
9 Q And he asked you what you were doing, basically?  
10 A Yes.  
11 Q And you said you were recording the conditions at  
12 the mall?  
13 A Right.  
14 Q And recording the idling noise?  
15 A I was recording what I thought at that point was  
16 idling noise, and yes, and he indicated that he, instead,  
17 had some kind of generator on his truck that was used to  
18 maintain the cab conditions, I guess, heating and cooling.  
19 They do, there is -- that's an alternative which I've  
20 learned about over time, that one of the ways they're trying  
21 to keep trucks from doing as much idling is to have a  
22 separate generator that could keep the cab warm or cold and  
23 do that in lieu of the truck idling.  
24 MR. GROSSMAN: It's not something that keeps the  
25 product cold or something? It's --

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1 THE WITNESS: No. That is something -- that's a  
2 different point, yes. You have the refrigeration on the  
3 trailers which makes noise --  
4 MR. GROSSMAN: All that noise is made by, by  
5 something to keep the cab warm?  
6 THE WITNESS: Yes.  
7 MR. GROSSMAN: I see. All right.  
8 THE WITNESS: Yes. It was very distinctly audible  
9 for quite a distance away there, yes.  
10 BY MR. GOECKE:  
11 Q And so the truck was not actually idling at that  
12 time?  
13 A That truck was not idling, that's correct.  
14 Q And it's difficult to tell the difference between  
15 the noise from this generator that, as Mr. Grossman points  
16 out, is noisy with an idling truck?  
17 A Well, from a distance and without knowing that,  
18 but in other ones, I would walk up closely and be able to  
19 identify that the engine, you know, it was coming from the  
20 engine in the other idling situations.  
21 Q So from the distance at which you were videoing  
22 this, you were unable to determine?  
23 A Well, at that point, I was taking the thing when I  
24 talked to him. At that point, I wasn't really trying to  
25 identify because I was not aware of this notion of a

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1 generator at that point. From there on out, I would --

2 Q Yes.

3 A -- you know, try to approach and make sure I was

4 actually listening to the engine noise as opposed to

5 anything else.

6 Q Yes. And how close do you need to be to be able

7 to tell whether it's idling or whether it's a generator?

8 A Oh, I don't know. I suppose, 10, 20 feet or so.

9 You can -- his generator was really coming more, farther

10 back in the truck, as I recall, on that one as opposed to,

11 you know, coming from the actual, under the hood of the

12 truck.

13 Q Yes. And I take it you didn't actually record the

14 decibel level of any of these trucks?

15 A No. I don't have a decibel meter.

16 Q Neither at the mall nor from any of the

17 neighboring properties?

18 A No, but they, that was, you know -- there's a

19 loudness of trucks and they're pretty loud, and this was

20 about as loud as most idling trucks that you would, large

21 tractor-trailers like this that you would hear in the

22 ordinary course.

23 Q Right. But you have no evidence showing any noise

24 violation at the property of the residents and --

25 A Do I have an actual decibel meter? No, but I

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1 think if you look at -- you can look at websites and

2 determine that a tractor-trailer idling is at a high level

3 of noise, and certainly, this would have been distinctly

4 audible at the property line and well above any other levels

5 of noise in the parking lot at that point.

6 MR. GROSSMAN: Well, it wasn't idling. So --

7 THE WITNESS: I'm sorry, the generator that was

8 running.

9 MR. GROSSMAN: So there's something on websites

10 that say that generators in trucks like this --

11 THE WITNESS: Well, I don't know about that. What

12 I'm saying is that it was -- in my ear experience, this was,

13 you know, in the same general range of loudness that you

14 would hear with an idling tractor-trailer.

15 MR. GROSSMAN: Do we know what those generators

16 run on?

17 THE WITNESS: I'm not sure if they -- I don't

18 know. I would have to --

19 MR. GROSSMAN: Are they running off the battery,

20 or are they burning gasoline --

21 THE WITNESS: They might --

22 MR. GROSSMAN: -- or diesel fuel?

23 THE WITNESS: They might be burning something, but

24 because they're so much smaller and because it's not the big

25 engine --

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1 MR. GROSSMAN: Right.

2 THE WITNESS: -- they obviously, what I've read on

3 the websites is that they're encouraged to be used because

4 they have a much smaller --

5 MR. GROSSMAN: Smaller emissions.

6 THE WITNESS: -- creation of any kind of emission

7 or --

8 MR. GROSSMAN: Right.

9 THE WITNESS: -- gasoline usage or diesel usage.

10 MR. GROSSMAN: Okay.

11 BY MR. GOECKE:

12 Q Okay. So are you testifying that the noise from

13 this truck may have constituted a noise nuisance?

14 A This was at 7:30. I think the decibel level there

15 is 65. I don't know whether at the property line it was

16 above 65 or not, but it was certainly quite noisy. You

17 know, as I say, I don't have a decibel meter. I can't tell

18 you that, but I can tell you that that was a, that was a

19 loud truck.

20 Q But was it so loud that you thought it might be a

21 noise nuisance?

22 A It was certainly annoying to me as I was walking

23 through the parking lot, yes. It was quite loud, quite at

24 the point where you would distinctly have heard it -- it

25 would not have been a soft noise. It would not have been

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1 something that would have dissipated by the time you got to

2 the property line, just, you know, 20 or 30, well, not 20,

3 30, I don't know, 100 --

4 Q And did you --

5 A -- 200 feet away.

6 Q Did you complain to anyone about this noise

7 annoyance?

8 A I don't know who I would complain to, and I don't

9 know if the truck would have still been there by the time

10 anybody could have complained and come out.

11 Q Yes. And in all of your visits to the site to

12 record and observe the noisy trucks, did you ever complain

13 to anyone in the county or the city or anywhere?

14 A Did I? No.

15 MR. GROSSMAN: Exactly what difference would that

16 make?

17 MR. GOECKE: Well, I think it goes to the

18 credibility of her testimony. If she thinks this is a noise

19 nuisance and took no action about it, she could have gotten

20 someone involved to record it and to show what the actual --

21 MR. GROSSMAN: I really don't think that, that

22 goes to her credibility, but --

23 MR. GOECKE: Well, maybe not her, okay, maybe not

24 her credibility. Well, I think it does a little bit but

25 more to the ultimate point of what she's trying to show,

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1 which is that this might be a nuisance, and there's no  
2 evidence there to suggest that.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: I would note that I can walk away  
5 from these.  
6 MS. ROSENFELD: I'd like to --  
7 MR. GROSSMAN: No, there's no question pending.  
8 MS. ROSENFELD: -- just in response. Just in  
9 response, for a moment. Mr. Goecke said there's no evidence  
10 there to suggest, to suggest that. I think that's for  
11 you --  
12 MR. GROSSMAN: No evidence to suggest what?  
13 MS. ROSENFELD: That there's a noise nuisance, and  
14 I think that's for you to determine and not Mr. Goecke.  
15 MR. GROSSMAN: I don't --  
16 MS. ROSENFELD: Okay.  
17 MR. GROSSMAN: -- you didn't have to even add that  
18 comment.  
19 THE WITNESS: Right.  
20 BY MR. GOECKE:  
21 Q One of the topics you talked about in your  
22 testimony at the last hearing was the issue of parking at  
23 the mall, is that correct?  
24 A Yes.  
25 Q And I believe you testified that we're at or near

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1 a saturation point, is that correct?  
2 A At different times. I mean, not every minute of  
3 every day, of course not.  
4 Q That's a fair point. At the peak times,  
5 obviously, there's more cars parked than at other times?  
6 A That's a, that's a true definition of the point of  
7 peak time, yes.  
8 Q A radical statement. And you were at the mall  
9 during peak times on occasion?  
10 A Right. I had been at times that, during -- those  
11 parts of the month were probably peak times. I don't think  
12 I've been at the peak time at the mall yet for this year.  
13 I'm awaiting that quite anxiously over the next month or so  
14 to see how that's going to play out.  
15 Q Fair enough. But you were at the mall on busy  
16 days, during busy --  
17 A Yes.  
18 Q -- busy times of the day?  
19 A Yes, I've been there on busy days, yes.  
20 Q And you testified that during those visits, you  
21 never saw the third floor of the parking structure full.  
22 A Well, I don't know that I ever testified about  
23 that, but I think that, that's probably a true statement,  
24 that I don't think I have -- I don't think during the  
25 non-holiday period -- well, let's put it this way: Since

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1 April, I don't -- I think it would be true that it's  
2 unlikely that the third floor was ever fully occupied.  
3 Q What was the, percentage-wise, what was the  
4 highest degree of occupancy you ever observed on the third  
5 floor of the parking lot?  
6 A I didn't go there very often. I didn't visit the  
7 garage all that often, but I don't know, probably, perhaps  
8 20, 25 percent --  
9 Q Yes.  
10 A -- I might have seen on some day.  
11 Q Yes. But, so --  
12 A I mean, it's generally not highly occupied outside  
13 of the, the truly peak times of the year.  
14 Q And you would agree that there -- I mean, maybe  
15 you wouldn't agree, but would you disagree that there's  
16 about 400 parking spaces on the third floor?  
17 A I'm not sure what the exact number is. I think  
18 there's supposed to be about 350 on the second floor. I  
19 don't know if it's the same number on the third floor or  
20 not, but somewhere in that range.  
21 Q You have no reason to dispute that estimate,  
22 though, do you?  
23 A Well, as I said --  
24 MS. ROSENFELD: Objection. Asked and answered.  
25 THE WITNESS: -- my understanding is that there's

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1 about 350 on the second floor. I wouldn't think the third  
2 floor would be much higher, but between 350 and 400 is  
3 probably an accurate number, yes.  
4 BY MR. GOECKE:  
5 Q Are you aware that there's an elevator taking  
6 folks from the third floor down to the Costco?  
7 A Yes, I am.  
8 Q So Costco shoppers could park on the third floor  
9 and conveniently get to the Costco warehouse?  
10 A They can park on the third floor, yes.  
11 Q Yes. How many times did you observe the third  
12 floor in the parking structure?  
13 A Oh, maybe five or six.  
14 Q Yes.  
15 MR. GROSSMAN: Let me ask you, Mr. Goecke, let's,  
16 let's say there's space on the third floor of the garage but  
17 people aren't using it for whatever reason --  
18 MR. GOECKE: Right.  
19 MR. GROSSMAN: -- and, as a result, the parking  
20 lot is so crowded as to create a dangerous condition, as  
21 what's alleged here.  
22 MR. GOECKE: Right.  
23 MR. GROSSMAN: How do I factor in the fact that  
24 the third floor is not fully used in evaluating this if I  
25 think that the evidence establishes a dangerous situation in

1 the way it is being used?  
 2 MR. GOECKE: I think, like we've talked about  
 3 before, determine if there's ways for Costco to incentivize  
 4 people to use the third floor. If there are 400 spaces on  
 5 that third floor and there's approximately 800 spaces in the  
 6 southwest quadrant of the parking lot after the Costco gas  
 7 station comes in, that's a lot of people. Let's assume all  
 8 those folks are going to Costco. A lot of those folks could  
 9 park on the third floor and avoid that entire area. So is  
 10 it -- and I think there has been some testimony that when  
 11 this hearing began, fewer people were parking in the parking  
 12 structure and over time --  
 13 MR. GROSSMAN: Right, and then signs, Costco put  
 14 up signs, but --  
 15 MR. GOECKE: Costco put up signs and over time  
 16 that education has been beneficial, and so I think it's --  
 17 it wouldn't be difficult at all to incentivize more people  
 18 to take advantage of this. And I think these things take  
 19 time too, that over time, people will figure out where they  
 20 want to go and where they don't want to go.  
 21 MR. ADELMAN: Objection.  
 22 MS. ROSENFELD: Testimony.  
 23 MR. ADELMAN: This is testifying.  
 24 THE WITNESS: Yeah.  
 25 MR. GROSSMAN: Well, no, no. He's --

1 MR. GOECKE: He's asked me to respond.  
 2 MR. GROSSMAN: I asked him a question, and he's --  
 3 MR. ADELMAN: Oh, I'm sorry.  
 4 MR. GROSSMAN: -- entitled to respond to my  
 5 question.  
 6 MR. GOECKE: And they may find that it's more  
 7 convenient to park in the parking lot, in the parking  
 8 structure, rather. You go there. It's a little bit  
 9 further, sure, but you can take the elevator; it's  
 10 convenient to go down, and you don't have to walk through  
 11 the open-air parking lot if you find that uncomfortable.  
 12 MR. GROSSMAN: Did you want to respond to that?  
 13 I'm giving you an opportunity to respond if you want. You  
 14 don't have to.  
 15 MS. ROSENFELD: No. Thank you.  
 16 MR. GROSSMAN: Thank you. Okay.  
 17 BY MR. GOECKE:  
 18 Q Just briefly, you talked, Ms. Cordry, about the  
 19 cut-through traffic that you're concerned about if the  
 20 Costco gas station opens.  
 21 MR. GROSSMAN: You mean onto Mount McComas and --  
 22 MR. GOECKE: Onto Mount McComas, that's right.  
 23 MR. GROSSMAN: -- and Drumm.  
 24 THE WITNESS: Well, I'm sorry. Well, there  
 25 wouldn't be, you mean -- I mean, there would not be

1 cut-through traffic in the sense of vehicle traffic on Mount  
 2 McComas.  
 3 BY MR. GOECKE:  
 4 Q Are you concerned about people cutting through  
 5 Mount McComas to avoid traffic at the mall?  
 6 A Okay. Well, Mount McComas is a pedestrian path at  
 7 the moment, would have homes on it once the site plan is  
 8 approved and those are constructed. It will not have  
 9 traffic there because there is not a vehicular connection  
 10 there.  
 11 Q Let me be more clear.  
 12 A Okay.  
 13 Q The roads going through the neighborhood to the  
 14 south portion of the mall.  
 15 A Okay. McComas Avenue, is that what you're asking  
 16 about?  
 17 MR. GROSSMAN: McComas Avenue.  
 18 BY MR. GOECKE:  
 19 Q Yes.  
 20 A Okay. Yes, McComas Avenue and Drumm, yes.  
 21 Question?  
 22 Q Okay.  
 23 A Okay. What's your question then? I'm sorry.  
 24 Q My question is, do you have any evidence showing  
 25 that people are doing that now?

1 A Well, I can tell you that I and my neighbors use  
 2 those routes to go around the mall now. What people will  
 3 do, as traffic gets heavier, I can't tell you; but I can  
 4 tell you that in terms of a convenient way to go, as a terms  
 5 of a way of eliminating several traffic lights and very busy  
 6 traffic on University and Veirs Mill and Georgia, there's a  
 7 lot of sense to it. People are fairly sensible. People  
 8 find cut-around routes all the time if the main routes get  
 9 overcrowded.  
 10 Q And would you mind showing us again the route that  
 11 you take sometimes?  
 12 A Do you have your little laser pointer there?  
 13 MR. GROSSMAN: Yes. I won't have to send my staff  
 14 to track you down today, will I?  
 15 THE WITNESS: I didn't disappear with it. It was  
 16 still here. Okay. All right. The route I go -- I live,  
 17 let's see, on this road here, which is Torrance Court, yeah,  
 18 Torrance Court here, the next road over from Stephen Knolls.  
 19 I will drive up here to McComas. I'll drive down McComas to  
 20 Drumm. I turn right on Drumm. I come up University. I  
 21 turn right on University, and then I turn right again on the  
 22 entrance road here at Valley View into the mall, taking me  
 23 up to the infamous Intersection 16, at least I have been  
 24 doing that until now. It's beginning to become somewhat  
 25 debatable of a point with the amount of time that I'm

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1 finding myself, more often than not these days, sitting at  
2 Intersection 16, but -- but that is the route I have taken.  
3 BY MR. GOECKE:  
4 Q But so far your preference is to take the route  
5 that takes you through Intersection 16 instead of going any  
6 other direction?  
7 A Well, up until this point, because as I said,  
8 there are three lights here, each one of which is about two  
9 to two-and-a-half minutes --  
10 MR. GROSSMAN: Three lights here being?  
11 THE WITNESS: Three lights, one as you exit  
12 McComas, which actually turns into Windham Lane at Georgia,  
13 then there's one where Georgia and Veirs Mill come together,  
14 and then there's another light going into the mall. Each of  
15 those is quite a long light. I seem to have the ability to  
16 always miss all three. It's a very short time period coming  
17 actually out of Windham Lane. It's only about 15 seconds  
18 that you get to come out; otherwise, then you get to sit  
19 through the whole light and so on and so forth.  
20 So it has been, until recently, always made more  
21 sense, rather than sit through all of those lights, to go  
22 the other way around. I'm beginning to reconsider my  
23 approach now. And it -- and it also, of course, depends on  
24 what time I go. There are times where Intersection 16 does  
25 not have a total backup, you know. Late on a Friday

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1 evening, which is when I tend to get over there, it may not  
2 be totally backed up, but Saturdays it very often is backed  
3 up. So it's something I have to reconsider, which route I  
4 take.  
5 BY MR. GOECKE:  
6 Q Yes. So the two or three lights that you have to  
7 sit through, do you agree that that is a common experience  
8 when you're shopping in a central business district or a  
9 commercial area?  
10 A Well, I'm not sure that sitting through lights and  
11 shopping is there, but there are often lights. That  
12 particular combination of them in such a short distance,  
13 when I am literally 500 feet probably from the stores as I  
14 walk and yet it can take me two or three times as long to  
15 drive as it does to walk up there, that's not been my common  
16 experience with shopping. So it does make me try to avoid  
17 that. I'd rather drive than sit. At least you feel like  
18 you're making progress that way. So --  
19 Q But that's not my question.  
20 A Okay.  
21 Q Putting aside your specific ability to be able to  
22 walk to the mall based on where you live, what I'm asking  
23 you is, the traffic conditions at the mall -- and I think we  
24 all agree there's some degree of traffic -- but aren't they  
25 common for a mall, a regional mall like this?

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1 A Well, I don't think I'm saying they're not, but  
2 I'm saying, because they are common, people look to find  
3 cut-arounds. People always are looking to find ways to  
4 avoid heavy traffic and heavy signalized intersections and  
5 so forth. That's why neighborhoods oftentimes try to have,  
6 you know, limits. Over in Kensington there are some streets  
7 that, as I understand, you can't drive down them unless  
8 you're in the neighborhood at different times of day and  
9 that's because people do use them as cut-arounds. So that's  
10 a -- both of those things are true, both: there's a lot of  
11 traffic and there's a lot of cut-arounds.  
12 Q And you testified at the last hearing about the  
13 left-hand turn from Veirs Mill onto East Drive, correct?  
14 A I'm sorry. Onto Valley View?  
15 Q I'm sorry, onto Valley View.  
16 A Yes.  
17 Q Okay. And is it your contention that during peak  
18 hours, the traffic at the Veirs Mill and Valley View  
19 intersection is a traffic nuisance?  
20 A Well, I'm not sure what I would call a traffic  
21 nuisance in that sense. It's a main road. It backs up  
22 quite a ways. I have seen it, as I said, as many as 17 or  
23 18 cars in each lane, backing up. I think, I guess I'd have  
24 to leave it to the Hearing Examiner whether that constitutes  
25 a nuisance or not --

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1 Q Yes.  
2 A -- but it certainly creates a, a difficult  
3 situation, and it, it can, the overall impact of that,  
4 including, it's really more the -- the backing of cars onto  
5 the other direction on University, going into the direction  
6 of Drumm, tends to be a problem.  
7 MR. GROSSMAN: Ms. Cordry, how many cycles of that  
8 light does it take for those cars to empty out from that  
9 17- or 18-vehicle backup?  
10 THE WITNESS: I think in that one it probably --  
11 most of them were able to go through in one, including the  
12 ones who sat there and blocked the access of people trying  
13 to come straight across. There were probably a few cars  
14 left behind on that particular cycle.  
15 MR. GROSSMAN: So it would be one -- oh, there'd  
16 be --  
17 THE WITNESS: One to two cycles.  
18 MR. GROSSMAN: -- two cycles. Okay.  
19 THE WITNESS: Yeah. Generally, two cycles  
20 probably for those cars if it gets that long.  
21 BY MR. GOECKE:  
22 Q So if I understand you correctly, you think the  
23 bigger concern is the traffic that backs up southeast of the  
24 intersection as opposed to the people turning left onto  
25 Valley View?

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1 A Well, the direct concern for our neighborhood,  
2 which is to the south and west, which is being able to come  
3 out of Drumm or --  
4 Q I'm sorry, not for your neighborhood, but just  
5 generally, just --  
6 A Well --  
7 Q -- in terms of the traffic --  
8 A Okay. Well, for --  
9 Q -- problem as you see it.  
10 A Well, what I've been trying to describe are  
11 situations, and we can discern whether they're problems. I  
12 think for people trying to come out of Valley View, some of  
13 these can be issues as well. There is a new bank that's  
14 going to be here. I don't know whether that's going to  
15 increase the traffic additionally, as well. But my point  
16 is, is really, there are these long lines, there are these  
17 long backups, they do end up creating long backups coming  
18 into the mall, and they do end up creating idling, slow  
19 traffic, difficulties in getting through the mall property,  
20 which is what we're looking at primarily in terms of both  
21 the traffic within the mall and then the emissions and  
22 idling and so forth that Mr. Sullivan is going to have to  
23 take into account.  
24 Q But I think you just put your finger on it when  
25 you said that you're describing situations. Was that the

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1 word you said?  
2 A I probably used the word situation.  
3 Q You would agree that you're describing traffic  
4 situations and it's unclear whether or not, even in your  
5 mind, whether these are problems or nuisances?  
6 A Well, for anybody sitting in those lines, they are  
7 probably a nuisance. What I've been trying to describe is  
8 how the scenario works, where it causes backups, where,  
9 certainly within the mall, which is where we are trying to  
10 get to in terms of the proximity to the special exception  
11 and also in terms of the, as I say, the emissions levels,  
12 the idling, the factors that Mr. Sullivan has to take into  
13 account, how all of that plays into the overall picture  
14 there.  
15 Q Yes. But, again, these situations that you're  
16 describing are common in a busy commercial area?  
17 A I would not dispute the fact that it's a busy  
18 area, yes.  
19 Q They may not be enjoyable but they are common?  
20 A And sometimes common situations get to the point  
21 where they become a nuisance.  
22 Q Okay. Do you have any photographs or videos of a  
23 situation from your 65 visits to the mall site that, in your  
24 view, demonstrates a nuisance?  
25 A I think the number of the videos where the traffic

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1 is backed all the way down onto University, backing onto  
2 University towards Drumm, I think those clearly indicate a  
3 nuisance. I think those indicate a situation where there's  
4 more traffic than the roads can reliably handle.  
5 Q Okay. So traffic backed up from this intersection  
6 on University in sort of a northeastern direction, that  
7 creates a nuisance in your mind?  
8 A Well, that area is set up to have a long backing  
9 area. Now, whether it's a nuisance in the sense that those  
10 cars are there and they are in that long backing area, how  
11 much of a nuisance it is for them in terms of how many times  
12 it takes them to get through is an issue, and then, as I  
13 say, because they don't want to sit through a second traffic  
14 light, they -- it's pretty routinely people come through and  
15 sit in that, sit in the main intersection there and can't  
16 get into the -- when it is backed all the way down from  
17 Intersection 16 to --  
18 Q I understand that there are conditions --  
19 A Then I --  
20 Q -- with the situation --  
21 A Well --  
22 Q -- but you're not answering my question.  
23 A Well, you know, you asked me a question. I'm  
24 asking you, is there a problem there? What I'm saying is,  
25 yes, the problem is that people do come in and they do block

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1 the crossroads because they don't want to sit there in that  
2 long line. So they -- I think I showed you a couple of  
3 videos where they went over there, blocked the intersection;  
4 the cross traffic couldn't get through for a while because  
5 they had to wait for those cars to laboriously come through  
6 and clear out.  
7 Q So when people get impatient and turn into an  
8 intersection where they don't have time to go, that's a  
9 nuisance?  
10 A It, I think it can be a nuisance, yes. I mean, I  
11 think there, we -- certainly down in downtown D.C. they  
12 have, you know, don't block the box, and I'm not sure  
13 whether we've got a specific ordinance there. I think there  
14 have been cities, I know, where you can get very specific  
15 traffic tickets if you're in the middle of the intersection  
16 and you didn't wait for it to clear out on the other side.  
17 So, yes, I think that's one of the concerns traffic  
18 engineers and traffic safety people and then the city laws  
19 do, is to try to keep people from blocking intersections so  
20 the cross traffic can go.  
21 Q Okay. Well, there's really two things there. One  
22 is education, signs saying, don't block the box, and is it  
23 your testimony that those can be effective?  
24 A Generally not unless you're getting a ticket.  
25 MR. GROSSMAN: Mr. Goecke --

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1 MS. ROSENFELD: Objection. Yes.  
2 MR. GROSSMAN: -- where is this going? I  
3 understand that, you know, what you've gone into thus far,  
4 but I think it's becoming repetitive on this point.  
5 Whatever Ms. Cordry considers a nuisance or not, I mean, I  
6 think she's given you a sense of that. Is there -- do we  
7 have to belabor this part anymore? I don't want to cut you  
8 off. I'm just saying that it seems to me you've --  
9 MR. GOECKE: I have a general sense that things  
10 that annoy her she considers to be a nuisance. What I'm  
11 trying to do is delineate when there is a nuisance and when  
12 there is not a nuisance.  
13 MR. GROSSMAN: Well, is any laywitness capable of  
14 defining for you what a nuisance is other than giving her  
15 opinion of what a nuisance is, her personal opinion? And  
16 does her personal opinion of whether it's a nuisance govern  
17 anything I would decide?  
18 MR. GOECKE: I don't think -- well, no, it's a  
19 fair point. I don't think anyone, especially a layperson's  
20 personal opinion, governs what you decide. But to the  
21 extent that there is a laywitness testifying about what is a  
22 nuisance, I want to try to show that it's an occurrence,  
23 it's a traffic occurrence.  
24 MR. GROSSMAN: No, I understand, but you've been  
25 over it a couple of times --

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1 MR. GOECKE: Okay.  
2 MR. GROSSMAN: -- in different ways, and I think  
3 you could move to the next point.  
4 MR. GOECKE: Okay. Okay. If I -- at this point,  
5 I'll make one more point on this and then I'll go on.  
6 MR. GROSSMAN: All right. All right.  
7 BY MR. GOECKE:  
8 Q You see here on University Boulevard where the  
9 lanes, there's a slight diagonal there at the -- it's sort  
10 of level with the Giant, the end of the Giant parking lot.  
11 A Okay.  
12 Q Okay. And so that turn lane has been, or is quite  
13 long, is it not?  
14 A Yes.  
15 Q Do you know how long it is?  
16 A I haven't tried to measure it, no.  
17 MR. GROSSMAN: This is for the traffic heading  
18 northeast or the traffic heading southwest?  
19 MR. GOECKE: For the traffic heading southwest,  
20 yes.  
21 MR. GROSSMAN: Okay.  
22 BY MR. GOECKE:  
23 Q If I told you it was 500 feet, would you have any  
24 reason to disagree with that?  
25 A That could well be true.

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1 Q And you said you've seen as many as 18 cars lined  
2 up in this location, and do you know what the capacity is  
3 for this area right here in terms of cars queued?  
4 A Again, I haven't counted that. That seemed to go  
5 most of the way, to the end of the area. By that time, it  
6 was getting far enough away that even with my contact  
7 lenses, it was hard to tell exactly where the cars were  
8 versus the end of those lanes.  
9 Q Thank you. You submitted several documents  
10 addressing the issue of pedestrian safety in parking lots,  
11 correct?  
12 A Yes.  
13 Q Do you have any data showing how many accidents  
14 there have been in mall parking lots in Montgomery County?  
15 A Yeah. Actually, I think this most recent, let me  
16 see, I think this most recent one that I put in may have  
17 addressed some of that. Let's see. On page 1, it says --  
18 MR. GROSSMAN: This is 397(b) or (a)?  
19 THE WITNESS: (B).  
20 MR. GROSSMAN: Okay. Page? Which page?  
21 THE WITNESS: Okay. I'm just trying to look at  
22 what this says. On page 1, it says: 83 percent of the  
23 parking lot collisions occurred in private retail parking  
24 lots, which included lots at malls, strip malls, fast-food  
25 and other restaurants, banks, gas stations, et cetera.

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1 MS. ROSENFELD: Excuse me. Ms. Cordry, I don't  
2 mean to interrupt. I don't see where you're reading.  
3 MS. ADELMAN: On page 3, right there.  
4 MR. GOECKE: It's right here.  
5 MS. ROSENFELD: Oh, I'm sorry. I thought you said  
6 page 1. Got it. Okay.  
7 MR. GOECKE: It's numbered 1.  
8 THE WITNESS: I think this year the information I  
9 heard at the pedestrian safety meeting I think indicated  
10 that three of the 12 fatalities were in shopping malls, or  
11 at least in parking lots. I'm not sure if they were  
12 specifically in shopping --  
13 MS. HARRIS: Can you repeat that again, please?  
14 THE WITNESS: I say, of the information that was  
15 given out when I went to the pedestrian safety meeting and  
16 some of this data that I put in here, I believe three out of  
17 the 12 fatalities have been in parking lots. I'm not sure  
18 precisely whether they were in mall parking lots or not.  
19 The one that I mentioned and described where the person was  
20 hit when the driver was looking at the emergency vehicle,  
21 that clearly was a shopping mall.  
22 BY MR. GOECKE:  
23 Q Okay. So on page 1 of 398(b), it says, 83 percent  
24 of parking lot collisions, and then it provides  
25 subcategories, but we don't know how many of those --

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1 A Right. No. No.  
2 Q -- occurred at malls?  
3 A As I indicated, part of their study is to try to  
4 do this because of a lack of data-keeping in private areas,  
5 both as to the number of occurrences altogether and then, of  
6 course, severity and so forth. Much of that is lacking  
7 because it's not part of what is generally required to be  
8 kept.  
9 Q Right. And I believe you testified that  
10 Montgomery County is actually one of the leading counties in  
11 the country in terms of focusing on this issue?  
12 A They are focusing on it, and as they recognize,  
13 they have very little data that they can really work with,  
14 and they are -- need to do a great deal more study to try to  
15 find out why these accidents are increasing.  
16 Q Okay. So in spite of their focus, you don't have  
17 any data about how many accidents occurred at the Wheaton  
18 Westfield Mall, for example?  
19 A No.  
20 Q Okay.  
21 MR. GROSSMAN: By the way, that statement about  
22 the 83 percent, that's on page numbered 4.  
23 THE WITNESS: Well, of the document, of the --  
24 MR. GROSSMAN: Of the exhibit.  
25 THE WITNESS: Of the exhibit.

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1 MR. GROSSMAN: Of 397(b).  
2 THE WITNESS: Of the introduction. The number at  
3 bottom is 1. It may be the fourth page of the overall  
4 exhibit.  
5 MR. GROSSMAN: Oh, okay, yes.  
6 THE WITNESS: Correct.  
7 MR. GOECKE: It's physically page 4, but it's  
8 numbered 1.  
9 THE WITNESS: Yeah.  
10 MR. GROSSMAN: No. Mine is numbered page 4 in the  
11 document itself.  
12 THE WITNESS: Oh, no, no. I'm referring to this,  
13 this page.  
14 MR. GROSSMAN: You're referring to the summary  
15 page.  
16 THE WITNESS: The one that's labeled Introduction,  
17 at the bottom of that, it has page 1.  
18 MR. GROSSMAN: Okay. Roman numeral I.  
19 THE WITNESS: Right. Okay.  
20 MR. GROSSMAN: No. Roman numeral I on mine is --  
21 THE WITNESS: No, no. No.  
22 MR. GROSSMAN: -- a picture of Ike Leggett.  
23 THE WITNESS: No. It is a 1. The statistic  
24 you're referring to is on both page 1 and page 4.  
25 MR. GROSSMAN: I see.

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1 THE WITNESS: So there we go.  
2 MR. GROSSMAN: Okay. I see it. Thank you.  
3 BY MR. GOECKE:  
4 Q And if you can turn to the page numbered 3 of that  
5 exhibit, 398(b), there's a heading that says -- the heading  
6 is Approach.  
7 A Yes, uh-huh.  
8 Q And if you could go down in the first paragraph on  
9 the left-hand side, one, two, three, four, five lines down,  
10 there's a sentence that begins at the end of that line that  
11 I'm going to read: Research has shown that the most  
12 effective traffic safety programs involve a combination of  
13 approaches to change behavior --  
14 A Yes.  
15 Q -- including the three E's of traffic safety:  
16 engineering, enforcement, and education.  
17 A Yes.  
18 Q Engineering changes, such as installing crosswalks  
19 or traffic-calming measures, may make the physical  
20 environment safer. Enforcement of traffic laws induces  
21 people to slow down and follow the rules. Did I read that  
22 correctly?  
23 A Yes. That's what it says.  
24 Q Okay. So in terms of any perceived problem for  
25 the traffic occurrence at south University and Valley View,

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1 do you agree that enforcement may help people not block the  
2 box?  
3 A Yes. Generally, if people get tickets, they tend  
4 not to do the things they have done before.  
5 Q Yes. And according to this, education may help  
6 people not block the box as well.  
7 A I think in terms of people trying to get through a  
8 light, education typically doesn't do very much. People are  
9 -- people know they're not supposed to be running red  
10 lights. We all do because we want to get through the  
11 intersection, and we hope the cops aren't around to see us.  
12 Q And do you know what a traffic-calming measure  
13 might be?  
14 A My understanding is it's things like building the  
15 little bump-outs on the side of the road --  
16 Q Like a speed bump?  
17 A A speed bump would be another measure.  
18 Roundabouts can do it. There's any number of different  
19 kinds of traffic measures that have, that fall into that  
20 traffic calming.  
21 Q Things to make people slow down?  
22 A Yes.  
23 Q Because slower is safer?  
24 A In general, yes.  
25 Q Okay. And you may recall, when Dr. Adelman was

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1 testifying about his observations of Intersection 16, he  
2 said he was surprised that there weren't more accidents, or  
3 accidents at that location and then, then offered the  
4 thought that maybe it's because they're driving so slowly.  
5 A Yes.  
6 Q Do you agree with that?  
7 A I did agree and I think I said the same thing,  
8 which is that because they're driving so slowly -- because  
9 that intersection is so difficult, it does make people drive  
10 very slowly; it almost ends up being like almost a double  
11 stop: you stop, you start, then you realize there's  
12 somebody else that you got to watch out for, so you almost  
13 stop again. And I think I testified that that's part of the  
14 reason why that intersection proceeds so slowly, why the  
15 critical lane volume number doesn't really tell you very  
16 much about how well that intersection works, and why there's  
17 so much more idling and traffic volume, cars sitting there  
18 than what Mr. Sullivan was likely, as far as I can tell of  
19 using his parameters, that his parameters don't really take  
20 into account the way that intersection works.  
21 Q So it may be inconvenient or annoying to go  
22 slower, but it's safer?  
23 A In terms of an intersection like that, yes. If  
24 people tried to go at a free-flowing speed of 15 miles an  
25 hour, which Mr. Sullivan, I believe, was generally assuming

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1 in his factors, you'd probably have a great deal of  
2 accidents there, yes.  
3 Q Are you aware of any pedestrian accidents -- I may  
4 have already asked you this -- but are you aware of any  
5 pedestrian accidents at the mall?  
6 A I don't know. We asked Mr. Agliata that early in  
7 the session, and he said he wasn't the one, he didn't know  
8 anything. So we don't have any evidence in the record about  
9 that, no.  
10 Q Did you observe any in all of your many visits to  
11 the mall?  
12 A Did I observe? No. Some other people have told  
13 me about some, but I did not personally observe any  
14 accidents.  
15 Q Yes. And even before you started recording your  
16 observations of the mall, I take it you were going to the  
17 mall on a regular basis?  
18 A Yes. Of course, before I did, that was before the  
19 warehouse opened. So it was, you know, less busy than than  
20 currently, but yes, I have gone to the mall ever since I've  
21 lived in this area.  
22 Q Yes. Does that apply to the trucks as well?  
23 You're not aware of any truck accidents at the mall?  
24 A I have not observed any accidents at the mall, no.  
25 Q Turning now to the added traffic at the mall in

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1 the morning --  
2 MR. GROSSMAN: You mean what would be added if the  
3 proposed gasoline station is approved and functioning?  
4 MR. GOECKE: Thank you, yes.  
5 MR. GROSSMAN: Okay.  
6 BY MR. GOECKE:  
7 Q Assuming that the gas station opens, Ms. Cordry,  
8 you testified about what you anticipate that doing to the  
9 traffic levels at the mall ring road, is that correct?  
10 A Yes.  
11 Q And I think you provided an estimate of that in  
12 Exhibit 382.  
13 A Okay.  
14 Q Do you have a copy of that handy?  
15 A I'm trying to find that one. I'm not seeing that  
16 one right at the moment, but I believe I -- do you have that  
17 one handy Mr. --  
18 MR. GROSSMAN: Okay, 382.  
19 THE WITNESS: I believe that's not the one where I  
20 scaled up or down the Sterling versus Wheaton?  
21 BY MR. GOECKE:  
22 Q Yes. Yes, that's the one.  
23 A Actually, let me do look in here.  
24 MR. GROSSMAN: Here it is.  
25 THE WITNESS: Actually, I could probably find it

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1 on here as well. So hold on a second.  
2 MR. GROSSMAN: Here you go. It's one page. So --  
3 THE WITNESS: Yeah, right. Right.  
4 MR. GOECKE: Right.  
5 THE WITNESS: It's probably in this stack here  
6 somewhere but a little discombobulated.  
7 BY MR. GOECKE:  
8 Q Okay.  
9 A Yes.  
10 Q And -- I'm sorry. You're still looking?  
11 A Go ahead. No. I have it from the Hearing  
12 Examiner.  
13 Q Okay.  
14 A I was trying to see if I could find it on here so  
15 I could give him his sheet back.  
16 MR. GOECKE: You have it as well?  
17 MR. GROSSMAN: No.  
18 MR. GOECKE: Okay. It's probably not necessary,  
19 but --  
20 BY MR. GOECKE:  
21 Q If you look, Ms. Cordry, at your estimate for the  
22 Wheaton weekday traffic -- and I want to focus on the  
23 morning for the moment. So if we look at the 9 o'clock  
24 hour --  
25 A Okay.

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1 Q -- the way I read your chart, it's estimating 152  
2 cars per day, per weekday during that hour, is that correct?  
3 A Correct, going, just going to the station, yes.  
4 Q Okay. And so that's about two-and-a-half cars a  
5 minute?  
6 A Yes.  
7 Q And it's your testimony that this additional  
8 traffic will change the character of the mall?  
9 A Well, I don't think I said that. What I said was  
10 that that number was about two-and-a-half times higher than  
11 the number that is back there at the moment. So you have a  
12 250 percent increase in traffic over what is there currently  
13 during that hour --  
14 Q Yes.  
15 A -- and that, yes, that those kind of things are  
16 the sort of things that I believe in previous special  
17 exceptions they have looked at how much it has changed the  
18 existing volume of traffic.  
19 Q Okay. And so assuming your calculations are  
20 correct, what are the negative impacts --  
21 A Well, as I said --  
22 Q -- that would result from that?  
23 A -- you certainly have the volume back there.  
24 Probably the main one that you might have is those cars --  
25 among the main ones is that if any of them have any kind of

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1 noise, noisy muffler or rattling, you know, a pickup truck  
2 coming, you know, a business, one of the businesses that  
3 uses Costco, if it has its pickup truck and it has its  
4 equipment in the back, rattling around, if somebody is  
5 driving with a loud radio, those cars going in that early  
6 morning time period, they are driving right by all the homes  
7 and they will be sitting there then, 100 to 150 feet away  
8 from the back windows of the people living in those homes,  
9 and those kind of noises will be there in the morning where  
10 they are not now.  
11 Q So how much noise will that generate? If we  
12 assume about two-and-a-half cars a minute, how much noise is  
13 that going to generate?  
14 A I can't tell you because, as I say, it depends on  
15 what, what the cars are doing. It depends on whether they  
16 have noisy mufflers or quiet mufflers. It depends, as I  
17 say, is it a, is it a business, one of the painting  
18 contractors coming around there with ladders on the back,  
19 you know, rattling as he's driving over the speed bumps and  
20 accelerating and decelerating? I couldn't tell you  
21 precisely, but I can tell you that it's a lot more traffic  
22 than is there now. That's the main point of what that  
23 exhibit was.  
24 Q So we agree it's going to be, it's still going to  
25 be quieter than than at peak hour later in the day?

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1 A It probably is, but we have quiet hours in  
2 Montgomery County for particular reasons, and people are  
3 generally out of their houses. Most people, you know, work  
4 during the day; so they're not at home during those peak  
5 hours during the day, at least during the week anyway.  
6 Q And Slide 19 of your PowerPoint presentation --  
7 MR. GROSSMAN: Are you finished with this, 382?  
8 MR. GOECKE: I am finished with 382.  
9 MR. GROSSMAN: Okay.  
10 THE WITNESS: Which slide?  
11 BY MR. GOECKE:  
12 Q It was Slide 19. It was a -- and you don't need  
13 to pull it up --  
14 A Okay. Okay.  
15 Q -- but -- unless I'm wrong on the slide number,  
16 but I think I'm right -- you had a photograph of some of the  
17 blind residents in the community walking through the mall.  
18 A Actually, let's see. I don't think that's 19.  
19 Let me see.  
20 MR. GROSSMAN: I remember the slide.  
21 THE WITNESS: Yeah. Okay.  
22 BY MR. GOECKE:  
23 Q Okay. So the slide number may be incorrect, but  
24 -- so is it fair to assume that these folks still feel  
25 comfortable walking at the mall?

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1 A Actually, yeah, it's Slide 30. At this point --  
2 MR. GROSSMAN: I don't know if she can answer that  
3 question. She's not --  
4 MR. GOECKE: Okay. Okay.  
5 THE WITNESS: Yeah, I'm not comfortable, but they  
6 do walk -- the area they were walking in was this area  
7 relatively near the Target, and they were walking in the  
8 morning at least, before the mall was open. Now, of course,  
9 there would be considerably more traffic on that area than  
10 once the, once the gas station would open.  
11 BY MR. GOECKE:  
12 Q Yes. If I may put up another exhibit. So I just  
13 want to ask you a few questions about the direction of  
14 traffic leaving the proposed fueling station, and this -- I  
15 don't see an exhibit number on this.  
16 A I think, if you turn it the other way around, that  
17 one --  
18 Q Thank you.  
19 A -- has an exhibit number on it. In the top  
20 right-hand corner, is it?  
21 Q Yes, 155. So in Exhibit 155 -- and this is a  
22 special exception area diagram about what it might look like  
23 if the Costco gas station is there -- and so as the cars are  
24 exiting the fueling area, do you agree that they have  
25 multiple options in terms of which way they're going to go?

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1 A Yes.

2 Q They can go to the left. There's -- and when I

3 say to the left, I mean to the east. They can --

4 A Actually, that would be to the west, I believe.

5 Q I'm sorry, to the west. And they can go, there's

6 two exits north of the fueling station area?

7 A Yes.

8 Q And then there's also one on the east?

9 A Yes.

10 Q And so in a peak hour do you have any sense of how

11 many cars might be exiting?

12 A I think based on the comparison to Sterling and,

13 again, assuming the Sterling to Wheaton correlation is

14 correct, I think it would be in the range of 200 to 250 if

15 -- my view is that I, I'm not at all sure that the Sterling

16 is going to be more than Wheaton. It could be more than

17 that, but somewhere in the range of 200 to 250 cars

18 probably, perhaps somewhat a little more than that perhaps

19 in the peak hour.

20 Q Okay. So if we assume 250 cars, that's a little

21 over four cars a minute on average?

22 A Right.

23 Q And those four cars have four different options in

24 terms of which way they're going to exit the fueling area?

25 A Yes, there are four exits, yes.

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1 Q So isn't that likely to reduce congestion at that

2 point?

3 A Well, it certainly can't reduce congestion. It

4 would be less congestion than if they all went to one

5 spot --

6 Q Right.

7 A -- but it certainly, you are putting them back

8 into what is already a very busy segment there and which is

9 now going to have -- of course, all the cars who were

10 displaced from the closer-in parking area and move to the

11 farther-away parking area, all of that traffic and all of

12 those pedestrians are going to have to be moving through

13 that area there to get towards the store because the store

14 is east and north of where the station is and everyone else

15 is south and west of there. So they will all be moving past

16 that area there towards the store.

17 Q And when you say past that area, you --

18 A Past the special exception area.

19 Q Right. And part of the way that people could walk

20 past the special exception area is on this proposed walkway

21 on the north of the diagram, is that correct?

22 A Yes.

23 Q And so you agree that that section of walkway will

24 help mitigate some of the traffic concerns?

25 A Well, in one sense, yes; in another sense, no. I

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1 think, as I said, to the extent that it's marked, it will

2 hopefully identify to the cars not to run the people over

3 there, but to the extent, if everyone actually funnels into

4 that one space there, then it will put more pedestrians

5 right in the path of where people, as they come out of the

6 station, can drive straight ahead and drive right through

7 that path and out onto the main drive aisle. So there will

8 be, again, the interaction and the conflicts there between

9 the groups.

10 Q One of the videos you showed was a truck that was

11 backing into --

12 A Yes.

13 Q -- the warehouse loading dock. You agree that

14 when that truck was backing into the area, it wasn't

15 blocking traffic at all?

16 A Well, at that time in the morning, there was no

17 one there.

18 Q Right. What time of the morning was that?

19 A Let me see if I can figure when that one was.

20 Actually, it might be simpler if I -- let me look on the

21 sheet here.

22 Q Was it before 10:00 a.m.?

23 A Oh, yes. Yes, it would have been before 10 a.m.

24 Q Okay. And as you testified before, most of the

25 truck deliveries occur in the morning or in the evening?

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1 A In the morning before 10:00 a.m., generally, or in

2 the evening between 7:00 and 10:00 when the warehouse is

3 still open and the station is still open during part of that

4 time.

5 Q And so even if a truck is struggling to park the

6 car, or park the truck, rather, as this one was, it's less

7 likely that there's going to be cars interacting or driving

8 near that truck because of the time --

9 A Well, it depends on what time of day that was

10 going to do. Any truck that comes in in the evening, if it

11 tries to use the truck turn approach that was being

12 suggested, certainly that is -- this is a busy drive aisle.

13 What I referred to as Drive Aisle A, that's quite busy in

14 the evening time.

15 MR. GROSSMAN: I think that the witness was

16 showing that moving, not just that, in terms of blocking,

17 but in terms of the amount of idling time that might produce

18 pollution --

19 THE WITNESS: Right.

20 MR. GOECKE: That's true.

21 THE WITNESS: Right, both, both points.

22 BY MR. GOECKE:

23 Q And are you aware that with the reconfiguration of

24 the parking lot, assuming the fueling station would be to

25 open, there would be slightly more space for trucks to back

Page 146

1 into that area?  
2 A No, I don't believe there's any more space.  
3 MS. ROSENFELD: I'm sorry. What was that question  
4 again?  
5 MR. GOECKE: Yes.  
6 MR. GROSSMAN: That's --  
7 MS. ROSENFELD: I didn't hear.  
8 MR. GROSSMAN: -- not consistent. As I recall the  
9 testimony from your witnesses, they said that it wouldn't,  
10 the new site would not change the configuration of how the  
11 trucks access the loading docks. That was --  
12 THE WITNESS: Right. It's changing the  
13 configuration of this pod on the west side of the mall to  
14 allow the delivery truck to get out of the drive aisle on,  
15 or the parking aisle, on the west side. It's my  
16 understanding there is not going to be a change in the width  
17 of this aisle here, the drive aisle.  
18 MS. ROSENFELD: And if I might add further, I  
19 think the testimony was that bollards would be added to  
20 prevent trucks from using the queuing area as, for turning  
21 space --  
22 THE WITNESS: Right. Right.  
23 MS. ROSENFELD: -- whereas under the original plan  
24 it was open and only striped so that they could use it if  
25 they wanted to.

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1 MR. GROSSMAN: Yes, and I don't want to -- and I  
2 don't want it to go to her head, but I, my recollection  
3 agrees with Ms. Rosenfeld.  
4 THE WITNESS: Yes.  
5 MR. GOECKE: Okay.  
6 BY MR. GOECKE:  
7 Q Well, right now where the gas station would go  
8 there are parking spaces, right?  
9 A Yes, there are parking spaces in there.  
10 Q And --  
11 A Do any of these have, somewhat --  
12 MR. GROSSMAN: Well, let me ask you, Mr. Goecke,  
13 do you have a different sense of what's happening on the  
14 eastern side of the subject site that it's going to change  
15 the --  
16 MR. GOECKE: It's not --  
17 MR. GROSSMAN: -- contours of the trucks entering  
18 the loading dock?  
19 MR. GOECKE: That's what I was trying to get to.  
20 My understanding --  
21 MR. GROSSMAN: My recollection of your witnesses'  
22 testimony is that it was not going to change the eastern  
23 side in terms of their entry into the loading docks. Now,  
24 if I'm remembering it incorrectly, then you need to show me  
25 the testimony then.

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1 MR. GOECKE: Okay. We'll do that.  
2 MS. ADELMAN: Mr. Grossman, would it help to look  
3 at the truck turning exhibits --  
4 THE WITNESS: Well --  
5 MS. ADELMAN: -- on the other side of what  
6 Ms. Cordry had?  
7 THE WITNESS: Not really, but this, this indicates  
8 40 feet of the width of the drive aisle here and that is my  
9 understanding, that if we look back, the current width of  
10 the drive aisle is 40 feet.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: Mr. Goecke, do you want this one  
13 back up or --  
14 BY MR. GOECKE:  
15 Q Okay. And then one last point I'd like to ask you  
16 about, Ms. Cordry, is, you testified that in your opinion  
17 some of the traffic occurrences you demonstrated, or that  
18 you showed, demonstrated something other than a level of  
19 service A, is that fair?  
20 A As I said, I have seen a number of descriptions in  
21 county websites about what level of A service means. One of  
22 them appeared to be simply some kind of equating of level of  
23 service with certain critical lane volume numbers --  
24 Q Yes.  
25 A -- that if you had a critical lane volume of, say,

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1 a thousand, that was automatically a Level A, and it went  
2 down from there. Elsewhere I saw, as I say, I don't know  
3 that any of this level of service is still in the county  
4 guidelines, but previously I also saw that they described it  
5 in terms of percentage of the free-flowing speed. I've also  
6 seen on somebody else's site a description as how much  
7 seconds of delay.  
8 So in the sense of the latter concept,  
9 functionality, you know, if level of service is meant to  
10 describe functionality, then yes, I would not think that the  
11 intersection on the days I was watching it would be  
12 considered a level of service A. If that's A, I'd be  
13 shocked to see what a Level F would have been.  
14 Q Okay. I just want to pass out Exhibit 87(c),  
15 which is a letter dated January 13th from 2012 to the Stop  
16 Costco Gas Coalition from --  
17 MR. GROSSMAN: Thank you.  
18 BY MR. GOECKE:  
19 Q -- a Mark Franz, F-R-A-N-Z.  
20 A Yep.  
21 Q And this is Mr. Franz's review of the Costco gas  
22 station traffic impact, TIA, and analysis of the associated  
23 parking situation at Westfield Wheaton Shopping Mall.  
24 A Okay.  
25 Q And if we turn to page 2 of 11 --

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1 A Okay.

2 Q -- in the middle of the page, there's a section

3 entitled Review of TIA, and I believe everyone's copy is

4 highlighted, but I just wanted to point out to a few of the

5 conclusions that Mr. Franz made, one of which, in the middle

6 of that paragraph, says: The methodology used for the trip

7 generation is sound. Do you agree with that statement?

8 A Probably so. I mean, this was not something I

9 generated or worked with, but in general, as we see in the

10 trip generation -- well, okay, let me back up. The

11 methodology, I think, is based on using these ITE guidelines

12 and so forth and that -- they followed those kind of

13 guidelines. I think, as we've seen, the reality is that the

14 actual numbers are somewhat higher than that but the

15 methodology may be what the county says to use. In that

16 case, then it was probably sound in that sense.

17 Q Okay. And then going down a bit further, the

18 sentence begins, In any case.

19 A Uh-huh.

20 Q About six lines up from the bottom of that

21 paragraph: In any case, since none of the analyzed

22 intersections were close to the critical, I'm sorry, were

23 close to the critical CLV value, it is reasonable to assume

24 that these variations in trip distribution would not cause

25 any intersection to reach its critical CLV value. Did I

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1 read that correctly?

2 A You read that correctly.

3 Q Almost. And so Mr. Franz concluded that the TIA

4 analysis, he supported the conclusions of the TIA analysis

5 on that point?

6 A Well, he said it met the standards required in the

7 LATR and PAMR guidelines, and of course, what we've just

8 suggested is that, yes, those do have certain CLV numbers

9 that are there and, if you don't violate those CLV numbers,

10 then you have met those guidelines, but do those CLV numbers

11 necessarily mean that intersection works? The answer is

12 obviously no. I mean, the clearest example is when you have

13 the blocks balked, or the box blocked --

14 MR. GROSSMAN: Or one of those two.

15 THE WITNESS: One of those two things. When the

16 box is completely blocked and no one is moving, the CLV

17 value for that intersection is zero. That doesn't mean it's

18 a workable intersection. So --

19 BY MR. GOECKE:

20 Q And, again, that's an enforcement issue,

21 preventing people from blocking the box?

22 A Well, it's just, it's an enforcement issue, but

23 it's also just a fact that the CLV number has -- it

24 certainly has its value. It's useful for various things.

25 There are other aspects of what happens in an intersection

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1 that is not necessarily captured by the CLV value.

2 MR. GOECKE: No further questions.

3 MR. GROSSMAN: All right. Is there redirect?

4 MS. ROSENFELD: Yes. Thank you.

5 REDIRECT EXAMINATION

6 BY MS. ROSENFELD:

7 Q Ms. Cordry, while we're on the subject of Exhibit

8 187(c) --

9 MR. GOECKE: I think it's just 87(c).

10 MR. GROSSMAN: 87. 87(c).

11 MS. ROSENFELD: I'm sorry.

12 MR. GROSSMAN: The Stop Costco Gas Coalition --

13 MS. ROSENFELD: You're correct.

14 MR. GROSSMAN: -- submission.

15 MS. ROSENFELD: Hard to think back to double-digit

16 exhibits.

17 MR. GROSSMAN: Yes, tell me about it.

18 BY MS. ROSENFELD:

19 Q On page 2 of Exhibit 87(c), there was,

20 additionally, evaluation not only of the TIA but a parking

21 analysis as well. The first paragraph under the heading

22 Parking Analysis on page 2, would you read that paragraph

23 into the record, please?

24 A Sure. While the submitted TIA adequately

25 evaluated the impact of the proposed Costco gas station on

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1 intersection performance and basic pedestrian

2 considerations, it does not directly address the impact of

3 the gas station on parking at the Westfield Wheaton Shopping

4 Mall. The omission of this consideration may underestimate

5 the impact of the proposed gas station -- Costco gas

6 station, I'm sorry -- on the local traffic flow and traffic

7 safety.

8 Q Okay. And let me ask you, have you reviewed this

9 document before, or is this the first time that you've seen

10 it?

11 A I believe I read it quite a few months ago.

12 Q Okay. In that case, I am going to ask you some

13 questions on pages 3 and 4 of this document --

14 A Okay. Okay.

15 Q -- if you would take a few moments to look at it,

16 please.

17 A Sure. Okay. Okay.

18 Q Okay. Looking at the last paragraph of page 3,

19 there were some general analysis in here with respect to the

20 amount of parking that's available, including in the WMATA

21 parking garage. Did Mr. Franz have any conclusions as to

22 whether or not, or what effect availability parking spaces

23 might -- I'm sorry. Did he have an opinion as to what

24 amount of parking might be available to Costco patrons in

25 the WMATA parking garage?

1 A Well, he certainly noted that obviously, not  
2 surprisingly, that there are people parked at the WMATA  
3 garage, presumably using the WMATA garage to access the  
4 Metro, as I think there was some discussion earlier today on  
5 that point, and that obviously, to the extent that it's  
6 being used for Metro patrons -- which is, presumably, its  
7 primary use, actually -- that that would not be available to  
8 service mall patrons.

9 Q Okay. And turning to page 4 of the same exhibit,  
10 in the second full paragraph, there's a sentence that begins  
11 with, In the instance of a wholesale store, and this is  
12 talking about, again, going to the issue of parking and  
13 pedestrian safety. If you could read that section.

14 A The whole paragraph?  
15 MR. GROSSMAN: Which?  
16 BY MS. ROSENFELD:

17 Q No, just starting with, In the instance of a  
18 wholesale store.

19 A Oh, okay. In the instance of a wholesale store,  
20 it's reasonable to assume that most patrons will not be  
21 willing to push their carts over far distances to load their  
22 vehicles. Thus, if the number of available parking stalls  
23 near the main store exit is not sufficient, patrons may  
24 circulate the lot, looking for parking. This circulation of  
25 traffic raises the likelihood of a conflict, be it a

1 vehicle-to-vehicle or vehicle-to-pedestrian conflict, and  
2 then notes the two lots that are close to the Costco store:  
3 Lot A, which is that main southwest quadrant parking lot,  
4 and then Lot B, the lot on the north side of the Target,  
5 between the Target and the Macy's.

6 Q And Lot A is shown on Figure 2 of --

7 A Yes.

8 Q -- page 5?

9 A Yes.

10 Q And is Mr. Franz's conclusion with respect to  
11 pedestrian safety within that parking lot consistent with  
12 the testimony that you've presented so far in this case?

13 A Yes. It was -- the point being that, yes, as  
14 people try to circulate, as they try to find a space in that  
15 lot, as people are -- and I think, speaking of the WMATA  
16 garage, it would not just be the fact that it's the  
17 distance. It's also the fact that if they came there during  
18 the day, they'd have to pay to park there, and I think most  
19 people are very reluctant to want to pay to park to go  
20 shopping when there are theoretically free spaces at the  
21 mall. So they would spend a lot of time circling, looking  
22 for a free space, rather than want to have to pay to go in  
23 and park.

24 Q Okay, thank you. If we could turn back for a  
25 moment to Exhibit No. 397(b) --

1 A Okay.

2 Q -- Mr. Goecke had asked some questions about  
3 statistical information on pedestrian and vehicular  
4 accidents. On the top two paragraphs of page 1, is there --  
5 did the county come up with some numerical quantification of  
6 pedestrian collisions and how many of those actually occur  
7 in parking lots and parking garages?

8 A Right. Right, that in 2012 there were 423  
9 reported pedestrian collisions and, of that number, 125, or  
10 about 30 percent, occurred in parking lots and garages,  
11 which was the 39 percent increase in one year and the third  
12 consecutive year of increases in these parking lot  
13 collisions.

14 Q And in 2011?

15 A Twenty-three percent out of 399 occurred in  
16 parking lots.

17 Q Okay. And on that same page, directly under  
18 Figure 2, does the report give any sense of the relative  
19 number of accidents that happen in parking lots as opposed  
20 to parking garages or the types of parking lots where those  
21 collisions might occur?

22 A Well, I think it -- as I said, the 83 percent  
23 number occurred in these private retail parking lots, and  
24 then the rest, there were five in residential lots, seven at  
25 commercial or industrial facilities, three in county parking

1 lot and garages, sorry to say, two at middle schools and  
2 one --

3 MR. GROSSMAN: Why did you look at me when you  
4 said that?

5 THE WITNESS: Well, because you're a county  
6 official, sir.

7 MR. SILVERMAN: Aren't you responsible for those?

8 THE WITNESS: Yes, you're responsible for all of  
9 those, yes. And one each at a hospital, cemetery, county  
10 library, and Metro station.

11 BY MS. ROSENFELD:

12 Q Okay. So a significant percentage --

13 A Oh, and I'm sorry. Actually, at the very end, it  
14 does say five percent occurred in parking garages rather  
15 than lots.

16 Q Okay. So this report, at least, concludes, or  
17 this study concludes that 83 percent occur in private retail  
18 surface lots as opposed to elsewhere, is that correct?

19 A Yes. If I'm reading this correctly, the five  
20 percent is in addition to the 83 percent.

21 Q Okay. And also on that same page, in the next  
22 paragraph, what seems to be the most direct causal factor of  
23 pedestrian vehicular collisions?

24 A It's like one of these reading tests. Well,  
25 obviously, peak hours of parking lot usage, it says. When

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1 you got a lot of people there, you have more chances of  
2 having collisions. That's at the bottom of the page and  
3 going up to the top of the next, or I'm sorry, at the bottom  
4 of that column and going up to the top of the next column.  
5 Q So it's not darkness, for example?  
6 A It's not darkness.  
7 Q Okay. All right, thank you.  
8 MR. GROSSMAN: Was that a final thank you or a  
9 temporary thank you?  
10 MS. ROSENFELD: Temporary thank you.  
11 MR. GROSSMAN: Hope springs eternal.  
12 MR. SILVERMAN: An interlocutory thank you.  
13 MR. GOECKE: May I ask one follow-up question?  
14 MR. GROSSMAN: Well, she's not finished yet.  
15 MR. GOECKE: Oh, okay.  
16 MR. GROSSMAN: She gave me a temporary thank you.  
17 BY MS. ROSENFELD:  
18 Q Turning to Exhibit No. 159, Mr. Goecke had been  
19 asking you primarily about if queued vehicles driving --  
20 A This one?  
21 Q No. 159 is the aerial that's up there now.  
22 A Oh, okay, yes. I'm sorry, yes.  
23 Q Had asked you primarily about queued vehicles  
24 heading southwest on Veirs Mill Road and the backup there.  
25 A I'm sorry. On University, do you mean?

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1 Q I'm sorry, on University.  
2 A Yes.  
3 Q I believe you've testified, though, that there  
4 also are queues heading northeast on University.  
5 A Yes. Yes, that it backs up down onto University,  
6 going off to the west here, heading northeast, yes.  
7 Q And you've testified that the queues extend to or  
8 close to Drumm Avenue, is that correct?  
9 A Yes.  
10 Q And have you seen those queues extend beyond Drumm  
11 Avenue?  
12 A I have not personally seen it extend beyond Drumm  
13 Avenue, but I've seen it get pretty close.  
14 Q Okay. And so at least hypothetically, if vehicles  
15 were to extend beyond Drumm Avenue, do you think that would  
16 have an impact on vehicles trying to exit Drumm Avenue onto  
17 University?  
18 A Certainly that's true because this intersection  
19 here, I mean, you can't tell from this aerial map because it  
20 doesn't show elevations, but very shortly after you continue  
21 looking to the west from Drumm Avenue, there's a fairly  
22 substantial drop-off there. So the cars are coming up the  
23 hill; you don't have a lot of sight line there. If the  
24 traffic is not heavy, you can get out and get there within  
25 the pretty short area of sight that you have there, but if

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1 there are cars parked there, that's going to -- I mean,  
2 waiting there -- that's going to, you know, interfere with  
3 being able to see that, back that way. Cars coming over the  
4 hill may also have a real concern because, again, you know,  
5 they will be coming, expecting to have open lanes of traffic  
6 and, if you come up on cars standing there all of a sudden,  
7 that's going to be an issue as well.  
8 I mean, our neighborhood has tried to get a  
9 parking light at Drumm on a number of occasions and -- a  
10 stoplight there -- and they've been told by the State  
11 Highway people that it's too close to the mall entrance.  
12 There are criteria and characteristics and standards in  
13 where you put these things, and they don't want those  
14 stoplights so close together. So we have not been able to  
15 get a stoplight there. We're still just left with an  
16 unsignalized intersection, and it's -- the sight lines  
17 aren't great; so you have to do some careful, you know,  
18 watching to be able to get out there, and when you put a lot  
19 more traffic and mess up the sight lines and put more people  
20 backing down there, it's going to make more difficulty with  
21 that intersection, yes.  
22 Q There also has been testimony about potential  
23 cut-through traffic along McComas Road and up Drumm.  
24 A Yes.  
25 Q And I think there had been a suggestion that

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1 should that occur or should the evidence show that that is  
2 likely to occur, that it really would have no impact on the  
3 neighborhood. In your view, would that increased traffic  
4 have an impact on the properties that fall within the  
5 neighborhood, bordering on Mount McComas and Drumm?  
6 A Sure. McComas Avenue is not real narrow, but it's  
7 really only, there's room for one lane of cars to be parked  
8 on one side and then the two lanes driving through. We've  
9 had numerous discussions at our community association  
10 meeting about the speed of traffic there, that people have  
11 had, you know, one person's had three different rearview  
12 mirrors knocked off his car on the left-hand side from  
13 people hitting there. And Drumm is even worse. It's quite  
14 narrow. You generally have to really kind of pull over to  
15 the side and let somebody through and so forth. It's  
16 winding. It's hilly. So -- and, actually, McComas is quite  
17 hilly too -- so both of these are, they get a lot of  
18 traffic, but they're hardly ideal roads for a lot of  
19 traffic.  
20 So for anybody trying to pull out there, if you  
21 got a lot more traffic, again, sight lines are bad, the  
22 roads are narrow, you know, the more traffic you get, the  
23 more difficulty it's going to be for those people who are on  
24 the inside of this sort of slightly arbitrary line but, you  
25 know, for them to be able to pull out and use the road and

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1 certainly for everyone else in the neighborhood who was  
2 trying to use those roads as well.  
3 Q Thank you. Going back to the notes and videos  
4 that you took that became the basis for your observations --  
5 and I forgot the exhibit number.  
6 A For the PowerPoint?  
7 Q Your written observations.  
8 A Oh, written observations were 377, I believe.  
9 Q 377, Exhibit 377. After you made your  
10 observations, how long was it, generally, before you went  
11 back and wrote your notes in the notepad that you  
12 referenced?  
13 A Most times I would -- as I say, I go out; I take a  
14 walk in the morning with or without the dog. Before the  
15 time I got the dog, I did it by myself. After that, we'd  
16 all go back. And usually I --  
17 MR. GROSSMAN: You didn't get the dog just to  
18 measure the heights of --  
19 THE WITNESS: No. No. I got the dog as someone  
20 who -- the usual rescue thing. I met somebody. They had  
21 the dog. They couldn't keep him. I said I was thinking  
22 about getting a dog, but --  
23 MR. GROSSMAN: Well, I didn't need the whole  
24 story.  
25 THE WITNESS: But in any case, yes, that's enough.

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1 MR. GROSSMAN: It was just a Hearing Examiner  
2 joke.  
3 THE WITNESS: Yes, exactly, exactly. In any case,  
4 I've had the dog since the end of April. So, in any case, I  
5 -- sorry, it's been a long day already -- I went, usually  
6 I'd go back in the morning and just write it down. I'd  
7 usually leave it laying on my table there, and I'd write it  
8 down at the time.  
9 BY MS. ROSENFELD:  
10 Q Okay. And so is it fair to say that the notes  
11 were contemporaneous with --  
12 A Right.  
13 Q -- your observations? And then, in addition, you  
14 had your videos and photographs to refresh your memory --  
15 A Yes. Yes.  
16 Q -- when you made these observations? Okay.  
17 Turning to Video 2 --  
18 A Okay.  
19 Q -- which was on your screen earlier --  
20 A Right, uh-huh. Do you want that back up or --  
21 Q Yes, if you would, please.  
22 A Okay. Let's see if we can get that back. I'll  
23 turn the sound down a little bit.  
24 Q And, actually, that's not the angle that it was  
25 at. Could you play that for just a moment, and I'll ask you

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1 to pause it shortly.  
2 (Whereupon, the videotape referred to was played.)  
3 A Do you want me to show, like, when I was around,  
4 behind the back of him?  
5 Q There was a wider angle at one point. Oh, no, no,  
6 no, no.  
7 MR. GROSSMAN: I'm sorry, but I don't think this  
8 competes with Lawrence of Arabia.  
9 THE WITNESS: No, probably doesn't.  
10 BY MS. ROSENFELD:  
11 Q All right, great, right about there would be good.  
12 A Okay. All right.  
13 (Whereupon, the videotape referred to was paused.)  
14 Q Does it pull back farther to the rear back of the  
15 truck?  
16 MR. GROSSMAN: I don't think so.  
17 THE WITNESS: At the beginning, I went around and  
18 showed you --  
19 MR. GROSSMAN: The license plate.  
20 BY MS. ROSENFELD:  
21 Q Okay. Let's start. Let's start there. Then we  
22 can --  
23 A Yes. At the very beginning, I -- I walked around  
24 the back of the truck and showed you what its license plate  
25 was, but --

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1 Q Okay. Ms. Cordry, looking at -- is that marked?  
2 Why does this not have an exhibit number?  
3 A What's the date on that?  
4 MR. GROSSMAN: There was another one that did.  
5 So --  
6 THE WITNESS: It has a back. Turn it around.  
7 BY MS. ROSENFELD:  
8 Q Yes. Oh, okay. Looking at Exhibit No. 155, can  
9 you show where the truck shown in Video 2 is parked?  
10 MR. GROSSMAN: You can use the pointer from your  
11 seat.  
12 THE WITNESS: Right. I'm trying to determine  
13 exactly -- it actually will be easier on the original aerial  
14 because where --  
15 BY MS. ROSENFELD:  
16 Q Sure.  
17 A -- where the truck is parked now is going to be  
18 completely restriped and redesigned and so forth, but --  
19 Q And you're looking now at Exhibit No. 159?  
20 A Yes.  
21 Q Okay.  
22 A The truck at that point was in, and I can tell  
23 when it circled around -- this small drive aisle here I have  
24 referred to as Drive Aisle C or Area C. He's actually up in  
25 this parking area between Drive Aisle C and the main

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1 east-west drive aisle. He was just sitting in the middle of  
2 the parking lot there.  
3 Q And, Ms. Cordry, can you tell from either your  
4 memory or from the video how many parking spaces that truck  
5 now occupies, occupied?  
6 A Oh, that would look like about one, two, probably  
7 four and then, of course, blocking the aisle, the drive  
8 aisle going up and down there --  
9 Q And that was my next question. Is that --  
10 A -- or the parking -- I should, let me say, when I  
11 say the parking aisle, I mean in between two lines of  
12 parking lanes. When I say the drive aisle, I'm talking  
13 about one of these ones that does not have parking spaces on  
14 either side. So to try to keep it consistent, what he is  
15 blocking is a parking aisle, and there -- and it looks like  
16 he's taking up probably four, at least four spaces.  
17 Q Four parking spaces within two separate parking  
18 aisles?  
19 A Yes, exactly.  
20 Q And is the truck, as well, blocking a drive aisle?  
21 A No. He is sitting there between the two drive  
22 aisles, as I say, crosswise here of this area between what  
23 I've referred to as Area C and this drive aisle up here, the  
24 main east-west drive aisle to the store.  
25 Q Let me ask you this question. If the truck were

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1 not parked there, would a vehicle be able to drive over in  
2 the direction of either of the two arrows that are painted  
3 on the ground right there?  
4 A Yes. Without the truck there, that is exactly  
5 where cars would drive up and down in order to park in those  
6 spaces there.  
7 Q Okay. So the truck is in fact impeding the flow  
8 of traffic where he's currently parked, is that correct?  
9 A Yes. Yes.  
10 Q And have you seen other trucks parked in similar  
11 fashion?  
12 A Most -- well, yes. Certainly there are a number  
13 of trucks -- well, okay, let me back up. Quite often,  
14 trucks during the morning, in particular, are parked in the,  
15 what I've called Area B, which is the area which would now  
16 be the very south side of where the station would be, and  
17 they would be either taking up parking spaces if they're  
18 right up against the ring road barrier or they might be in  
19 that drive aisle there. In the morning time, that would be  
20 before the store was open, but in the evening and other  
21 times, when they do park in that area, there's still -- I've  
22 often seen trucks there overnight, and I think some of the  
23 observations, you know, mention that. And they do take up  
24 spaces and/or take up some of that drive space along there,  
25 yes.

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1 Q And do you know if the mall was open at the time  
2 this truck was parked?  
3 A This particular one, I believe, was like 7:30 at  
4 night. So, yes, the mall would have been open.  
5 Q Turning to Exhibit No. 155, Mr. Goecke asked you  
6 earlier about the pedestrian pathway that on Exhibit 155  
7 runs parallel to the top of the northern side of the special  
8 exception area. Do you recall that questioning?  
9 A Yes, uh-huh.  
10 Q And, in fact, he asked you if that might be a  
11 safety feature --  
12 A Yes.  
13 Q -- on the property. And I also am going to ask  
14 you to take a look at Exhibit No. 128(b), which is an  
15 exhibit prepared by Mr. Guckert --  
16 A Yes.  
17 Q -- with respect to traffic --  
18 A Right.  
19 Q -- traffic and pedestrian levels.  
20 A Yes.  
21 Q Do you have a sense for how many people might be  
22 using this pedestrian walkway given the numbers of  
23 pedestrians that are identified in Mr. Guckert's --  
24 A Right. Okay. Well, as I testified, his report  
25 indicated that at a peak hour, there would be approximately

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1 1600 pedestrians entering the mall entrance, which is the  
2 one that goes into the Costco itself.  
3 MR. GROSSMAN: A sum of those entering and  
4 leaving.  
5 THE WITNESS: I'm sorry, yes, entering and  
6 leaving, yes. There would be 1600 entering and leaving the  
7 Costco mall entrance, which is on the, you know, the  
8 north-south side of this thing. That doesn't count, of  
9 course, he did not count in any way the ones going to the  
10 Target; so those would be ones coming from the area above  
11 there. But just the ones coming from the southwest quadrant  
12 here and probably some just above that, that east-west drive  
13 aisle also would be part of that 1600 during the main hour  
14 entering and leaving, and then I think the number was about  
15 9,000 -- actually, somewhere between 9 and 10,000 over the  
16 course of the day, or no, eight hours. I believe that was  
17 just eight hours' figure, so about 9500 people walking to  
18 and from this area in the course of a day.  
19 BY MS. ROSENFELD:  
20 Q And would it be fair to say that if those  
21 pedestrians used the pedestrian crosswalk, that there would  
22 be a fairly steady stream of pedestrians within that  
23 crosswalk?  
24 A Right. Well, as I say, if you took 1800 and  
25 divided that by 60, that's 30 a minute. If you ratchet that

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1 down slightly, that's probably about 27 a minute either  
2 going in or coming out. So, obviously, they come from a  
3 different area, but as they funnel towards the store, they  
4 get more and more compacted there, and as I say, especially  
5 if you funnel them all -- you know, it's a two-edged sword.  
6 It's great to have a marked walk there, but if they all  
7 funnel down into that area, that's a lot of people. If  
8 you --  
9 Q And presumably, the cars exiting the queues that  
10 in fact choose to drive straight through rather than make a  
11 right or left-hand turn would need to wait; in fact, it's  
12 county law, isn't it, that they would need to wait for those  
13 pedestrians to clear before they could drive through?  
14 A Right. I believe that with a marked crosswalk  
15 even in a parking lot, private parking lot, I think you, at  
16 that point, are still supposed to defer to the pedestrians,  
17 and yes, most of us, in any case, do do that. So, yes, if  
18 there was --  
19 MR. GROSSMAN: Is that a county or state law?  
20 THE WITNESS: That would be county, I believe, if  
21 it was anything, yes.  
22 MS. ROSENFELD: I believe it was introduced in the  
23 record.  
24 THE WITNESS: Oh, I'm sorry. No, I would take  
25 that back. That was actually a state law that --

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1 MR. GROSSMAN: Right.  
2 THE WITNESS: -- Maryland state law on enforcement  
3 of those things, but -- so if you took half of that 27 --  
4 MR. GROSSMAN: So, I guess then we don't count  
5 that against Ms. Rosenfeld's credibility.  
6 THE WITNESS: Well, Ms. Rosenfeld --  
7 MR. GROSSMAN: Just a little tease about --  
8 THE WITNESS: I understand. I understand.  
9 MS. ROSENFELD: We get it.  
10 THE WITNESS: I understand -- I understood the  
11 point of it to begin with, yes.  
12 MR. GROSSMAN: All right.  
13 MS. ROSENFELD: I'll take one for the team.  
14 THE WITNESS: If you took 27, 28, so you can  
15 divide it evenly, if you took 28 people going in and out,  
16 took half of that to be going in, that would be 14 people a  
17 minute probably, you know, sort of funneling through here,  
18 would be some kind of an estimate. So -- with kids, with  
19 strollers, with carts -- so if these cars are trying to come  
20 out, that's a lot of people they have to be either trying to  
21 dodge or wait for, which can, you know, clearly indicate  
22 that you're going to have some issues with them not  
23 necessarily being able to get out right away, slowing these  
24 kind of exit things.  
25 MR. GROSSMAN: Okay.

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1 BY MS. ROSENFELD:  
2 Q Do you think that might potentially have an impact  
3 on the queuing within the gas station queuing area itself?  
4 A I think there could be, you know. I mean, you  
5 know, every one of these things, it's hard to develop  
6 exactly how each one will work, but --  
7 MR. GROSSMAN: Now, that's pretty speculative, I  
8 think --  
9 THE WITNESS: Right.  
10 MR. GROSSMAN: -- don't you think?  
11 MS. ROSENFELD: Well, let me ask the question a  
12 different way.  
13 BY MS. ROSENFELD:  
14 Q You've described a series of compounding,  
15 potential compounding effects of the circulation within the  
16 parking lot --  
17 A Right.  
18 Q -- do you think this might be one of them?  
19 A Yeah, it certainly is yet another factor that can  
20 slow things down, back things up. You've got two lines of  
21 cars, at least, that are trying to get through this area  
22 here. Probably the most likely is maybe these two might try  
23 to go out to the -- the two ones on the left-hand side might  
24 try to go out to the left; the two on the right side might  
25 try to go out to the right --

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1 MR. GROSSMAN: And for the record, you're  
2 referring to --  
3 THE WITNESS: To the special exception --  
4 MR. GROSSMAN: -- the northern exit area --  
5 THE WITNESS: Yeah.  
6 MR. GROSSMAN: -- of the special exception, the  
7 four directions they can take.  
8 THE WITNESS: Right. So the two in the center --  
9 the four going in the center, two of them might try to go  
10 out through the one set of islands; two, through the other.  
11 Then they're combining into one drive aisle. They're coming  
12 up to this pedestrian area. They're having to wait to see  
13 if a pedestrian is crossing. Then they're trying to pull  
14 out into this very busy drive aisle itself, which, again,  
15 may hold them up. So is there an ability in this fairly  
16 short area to have backups and to have it precluding people  
17 from being able to get out of the special exception area?  
18 Certainly, and if they can't get out, then more people can't  
19 get in.  
20 BY MS. ROSENFELD:  
21 Q And do you know where the entrances to the  
22 tire-changing service are located?  
23 A The tire center is on, kind of right at the, where  
24 the north-south drive aisle comes in. That's -- it's maybe  
25 not quite centered on that area, but it's in that general

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1 vicinity there.

2 Q So another potential source of vehicular activity?

3 A Yes.

4 Q And one last question. For the vehicles -- I'm

5 looking now at Exhibit 232(b) -- for those vehicles that

6 might choose to exit through the western --

7 MR. GROSSMAN: Eastern.

8 BY MS. ROSENFELD:

9 Q -- the easterly side of the --

10 A Yes.

11 Q -- gas station in lieu of driving north through

12 the straight drive aisles, if they exit to the east and make

13 a left, they're heading toward the pedestrian pathway, and

14 if they make a right and head south, what area are they

15 driving through?

16 A Well, at that point, they're coming into the main

17 area where trucks are being used, you know, and accessing

18 the loading dock, and I think, as a number of the pictures I

19 showed at different times, there are often trucks parked in

20 that aisle, there are trucks backing up through that aisle,

21 there are trucks parked -- that used to be parked in this

22 area, what I've called the Area B area here, but that now

23 couldn't park there anymore and would be displaced to

24 somewhere else, quite possibly in this drive aisle.

25 So they are coming into an area there at different

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1 times of day and at different levels of, you know -- I mean,

2 the trucks aren't there every single minute of -- every

3 minute of the day, but that's an area where trucks are and

4 are trying to do these kind of backing maneuvers, and while

5 somebody is taking that six minutes to back in, you pretty

6 much didn't get anybody else going through that lane there.

7 Q Okay.

8 MS. ROSENFELD: One moment, please.

9 MR. GROSSMAN: Sure.

10 MS. ROSENFELD: Okay. Thank you, Ms. Cordry. I

11 have no further questions.

12 MR. GROSSMAN: All right. Any recross?

13 MR. GOECKE: One question.

14 RE-CROSS EXAMINATION

15 BY MR. GOECKE:

16 Q If we could return to Exhibit 87(c), please,

17 Ms. Cordry, on page 5.

18 A Okay. That was the --

19 Q This is Mr. Franz's --

20 A Mr. Franz's report, okay. I'm sorry. What page?

21 Q It's page 5 of 11 --

22 A Okay.

23 Q -- the diagram there of the parking lots that he

24 analyzed.

25 A Uh-huh.

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1 Q And if you notice, he identifies two lots --

2 A Uh-huh.

3 Q -- Lot A to the east of the Costco warehouse and

4 Lot B -- I'm sorry, I keep getting my directions messed up

5 today -- to the west of the Costco parking lot, and Lot B up

6 near Macy's, but he did not analyze the parking structure to

7 the east of the Costco warehouse, did he?

8 A Well, this part of the report stops at page 5.

9 I'm not sure if the other six pages went on and talked about

10 the garage or not. And I'm sorry. You're talking about the

11 garage, correct, or --

12 Q Yes.

13 MR. GROSSMAN: Yes.

14 THE WITNESS: Yes. There's six more pages of

15 this. So I'm not sure what else he discussed in the other

16 six pages.

17 MR. GOECKE: Okay. No other questions.

18 MR. GROSSMAN: Okay. Well, thank you, Ms. Cordry.

19 THE WITNESS: All right.

20 MR. GROSSMAN: I think it's a fair time to break

21 for lunch. We'll come back at 2 o'clock, and hopefully

22 Mr. Sheveiko will be here, and we can start with him and --

23 MS. CORDRY: I think Kathy Michels is --

24 MR. GROSSMAN: -- and Kathy Michels.

25 MS. CORDRY: Yeah, and that hopefully will take us

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1 to the end of the day.

2 MR. GROSSMAN: All right. Thank you. Then we're

3 recessed until 2:00.

4 MS. ROSENFELD: Thank you.

5 (Whereupon, at 2:30 p.m., a luncheon recess was

6 taken.)

7 MR. GROSSMAN: I think, by the way, we need to

8 think about potential additional dates as it is unlikely

9 that we'll be able to complete this by, through December 6,

10 unless there are no rebuttal witnesses. I mean, I don't

11 know if the --

12 MS. HARRIS: We, no, we expect to have some

13 rebuttal witnesses.

14 MR. GROSSMAN: All right. So what I suggest is we

15 want to get at least 30 days' notice out to people. So I --

16 yes. Well, I was going to --

17 MS. HARRIS: No, I was going to anticipate what

18 you've said in other instances. We'll coordinate with the

19 opposition and then propose some dates.

20 MR. GROSSMAN: Right. Talk, figure out some

21 dates, and --

22 MS. ADELMAN: In 2014, are you speaking of,

23 Mr. Grossman?

24 MR. GROSSMAN: Well, I don't think that we'll fit

25 them into December.

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1 MS. ADELMAN: I don't think so either.  
2 MR. GROSSMAN: I have other hearings, as well, in  
3 December, but we don't want to put it in the last two weeks  
4 of December. So the practical fact is that we won't do it  
5 in December, unless you have some other ideas, Applicant?  
6 MS. HARRIS: No. I mean, unfortunately, I don't  
7 disagree.  
8 MR. GROSSMAN: Okay. So we are thinking about  
9 January. Okay. I'd ask, since we want to make sure, as I  
10 say, to get 30 days out, so I'd ask you all to discuss this  
11 sometime within the next week or so, so we can have the  
12 back-and-forth that usually -- it's usually required.  
13 MS. HARRIS: And then, also, before the end of the  
14 day, if we could get a realistic expectation of the  
15 witnesses for the 5th and 6th, that would be helpful.  
16 MR. GROSSMAN: Yes. At the end of the day, let's  
17 get that --  
18 MS. CORDRY: I think we --  
19 MR. GROSSMAN: -- see if we can solidify that.  
20 MS. CORDRY: We can work on that.  
21 MR. GROSSMAN: All right. Dr. Adelman, did you  
22 have something you wanted to say or -- okay.  
23 MR. ADELMAN: No.  
24 MR. GROSSMAN: All right.  
25 MR. ADELMAN: How about good night?

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1 MR. GROSSMAN: Good night and good luck, is that  
2 -- all right. Any problem with moving on to Mr. Sheveiko?  
3 (No audible response.)  
4 MR. GROSSMAN: Okay. Mr. Sheveiko, would you be  
5 so kind? I'm sorry to hear about your back. I've been  
6 through that myself.  
7 MR. SHEVEIKO: Well, thanks, sir, for the  
8 commiseration. I find it helps me to blame my parents,  
9 because they gave me bad genes.  
10 MR. GROSSMAN: Oh, well, I blame my wife usually.  
11 So --  
12 MR. SHEVEIKO: Oh.  
13 MR. GROSSMAN: -- and I can't accuse her of giving  
14 me bad genes, but -- all right. So would you state your  
15 full name and address for the record, please?  
16 MR. SHEVEIKO: Danila Sergey Sheveiko, 10812  
17 Melvin Grove Court, Kensington, Maryland 20895.  
18 MR. GROSSMAN: Okay. And would you spell your  
19 first and last name for the record so that --  
20 MR. SHEVEIKO: That's Delta Alpha November India  
21 Lima Alpha, and last name is Sierra Hotel Echo Victor Echo  
22 India Kilo Oscar.  
23 MR. GROSSMAN: I assure you, you did that faster  
24 than I could write it down.  
25 MS. CORDRY: Have to write aggressive.

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1 MR. SILVERMAN: We've done it before.  
2 MR. GROSSMAN: Okay. Would you raise your right  
3 hand, please?  
4 (Witness sworn.)  
5 MR. GROSSMAN: All right. You may proceed.  
6 DIRECT EXAMINATION  
7 THE WITNESS: All right. Well, I will be speaking  
8 on several points today and not as an expert witness,  
9 obviously, but I did want to give you a little bit of  
10 information about my background.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: I, besides being the former  
13 president of the Kensington Heights Civic Association, since  
14 the beginning of this whole battle over the gas station,  
15 which has lasted nearly four years now, I was the chair of  
16 the Costco Working Group and a member of the land use  
17 committee with the Civic Association, and I also served  
18 three years on the county's Water Quality Advisory Group,  
19 nominated by the county executive, and in 2012 and 2013 I  
20 co-chaired that group, have a B.S. in finance, most of a  
21 degree in international business management, and a half of  
22 five-year degree in ecology from Russia.  
23 MR. GROSSMAN: Okay.  
24 THE WITNESS: So I kind of, that should -- I kind  
25 of try to look at things from both sides of those two

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1 issues, and when Costco came, we, you know, I took that  
2 approach to dealing with this company. So --  
3 As far as the history of the case itself, since I,  
4 I was there at the very beginning and I'm still here at the  
5 end -- with a cane, but I'm still here -- I was wondering if  
6 I could just take a couple of minutes to go through the  
7 history of the case and educate you on how it started before  
8 the special exception occurred, and you can, you can feel  
9 free to stop me at any time.  
10 MR. GROSSMAN: You tell me if you think it's  
11 relevant to -- as you know, I'm interested --  
12 THE WITNESS: Right.  
13 MR. GROSSMAN: -- in things that bear on what I  
14 have to evaluate and recommend on. So --  
15 THE WITNESS: Right. I understand --  
16 MR. GROSSMAN: So --  
17 THE WITNESS: -- and so maybe I should start with  
18 the conclusions then --  
19 MR. GROSSMAN: All right.  
20 THE WITNESS: -- because you've asked several  
21 witnesses before, well, what are your conclusions and then  
22 we'll work back from there.  
23 MR. GROSSMAN: Right. I like to know -- I don't  
24 like suspense very much. I'm --  
25 THE WITNESS: Right. Right. Well, I --

1 MR. GROSSMAN: -- very bad at Perry Mason.  
 2 THE WITNESS: Well, so I wanted to talk about the  
 3 history of the case, and I wanted to talk a little bit about  
 4 the Wheaton Sector Plan.  
 5 MR. GROSSMAN: Okay.  
 6 THE WITNESS: And then I wanted to talk about  
 7 noise and, generally, my experience living next to the  
 8 Costco warehouse and how I think it would affect, affect me  
 9 personally if the gas station is to be approved.  
 10 MR. GROSSMAN: Okay.  
 11 THE WITNESS: And then, then I did want to say for  
 12 the record, I'd just like two sentences on the forest  
 13 conservation buffer. I know. I know, but that's just going  
 14 to be for the record. And, finally, I wanted to make some  
 15 closing arguments on need and emotion.  
 16 MR. GROSSMAN: Why don't I let you proceed the way  
 17 you want to proceed.  
 18 THE WITNESS: Okay. Well, so in terms of the  
 19 history of the case, I was there when the project was  
 20 presented to the Kensington Heights Civic Association at a  
 21 special meeting, and from the beginning we just could never  
 22 get on the right page, page with Costco and Westfield. So  
 23 in their original presentation to us, the gas station wasn't  
 24 even mentioned in the actual presentation, and once the Q  
 25 and A was opened and people were like, well, what's that in

1 the right-hand corner, oh, well, that's the gas station, you  
 2 know. So from the very beginning, we had problems in our  
 3 dealings with Costco Wholesale Corporation.  
 4 MR. GROSSMAN: Wasn't that in the left-hand  
 5 corner, by the way?  
 6 THE WITNESS: Yes, left-hand corner, yes. Thank  
 7 you so much for the correction. So from the very beginning,  
 8 we were very much trying to be constructive, and we very  
 9 much stated that our opposition against the Costco gas  
 10 station is tied to its specific location, abutting the  
 11 neighborhood. And we went to great lengths and spent a lot  
 12 of time searching for alternative locations within the mall  
 13 parcel for the gas station, and it was literally, not quite  
 14 a year we spent on trying, you know, back and forth and  
 15 trying to deal with the stakeholders, and we were told  
 16 essentially that all the parking space in the mall is  
 17 accounted for and there's tenant agreements which cannot be  
 18 violated, so the gas station cannot be moved and, and it has  
 19 to be right here. And so then we kept opposing it because  
 20 it's, to our neighborhood, it was not something we were  
 21 willing to compromise on. So we were willing to compromise  
 22 on the store itself. We did not oppose, as a neighborhood,  
 23 the store itself and we were willing to compromise and  
 24 sacrifice on the traffic and on the noise and on our  
 25 viewshed and everything. So --

1 MR. GROSSMAN: Well, the store was not subject to  
 2 a special exception. It had a right to be a store.  
 3 THE WITNESS: Right. Right. Right. I'm just,  
 4 sorry, I'm just talking about --  
 5 MR. GROSSMAN: Take your time, and if you need me  
 6 to break, just let me know.  
 7 THE WITNESS: Yeah. No, that's okay. I'll just  
 8 shift positions once in a while.  
 9 MR. GROSSMAN: All right.  
 10 THE WITNESS: These are much more comfortable  
 11 chairs than those.  
 12 MR. GROSSMAN: We don't like the people to get too  
 13 comfortable out there.  
 14 THE WITNESS: Right. Right. So, so from the very  
 15 beginning, we tried to take a very constructive approach,  
 16 and we thought, at times, that we've made progress because  
 17 the special exception was dropped or put on hold, the  
 18 original special exception, on a number of occasions. And,  
 19 you know, looking back at it, there was a time line where,  
 20 you know, it would be put on hold before the elections and  
 21 then it would be put on hold before the negotiations on \$4  
 22 million for the project.  
 23 So we were in this back-and-forth situation where  
 24 our concerns were not addressed, and we had meetings and  
 25 Costco had open houses where they had, you know, a bunch of

1 experts that were answering questions, and we were, we were  
 2 told that, well, you know, if the health risk increases, but  
 3 the original health risk is zero, why do you even need to  
 4 worry about anything? So, so from the very beginning, we  
 5 were told that there's no problems with this proposal, it's  
 6 great and, in fact, emotion is what's ruling our, our  
 7 actions. And I specifically want to point out to emotion  
 8 because Costco's opening statement in this particular  
 9 special exception mentioned emotion and the fact that  
 10 Opposition is driven by it.  
 11 So, so through these years, we hoped that the  
 12 situation would be resolved. And our last best hope, before  
 13 the special exception started, was the \$4 million that was  
 14 going to Westfield, and as part of that, the county mandated  
 15 good-faith negotiations with the community on seven points,  
 16 and the gas station was included.  
 17 MR. GROSSMAN: I don't know what you're talking  
 18 about \$4 million going to Westfield. I don't know if that's  
 19 part of our record.  
 20 THE WITNESS: Right. It was a subsidy for the  
 21 construction of the Costco wing, and so -- and the gas  
 22 station was, you know, included in Costco's plans and that  
 23 was before they separated the two projects; so -- which I  
 24 kind of also object to. I've never seen a Costco gas  
 25 station not connected to a store. So how can they be

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1 considered separate projects? I'm not quite sure. So, and  
2 in terms of that --  
3 MR. GROSSMAN: Well, the store doesn't -- the  
4 store, once again, doesn't require a special exception --  
5 THE WITNESS: Right.  
6 MR. GROSSMAN: -- the gas station does. So that  
7 makes --  
8 THE WITNESS: Right. Yeah, absolutely, and that  
9 was -- the good-faith that was indicated on the gas station  
10 front that, okay, well we dropped the zoning text amendment  
11 that would have allowed the gas station to come in by right  
12 and now we're entering the special exception process, and  
13 that's actually stipulated, you know, as a measure of good  
14 faith. So --  
15 MR. GROSSMAN: I'm sorry. I don't mean to  
16 interrupt you. What do you mean by it's stipulated as a  
17 measure? What are you talking about?  
18 THE WITNESS: Well, for the \$4 million, as a  
19 condition of the \$4 million.  
20 MR. GROSSMAN: Nothing is stipulated in this  
21 record. Usually, when you talk about a stipulation --  
22 THE WITNESS: Right, I hear you.  
23 MR. GROSSMAN: -- you're talking about in this  
24 record. So --  
25 THE WITNESS: I hear you.

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1 MR. GROSSMAN: Okay.  
2 THE WITNESS: Okay. So, so -- so I see these guys  
3 are getting tense here. If you disagree, feel free to, feel  
4 free to do so. Okay. So just from the very beginning, I  
5 wanted to express to you that from the very beginning, we  
6 were very patient and very friendly, and we feel like we got  
7 a, we got a raw deal from Costco. So, with that, I would  
8 like to move to the Wheaton Sector Plan comments, which --  
9 MR. GROSSMAN: Sure.  
10 THE WITNESS: -- I'm sure you will be, I'm sure  
11 you'll be interested in, and I do have an exhibit to --  
12 there you go. This is the press release that came out of  
13 the Planning Board once they voted to deny the, Costco's  
14 special exception at the Planning Board hearing.  
15 MR. GROSSMAN: Well, I have the letter from the  
16 Planning Board, is in our record.  
17 THE WITNESS: Right, right, right, but I don't  
18 think the press release is.  
19 MR. GROSSMAN: I'm sure it isn't.  
20 THE WITNESS: So I wanted to use the,  
21 specifically, the press release, and it's really just a  
22 couple of sentences in there.  
23 MR. GROSSMAN: Okay. Hold on. Let me mark this  
24 as Exhibit 398, Planning Board press release --  
25 MS. ROSENFELD: And do you have copies?

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1 THE WITNESS: I sent you one. I don't -- I only  
2 have my one copy.  
3 MR. GROSSMAN: -- of March 1, 2013, Re:  
4 Recommendation of Denial of the Special Exception. Okay.  
5 (Exhibit No. 398 was marked  
6 for identification.)  
7 THE WITNESS: And so we'll be focusing, just so  
8 you have a chance to read through that, we'll be focusing on  
9 the third paragraph of that, okay? But, in the meantime, I  
10 just, as far as the Wheaton Sector Plan as a whole, I  
11 participated in, I would say, nearly the entire development  
12 process for the Wheaton Sector Plan myself, and I've  
13 attended nearly all of the charrettes and public meetings  
14 and hearings on the Wheaton Sector Plan and submitted  
15 multiple testimony and comments and watched the entire plan  
16 evolve from the ground up. And there were a lot of  
17 interesting dynamics as the plan developed, and it  
18 considered how to zone the Westfield property and what to do  
19 with that, with that area of the mall. And as the plan went  
20 through the iterations from planning staff to Planning  
21 Board, in my opinion, it definitely took, took a hit when it  
22 comes to the southwest area of the mall. For example, there  
23 were proposed green spaces, public use green spaces that  
24 should have come with the redevelopment, and there was going  
25 to be, you know, the pedestrian path was on the ring road

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1 and then it wasn't on the ring road and then it was back on  
2 the ring road. And so there were a lot of developments, as  
3 the plan progressed, that, you know, in my opinion, reduced  
4 protections for the community, for the adjacent community.  
5 MR. GROSSMAN: Okay.  
6 THE WITNESS: And so that's when -- when I saw the  
7 latest plan, which completely eliminated the forested buffer  
8 -- that's my first mention of the forested buffer -- you  
9 know, that's when I drew the line and I said, okay, we're  
10 going to do something about this. And I involved  
11 environmental groups and other organizations, local civic  
12 organizations that have supported us in our effort to ensure  
13 that appropriate transitions are retained in the plan to  
14 protect neighborhoods as the mall redevelops. And that took  
15 about a year and a half, and we lobbied the County Council,  
16 and I believe we had nine different environmental  
17 organizations that have signed on to say, you know, protect,  
18 protect the Wheaton buffer, you know, ensure that the sector  
19 plan is as green as possible, and -- and we did get some,  
20 you know, some victories on that front. You know, we didn't  
21 get everything that we wanted, but we did get some. And so  
22 now, as I look at this project, I feel like it does not meet  
23 the criteria for the goals that are stated in the Wheaton  
24 Sector Plan and it does not meet the specific guidelines and  
25 letter and spirit of the plan, as it goes. So I just have

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1 several specific comments --  
2 MR. GROSSMAN: Certainly.  
3 THE WITNESS: -- that I would like to go through  
4 just to highlight that point.  
5 So, first of all, the redevelopment goal -- and  
6 I'll just, it's in evidence; so I'm just, several quotes  
7 from the plan -- redevelopment goals should be to reduce  
8 energy consumption and make Wheaton a more green and  
9 sustainable place. For example, providing transportation  
10 alternatives can reduce vehicle miles traveled and the  
11 community's carbon footprint.  
12 Now, in my opinion, and once again, I'm not an  
13 expert, but I see that there isn't really any disagreement  
14 between the two sides that the gas station will put out  
15 extra emissions. So since there's -- and just a matter of  
16 how much, right? So, in my opinion, since it is going to,  
17 you know, it is going to be a hot spot -- yes, it's not, you  
18 know, a toxic waste dump, it's not -- well, just in  
19 isopleths from Mr. Sullivan, there's, there's isopleths that  
20 show there's elevated levels at the center of the gas  
21 station and that, you know, that is, you know, fits the  
22 definition of hot spot for me, personally.  
23 MR. GROSSMAN: Okay.  
24 THE WITNESS: So, so with that in mind, I don't  
25 see how this gas station, and I quote, makes Wheaton a more

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1 green and sustainable place. I just --  
2 MS. ROSENFELD: Mr. Sheveiko, what page are you  
3 quoting from, if you know?  
4 THE WITNESS: I don't have the page numbers on my  
5 printout --  
6 MS. ROSENFELD: Okay.  
7 THE WITNESS: -- but I believe it's page 8.  
8 MS. ROSENFELD: Thank you.  
9 THE WITNESS: I can get the page numbers for your  
10 reference later. I have --  
11 MR. GROSSMAN: Well, let me ask you this: Does  
12 everything done within the sector plan have to further every  
13 goal of the sector plan, in your opinion?  
14 THE WITNESS: No, it does not, but it should not  
15 work in the opposing direction. So environment in Wheaton  
16 is considered at a disadvantage. We have less tree canopy  
17 than Silver Spring and Bethesda, we have less, less open  
18 space, there's more pavement, there's more concrete, and the  
19 environment is set as one of the major goals of improving in  
20 Wheaton, and it's specifically stated that Wheaton's  
21 environment is only going to be improved through  
22 redevelopment. There's no other avenue to improve Wheaton's  
23 environment except through responsible, sustainable  
24 development.  
25 So, so speaking of which, the plan mentions

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1 environmental features as one of its primary descriptives  
2 for the plan, that it serves the headwaters both of Sligo  
3 Creek, Upper Anacostia, and Rock Creek watershed. These  
4 are, these are statements in the plan that are front and  
5 center and have to be recognized. So -- and the plan also  
6 talks about expanding the connections between the central  
7 business district, the regional mall, and surrounding  
8 residential communities. And so I am one of those  
9 surrounding residential communities, even if Costco's, you  
10 know, definition of neighborhood doesn't even have my house  
11 in it. Even though I'm 125 feet away from the special  
12 exception area, I still feel like I'm part of the  
13 surrounding residential community, and in fact, the Wheaton  
14 Sector Plan recognizes the importance of residential  
15 communities, which I will get to here in a second.  
16 Next quote: The natural and built environments  
17 can be improved through development that reduces energy  
18 consumption, contributes to the restoration of Wheaton  
19 Branch of Sligo Creek and the Silver Creek tributary of Rock  
20 Creek, and that provides better stormwater management,  
21 greater tree canopy, and walkable streets.  
22 I am glad that the gas station itself is doing  
23 environmental site design and there's those two bioretention  
24 facilities, but there is, you know, greater tree canopy and  
25 walkable streets. I just don't think that, that a gas

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1 station and -- you know, can, in any shape or way,  
2 contribute to these goals of Wheaton's redevelopment.  
3 MR. GROSSMAN: Can a parking lot?  
4 THE WITNESS: Yes, it can because nowadays there's  
5 environmental -- if Costco had, the warehouse itself had to  
6 do environmental site design, which it did because of a  
7 grandfather clause in the law, parking lots nowadays can  
8 actually improve the environment in a number of ways. So,  
9 for example, the landscaping that they did install, it's all  
10 the old-school way, where it's mounds and then there's a  
11 tree sticking up, but in environmental site design, it's  
12 concave, just like those bioretention facilities that they  
13 are proposing for the gas station. So -- and that's not  
14 just for stormwater. It has all these ancillary benefits.  
15 MR. GROSSMAN: No, but I mean, comparing the gas  
16 station with its environmental site design to the existing  
17 parking lot, because they're not required to change it --  
18 THE WITNESS: Right. Well --  
19 MR. GROSSMAN: -- why do you suggest -- it's my  
20 understanding that the environmental site design will  
21 improve the environmental aspects of this -- why would you  
22 suggest the contrary?  
23 THE WITNESS: Well, because, because a parking lot  
24 is a very different, you know, use than a gas station.  
25 We're talking about potentially the busiest gas station in

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1 the county, likely to be, and you're concentrating an  
2 immense amount of daily traffic on a very small area that,  
3 you know, a parking lot, it just does not get the same use.  
4 There is no parking lot that I'm aware around here that will  
5 have, you know, 50, 60 cars idling in it, you know. There's  
6 just, I've never seen it in my personal --  
7 MR. GROSSMAN: Right, but that's a question  
8 regarding the air. I thought you were addressing the water  
9 quality issue.  
10 THE WITNESS: Right, but I'm addressing -- I'm  
11 addressing various aspects of the built environment of  
12 Wheaton as the Wheaton Sector Plan sees it. So I think that  
13 -- I just don't see how a gas station is the same as a piece  
14 of parking lot. So I think the land use is very different.  
15 MR. GROSSMAN: No, clearly, they're, the land uses  
16 are different. I'm just saying that if you -- you have one  
17 now existing, and if you don't have the gas station, you  
18 either have that parking lot staying with whatever  
19 environmental design problems it has --  
20 THE WITNESS: Right, right, right.  
21 MR. GROSSMAN: -- in terms of water quality --  
22 THE WITNESS: Uh-huh.  
23 MR. GROSSMAN: -- if you have the gas station  
24 built, then you have a better control to environmental site  
25 design. So just on that basis, so that was one of my --

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1 THE WITNESS: Right. I hear you. I hear you.  
2 MR. GROSSMAN: -- you know, concerns there. And  
3 the other is they may put something else on that parking  
4 lot. They've suggested that they, that some pad use could  
5 be put in that same location if not the gas station. I'm  
6 not sure what that, how that would compare in terms of the  
7 environmental issues, but --  
8 THE WITNESS: Well, it's just, it's hard to,  
9 unless they're going to put a toxic waste dump on the pad,  
10 it's hard to, for me, as a layperson, to imagine --  
11 MR. GROSSMAN: Depends on how you --  
12 THE WITNESS: Well, I'm being facetious in this  
13 particular situation, but it's hard to imagine a more  
14 onerous use on the community than a gas station. When the  
15 Wheaton Sector Plan was being developed, there were a number  
16 of alternatives proposed by the Planning Department for uses  
17 of that area, and one of them was even an elementary school,  
18 you know. So we would have been perfectly fine with an  
19 elementary school. So, so just in terms of that, they could  
20 put public use space in there. They could, you know, the  
21 mall --  
22 MR. GROSSMAN: They could, but it's owned by, it's  
23 owned by --  
24 THE WITNESS: Right.  
25 MR. GROSSMAN: -- an entity, and they have the

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1 right, in general --  
2 THE WITNESS: Oh, absolutely they have the right,  
3 yeah, yeah.  
4 MR. GROSSMAN: -- I presume they have the right,  
5 in general, to do what they want with their --  
6 THE WITNESS: Yeah, yeah. We're --  
7 MR. GROSSMAN: -- with their property.  
8 THE WITNESS: You know, property rights are, are  
9 important and some say paramount. So I'm not saying  
10 anything like that, but public use space is, is considered a  
11 catalyst by the plan and that specifically says that public  
12 use space is a catalyst, and that would be a potential area  
13 where they could put something, because right now there's  
14 nothing and it doesn't have to be, you know, public property  
15 to be public, public use area, just like in the Silver  
16 Spring Urban District, you know, Ellsworth. That's now -- a  
17 privately owned corporation owns Ellsworth, but it's a  
18 public use area. In fact, they either arrested or  
19 threatened to arrest a journalist that was trying to take  
20 pictures there, because it was private property, and then  
21 there was a lot of hoopla over the case, and they made sure  
22 that public use is something that was written in. So, so  
23 the gas station, it just precludes any opportunity of  
24 anything like that happening --  
25 MR. GROSSMAN: Right. I'm just trying to

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1 understand --  
2 THE WITNESS: -- which is the goal of the plan.  
3 So --  
4 MR. GROSSMAN: -- better your point about the  
5 sector plan. Is it your opinion that the sector -- that the  
6 Council, when they adopted, and the Planning Board, when  
7 they adopted this sector plan and allowed Wheaton Regional  
8 Mall to exist, that they violated their own goals of their  
9 sector plan?  
10 THE WITNESS: I, I disagree because --  
11 MR. GROSSMAN: Well, that's not quite -- I'm not  
12 asking you --  
13 THE WITNESS: Right, right, right. Okay. Okay.  
14 MR. GROSSMAN: Do you think that they violated the  
15 stated goals of the sector plan by allowing a regional mall  
16 to draw cars in?  
17 THE WITNESS: Right. No, because, because the  
18 goal is to make Wheaton less autocentric, but you work with  
19 what you have. You can't just tell a regional mall to shut  
20 down just because it's, you know, it's autocentric, but the  
21 goal of the plan is to make this area less, less  
22 autocentric. So the malls can change their, you know, can  
23 make improvements, and they can -- and they can do things.  
24 Westfield is, according to some, the largest retail real  
25 estate property holder on planet Earth. So there is

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1 definitely avenues to make, to make the mall less  
2 autocentric.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: So I don't think the sector plan  
5 somehow contradicts itself just because they didn't zone the  
6 mall out of existence, you know; so -- and same goes for our  
7 neighborhood. I mean, we've always knew that the mall is  
8 there, and we've always supported the mall's economic  
9 success, and we understand that it's autocentric, but we  
10 never in our scariest nightmares thought that, you know,  
11 somehow it would become even more autocentric, and --  
12 MR. GROSSMAN: Okay.  
13 THE WITNESS: -- which is, which is what this is,  
14 because this is a very high, you know, density, high  
15 intensity automotive use. So it's just not something we, we  
16 would've ever expected from Wheaton.  
17 MR. GROSSMAN: Okay.  
18 THE WITNESS: So in terms of, in terms of  
19 protection for the buffer -- now, I know that, you know,  
20 your decision lies with everything that has been submitted  
21 to you by the various agencies and you have to go with those  
22 documents, but for the record, I do, I do object to the  
23 forest conservation exemptions, and I -- to both the ones  
24 that have been issued and the one that, that is specifically  
25 for the gas station. And, frankly, the way that, you know,

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1 the process has been carried out, I don't have any  
2 confidence in the Costco master landscaping plan. If they  
3 had a forest conservation plan, it would be transparent, it  
4 would be enforceable, and we could do something with it. As  
5 it stands, I just have to object, just for the record. And  
6 there is lots of language in the Wheaton Sector Plan as to  
7 the protection of the buffer, and I just hope it's not empty  
8 words. And so --  
9 MR. GROSSMAN: Well, they have said that they are  
10 not touching the buffer, and --  
11 THE WITNESS: Right. I --  
12 MR. GROSSMAN: -- and that would certainly be a  
13 recommended condition if a special exception is recommended.  
14 THE WITNESS: Right. Right. Well, at this point,  
15 I just don't have a lot of confidence in that --  
16 MR. GROSSMAN: Okay.  
17 THE WITNESS: -- and that's just my personal  
18 opinion. And just following with the plan here, one of the  
19 sentences I really liked is: Existing single-family  
20 residential neighborhoods should be preserved and protected  
21 from the adverse impacts of nearby non-residential  
22 development. That was written in there specifically with  
23 the intent to protect my specific neighborhood, because  
24 there isn't really much single-family residential  
25 development in the sector plan area, but -- except on the

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1 side of Kensington Heights. We're kind of the largest  
2 community whose houses are part of the sector plan, and in  
3 fact, we have approximately 225 single-family residences  
4 within the sector plan area and that's according to my count  
5 using Google Earth. So if I'm off a couple of houses,  
6 please forgive me.  
7 MR. GROSSMAN: And that's just in Kensington  
8 Heights?  
9 THE WITNESS: Yes, that's just in Kensington  
10 Heights.  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: Kensington View has, I believe, 150  
13 homes within the sector plan. So, so this sentence was  
14 specifically inserted: Existing single-family residential  
15 neighborhoods should be preserved and protected from adverse  
16 impacts of nearby residential development.  
17 MS. HARRIS: Excuse me. What page is that?  
18 THE WITNESS: That is -- I don't have the page  
19 number here. I can get you that via -- I can get you all  
20 the page numbers for what I quoted. I cut and pasted from  
21 there; so I'm sure that it's, I'm not misquoting anything.  
22 So I feel like, in terms of that sentence, I feel  
23 that we will not be preserved and we will not be protected.  
24 As I said, my house is 125 feet away from the gas station,  
25 and I heard Jim Core's testimony on video and some on

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1 transcript, and there was the question raised, well, what if  
2 you can't see it, what if there's a fence, but I agree with  
3 Mr. Core. I think that just because the viewshed is  
4 technically not affected with an obstruction, the gas  
5 station has impacts beyond viewshed. And if -- whether it's  
6 the noise or whether it's the smell or whether it's the air  
7 pollution and health impacts that we're alleging indeed  
8 exist, it's, it's not compliant with the sector plan's  
9 statement that existing single-family neighborhoods should  
10 be protected. So -- and that's, once again, my non-expert  
11 opinion.  
12 So, also, Map 18 in the sector plan shows a  
13 proposed bikeway along, along the ring road and that's  
14 something, I believe, that would be great to have. And  
15 there used to be a lot more traffic, pedestrian and bicycle  
16 and, you know, people with kids going back and forth,  
17 because the ring road is actually used by residents in our  
18 community as an east-to-west artery as well, not just to  
19 walk to the Metro. So a lot of people walk from the eastern  
20 side of the neighborhood to the Kenmont pool -- well, used  
21 to walk, before the Costco was built, and now there's no  
22 place to walk. And then, you know, I'm reading their  
23 pedestrian counts: well, there's, you know, barely anybody  
24 walking. Well, of course, it's horrible to walk. Of course  
25 nobody is going to be walking, but there used to be a lot of

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1 traffic, you know, all the kids going to Kenmont, because if  
2 you go through the neighborhood, if you don't use the ring  
3 road, it's literally, the distance is over three times and  
4 it's all hilly. So you're -- it makes it impossible to  
5 walk. Nobody walks, walks that route. They just, you know,  
6 put the kids in the van and they drive across. So the ring  
7 road has become unusable for, for east-to-west traffic,  
8 which is so important to the sector plan as a whole because  
9 it's emphasizing connections and --

10 MR. GROSSMAN: But I have to take the situation as  
11 it exists now. I can't --

12 THE WITNESS: Right.

13 MR. GROSSMAN: -- I can't reverse --

14 THE WITNESS: Right.

15 MR. GROSSMAN: -- the Costco warehouse location.  
16 So it is the situation now versus the situation if a gas  
17 station --

18 THE WITNESS: Right. Right, and so our objective  
19 is to not make the situation worse. So --

20 MR. GROSSMAN: Well, from what you're saying,  
21 though, adding the pedestrian walkway along the southern  
22 ring road would make that aspect better.

23 THE WITNESS: Well, actually, a pedestrian walkway  
24 was promised to us as part of the \$4 million and then never  
25 built. So, you know, if you take that into account, the

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1 pedestrian path should come regardless of whether the gas  
2 station comes in or not.

3 MR. GROSSMAN: I have to consider what the Board  
4 of Appeals has authority to deal with. It doesn't have --

5 THE WITNESS: Right.

6 MR. GROSSMAN: -- authority to deal with any of  
7 these promises. It does have authority to deal with  
8 conditions of a Costco and the consent of the owner of the  
9 ring road area. So --

10 THE WITNESS: Right. Well, one of the arguments  
11 that was made by Planning Board members was that it will  
12 indeed prevent the actual vision of the sector plan from  
13 ever being realized, and it's talking about a multimodal --  
14 multifunctional green infrastructure shared-use path with  
15 rows and rain gardens. And, yes, it does say explore the  
16 option, but we feel like the option was never really  
17 explored at this point, and we hope that, you know, another  
18 project will come in the future through which redevelopment  
19 we can actually realize this vision, because as it stands,  
20 aside from the ring road, there is, or going through the  
21 mall, up and down and, you know, dodging customers, there is  
22 no other east-west connection in the southern part of the  
23 sector plan, and putting a gas station, you know, right in  
24 the middle of it is just not, not the best approach to  
25 walkability.

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1 So, so from that perspective, I totally agree with  
2 Planning Board members that, that this doesn't just make the  
3 situation worse but it also prevents other good things from  
4 happening in the future, because it's going to be such an  
5 intensive -- be the busiest gas station in the county, just  
6 going to be such an intensive use that any kind of  
7 possibility of, you know, improved paths or public space as  
8 a catalyst, it rules them all out. So it doesn't just go  
9 against the goals of the plan, but it prevents, you know,  
10 those goals from being reached in the future; so -- is, is  
11 the argument that I'm making.

12 And so another quote: Wheaton will grow greener  
13 through redevelopment by creating a sustainable community  
14 that conserves energy and uses roofs and green spaces to  
15 filter stormwater and purify air. These statements are all  
16 over the plan, and another one is: reinforcing  
17 relationships to local natural resources through visual and  
18 functional connections; using advanced planting techniques  
19 such as constructed soil and interconnected tree pits to  
20 increase the soil area for tree roots along new streets and  
21 sidewalks, and this is, this is something that is being done  
22 all over the country now, and this is the goal of the sector  
23 plan.

24 MR. GROSSMAN: I'm sorry. What is being done all  
25 over the country?

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1 THE WITNESS: You know, interconnected tree pits  
2 and, you know, construction of green streets and green  
3 trees, we have it all over the county. It's coming places,  
4 on Arcola Avenue. There's beautiful rain gardens along  
5 Arcola Avenue. I don't know if you've been around that  
6 area. DOT is working hard with DEP to make these things a  
7 reality. And so that's the goal of the plan, and I don't  
8 feel like the applicant's design, design matches, you know,  
9 measures up to this goal.

10 MS. HARRIS: And what page is that, or you don't  
11 have that page number?

12 THE WITNESS: No. I can definitely get you the  
13 pages, Pat.

14 MS. HARRIS: Mr. Grossman, this is a little  
15 difficult, because obviously on a report that's almost 100  
16 pages long, having just sentences here and there and not  
17 being able to take it in context makes it extremely  
18 difficult.

19 MR. GROSSMAN: What do you suggest that I do in  
20 that regard?

21 MS. HARRIS: Well, I don't want to delay his  
22 testimony. On the other hand, it's hard to -- I mean, he  
23 could be reading something from the Core District and not  
24 the Westfield Mall District, but it's hard to follow and put  
25 in context.

1 MR. GROSSMAN: I agree, that's a concern, but if  
 2 you don't want to delay his testimony, let's let him --  
 3 MS. HARRIS: I don't think --  
 4 THE WITNESS: I just have two more, and I can get  
 5 you the page numbers later.  
 6 MR. GROSSMAN: Yes. I think what we'll do is,  
 7 when he finishes his direct, we can break for a few minutes  
 8 and --  
 9 MS. HARRIS: Find it.  
 10 MR. GROSSMAN: -- let the Kensington Heights Civic  
 11 Association find the page references and give them to you  
 12 before you --  
 13 MS. HARRIS: That would be helpful. Thank you.  
 14 MR. GROSSMAN: Okay?  
 15 MS. HARRIS: I appreciate it.  
 16 THE WITNESS: Yes. Thank you for the  
 17 understanding. I'll definitely get them to you. And so  
 18 I'll just leave it with one final quote. It says: A  
 19 well-designed community can improve the well-being and  
 20 health of those who live and work there. Wheaton's  
 21 redevelopment is an opportunity to build healthful features  
 22 into the community.  
 23 I don't think the gas station is a healthful  
 24 feature. I can't see how any, any legal argument can be  
 25 made that it's a healthful feature, and the plan -- so these

1 are just a couple of examples, and I won't, you know, bother  
 2 you with more of them, but I think, I think, I think you get  
 3 my point, is, is there's goals of Wheaton to be green and to  
 4 be sustainable and there's the busiest gas station in the  
 5 county, and even if you put a little bioretention pit next  
 6 to it, that's just like putting lipstick on a pig. So --  
 7 MR. GROSSMAN: I try to reject that quote each  
 8 time because it's fraught with political connections, but --  
 9 THE WITNESS: Yes. The best quotes are getting  
 10 learned. So anyhow, so, so that's the, that's the sector  
 11 plan. As far as, as far as noise, I went out to empty my  
 12 compost bucket one day, and I discovered Mr. Sullivan in the  
 13 backwoods. Well, no, it was --  
 14 MR. GROSSMAN: I'm afraid to let you go on after  
 15 that.  
 16 THE WITNESS: It's not the -- anyhow, so, and he  
 17 was, you know, he was breathing poison ivy and mosquitos in,  
 18 like, tennis, tennis shorts. He must have been so  
 19 miserable. And, you know, we ended up talking, and I did, I  
 20 did give him bug spray, you know, because, you know, the  
 21 West Nile virus is no joke. And he was out there for two  
 22 days, and we did get to talk about the noise situation, and  
 23 you know, I asked him, well, why are you only measuring, you  
 24 know, daytime noise and not measuring the nighttime noise,  
 25 and he said, well, that's just not when the gas station

1 operates. And I was kind of surprised about that because,  
 2 if we're talking about cumulative impact, you know, on a  
 3 community, if you look at what a community already has to  
 4 endure, then, you know, that's something that should be  
 5 considered part of the baseline, but Mr. Sullivan disagreed  
 6 and asked if we can stay friends after this whole special  
 7 exception mess is over. I didn't give him an answer. I  
 8 gave him a Pepsi, I believe. It was a horrible day, he was  
 9 having a horrible time, but you know, with everything that  
 10 has transpired since then, you know, I, you know, I'm  
 11 definitely not a happy camper that this process is still  
 12 going on.  
 13 So, but anyhow, so as far as, as far as noise, you  
 14 know, yes, Mr. Sullivan did take some measurements, and we  
 15 can argue whether he took them on the right days or at the  
 16 wrong days and whether, you know, he measured any peak, peak  
 17 noise sources, but the fact of the matter is, just with the  
 18 Costco itself, the loading docks are literally like living  
 19 in a war zone, because sometimes the house shakes, okay? I  
 20 mean, we got new windows, all new windows. So the windows  
 21 don't shake anymore, but sometimes the house shakes, and you  
 22 know, we're talking about, you know, on a daily basis,  
 23 there's, you know, some kind of loading or unloading or  
 24 trash compactors or something else that generates enough  
 25 noise that, you know, people, you know, the glasses start,

1 you know, trembling in the kitchen cabinet and that's,  
 2 that's noise that is serious enough where you don't need a  
 3 noise meter to know that this is an issue. And we're  
 4 subjected to this, you know, 365 days a year. I guess maybe  
 5 -- Costco closed for Christmas or how does it work?  
 6 MR. GROSSMAN: Well, I mean, the question is  
 7 whether or not the --  
 8 THE WITNESS: Three hundred and sixty-five?  
 9 MR. GROSSMAN: -- whether or not the gas station  
 10 would add any significant noise.  
 11 THE WITNESS: Right. Well, it will not make it  
 12 quieter; let's, let's make it sure. There is going to be an  
 13 incremental addition of noise, and if you, if you consider  
 14 what we're already having to deal with, it's going to be an  
 15 issue because it's already an issue right now. So any kind  
 16 of worsening of the situation is unacceptable to us because  
 17 -- there was a lot of back-and-forth I heard in the  
 18 transcripts, well, you should have known, you know, that you  
 19 bought a house next to a mall and you should have known that  
 20 it's autocratic, but you know, people knew what the goals  
 21 of Wheaton, what the development goals were, and you know,  
 22 we bought our house specifically to walk to the Metro, and  
 23 instead, we now have this truck stop where, you know, at all  
 24 times of night there's deliveries and there's very little  
 25 piece of mind. And, you know, people are adjusting. For

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1 the first couple of months, I was actually sleeping with,  
2 with earplugs. You know, after a few months, you know, it's  
3 like, it's like living, you know, next to like a loading  
4 facility at a harbor or, or a railroad station or something,  
5 and you know, you do get adjusted to it, but at a certain  
6 point, too much is too much, because I was looking -- I was  
7 doing the research, and the county nighttime hours mandated  
8 by the county's noise ordinance, you know, speaks about 55  
9 dBA during nighttime and 65 dBA, decibels, during daytime,  
10 and you know, I have a hard time squaring away these  
11 mandated legislative numbers with what's actually going on.  
12 I --  
13 MR. GROSSMAN: Are you saying that what you're  
14 currently experiencing is exceeding --  
15 THE WITNESS: Yes. Yes. So --  
16 MR. GROSSMAN: -- is exceeding county levels at  
17 the lot line?  
18 THE WITNESS: Well, I'm not asserting that, but I  
19 definitely have a suspicion that it is, and in fact --  
20 MR. GROSSMAN: You know, you can call the Maryland  
21 Department, Montgomery County Department of the Environment.  
22 They'll come out --  
23 THE WITNESS: Yeah.  
24 MR. GROSSMAN: -- and measure it.  
25 THE WITNESS: Yeah. Yeah. It was amazing. Yeah,

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1 I did call, and they insisted on coming out on a Sunday.  
2 Well, this was -- so anyhow, so they insisted coming out at  
3 a time when there was nothing, literally nothing going on,  
4 and they wouldn't come out again. And there was a lot of  
5 back-and-forth with DEP because Costco, for the construction  
6 of the warehouse, they did not get a noise suppression plan  
7 or a temporary noise waiver, construction was going on  
8 overnight, and this kind of -- we thought, as being patient  
9 and trying to be supportive of Costco as much as we can, you  
10 know, we thought, okay, fine, the construction is going to  
11 be over and then it's going to be smooth sailing, but the  
12 noise levels are already unacceptable. And I do have one  
13 more, one more piece of evidence to introduce. It's a  
14 comparative -- noise comparison chart.  
15 MR. GROSSMAN: Okay. This will be Exhibit 399.  
16 (Exhibit No. 399 was marked  
17 for identification.)  
18 THE WITNESS: And so this I --  
19 MR. GROSSMAN: Okay. This is -- wait. Hold on  
20 one second. Let me identify this. This is a noise  
21 comparison chart of what?  
22 THE WITNESS: Of sources of noise and it compares  
23 them to each other --  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: -- in terms of relative, relative

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1 noise intensity. And so there's a lot of these on the  
2 Internet. They vary, one way or another, a little bit. But  
3 the gist of this is that a truck, a heavy truck produces,  
4 you know, around 90 dBA of noise -- that's about in the  
5 middle of the left column there -- and I was thinking, well,  
6 you know, 55 dBA is the county limit; so it's less than half  
7 over the limit. But then I started doing more research, and  
8 I realized that it's not a linear relationship; it's a  
9 logarithmic relationship. So the human ear perceives every  
10 10 -- an increase in 10 dBA, it is perceived as a, roughly,  
11 as a doubling of noise. So that means, you know, just doing  
12 rough calculations here, if you have a 55 decibel limit on  
13 nighttime hours and you have trucks producing 90 dBA, that's  
14 roughly a twelvefold increase in intensity. And --  
15 MR. GROSSMAN: Well, but I guess the question is,  
16 what's the truck doing that they are, they are giving an  
17 estimated reading from it? If that's a truck passing by, it  
18 may make a certain amount of noise versus a truck that's  
19 idling, you know. So --  
20 THE WITNESS: That's --  
21 MR. GROSSMAN: -- I don't know what they're  
22 referring to.  
23 THE WITNESS: Yeah. Right. That's a great,  
24 that's a great point that you're making, and I thought of  
25 this as well, but we actually have some things that

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1 exacerbate truck noises. I mean, first of all, just the  
2 loading and unloading makes, you know, arguably more noise  
3 than the truck driving, because the forklift, all the, you  
4 know, clanging and the backup beepers and all of that --  
5 MR. GROSSMAN: But you're talking about at --  
6 THE WITNESS: -- it produces a lot of noise.  
7 MR. GROSSMAN: -- at the warehouse. My --  
8 THE WITNESS: No. Well --  
9 MR. GROSSMAN: -- what I have to address,  
10 because --  
11 THE WITNESS: I'm establishing a baseline.  
12 MR. GROSSMAN: I understand, but what I have to  
13 deal with is the question of whether or not the proposed  
14 Costco gas station is going to produce a noise level over on  
15 top of whatever baseline exists that is going to exceed the  
16 county standards, and I need evidence in that regard. I  
17 can't, I can't rely on the fact that an individual perceives  
18 something. I have to have evidence and --  
19 THE WITNESS: Well, right. I hear you. I hear  
20 you. Well, so my, my point is that the gas station is not  
21 going to make things quieter and it's already loud; so  
22 therefore it's going to be louder because, as with noises,  
23 if you have more, more sources operating at the same time,  
24 there is a cumulative effect. And similarly, you know, I  
25 was looking at EPA documents. They all talk about length of

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1 exposure to noise; so one thing if the gas station, you  
2 know, would only refuel once a day at certain hours and we  
3 didn't have any other problems. That would be one thing,  
4 but another is, you know, if there's constantly, they're  
5 going to be so busy, they're going to have to up to six  
6 fueling trucks, you know, per day, fueling. Each fueling  
7 takes 45 minutes. So that's, you know, hours and hours and  
8 just --  
9 MR. GROSSMAN: But they're not running the truck  
10 when that's happening.  
11 THE WITNESS: Right, but they're, you know, but  
12 they're in and out of there. So it's a constant,  
13 consistent, you know, every couple hours you have a truck  
14 coming, boom, boom, boom, boom, you know, do its thing and  
15 then come out. So it's a constant, throughout the day, it's  
16 a constant buildup. Then that crescendos, you know, with  
17 all of the warehouse deliveries. So it's a cumulative -- I  
18 believe it's a cumulative effect on noise, and if you look  
19 at any -- I should have brought sites of this, but there's  
20 cumulative effects. They're talking about, you know, some  
21 loud noises, okay, but if you constantly are exposed to it,  
22 it leads to, it leads to health issues. And --  
23 MR. GROSSMAN: Well, let me ask you this: If you,  
24 on your property, you were doing something and there's  
25 already a background noise and what you did made it a little

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1 bit noisier and the government came along and said to you,  
2 I'm sorry, Mr. Sheveiko, I don't know whether the background  
3 level is exceeding the county standards and I don't know  
4 whether your added amount that you're doing is exceeding the  
5 county standards but we're not going to let you do it  
6 because it's adding on to some noise that's already  
7 existing, what would you think about the government  
8 functionary doing that?  
9 THE WITNESS: Well, if I suddenly decided to go  
10 into stone-carving business and make noise beyond what is  
11 considered acceptable in a residential neighborhood, I mean,  
12 65 dBA is the law, if I was going above 65 dBA --  
13 MR. GROSSMAN: If you were going, that's --  
14 THE WITNESS: -- I mean --  
15 MR. GROSSMAN: -- the key; it's the if you were  
16 going above. What you're giving me is your overall sense  
17 that it's noisy in the area, but you don't have any evidence  
18 that it's over the county level that's permitted, and your  
19 sense that a gas station may add more noise, even if it's a  
20 small amount but it is more noise, and therefore I should  
21 recommend that it be not allowed for that reason. And do  
22 you think that's an acceptable level of proof for a  
23 government official to rely on in order to recommend the  
24 denial or order a denial of something?  
25 THE WITNESS: Well, that's a very good question,

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1 once again. How should I put it? Okay. Well, so if we had  
2 the money and we had the expertise and we hired a noise  
3 expert and he actually went out there and monitored  
4 everything and found that the levels are already, you know,  
5 not safe, so that would be considered, you know, proof for  
6 you, right? So, but other than that, I mean, it's --  
7 there's the chart. I mean, it says --  
8 MR. GROSSMAN: My point is, I have to be fair to  
9 both --  
10 THE WITNESS: Right. Right. Right.  
11 MR. GROSSMAN: -- just like I'd have to be fair to  
12 you if you were the landowner doing something on your land,  
13 I have to be fair to the landowner doing something here. So  
14 I can't --  
15 THE WITNESS: Well, you know, I mean, there's --  
16 MR. GROSSMAN: -- I can't, I can't make  
17 recommendations based on general impressions --  
18 THE WITNESS: Well, I hear you, but --  
19 MR. GROSSMAN: -- on something like this, which is  
20 a measurable quantity.  
21 THE WITNESS: Right, but I mean, the Costco gas  
22 station emissions are also, you know, a measurable quality,  
23 and instead of measuring them, they're doing air quality  
24 modeling. So, I mean, they could --  
25 MR. GROSSMAN: Well --

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1 THE WITNESS: -- totally can afford to go down and  
2 measure the air quality instead of this back-and-forth deal.  
3 So, you know, the only difference is I'm not a noise expert;  
4 so I can't say, you know, as an expert, that this is bad. I  
5 can only say that, as a person, my house already shakes  
6 periodically several times a day --  
7 MR. GROSSMAN: Right.  
8 THE WITNESS: -- from whatever it is they're doing  
9 and a gas station with six fuel, you know, tanker truck  
10 deliveries a day, it's not going to make the situation  
11 better, it's going to make the situation worse, and that's  
12 just rational --  
13 MR. GROSSMAN: I understand.  
14 THE WITNESS: -- rational thinking. And as far as  
15 your question, you know, the county outlaws leaf blowers  
16 beyond a certain horsepower range. You know, that's fine  
17 because they're too loud. You know, these leaf blowers are  
18 too loud, and yeah, if you have one, you know, get rid of it  
19 or move to some other county that is not so dense. But, you  
20 know, it's a matter of limits that a residential community  
21 can take, and if a leaf blower is going to be outlawed, the  
22 busiest gas station in the county, you know --  
23 MR. GROSSMAN: You understand my point.  
24 THE WITNESS: -- is certainly something that, in  
25 my layperson's mind, I can compare, you know, a leaf blower

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1 to the busiest gas station in the county --  
2 MR. GROSSMAN: Well, I don't know that they're  
3 comparable at all. I need something that is more scientific  
4 than an overall impression, at least in the noise area --  
5 THE WITNESS: Right. Well --  
6 MR. GROSSMAN: -- and certainly in the other areas  
7 as well, where you're talking about things that are  
8 measurable or modelable.  
9 THE WITNESS: Right. Well, in this particular  
10 case, yes. Is it measurable? Yes. We don't have the  
11 resources to hire a noise expert, but at the same time, we  
12 should be able to, you know, refer to this chart here, which  
13 says that, you know, a heavy truck, you know, produces 90  
14 dBA.  
15 MR. GROSSMAN: But as I pointed out, it doesn't --  
16 first of all, this chart, I don't know where this chart  
17 exactly comes from, but it's not --  
18 THE WITNESS: Well --  
19 MR. GROSSMAN: -- I don't know under what  
20 conditions the heavy truck or motorcycle was measured, if  
21 they're talking about the noise of one passing by, which may  
22 well be what they're pointing at, at highway speed and that  
23 may create, you know, certain noises. I can't really reach  
24 a conclusion from this, in fairness; neither could you.  
25 THE WITNESS: Well, it --

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1 MR. GROSSMAN: Could you?  
2 THE WITNESS: Well, I could definitely reach a  
3 commonsense conclusion that, you know, cigarettes are bad  
4 and gas stations --  
5 MR. GROSSMAN: Could you reach a legal and  
6 sustainable conclusion? All right. Anyway, I've made my  
7 point on that.  
8 MS. ROSENFELD: Unfair question.  
9 THE WITNESS: Well, no, I hear you. I hear you,  
10 but you know, at the same point, you know, if that would be  
11 the proof, the burden of proof, then they should really get  
12 an actual air quality monitoring there instead of dealing  
13 with, you know, theoretical modeling assumptions.  
14 MR. GROSSMAN: Well, that certainly could be  
15 argued. I'm not sure I have reached any conclusions about  
16 whether their evidence on air modeling is insufficient or  
17 not --  
18 THE WITNESS: Right.  
19 MR. GROSSMAN: -- but it is a scientific approach  
20 that's accepted by the EPA. So I won't --  
21 THE WITNESS: Right. Right.  
22 MR. GROSSMAN: -- I won't suggest that, off the  
23 top of my head, that that's improper.  
24 THE WITNESS: Right.  
25 MR. GROSSMAN: But, anyway, I don't want to

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1 belabor this back and forth. I want you to understand  
2 that --  
3 THE WITNESS: No, I hear you. Yeah, so just --  
4 yeah, I understand that you need to make the legal  
5 distinction, and I'm just telling you my personal experience  
6 of living 125 feet away from this --  
7 MR. GROSSMAN: I understand.  
8 THE WITNESS: -- from this thing, and the noise  
9 levels are pretty bad, and they're further exacerbated by  
10 various factors. So the ring road, for example, there's  
11 that decreasing radius turn, right, the southwest turn. So,  
12 you know, when trucks go into that turn, they have to use  
13 their brakes, and then there's several speed bumps in that  
14 area. So each speed bump that a truck hits, you know, it  
15 produces a lot more noise than average, you know, than  
16 regular running conditions. So there's actually, you know,  
17 come to think of it, there's more factors speaking for a  
18 higher number than 90 dBA --  
19 MR. GROSSMAN: I don't know if that's --  
20 THE WITNESS: -- than less; so -- and considering  
21 all of the maneuvers, as Karen's -- I can refer to Karen's  
22 testimony, right?  
23 MR. GROSSMAN: Sure.  
24 THE WITNESS: As Karen's PowerPoint aptly showed  
25 all these trucks, each one taking however much time, you

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1 know, doing 20 maneuvers --  
2 MR. GROSSMAN: Well, once again, that's --  
3 THE WITNESS: -- going back and forth, it all  
4 generates abnormal amounts of noise. It's not just like one  
5 truck passed through and that's it and it's gone, no. It's  
6 there. It's doing, constantly, maneuvers and it's  
7 increasing the ambient noise levels.  
8 MR. GROSSMAN: That's a consideration in terms of  
9 the ambient noise level and in terms of the ambient air  
10 quality level. I agree with that --  
11 THE WITNESS: Right.  
12 MR. GROSSMAN: -- it's not a new thing. It is  
13 what's going on right now.  
14 THE WITNESS: Right. Okay. Well, one thing --  
15 I'm just looking at my notes here -- one thing I didn't, I  
16 forgot to actually reference the Planning Board  
17 recommendation, the press release.  
18 MR. GROSSMAN: Yes.  
19 THE WITNESS: So let me just go back to that, and  
20 I'm finished with noise. So --  
21 MR. GROSSMAN: Okay.  
22 THE WITNESS: So back to the press release. In  
23 paragraph 3, it says: Planning Board members, voting three  
24 to two to recommend denial of the special exception request,  
25 stated that a large gas station would run counter to one of

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1 the main goals of the Wheaton Sector Plan, which is to  
2 encourage transit-oriented development.  
3 Now, the word that I would like to emphasize here  
4 is would -- not could, but would. And I believe, correct me  
5 if I'm wrong, that this is a finding of fact and that's  
6 something that, you know, they -- you know, I haven't, of  
7 all the testimony that I've mostly read in the transcripts,  
8 I haven't found anything so far in Costco's case that  
9 overturns this finding of fact by the Planning Board. It's  
10 not, it's not a position that maybe or if or somehow. It  
11 says would run counter to one of the main goals, and that,  
12 to me, seems like a very, very definitive ruling that is  
13 considered a finding of fact and it somehow needs to be  
14 overturned, and I have seen nothing to the contrary.  
15 MR. GROSSMAN: Well, it's not actually a ruling,  
16 and it's not actually a finding of fact. It's an opinion --  
17 THE WITNESS: Right.  
18 MR. GROSSMAN: -- of the majority of the Planning  
19 Board. And I think this actual statement is actually in the  
20 letter that they sent me.  
21 THE WITNESS: Oh, is it? Okay, yeah. For some  
22 reason I couldn't -- I did a search. I couldn't find it.  
23 MR. GROSSMAN: Right. Well, that was the sense  
24 that I got from their letter, that the majority felt and  
25 recommended denial based on their opinion that it would be

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1 inconsistent with the, with the sector plan. But it's not  
2 -- the way this system is set up, the Planning Board makes a  
3 recommendation. I make a recommendation. I make the  
4 findings of fact --  
5 THE WITNESS: Uh-huh.  
6 MR. GROSSMAN: -- and make a recommendation to the  
7 Board of Appeals, and they'll make the decision.  
8 THE WITNESS: Right.  
9 MR. GROSSMAN: So the Planning Board  
10 recommendation is not a finding of fact. It's an opinion  
11 and a recommendation.  
12 THE WITNESS: Okay. I will not argue with you.  
13 So, finally, I wanted to touch on emotion a little bit since  
14 it was the applicant that brought up emotion into the  
15 case --  
16 MR. GROSSMAN: Yes.  
17 THE WITNESS: -- and I was going to -- I wanted to  
18 say a few things on it, especially given my background and  
19 going to business school and working for, you know, stock  
20 exchanges and whatever else.  
21 So I understand where -- I understand Costco's  
22 business model and I understand where coming from, but this  
23 whole position that somehow our concerns are based on  
24 emotion and don't have any logical or legal merit was, was  
25 disappointing. It was disappointing to hear that from

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1 Costco, especially considering that, you know, we're all  
2 reasonable people here. And I fully, you know, support  
3 profit maximization. That's a perfectly legitimate market  
4 pursuit, but you know, there is a line there when profit  
5 maximization crosses, crosses over and becomes greed and  
6 that is an emotion. And since Costco brought up emotions, I  
7 would like to say for the record that I think their case is  
8 more emotional than ours because greed is a strong desire  
9 for more, whatever it is, more wealth, more power, and  
10 despite Costco's record, I've always -- I shopped at Costco  
11 for many years. I have great respect for their business  
12 model. I actually was part of a team. We did a business  
13 case in college on Costco and how great they are. You know,  
14 I think, in this particular situation, they crossed that  
15 line, and the impetus is to do whatever it takes, whatever  
16 legalistic or bureaucratic or political angles that need to  
17 be achieved to reach this goal of this gas station, which,  
18 you know, I think, at this point, is just not worth their  
19 money and, and that's how it goes in terms of, you know,  
20 emotions, if we consider that greed is an emotion. It's not  
21 just immoral, but it's also, in the end, not very rational,  
22 and I think that, you know, that's why it was considered by  
23 many to be a sin, because it's not just bad, quote/unquote,  
24 but it's dangerous, because people, people that are driven  
25 by it tend to make decisions that are not just bad for

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1 themselves but for everybody else.  
2 So I hope that was a non-emotional way of talking  
3 about emotion. So, so with that, I am, I'm out of comments.  
4 Thank you very much for listening.  
5 MR. GROSSMAN: All right. And thank you for  
6 coming down here to share them. Why don't we, before I open  
7 the field for cross-examination, or maybe I could start  
8 with --  
9 THE WITNESS: Any chance I could take a break?  
10 MR. GROSSMAN: Yes. That's what I was going to  
11 say.  
12 THE WITNESS: Okay.  
13 MR. GROSSMAN: We'll have a break, and during that  
14 break, maybe you and Ms. Rosenfeld can figure out where the  
15 quotes came from --  
16 THE WITNESS: Right.  
17 MR. GROSSMAN: -- in the sector plan --  
18 THE WITNESS: Yeah, I can do that real quick, yes.  
19 MR. GROSSMAN: -- before you come back for  
20 cross-examination. Okay. So we'll take a break until 25  
21 after 3:00 on this clock. Is that good for you?  
22 THE WITNESS: Sure.  
23 MR. GROSSMAN: Okay. All right. We'll recess  
24 until then.  
25 (Whereupon, a brief recess was taken.)

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1 MS. ADELMAN: The answer is, no, we do not.  
2 MR. GROSSMAN: All right. So there's no questions  
3 from the Coalition. All right. How -- oh, Kensington View,  
4 I don't see anybody here from Kensington --  
5 MS. CORDRY: Eleanor left. She has her own health  
6 issues. So --  
7 MR. GROSSMAN: Okay.  
8 MS. ROSENFELD: And she said she had no questions.  
9 MR. GROSSMAN: Okay. All right. Then we're to  
10 the applicant. Cross-examination?  
11 MS. HARRIS: Okay. Thank you.  
12 MR. BRANN: Nobody has any questions.  
13 MS. HARRIS: Oh, I'm sorry. I missed that part.  
14 Excuse me.  
15 MR. GROSSMAN: Were you able to get the --  
16 MS. HARRIS: Yes.  
17 MR. GROSSMAN: -- identification of the quotes?  
18 MS. HARRIS: Yes.  
19 MR. GOECKE: We were.  
20 CROSS-EXAMINATION  
21 BY MS. HARRIS:  
22 Q Mr. Sheveiko, let's go to page -- well, you don't  
23 have the page numbers, but anyway, you identified a number  
24 of recommendations in the sector plan dealing with  
25 environmental factors --

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1 A Uh-huh.  
2 Q -- is that correct?  
3 A Yes.  
4 Q And what do you think the purpose of those  
5 environmental recommendations are?  
6 A To improve Wheaton's environment. So that's a big  
7 goal that's set. There were, there were priorities  
8 outlined, you know, to improve walkability. You need trees  
9 so people can walk in the shade, and you know, that's just  
10 pretty, pretty straightforward stuff for a sector plan.  
11 Q I'm on page 73 of the sector plan. I just want to  
12 identify several of the recommendations, and based on your  
13 familiarity of the proposal, if you could indicate whether,  
14 in fact, Costco is planning to do these things. The first  
15 one is use native plants and create habitat for -- well, use  
16 native plants, let's --  
17 A You're using some native plants. I believe not  
18 all of the plants that you're proposing in the landscape  
19 master plan are actually native plants.  
20 Q And increase the tree canopy?  
21 A Boy, I would, I would disagree with that.  
22 Q Have you seen the planting plan --  
23 A Yes.  
24 Q -- that Mark Willard proposed?  
25 A Yes.

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1 MS. ADELMAN: Yes.  
2 BY MS. HARRIS:  
3 Q And were there additional trees planted on there?  
4 A Yes, there were, but at the same time, I don't  
5 think it's going to increase the canopy because the  
6 landscaping plan, where it shows the decreases in canopy,  
7 which I don't think are there -- so, for example, that strip  
8 of land that you don't consider forest along the ring road,  
9 the few feet that you need for, to build the sonic wall,  
10 you-all don't think that that's forest, but you know, I  
11 looked up the definition. You know, it has 100 percent  
12 canopy coverage and it has 100 percent critical root zone  
13 areas. So critical roots go all the way to the ring road,  
14 and canopy coverage is nearly ubiquitous, and I think from  
15 that perspective you're decreasing canopy coverage.  
16 Q Are you aware in Costco's proposal that they're  
17 planning to eliminate any trees in connection with the  
18 construction of the gas station or the wall?  
19 A Eliminate, no, but I --  
20 Q Okay. And then you also saw in the plan that  
21 they're increasing the number of trees, correct?  
22 A Yes.  
23 Q But you --  
24 MR. GROSSMAN: But you cut him off when he said,  
25 eliminate --

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1 MS. HARRIS: Okay.  
2 MR. GROSSMAN: -- no, but --  
3 MS. HARRIS: Sorry.  
4 MR. GROSSMAN: -- and so I'm going to let him  
5 finish his answer.  
6 THE WITNESS: There's no objective to eliminate  
7 any trees, but you're definitely going to damage all the  
8 critical root zones along, along the edge of the ring road  
9 because they go all the way to the road. And if you're  
10 going to be doing disturbance, you know, to put in the wall  
11 and to do whatever else, you know, you're damaging the  
12 critical root zone. So I don't think it's an improvement.  
13 BY MS. HARRIS:  
14 Q You're familiar with the way in which the wall is  
15 going to be constructed?  
16 A Yes.  
17 Q And so based on the tubes placed, and I don't  
18 recall the interval offhand, but it's on that basis that you  
19 think the critical root zone is going to be damaged and that  
20 there'll be a result of less tree canopy, not more?  
21 A Well, no, because I think that the actual holes  
22 for the sonotubes are not going to be the extent of the  
23 forest disturbance. I think it's -- you're not just  
24 teleporting those sonotubes in there. There's going to be  
25 work done, and I believe, I believe that I did ask

1 Mr. Willard in our cross-examination of him a few months ago  
 2 that there is going to be, you know, surface disturbance on  
 3 the other side of the wall because the workers need to be  
 4 there, materials need to be brought in there, there's going  
 5 to be equipment. I, you know, I just disagree with the way  
 6 you define canopy, and I disagree that the disturbance is  
 7 limited only to those, you know, little sonotube drillings.  
 8 Q Okay. But you would, nonetheless, agree that  
 9 Costco is proposing to plant more trees than -- and is, at  
 10 the same time, not eliminating any of them, is not proposing  
 11 to eliminate any of them? Do you agree with that statement?  
 12 A Some trees are going to be endangered. Whether  
 13 you're proposing to eliminate them, no, but in my opinion,  
 14 as your plans are drawn right now, you're going to, you're  
 15 going to impact critical root zones of many mature trees.  
 16 So --  
 17 Q And so --  
 18 A -- the fact that you're building, sorry to  
 19 interrupt, but you know, you are putting in trees inside the  
 20 forest, but you know, there's already 100 percent tree  
 21 canopy coverage there already. So you're not increasing  
 22 tree canopy coverage by putting, you know, some, some  
 23 undergrowth in there.  
 24 Q Would you agree that we're retaining the existing  
 25 green buffer between the mall, ring road, and the adjacent

1 properties?  
 2 A I would have to agree with that.  
 3 Q And we are employing environmental site design?  
 4 A Yes.  
 5 Q And are we increasing the pervious surface? Do  
 6 you recall that? And maybe you don't recall -- well, do you  
 7 recall that Mr. Duke testified to that?  
 8 A Uh-huh. I do not recall, but I will, I will trust  
 9 you on that. How about that?  
 10 Q And would you also agree that not every project  
 11 meets, satisfies every single recommendation, that that's in  
 12 fact why they're considered recommendations?  
 13 A In terms of the sector plan?  
 14 Q Correct, and now I'm specifically focusing on the  
 15 environmental recommendations. They're there as  
 16 recommendations, correct?  
 17 A Right. Yes.  
 18 Q And as you've just identified, Costco is in fact  
 19 satisfying a number of those recommendations?  
 20 A Well, taken separately, by themselves, possibly,  
 21 but you know, to offset the carbon footprint from the gas  
 22 station, once again, I don't have any documents on this, but  
 23 according to my back-of-the-envelope calculations, you need,  
 24 I believe, 400 fully mature oak trees to offset even like  
 25 one pollutant, you know, like CO2, I think, I believe, and

1 we're not even talking about the rest of the pollutants.  
 2 But, you know, if Costco wanted to have a neutral carbon  
 3 footprint, you would need to, you know, plant several acres  
 4 of trees, and having, you know, little, two bioretention  
 5 doohickeys and a couple of bushes is just, in my opinion,  
 6 doesn't cut it.  
 7 MR. GROSSMAN: Then you have a lot of acorn  
 8 pollution.  
 9 THE WITNESS: Well, no. That's, that's food for  
 10 wildlife, and you know, there's many studies out there that  
 11 show the more trees you have, the more business you have,  
 12 less crime you have. It's common sense.  
 13 MR. GROSSMAN: All right.  
 14 BY MS. HARRIS:  
 15 Q And you're familiar with the sector plan, I  
 16 assume, correct?  
 17 A Yes. Yes.  
 18 Q And you're aware that the sector plan area was  
 19 divided into a number of different districts?  
 20 A Yes.  
 21 Q And that there's five different, not including the  
 22 existing neighborhoods, there's five different districts?  
 23 A Yes.  
 24 Q And would you agree that each one of those  
 25 districts has its own distinct characteristics?

1 A Yes.  
 2 Q And that some of those districts are located  
 3 within the central business district and others aren't,  
 4 correct?  
 5 A Yes.  
 6 Q And is the Wheaton Mall located within the CBD?  
 7 A No.  
 8 Q It's located outside the CBD, correct?  
 9 A Yes.  
 10 Q And you recognize the fact that the Wheaton Mall  
 11 has a different, has a different characteristic than some of  
 12 the other areas within the sector plan area, including the  
 13 CBD?  
 14 A Absolutely.  
 15 Q And that the areas within the CBD were intended  
 16 for the mixed-use transit focus of the sector plan  
 17 recommendations?  
 18 A Let me think about that. Could you repeat the  
 19 question again, please?  
 20 Q Those districts that are located within the  
 21 central business district --  
 22 A Uh-huh.  
 23 Q -- that the mixed-use transit-oriented focus was  
 24 -- there was a focus on mixed-use transit-oriented  
 25 development for those districts within the central business

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1 district?

2 A I believe every single part of the Wheaton Sector

3 Plan falls under the transit-oriented goal. I don't think

4 they make any caveats that one district is, you know,

5 meeting the goals or not. Every -- there are goals for the

6 entire sector plan, yes. Are the districts somewhat

7 different? Yes. Nobody is, you know, saying that the mall

8 should not exist. We all support the health of the mall,

9 but you know, just because, you know, it's a little

10 different than other districts doesn't mean that this sector

11 plan's goals don't apply to it.

12 Q But you agree that not, and I think you said to

13 Mr. Grossman, that not every sector plan goal -- not every

14 project meets every sector plan goal?

15 A Yes, I will agree with that, but my argument is

16 that it's not just not meeting some goals; it's moving in

17 the opposite direction of meeting those goals. One thing if

18 it was neutral but it's not. It's the most autocentric use

19 I can think of as, you know, a mega gas station. I don't

20 know if there's any other use. I don't know of any other

21 place in the county where you have 50, 60 cars queuing, all

22 at once idling. I just --

23 Q Is it more autocentric than a 6,000-space parking

24 lot?

25 A Yes, I believe so because it's concentrated in a

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1 very small area. You know, a 6,000, that's hectares of

2 parking that, you know, a lot of it can be used for overflow

3 and is not used constantly. Well, this is -- the problem

4 with this is just such a concentrated, all of these gasoline

5 sales are concentrated in one small location. That's our

6 problem.

7 Q But it's located in an area where the majority of

8 the cars already are on the site. Would you not -- would

9 you agree with that?

10 A Boy, I'm not sure. I --

11 Q You're not sure that the majority of the --

12 A Well, I just, I disagree that, you know, most

13 people that are going to be using the gas station are

14 already going to be there, because even if they are Costco

15 members -- you know, I've shopped at Beltsville. Yeah, if

16 it's far away, then, you know, you go and you only fill up

17 when you're shopping the store, but in such a highly, you

18 know, densely populated area that is nothing like

19 Beltsville, you know, you're going to have additional trips

20 just for the gas. And, you know, using the Beltsville gas

21 station for years, you know, there's various kinds of trends

22 that come with these gas stations that are not inherent to

23 regular gas stations. You know, you have taxicab drivers

24 and you have, you know, various small business, you know,

25 vans filling up in the morning. So you have, you have peaks

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1 like you don't have at regular gas stations. So --

2 Q Thank you.

3 MS. HARRIS: No other questions.

4 MR. GROSSMAN: Any redirect?

5 MS. ROSENFELD: Yes, there is.

6 REDIRECT EXAMINATION

7 BY MS. ROSENFELD:

8 Q On page 43 of the sector plan, which identifies,

9 generally, the characteristics of the different districts,

10 it says: The Westfield District has the potential to evolve

11 into a mixed-use district that enhances the mall as a retail

12 destination. Does that reinforce or is that perhaps part of

13 the basis for your view about --

14 MR. GROSSMAN: You're leading him --

15 MS. ROSENFELD: Okay.

16 MR. GROSSMAN: -- not, that's not appropriate

17 redirect.

18 BY MS. ROSENFELD:

19 Q You had testified that you thought that the

20 transit-oriented goals of the sector plan --

21 A Right.

22 Q -- applied throughout --

23 MS. HARRIS: Excuse me. May I interrupt for one

24 moment? I had assumed that they did not have, the opponents

25 did not have any cross-examination questions of

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1 Mr. Sheveiko.

2 MR. GROSSMAN: This is a redirect.

3 MS. ROSENFELD: It's redirect.

4 MR. GROSSMAN: He is one of their witnesses.

5 MS. HARRIS: Again, I thought he was --

6 MS. CORDRY: He's our witness.

7 MS. ROSENFELD: He's our witness.

8 MR. GROSSMAN: He's a Kensington Heights Civic

9 Association witness --

10 MS. HARRIS: He is their witness. Okay, my

11 apologies.

12 MR. GROSSMAN: -- their past president, recently

13 past --

14 MS. CORDRY: Right, but not passed away.

15 MR. GROSSMAN: -- not entirely past.

16 THE WITNESS: Hey, I'm still an officer on the

17 executive committee. It's the best job ever, no

18 responsibilities.

19 MR. GOECKE: Lot of perks.

20 MR. GROSSMAN: And you get to testify here.

21 MR. SILVERMAN: Yes.

22 THE WITNESS: Yes, and if there's a tie in the

23 executive committee, I suppose I'm the tie-breaking vote.

24 MR. GROSSMAN: In any event, though, so they're

25 entitled to do a redirect. They just can't, they just can't

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1 lead quite that much. He's a smart man. Give him a hint.  
2 MS. ROSENFELD: That's right. It's late. It's  
3 late.  
4 BY MS. ROSENFELD:  
5 Q Is there anything in the sector plan that leads  
6 you to conclude -- to support your conclusion that the  
7 transit-oriented goals of the sector plan are not limited to  
8 the CBD?  
9 A First of all, nothing says otherwise anywhere  
10 else. I don't see any text in there that supports  
11 assertion, that assertion, and I believe that in every one  
12 of the districts there is, there is trends that are  
13 identified and a vision for each district identified as you  
14 go district by district. So I believe that there's not a  
15 single district in there that is identified as to not have  
16 transit-oriented smart growth aspirations. I think every  
17 single -- if you go through the descriptions, every district  
18 talks about improvements towards that end and not the other  
19 way around.  
20 MR. GROSSMAN: Okay.  
21 BY MS. ROSENFELD:  
22 Q One of the areas of questioning went to the  
23 difference between a regular parking lot and the gas  
24 station, and in your experience, assuming no gas station, in  
25 your experience, do the cars that are within the parking lot

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1 run their engines or idle while the shoppers are inside the  
2 mall?  
3 A Definitely not while they're inside the mall. I  
4 don't think I've ever seen somebody leave an unattended  
5 idling vehicle while they were shopping inside the Costco.  
6 So --  
7 Q So that would be a different operational  
8 characteristic from the way that the vehicles would operate  
9 while in the queues going to the gas station --  
10 A Absolutely.  
11 Q -- is that correct? Okay. And there also was a  
12 question about the auto-intensive nature of the mall parcel  
13 itself. Have you observed people walking to the mall in  
14 order to shop?  
15 A (No audible response.)  
16 Q And have you observed people --  
17 MR. GROSSMAN: Was that an answer? You shook your  
18 head.  
19 THE WITNESS: Yes. Yes. Yes.  
20 MR. GROSSMAN: Yes. You have to answer.  
21 THE WITNESS: Yes.  
22 BY MS. ROSENFELD:  
23 Q Have you observed people using Metro to get to the  
24 mall to shop?  
25 A Boy, I'm not sure about the Metro. I would think

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1 there must be people. There's definitely traffic on the  
2 pedestrian bridge between the Metro and the mall. So I  
3 assume some of those people have to be shoppers.  
4 Q And have you observed people taking the bus to the  
5 mall to shop?  
6 MR. GROSSMAN: Well, would he know whether they're  
7 coming to the mall to shop or not? I think we can assume  
8 that some people are going to take a bus and some people are  
9 going to take the subway. I don't think that's an issue  
10 really, is it?  
11 MS. ROSENFELD: Okay.  
12 BY MS. ROSENFELD:  
13 Q So people have various ways to get to the mall  
14 that do not demand the use of a car. Would that be correct?  
15 A Yes.  
16 Q And do they have that option if they are buying  
17 gas at the gas station?  
18 A No.  
19 Q Okay.  
20 MR. GROSSMAN: I don't understand. They don't --  
21 do they have the option of taking a bus or a train if  
22 they're already there in a car?  
23 MS. CORDRY: No.  
24 MR. GROSSMAN: Is that what you're asking? I  
25 don't understand.

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1 MS. ROSENFELD: I'm asking if you can -- if you're  
2 going to gas your vehicle at the gas station, can you do  
3 that through any means other than driving your vehicle  
4 there. I think the question that was asked was, isn't the  
5 mall, generally, just as autocentric as the gas station, and  
6 my questions for the witness are, do you have other ways to  
7 get --  
8 MR. GROSSMAN: I understand. You're trying to  
9 establish that if you come to the, to the gas station --  
10 MS. CORDRY: There's only one way you can get to  
11 the gas station.  
12 MR. GROSSMAN: -- 99.99 percent of the people  
13 doing that will come in a car rather than carrying a gas  
14 station.  
15 MS. CORDRY: Right.  
16 MS. ROSENFELD: That's correct.  
17 MR. GROSSMAN: I think that's --  
18 MS. CORDRY: Probably a few more nines on there,  
19 but yes.  
20 THE WITNESS: Yes.  
21 MR. GROSSMAN: Okay.  
22 BY MS. ROSENFELD:  
23 Q Mr. Sheveiko, are you familiar with the cypress  
24 trees that are on the perimeter of the ring road?  
25 A Yes.

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1 Q And do you know how close to the ring road they  
2 grow?  
3 A They're immediately adjacent to it --  
4 Q And --  
5 A -- they're like, you know, the branches actually  
6 hit the guardrail; so they're right there.  
7 Q And, in your opinion, can you build the wall  
8 without creating any damage to those cypress trees?  
9 A No, and I do believe that those trees are actually  
10 -- now that Michele is asking me this question, yeah, there  
11 are going to be trees removed, Pat. Yeah, those cypress  
12 trees are going to be removed. So I'll have to retract my  
13 answer to Ms. Harris's question.  
14 MR. GROSSMAN: Why do you think the cypress trees  
15 will be removed?  
16 THE WITNESS: Because I -- now that my memory is  
17 being refreshed, they're going to be removed because they  
18 need to put the wall there. So --  
19 MR. GROSSMAN: They're not, well, you think that  
20 the construction -- the wall is not to be located over the  
21 cypress --  
22 THE WITNESS: I believe that in Costco's plans, it  
23 says removal of the cypress trees, because I, I --  
24 Ms. Harris was so assertive with her question, that I kind  
25 of --

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1 MS. HARRIS: Oh, I intimidated you, right?  
2 THE WITNESS: -- I got intimidated, yes, yes.  
3 MS. HARRIS: I doubt it.  
4 MR. SILVERMAN: I see him quaking.  
5 BY MS. ROSENFELD:  
6 Q Do you know approximately how close the trunks of  
7 those trees are to the curb or to the edge of the ring road?  
8 A Oh, boy, a --  
9 MS. CORDRY: Are you showing a foot to 18 inches?  
10 MS. ADELMAN: Eighteen inches.  
11 THE WITNESS: A foot, you know, 18 inches,  
12 something, something along that realm, but the point is it's  
13 not just the limbs and the trunks; it's the critical root  
14 zones, because even if you damage a portion of the critical  
15 root zone of the tree, it's going to die. So that's, that's  
16 where my contention was, that I don't believe that the  
17 forest buffer will be safe with the currently proposed  
18 master landscaping plan.  
19 BY MS. ROSENFELD:  
20 Q And did you hear testimony as to how far from the  
21 ring, from the curb of the ring road the wall would be  
22 located?  
23 A I, yes, I did hear the testimony. Let me -- it's,  
24 I think, like a foot or something.  
25 Q And do you have any recollection as to

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1 approximately how many trees we're talking about?  
2 A In terms of the cypress trees?  
3 Q Yes.  
4 A Maybe a dozen.  
5 Q Okay.  
6 A That would be a safe number.  
7 MR. GROSSMAN: Any recross? No?  
8 MS. HARRIS: No.  
9 MR. GROSSMAN: Okay. All right. Thank you,  
10 Mr. Sheveiko.  
11 THE WITNESS: All right.  
12 MR. GROSSMAN: Appreciate your coming down here,  
13 especially with your back situation, and --  
14 THE WITNESS: Yeah, it held up, amazingly enough.  
15 MR. GROSSMAN: Don't be --  
16 THE WITNESS: Yeah, these chairs are so much  
17 better than --  
18 MR. GROSSMAN: I'm glad that's -- don't be  
19 discouraged about the genetic thing. I mean --  
20 THE WITNESS: Right. Right.  
21 MR. GROSSMAN: -- I got the fat gene, but I got  
22 the compensation of the corny humor gene, but some people  
23 may not consider that compensatory, those who have to  
24 listen.  
25 THE WITNESS: Right. Right. I'm more into the

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1 sardonic humor myself.  
2 MR. GROSSMAN: All right. So now we're ready for  
3 Kathy Michels?  
4 MS. ADELMAN: No, Laura Kervitsky.  
5 MR. GROSSMAN: I'm sorry?  
6 MR. GOECKE: Who?  
7 MS. ADELMAN: Laura Kervitsky.  
8 MR. GROSSMAN: What happened to Kathy Michels?  
9 MS. CORDRY: She will be here probably between  
10 4:00 and 4:15, she said.  
11 MR. GOECKE: Who's Laura?  
12 MS. ADELMAN: She's right in the back here, and  
13 she's been on the list for -- isn't that right, Michele?  
14 MR. GROSSMAN: I don't recall.  
15 MR. GOECKE: I think this is the first we've heard  
16 of her.  
17 MS. ROSENFELD: She's a neighbor. We're not  
18 calling her as a witness.  
19 MS. ADELMAN: Oh, yes. She's not being called by  
20 us. She's a neighbor, a resident of Kensington Heights.  
21 MR. GROSSMAN: And has been mentioned before?  
22 MS. ADELMAN: I believe so.  
23 MS. ROSENFELD: I don't think so.  
24 MS. ADELMAN: Don't think so? Oh, I don't know.  
25 Sorry, I'm mistaken.

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1 MR. GROSSMAN: All right. Well, I'm sorry. What  
2 was your name again?  
3 MS. KERVITSKY: Laura Kervitsky.  
4 MR. GROSSMAN: Laura Kervitsky? Okay. All right.  
5 Would you come forward, please, and have a seat on the  
6 stand? Would you state your full name and address and spell  
7 your last name, please?  
8 MS. KERVITSKY: Yes. Laura Kervitsky, K-E-R-V, as  
9 in Victor, -I-T-S-K-Y.  
10 MR. GROSSMAN: Okay.  
11 MS. KERVITSKY: 3410 Farragut Avenue, Kensington,  
12 Maryland 20895.  
13 MR. GROSSMAN: All right. Would you raise your  
14 right hand, please?  
15 (Witness sworn.)  
16 MR. GROSSMAN: You may proceed.  
17 DIRECT EXAMINATION  
18 THE WITNESS: Okay. I'm here pretty much just to  
19 share my concerns, my observations, my personal experience  
20 as a resident of Kensington. I live probably about a half  
21 mile from the mall, and I've lived in my home for 15 years,  
22 actually a little more than 15 years.  
23 Some specifics to my situation, I live -- the rear  
24 part of my house actually borders Silver Creek; so it runs  
25 basically through my backyard. So I have, I feel like, a

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1 personal responsibility and stewardship of the creek, and I  
2 have taken that seriously. Department of Environmental  
3 Protection has received several calls from me over the  
4 years. Actually, in the last month, there was a very  
5 significant smell of petroleum coming from the creek, and I  
6 called that in myself and another neighbor. Of course, we  
7 have no idea the source of it but just that I am quite  
8 sensitive and there was a noticeable sheen. So I know that  
9 there is pollution entering our stream system. I don't  
10 think anybody is going to disagree with that, but I'm  
11 just --  
12 MR. GROSSMAN: We know it didn't come from the  
13 Costco --  
14 THE WITNESS: Oh, no, of course not. No, of  
15 course not.  
16 MR. GROSSMAN: -- gas station because it's not  
17 there.  
18 THE WITNESS: No, no, absolutely not, no, and I --  
19 MR. GROSSMAN: Okay.  
20 THE WITNESS: -- would not make any assertion that  
21 it did because obviously it's not there, but it is a stream  
22 system and it does receive a lot of pollution just coming  
23 from the general area --  
24 MR. GROSSMAN: Okay.  
25 THE WITNESS: -- not from any one location,

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1 obviously. But, anyway, so I'm very sensitive to that.  
2 I'm a member of Kenmont pool and have been for  
3 about five years now. I have two children, ages 13 and 15,  
4 who regularly use the pool; we're up there most of the  
5 summer. And in the 50 years that I have lived in the  
6 neighborhood, I've always been a loyal shopper at the mall,  
7 but I do have to say that my loyalty has been in decline in  
8 the last six months or so.  
9 A few years ago I was actually in a pretty severe  
10 car accident at the intersection of University and Valley  
11 View Drive. Leaving the mall, I was T-boned by a car  
12 running the red light. So I've always had sort of a concern  
13 with that intersection, stemming back from that accident a  
14 few years ago, and I have noticed a significant increase in  
15 traffic up in the mall area to the point now that I rarely  
16 shop at the mall. I've been not shopping at the Giant Food  
17 Store any longer. I go into Kensington and I shop at the  
18 Safeway, just because the traffic up there, getting in and  
19 out of the parking lot, it's more than I am willing to put  
20 up with at this point in time. So I have changed my  
21 shopping behavior.  
22 If I do need to go to the mall, I am now walking  
23 instead of driving, because I have found just the  
24 configuration of the parking lot to be confusing and, and I  
25 don't like that three-way stop intersection at the top of

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1 Valley -- I think that's still Valley View as it comes into  
2 the mall -- that intersection with basically six lanes of  
3 traffic trying to negotiate this four-way stop, or three-way  
4 stop, and most people are rude and inconsiderate and don't  
5 yield, and I have just found that to be a headache, and so I  
6 try to avoid it at all costs.  
7 So now I park in the neighborhood and walk into  
8 the mall but that precludes me from carrying a lot of stuff.  
9 So I typically just do quick little shopping trips now at  
10 the mall. And I have found negotiating the crosswalk there  
11 is just as harrowing. Again, people aren't looking to yield  
12 to pedestrians. They're more concerned with who's going  
13 next through the intersection, people making left turns here  
14 and there. So I have even found that being a pedestrian up  
15 there is difficult. And I used to allow my children to walk  
16 up to the mall, and now I'm not comfortable letting them do  
17 that anymore because of the intersection. I'm still  
18 concerned with traffic in Kensington too, but at least there  
19 are traffic lights and that's, I don't have as grave  
20 concerns as up there at an unmonitored, basically,  
21 crosswalk, just with a stop sign.  
22 So I'm here, simply offering my testimony as a  
23 resident, as someone who has been aware of this process  
24 since day one. I've attended as many meetings as possible.  
25 I've sort of been on the periphery, not delving deeply into

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1 the documents and the testimony thus far, but I have been  
2 aware of the plans from day one and I've watched it closely,  
3 and I'm glad to have the opportunity, at least, to come and  
4 share some of my, my personal experiences with what's going  
5 on thus far. And I think the addition of a gas station is  
6 only going to exacerbate the problem because, like Danila  
7 had said, there will be vehicles coming into the mall  
8 specifically for the gas station. I think I even had heard  
9 Costco at some meeting way long ago, had mentioned -- I  
10 think they were probably asked, you know, what's the number  
11 of cars coming into the mall. It's going to be 1 or 200, I  
12 mean, hundreds additional vehicles into the mall just by  
13 virtue of the, of the store being there, because I remember  
14 at the very first meeting -- and I had posed the question,  
15 actually, and I was looking for some specific information,  
16 knowing how busy the mall is already, you know, what's the  
17 additional traffic load that the mall will have, and I  
18 remember numbers maybe in the hundreds of additional  
19 vehicles for the mall because of the store, the presence of  
20 a store there. I don't know, maybe you actually have real  
21 numbers now, I'm just not aware of it, but I know that there  
22 will be additional traffic just for the fueling station in  
23 addition to what's already being drawn for the store itself.  
24 MR. GROSSMAN: So I take it your bottom line is  
25 that you oppose the special exception?

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1 THE WITNESS: Well, I do, yes. I do. I've always  
2 thought -- and this is personal, purely personal -- that all  
3 the gas stations, I have -- I have lived in six different  
4 states in my life. I have lived in a number of very large  
5 cities in my lifetime. I have never seen a fueling station  
6 in a location like this. They're always on the side of a  
7 major road, you know, on Veirs Mill, on Georgia Avenue or  
8 Connecticut Avenue. I've never really seen a gas station,  
9 in my lifetime, in my experience, located in such an awkward  
10 location. It's inside a mall and on a ring road in a mall.  
11 I just, I have never in my personal experience, perhaps  
12 there are examples of that, but I just have never. So it  
13 never made sense to me from day one that a fueling station  
14 would be located inside a mall property so far from major  
15 thoroughfares. So --  
16 MR. GROSSMAN: Okay.  
17 THE WITNESS: -- yes, I do oppose the special  
18 exception.  
19 MR. GROSSMAN: Okay. I didn't mean to cut you  
20 off, by the way. Did --  
21 THE WITNESS: Yeah. No, no, that's good enough.  
22 That's -- yeah.  
23 MR. GROSSMAN: Okay. Any cross-examination from  
24 the Coalition?  
25 MS. ADELMAN: No.

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1 MR. GROSSMAN: All right. From Kensington  
2 Heights?  
3 MS. ROSENFELD: Yes.  
4 CROSS-EXAMINATION  
5 BY MS. ROSENFELD:  
6 Q Ms. Kervitsky, can you show me on that map,  
7 Exhibit 159, where you live?  
8 A I'm actually not even on it. That's what I was  
9 saying. I live about --  
10 Q Okay.  
11 A -- a half a mile. So I'm not directly --  
12 Q Okay.  
13 A -- adjacent to the mall property. I live -- this  
14 is University; this, I guess, is McComas -- I actually live  
15 much closer to the Town of Kensington.  
16 Q To the west, off the map?  
17 A To the -- yeah. So I'm sort of southwest of the  
18 mall property, yes.  
19 Q And you mentioned -- well, first of all, you  
20 mentioned that you no longer feel like it's safe for your  
21 children to walk through the parking lot and that you and  
22 your children go to the pool. Did your children used to  
23 walk from the pool to the mall and do shopping?  
24 A Oh, they definitely did, and when they reached,  
25 you know, teenage-hood, I would actually allow them to walk

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1 from my house up to the mall, yeah. They had built a  
2 sidewalk along McComas; so that was suddenly a lot safer.  
3 So not by themselves, but you know, together with a friend,  
4 I would allow them to walk to the mall. I've -- you know,  
5 the mall had a bad rap for a long time, and I, you know, I  
6 had never personally experienced anything bad at the mall;  
7 so I would allow them to go up there. They'd go up to  
8 Target or go get something to eat at the food court. So I  
9 definitely hesitate now allowing them to do that because I  
10 have personally had problems walking just across the  
11 intersection there and through the parking lot.  
12 Q And when you say the intersection there, you mean  
13 the intersection at Valley View?  
14 A I am talking about -- we usually come up by the  
15 pool, and this intersection here is, is really quite scary.  
16 A number of times I have come close to being hit by -- and,  
17 of course, it's not Costco's responsibility how, how people  
18 drive their vehicles. That's, of course, not theirs, but  
19 people in this area just are not good drivers, and the  
20 Costco there has certainly attracted a lot more traffic than  
21 used to be at the mall. So --  
22 MS. ROSENFELD: And for the record, the witness  
23 was talking about Intersection 16 --  
24 THE WITNESS: Oh, yeah. I don't --  
25 MS. ROSENFELD: -- what's been referenced.

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1 BY MS. ROSENFELD:  
2 Q That's okay. And --  
3 MR. GROSSMAN: Right.  
4 THE WITNESS: It's the one, yeah, at the top of  
5 this dead end here, and it goes straight over towards the  
6 Target, yeah.  
7 BY MS. ROSENFELD:  
8 Q And so, in your opinion, if the gas station draws  
9 additional traffic to the mall, would that make the problem  
10 worse?  
11 A More cars for me equals more problems. I mean,  
12 honestly, I can't see that more cars are going to make that  
13 intersection any better, but who knows? I mean, if there  
14 was a light up there, perhaps. I don't know if a light has  
15 ever been talked about at that intersection, but --  
16 Q And you testified that you used to drive to the  
17 mall and park within the mall parking lot --  
18 A Yes.  
19 Q -- but now you park outside of the mall.  
20 A I do. I park in the neighborhood here.  
21 Q Do you know the name of that street?  
22 A Faulkner? Is that Faulkner that goes by the pool?  
23 Yeah. I think it's Faulkner.  
24 Q Okay. So you park within the neighborhood and  
25 walk to the mall?

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1 A So I park in the neighborhood now, and yeah, if I  
2 go to the mall, yeah.  
3 Q And, in your view, do you think other people might  
4 choose to park that way?  
5 MR. GROSSMAN: That's a little vague for a  
6 question. Hold on one second.  
7 THE WITNESS: Sure.  
8 MR. GROSSMAN: Try to rephrase that way in --  
9 BY MS. ROSENFELD:  
10 Q In your opinion, would other shoppers perhaps  
11 choose to park in the neighborhood --  
12 A Well --  
13 Q -- in lieu of on the parking --  
14 A -- I could say --  
15 MR. GROSSMAN: Hold on one second.  
16 THE WITNESS: Oh, okay.  
17 MR. GROSSMAN: Have you observed others --  
18 THE WITNESS: There are --  
19 MR. GROSSMAN: -- parking in that, in the -- from  
20 outside the neighborhood --  
21 THE WITNESS: Oh.  
22 MR. GROSSMAN: -- parking inside the neighborhood  
23 to walk to the mall?  
24 THE WITNESS: I am never the only -- for what it's  
25 worth, I am never the only car parked in this circle. I

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1 have seen upwards of three or four other cars. Where those  
2 people go, I have no idea. I can't say.  
3 MR. GROSSMAN: Where they come from is the  
4 question --  
5 THE WITNESS: Yeah, or where they come from, I  
6 don't know. I don't know where they come from, where they  
7 go, but I've never seen -- I mean, I have always seen other  
8 cars parked in that circle --  
9 MR. GROSSMAN: Okay.  
10 THE WITNESS: -- and I know that the pool is  
11 closed right now; so that won't be attracting people, and I  
12 know that this one house on the end, I think, is either for  
13 sale or getting ready to be torn down or something. I know  
14 that that house is no longer occupied. So --  
15 MR. GROSSMAN: Okay.  
16 BY MS. ROSENFELD:  
17 Q And do you have any concern about increased  
18 traffic on the ring road where it abuts the pool for the  
19 Kenmont Swim Club?  
20 A Oh, yeah. Oh, yeah. No, I -- because this, in my  
21 observation, in my experience, there is almost always a line  
22 of traffic coming up this section. So there's always idling  
23 cars --  
24 MR. GROSSMAN: All right. Just for the record --  
25 THE WITNESS: Oh, I'm sorry.

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1 MR. GROSSMAN: -- you're referring to the  
2 intersection, from the intersection of Veirs Mill and  
3 University up to the, what we've called Intersection 16.  
4 THE WITNESS: Yeah. So that would be Valley View,  
5 not Veirs Mill.  
6 MR. GROSSMAN: Yes, I misspoke. I --  
7 THE WITNESS: Okay. Okay, just making sure.  
8 MR. GROSSMAN: -- said Veirs Mill. I meant Valley  
9 View.  
10 THE WITNESS: Yeah. Okay. So, yeah, Valley View.  
11 So up from University, up that little access road, I don't  
12 know if that is Valley View or not, but that mall access  
13 road, there's always a line of cars there --  
14 MR. GROSSMAN: Okay.  
15 THE WITNESS: -- and there's always a line of cars  
16 coming into, you know, this parking lot here. So, yeah, the  
17 pool on at least two sides is always surrounded by moving,  
18 idling, parking vehicles --  
19 MR. GROSSMAN: Okay.  
20 THE WITNESS: -- and I think adding the fueling  
21 station is not going to make the situation any better.  
22 MR. GROSSMAN: Okay.  
23 MS. ROSENFELD: Okay. Thank you.  
24 MR. GROSSMAN: Cross-examination?  
25 MS. HARRIS: No. No, thank you.

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1 MR. GROSSMAN: All right. Thank you very much,  
2 Ms. Kervitsky, for coming down here and --  
3 THE WITNESS: Okay. Thank you for the  
4 opportunity.  
5 MR. GROSSMAN: -- sharing your views. We  
6 appreciate it. All right. So now we're still awaiting the  
7 arrival of Kathy Michels. She said she's going to be here  
8 -- I thought she was going to be here earlier but that's  
9 what I understood. Have you spoken with her?  
10 MS. ADELMAN: No, I have not.  
11 MR. SILVERMAN: I think Ms. Cordry is trying to  
12 reach her.  
13 MR. GROSSMAN: I see.  
14 MR. SILVERMAN: I think.  
15 MR. GROSSMAN: All right. Well, why don't we take  
16 a break for a bit. Is there anything that we need to  
17 discuss? We've already talked about the fact that you're  
18 all going to be in touch with each other as far as new  
19 dates. How many additional dates do you think we'll need?  
20 MS. HARRIS: I think it depends on the remaining  
21 witnesses that the opponents have and how long they expect  
22 their remaining witnesses.  
23 MS. ROSENFELD: And as far as the 5th and the 6th,  
24 we would expect to start the morning of the 5th with  
25 Dr. Cole --

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1 MR. GROSSMAN: Okay.  
2 MS. ROSENFELD: -- and go through his direct and  
3 cross-examination. I assume he's going to be on the stand  
4 at least a full day, if not longer, between --  
5 MR. GROSSMAN: On direct or just, or direct and  
6 cross?  
7 MS. ROSENFELD: I would say the better part of a  
8 day on direct, if not a full day.  
9 MR. GROSSMAN: Well, we'll decide if it's the  
10 better part of the day after we hear.  
11 MS. ROSENFELD: Well, if I have anything to do  
12 with it, it will be. And --  
13 MR. GROSSMAN: It's that corny humor gene. I'm --  
14 MS. ROSENFELD: Yes, I know.  
15 MR. GROSSMAN: -- I have a defense.  
16 MS. ROSENFELD: And we will send an e-mail, I  
17 would think by Monday, to identify what additional witnesses  
18 we will have --  
19 MR. GROSSMAN: Okay.  
20 MS. ROSENFELD: -- on Tuesday, depending -- that  
21 Friday, depending on when Dr. Cole may finish. I think  
22 we --  
23 MR. GROSSMAN: Let's have a backup available --  
24 MS. ROSENFELD: That's my point.  
25 MR. GROSSMAN: -- in case he moves along -- I

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1 mean, on the 5th.  
2 MS. ROSENFELD: Okay.  
3 MR. GROSSMAN: In case he moves along more  
4 rapidly, so we don't want to waste any --  
5 MS. ROSENFELD: Sure.  
6 MR. GROSSMAN: -- of our precious time.  
7 MS. ROSENFELD: We have tried hard to make sure  
8 we've had witnesses --  
9 MR. GROSSMAN: I understand. Everybody's tried  
10 hard.  
11 MS. ROSENFELD: -- available.  
12 MR. GROSSMAN: All right. And --  
13 MS. ROSENFELD: And beyond that, I know that we  
14 have --  
15 MR. GROSSMAN: You have Dr. Breyse, Dr. Jison.  
16 MS. ROSENFELD: -- we have Dr. Breyse, Abigail  
17 Adelman, and Dr. Jison and my -- oh, and Donna Savage and  
18 Mark Meszaros.  
19 MR. GROSSMAN: All right.  
20 MS. ROSENFELD: And I don't know yet in what order  
21 at this point.  
22 MR. GROSSMAN: So, Ms. Adelman, would you make  
23 sure that you're ready to roll on the 5th should you be  
24 needed then, if Dr. Cole finishes up early? And, also --  
25 MS. ADELMAN: Yes.

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1 MR. GROSSMAN: -- let's say the same thing for  
2 Donna Savage.  
3 MS. ROSENFELD: Yes, I think we're looking at  
4 Donna Savage and perhaps Mr. Meszaros.  
5 MR. GROSSMAN: All right. Because we just want to  
6 make sure we have the --  
7 MS. ROSENFELD: Right.  
8 MR. GROSSMAN: -- people here. How long do you  
9 think Dr. Jison's testimony will take?  
10 MS. ROSENFELD: I would assume at least a couple  
11 of hours for, for Dr. Jison.  
12 MS. ADELMAN: An hour for me.  
13 MS. ROSENFELD: Mrs. Adelman, an hour perhaps;  
14 Dr. Breyse on direct, I would assume another couple of  
15 hours; and I think Donna Savage easily will be a couple of  
16 hours, and Mr. Meszaros, probably, I'm guessing, an hour.  
17 MR. GROSSMAN: Okay. All right. So it's not  
18 likely that we're going to finish the opposition case by the  
19 6th, but it's conceivable.  
20 MS. HARRIS: You're a positive man.  
21 MR. GROSSMAN: I am a pie-in-the-sky optimist, my  
22 wife will tell you, but that's -- all right. So, and how  
23 about, in terms of rebuttal, do you have any sense of how  
24 many, how much time you would think? I presume the same  
25 list of characters would supply rebuttal testimony, the

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1 experts that you have, or are there going to be additional  
2 people?  
3 MS. HARRIS: Yes, though it may be possible that  
4 there may be a new witness. I just --  
5 MR. GROSSMAN: Okay.  
6 MS. HARRIS: -- we will be focusing on that in the  
7 next several weeks.  
8 MR. GROSSMAN: Okay.  
9 MS. HARRIS: I think what may be more -- I mean,  
10 it may be a day and a half, two days, a day and a half, but  
11 I think the more telling thing is the cross-examination, if  
12 history plays out the way it has been, that our witnesses --  
13 I mean, I think the cross for most of our witnesses took  
14 longer than their direct testimony.  
15 MR. GROSSMAN: Why is everybody looking at you,  
16 Ms. Rosenfeld?  
17 MS. ROSENFELD: I --  
18 MR. GROSSMAN: All right.  
19 MS. ROSENFELD: I'm biting my tongue.  
20 MR. GROSSMAN: That's always a good idea. Okay.  
21 MS. ROSENFELD: No, I do, I do have an actual  
22 question.  
23 MR. GROSSMAN: She released her tongue.  
24 MS. ROSENFELD: I released it. I'll -- do you  
25 expect to produce any new written materials or new reports,

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1 because frankly that has been the genesis of a great deal of  
2 the time of additional cross-examination?  
3 MR. GROSSMAN: Fair enough.  
4 MS. HARRIS: I would like to give that some  
5 thought, and I can get back to you within the next week or  
6 so and let you know that. I mean --  
7 MR. GROSSMAN: I mean, it would be rebuttal, and  
8 so the likelihood of my being receptive to a lot of new --  
9 MS. HARRIS: Right.  
10 MR. GROSSMAN: -- concepts would be low.  
11 MS. HARRIS: I --  
12 MS. ROSENFELD: We're grateful for that --  
13 MR. GROSSMAN: But --  
14 MS. ROSENFELD: -- speaking for Kensington  
15 Heights.  
16 MR. GROSSMAN: But I'm not going to prejudge --  
17 MS. HARRIS: Yes.  
18 MR. GROSSMAN: -- whatever it is that you offer.  
19 I see Ms. Cordry in the background staring at the clock.  
20 MS. CORDRY: Yes. I just talked to Ms. Michels.  
21 She was trying to get away at 3:30. She unfortunately has  
22 only just left, or only just ready to leave her office. Do  
23 we want to try? She's coming from Bethesda.  
24 MS. HARRIS: Good luck.  
25 MR. SILVERMAN: Good luck, yes.

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1 MR. GROSSMAN: It's not the greatest time.  
2 MS. HARRIS: How long is she going to --  
3 MR. GROSSMAN: Has she left already? Is she on  
4 her way?  
5 MS. CORDRY: Well, she's just on her way, but we  
6 could probably head her off. I could call her and just tell  
7 her not to come if we think -- because by the time she gets  
8 here, she will probably be at least 15 to 20 minutes or more  
9 in terms of her actual testimony, from what I understand in  
10 talking to her, 15 to 30 minutes, and then cross. Should we  
11 just put her on in December?  
12 MR. GROSSMAN: How about if we just put her off  
13 the list altogether?  
14 MS. CORDRY: Well, no, because she has testimony  
15 that I think is important testimony from what she has  
16 suggested, but --  
17 MR. GROSSMAN: She's supposed to come when she  
18 said she's going to come --  
19 MS. CORDRY: Well, and again --  
20 MR. GROSSMAN: -- not postpone it three times and  
21 then --  
22 MS. ROSENFELD: Well, she's not a Kensington --  
23 she's an individual.  
24 MS. CORDRY: She's an independent witness. She's  
25 trying to get off of work. I mean, this is someone who's

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1 coming --  
2 MS. ROSENFELD: We're not --  
3 MR. GROSSMAN: Well, I know. I accommodate -- as  
4 you know, I've been accommodating witnesses the whole time,  
5 but when somebody says they're going to be here and then  
6 they don't show up and they leave us without anybody for --  
7 MS. CORDRY: Well, I understand.  
8 MR. GROSSMAN: -- 45 minutes, that's much more of  
9 a problem, okay?  
10 MS. CORDRY: Well, I mean, she can still come  
11 here, but I don't know that, you know --  
12 MS. ROSENFELD: Well, Mr. Grossman --  
13 MS. CORDRY: We're all working --  
14 MS. ROSENFELD: -- if I may --  
15 MR. GROSSMAN: Yes.  
16 MS. ROSENFELD: -- the scheduled primary witness  
17 for today had been Dr. Cole, and we have worked to try and  
18 coordinate with witnesses who said they wanted to testify to  
19 make sure that we didn't leave today at noon. So --  
20 MR. GROSSMAN: All right.  
21 MS. ROSENFELD: -- if you would please indulge  
22 her.  
23 MR. GROSSMAN: I understand. I understand. That  
24 is a fair point, that Dr. Cole was postponed at the request  
25 of the applicant, is what you're suggesting.

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1 MS. ROSENFELD: That's correct, and we have worked  
2 hard to make sure that we have a full day of witnesses.  
3 MR. GROSSMAN: All right. So what's the pleasure  
4 of the group here? Should we wait for Ms. Michels to  
5 arrive, or, and then just take her then? I mean, I have no  
6 problem in going over today. I don't know about the court  
7 reporter. Can --  
8 THE REPORTER: I'm fine.  
9 MR. GROSSMAN: Okay. So --  
10 MR. GOECKE: We're here. We may as well make the  
11 most of it, I suppose.  
12 MS. CORDRY: All right. Can we just take a break  
13 and --  
14 MR. GROSSMAN: All right. So we'll take a break.  
15 MS. CORDRY: Hopefully she's going against  
16 traffic.  
17 MR. GROSSMAN: You can all go have a beer or  
18 whatever.  
19 MR. GOECKE: Yes.  
20 MS. ADELMAN: Are you buying?  
21 MR. GROSSMAN: No, I don't suggest. I don't  
22 want --  
23 MS. ROSENFELD: In which case I won't be back.  
24 MR. GROSSMAN: -- anybody falling off their chair.  
25 So will you all let me know when she arrives?

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1 MS. CORDRY: Right.  
2 MR. GROSSMAN: Okay. We're in recess probably at  
3 least for 15 or 20 minutes.  
4 (Whereupon, a brief recess was taken.)  
5 MR. GROSSMAN: All right. We're back on the  
6 record, and Ms. Michels is here. Ms. Michels, would you  
7 state your full name, please, and address?  
8 MS. MICHELS: Yes. Kathleen Marie Michels, 1701  
9 -- and Michels is M-I-C-H-E-L-S.  
10 MR. GROSSMAN: Oh, E-L-S, okay.  
11 MS. MICHELS: Yeah, sorry. 1701 Ladd, L-A-D-D,  
12 Street, Silver Spring, Maryland 20902.  
13 MR. GROSSMAN: And how do you spell your Kathleen?  
14 MS. MICHELS: With a K --  
15 MR. GROSSMAN: Okay.  
16 MS. MICHELS: -- K-A-T-H-L-E-E-N.  
17 MR. GROSSMAN: All right. Would you raise your  
18 right hand, please?  
19 (Witness sworn.)  
20 MR. GROSSMAN: All right. You may proceed.  
21 DIRECT EXAMINATION  
22 THE WITNESS: So, okay, I have --  
23 MR. GROSSMAN: Are you testifying on behalf of any  
24 organization or just yourself?  
25 THE WITNESS: So I was going -- so I'm here on

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1 behalf of my, of myself and my family --  
2 MR. GROSSMAN: Okay.  
3 THE WITNESS: -- essentially; so -- although I  
4 have, as I'll mention, I'm a founding member of a number of  
5 organizations that are relevant: Green Wheaton and the  
6 Sligo Headwater Civic Association, both of which are focused  
7 on Wheaton issues. So I have, I've been living -- I've  
8 lived in the Wheaton area for 20 years, although I'm not,  
9 you know, right next to downtown, but our family has long,  
10 you know, patronized downtown. We have, familiar with  
11 Wheaton, so --  
12 MR. GROSSMAN: All right.  
13 THE WITNESS: -- just to try to give some context.  
14 And I have my husband, two sons, you know, sons and a dog.  
15 I'm a neuroscientist with expertise in the public health  
16 area, specifically.  
17 MR. GROSSMAN: But you're not offering expert  
18 testimony here, I take it?  
19 THE WITNESS: No. It's -- although, of course,  
20 it's informed by my background, so --  
21 MR. GROSSMAN: Okay.  
22 THE WITNESS: -- just with that caveat. I've been  
23 asked to speak about the station because I have a number of  
24 concerns arising out of my background and knowledge about  
25 some of the issues in connection with the station. And I

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1 understand that a special exception has been -- it's  
2 probably easier if I read from my paper -- application with,  
3 that a special exception application has been requested and  
4 some of the effects of the project are considered to be  
5 inherent adverse effects and that one must show something  
6 more than just the existence of features common to every  
7 station of the nature, every gas station, of the nature  
8 contemplated in the zoning ordinance in order to be able to  
9 deny approval of a proposal; so it has to be unique. So  
10 what I want to talk about today is some of the aspects of  
11 the design of this particular station that I think are  
12 unique and not inherent to every gas station that would be  
13 in the area, as contemplated in the zoning code.  
14 As I understand it, from what has been said by  
15 Costco, in particular, this station is projected to sell \$12  
16 million -- 12 million gallons, sorry, of gasoline per year  
17 and that, that is several times the size of a typical gas  
18 station in the county. So I think that's one of the primary  
19 points, is that this is not your normal gas station. It's  
20 well above any other gas station operating certainly in the  
21 area and perhaps in the county, and this was addressed in  
22 last year's zoning text amendment, 12-07, which noted that  
23 typical gas stations sold around 1.5 million gallons a year  
24 and imposed added minimum restrictions for stations above  
25 3.6 million gallons per year. And this, of course, as I've

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1 mentioned, this 3.6 million gallons is only 30 percent of  
2 the proposed sales volume for the Costco gas station, and  
3 the amendment used a 300-minimum-foot buffer for stations  
4 above that 3.6-million-gallon size, but of course, that text  
5 amendment covers -- doesn't really address, when you get way  
6 above that size, which the Costco gas station will be,  
7 whether an even larger buffer might be needed, and so just  
8 to make that point. There was a question as to whether a  
9 buffer as large as a thousand feet, but the problem with  
10 that was if you wanted a one-size-fits-all amendment, to  
11 apply that perhaps to the smallest gas stations wouldn't  
12 make sense. So the result was the Council decided to scale  
13 down the original 1,000 feet to 300 feet for stations  
14 starting at 3.6 million gallons.

15 MR. GOECKE: Mr. Grossman, I would object because  
16 I think she's testifying what Council, their thought process  
17 was and --

18 MR. GROSSMAN: Yes, I -- well, we've been going on  
19 in this hearing for, approaching seven months now. So we  
20 have a pretty good idea of what --

21 THE WITNESS: Okay. That's fine.

22 MR. GROSSMAN: -- the zoning text amendment was --

23 THE WITNESS: Okay.

24 MR. GROSSMAN: -- and what the code provides. So  
25 we'd like to hear you --

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1 THE WITNESS: Right.

2 MR. GROSSMAN: -- views on it rather than what's  
3 already been enacted.

4 THE WITNESS: Sure. So, okay, so that's to get at  
5 the protections for the residents and the people in the  
6 area, is whether, whether it's sufficient, whether what was  
7 decided was sufficient for a gas station that's uniquely of  
8 this volume and size.

9 So Costco is a magnet, really, that draws  
10 customers from a huge regional area and would draw customers  
11 from a larger area and a larger number of customers than a  
12 normal gas station would do. The sales at this station  
13 would probably take away from sales in the local area gas  
14 stations, and -- because there wouldn't be any added demand  
15 in the local area, but, so it would probably pull away from  
16 the other gas stations and concentrate those sales in one  
17 location. And I think that's the main, the main overarching  
18 point, is a huge number of cars idling in one location and  
19 those are cars that would have maybe been distributed to a  
20 number of other stations normally, without the existence of  
21 this station.

22 And the station is designed to operate at a very  
23 high percentage of its maximum capacity. If -- with 16  
24 pumps and 12 million gallon, million gallons, each pump will  
25 have to sell about 750,000 gallons a year, and if you

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1 compare that to a typical station that has anywhere from  
2 four to 12 pumps, which sell about 1.5 million gallons a  
3 year on average, the difference in usage will be dramatic  
4 and, again, will require that there be -- cars will be  
5 idling at this gas station.

6 So, as I understand it, the testimony given during  
7 these proceedings is that it's expected, based on the actual  
8 experience at the Sterling store, that there'll be queues of  
9 40 cars for as much as eight hours or more a day.

10 MR. GROSSMAN: No, I don't think -- that's not the  
11 testimony.

12 THE WITNESS: Okay. So --

13 MR. GROSSMAN: There will be, on occasion, queues  
14 of 40 cars.

15 THE WITNESS: Right, there could be queues of 40  
16 cars, but even, I mean, that's even way and above. I mean,  
17 most, so in most -- in my driving experience, very rarely do  
18 you have long queues of cars at a gas, at almost any gas  
19 station really, except during the times when gas was being  
20 rationed, and I do remember that, and then there were lines,  
21 but at Costco stations there are almost always lines. So,  
22 so again, that's in my, you know, in my overall experience  
23 that there's usually not that kind of idling. I mean, the  
24 -- when I'm driving on a highway sometimes and you go to one  
25 of the big gas stations, sometimes there might because

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1 that's the only place you can go, unless you want to get off  
2 and then come back on again. So at most other stations,  
3 yeah, there just isn't that much idling. You go; you pull  
4 in. There might be one or two cars ahead of you perhaps,  
5 but there just isn't that much idling.

6 The other problem is that -- the other factor that  
7 would limit idling at other gas stations is that if they  
8 were lined up, they would spill out onto the, onto the  
9 surrounding roads and that would limit the amount of cars  
10 that could actually be at one of the smaller gas stations.  
11 And at the Costco site, there would be the capacity for more  
12 cars to be able to sit there, idling, before it's spilling  
13 out and causing, causing problems.

14 Okay. I just covered that. Okay. So, basically,  
15 that's, you know, the spillover, and if there is a  
16 spillover, that's a whole nother issue, is how that would be  
17 managed if there were a large number of cars and they did  
18 start spilling out into the surrounding roads.

19 MR. GROSSMAN: Well, it's been recommended that  
20 there be a requirement for, that an attendant make sure that  
21 cars don't spill out onto the ring road.

22 THE WITNESS: Right, but how effective that would  
23 be, I don't know if anybody really knows if that's been a  
24 proven, you know, method to -- so, in any case, the, if the  
25 cars, even in that case, if the cars are forced to drive

1 around again, they're driving just to keep driving to get  
2 gas and creating more congestion both for the area and for  
3 the mall and also creating more idling, of course. So  
4 either way, it's a problem. Some of the -- so the unusual  
5 lineup of waiting cars will, well, there's a whole lot of  
6 issues, and I mean, there could be noise, but the main issue  
7 is the exhaust being generated of all those cars sitting in  
8 one place and idling.

9 Some of the adverse effects that arise from,  
10 inherently, from the idling of those cars are, the first is  
11 the direct and immediate health effects from the vehicle  
12 emissions that fall in the category of airborne toxics that  
13 are regulated under the National Ambient Air Quality  
14 Standards and other similar EPA regulations. And when  
15 looking at the effects on, of health effects on nearby  
16 residents and those using the facilities at the mall,  
17 including shoppers, students at the school, visitors to the  
18 nearby pool, et cetera, this is a concern.

19 The other is the effects of idling on a more  
20 global basis as they relate to greenhouse gases, et cetera,  
21 but I think the point -- the fact of the point source being  
22 in that area is particularly important. And I'll interject  
23 here because this a recent -- that the World Health  
24 Organization declared air pollution as a Class 1 carcinogen,  
25 and by air pollution, in particular, they meant the, many of

1 the toxics that are generated in car exhaust, in particular.  
2 Okay. So I'm aware of the large and growing body  
3 of studies that relate to the effects of various components  
4 of air pollution, such as nitrogen oxide, particulate matter  
5 -- which is an even bigger concern recently and that's one  
6 of the components that have been declared a Class 1  
7 carcinogen -- benzene, and carbon monoxide, and those are  
8 important for human health. I understand others will be  
9 testifying on that in more detail; so I won't go into more  
10 of that here, but I would just like to add my, my emphasis  
11 to that testimony as well.

12 MR. GROSSMAN: I guess the question is one of  
13 dosage to people who are exposed. That's been an issue  
14 here, what the dosage is and what is safe and what's not.

15 THE WITNESS: Well, certainly there's disputes  
16 about the exact levels of emissions. It's indisputable that  
17 the, as emissions rise, rates of asthma, rates of  
18 cardiovascular disease, heart disease, even, I mean, even  
19 not directly related to lung effects, rise. I mean, there  
20 is no, no bright line where --

21 MR. GROSSMAN: Right.

22 THE WITNESS: -- it's safe and not safe.

23 MR. GROSSMAN: The question is what, if any,  
24 increase in significant damaging pollutants will arise from  
25 this proposed gas station in this location and the people

1 who are immediately exposed.

2 THE WITNESS: Right. So they told us -- Costco's  
3 original assurances, using their analytical methods,  
4 conclude there were no violations of EPA standards. Now,  
5 there were errors in those original estimates, particularly  
6 on the background calculations for nitrogen oxide, and so  
7 it's not really clear what, what the levels of pollutants  
8 that will be issued, and it's all somewhat hypothetical  
9 because you don't normally have this level of cars idling  
10 all in one place. It's a synthetic, you know, created  
11 situation of, you know, huge point source pollution. I  
12 mean, all of this -- well, cars, when they idle, release  
13 more of all the various pollutants when they're idling, and  
14 in addition, it's not spread out over a wide area.

15 MR. GROSSMAN: Are you saying that cars, when  
16 they're idling, produce, aside from the dispersion of it  
17 over a larger area, are you saying that a car idling  
18 produces more pollutants than a car which is, which is --

19 THE WITNESS: They're less efficient when they're  
20 idling, yes. They're less efficient when they're idling.

21 MR. GROSSMAN: Does the efficiency equate directly  
22 to --

23 THE WITNESS: Yeah. They --

24 MR. GROSSMAN: -- the amount of pollutants of the  
25 kind that we're talking about here?

1 THE WITNESS: Yeah. A car, a car, when it's  
2 idling, will, will release more hazardous pollutants than  
3 when it's rolling, and of course, it's in one spot. So you  
4 have the double whammy, essentially, and of course, then  
5 it's multiplied by the number of cars.

6 Okay. So it's also, it's idling for less than --  
7 so the state actually has a number of regulations on idling  
8 times, okay, but these idling times weren't really meant to  
9 -- I mean, just because each car is idling for a certain  
10 period of time, when it -- it wasn't really meant to apply  
11 to tons of cars idling over, or you know, a whole number of  
12 cars idling. So if --

13 MR. GROSSMAN: I'm sorry. What wasn't --

14 THE WITNESS: -- each individual car is idling  
15 for, say, five or 10 minutes, normally you would have a car  
16 -- the regulations would say you have to turn your car off.  
17 Well, so a car might idle for five minutes and just be under  
18 the, you know, the limit and, but then another car is also  
19 idling and then another car is also idling. So it's really  
20 cumulative with the number of cars, but the regulations  
21 weren't really designed to address a whole lot of cars, you  
22 know, idling --

23 MR. GROSSMAN: Which regulations are you talking  
24 about?

25 THE WITNESS: The Maryland, the regulations on --

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1 MR. GROSSMAN: The anti-idling one?  
2 THE WITNESS: Yeah.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: Maryland's -- and Maryland's law  
5 applies to all vehicles. In some states they apply only to  
6 diesel, but in Maryland it's all vehicles.  
7 MR. GROSSMAN: Right.  
8 THE WITNESS: Let's see. Okay. And, okay, so I  
9 addressed that. Okay. And there's a whole variety of  
10 reports on idling. For example, in Canada they noted that  
11 anything over 10 seconds, it makes sense to turn your engine  
12 off.  
13 MR. GROSSMAN: Who's they?  
14 THE WITNESS: There's a Canadian report on idling  
15 and emissions. So these are all in the, in the excess,  
16 supplemental materials.  
17 MR. GROSSMAN: I don't know what we're looking at.  
18 MS. CORDRY: Okay. There were documents that  
19 Ms. Michels asked us to submit that are all as part of --  
20 they were put in some time ago. I think they're -- do you  
21 have the exhibit list there?  
22 THE WITNESS: Yeah. So anyway, so if you're  
23 idling --  
24 MR. GROSSMAN: Hold on one second, Ms. Michels --  
25 THE WITNESS: Okay.

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1 MR. GROSSMAN: -- until I figure out what we're  
2 talking about here.  
3 THE WITNESS: There's a number -- so there's a  
4 number of reports that, background materials.  
5 MR. GROSSMAN: Okay. Let me see which ones we're  
6 talking about. What, which exhibit numbers?  
7 MS. CORDRY: 363.  
8 MR. GROSSMAN: Okay. Hold on.  
9 THE WITNESS: So, I mean, the main point is --  
10 MR. GROSSMAN: Ms. Michels, can you just give --  
11 THE WITNESS: Yeah. Oh, okay. Okay. Sorry.  
12 MR. GROSSMAN: Thank you. All right. So we have  
13 363, beginning; you have a list, 363(a); and then you have  
14 363(b), Ann Arbor Idling Reduction Ordinance. Then (c) was  
15 the Argonne Laboratory's Study of Idling Effects --  
16 THE WITNESS: Right. So there's --  
17 MR. GROSSMAN: -- then (d) --  
18 THE WITNESS: Uh-huh.  
19 MR. GROSSMAN: -- the ATRI Compendium of  
20 Anti-Idling Provisions; then (e) Maryland Greenhouse Gas  
21 Reduction Act Plan Excerpts; (f) Montgomery County Climate  
22 Protection Plan; (g) Montgomery County Fleet Management  
23 Idling Policy; (h) Natural Resources Canada Greenhouse Gases  
24 -- is that what you were referring to?  
25 THE WITNESS: Right. Right.

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1 MR. GROSSMAN: And then (i) Oak Ridge National  
2 Labs Best Practices Guide Excerpts; (j) U.S. Department of  
3 Energy Idling Documents; and (k) U.S. Department of Energy,  
4 Vehicle Technologies Office, Anti-Idling Policy.  
5 THE WITNESS: Yes. Yeah.  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: Thank you. Yeah, thanks for reading  
8 that. I mean, the main point -- obviously, I'm not going to  
9 go over all of those idling policies, but the main point is  
10 that, of all of those, is that virtually any idling, as I  
11 mentioned before, is harmful, is a bad idea, and -- for  
12 human health and the environment -- and idling conditions  
13 such as present at the Costco station are likely to be  
14 particularly problematic because people are sitting there  
15 and -- I mean, there's basically constant idling, even if  
16 it's not any individual car that's doing it for a long  
17 period of time.  
18 MR. GROSSMAN: Okay.  
19 THE WITNESS: The exceptions are to deal with the  
20 practical realities for most of the other idling regulations  
21 for traffic or operational considerations. So, so basically  
22 this is unknown -- a situation like that, presented by the  
23 Costco gas station, is kind of unknown territory. It just  
24 wasn't foreseen, but certainly, all of these regulations  
25 apply, too, with the essence being idling is harmful and

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1 should be limited as much as possible. So, let's see. In  
2 Montgomery County they set up their own policies for county  
3 employees. It limits idling to no more than five minutes,  
4 but none of that would be applicable, as I said, sitting in  
5 a line at a gas station pump.  
6 So if any idling is generally bad, then the  
7 obvious approach would be to try to design operations in  
8 some way to eliminate idling to the greatest degree  
9 possible. Not creating the problem in the first place,  
10 though, is the best solution. In this case, there really is  
11 no way that, you know, I certainly can foresee, that they  
12 could actually prevent the idling short of not having, you  
13 know, the gas station.  
14 MR. GROSSMAN: What if they doubled the number of  
15 pumps?  
16 THE WITNESS: They might. It's -- I'm not sure if  
17 the numbers of, you know, how many they are expecting to  
18 bring in. It might --  
19 MR. GROSSMAN: Sixteen pumps.  
20 THE WITNESS: -- might limit the idling, but if  
21 there's 40 pumps in a queue, I mean, 40 cars in a queue, I  
22 don't, I don't know for sure, you know, how, whether it  
23 would get it down to the level of what you would expect at a  
24 normal gas station.  
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: So the applicant, Costco, is  
2 creating a situation that it knows will engender long idling  
3 lines and argues that its patrons need heating and  
4 air-conditioning to keep their cars on during the delays  
5 that they'll be subject to. So that --  
6 MR. GROSSMAN: I don't recall that being in the  
7 record here --  
8 THE WITNESS: Okay.  
9 MR. GROSSMAN: -- that anybody said that they  
10 needed heating or -- I mean, it may be that they said it at  
11 some point, but --  
12 THE WITNESS: Well, whether they would be forced,  
13 yeah, that's been said.  
14 MR. GROSSMAN: -- but I don't recall anybody  
15 testifying to that.  
16 THE WITNESS: Okay. I don't know if anyone's  
17 testified here, but it's been -- to actually force people to  
18 turn off their cars.  
19 MR. GROSSMAN: Is my recollection incorrect? Did  
20 anybody testify to that that anybody recollects, said  
21 that --  
22 MR. BRANN: Not that I remember.  
23 THE WITNESS: Okay.  
24 MR. GROSSMAN: -- Costco said that they need to  
25 have people running their engines to stay warm or whatever?

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1 Is that what you're suggesting?  
2 THE WITNESS: Yeah, and this may not have been  
3 said here, but just as far as whether people should be,  
4 there should be regulations on people, or rules on people in  
5 the queue. And I could be wrong about that, but I thought  
6 that was one of the rationales for not actually trying to  
7 regulate what people actually do in the queue. So I could  
8 be wrong about that, but essentially, the gas station is  
9 going to generate a situation that will at least violate in  
10 spirit, if not, the letter of the law regulating idling in  
11 various situations.  
12 MR. GROSSMAN: Well, let me ask you a question  
13 about, in terms of the amount of emissions. You already  
14 said that cars tend to emit more harmful gases when they  
15 are, when they're idling than when they're running. What  
16 happens when they turn their cars on and off? Let's say  
17 there were some enforcement condition that said cars waiting  
18 in the queue had to have their engines off until they were  
19 going to move.  
20 THE WITNESS: Well, that's part of the reason it's  
21 not a solution to even have that kind of a, because when you  
22 turn your car on and off, you're also generating -- now, I  
23 don't know. I mean --  
24 MR. GROSSMAN: That's the question --  
25 THE WITNESS: Yeah.

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1 MR. GROSSMAN: -- are you generating more or less?  
2 If you --  
3 THE WITNESS: Well, it depends.  
4 MR. GROSSMAN: -- if you have your engine off --  
5 THE WITNESS: If you're sitting for 15 minutes,  
6 it's probably okay.  
7 MR. GROSSMAN: Yes, but let's say you're sitting  
8 for two minutes before you move.  
9 THE WITNESS: It's --  
10 MR. GROSSMAN: Do you know?  
11 THE WITNESS: -- it's not clear. No, I don't --  
12 well, I can't know for sure. I mean, I don't think anyone  
13 can know for sure --  
14 MR. GROSSMAN: Well, do you know --  
15 THE WITNESS: -- because you'd have to titrate it.  
16 It's like, okay, are you off for two minutes, are you off  
17 for three minutes. So it's a balance.  
18 MR. GROSSMAN: Do you know if that issue has been  
19 studied?  
20 MR. SILVERMAN: Yes.  
21 MS. CORDRY: Yes.  
22 THE WITNESS: It had, yeah. It has been.  
23 MR. GROSSMAN: All right. And is there any  
24 evidence in the case already on this?  
25 MS. CORDRY: I think some of the exhibits that are

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1 in here do go to that.  
2 MR. GROSSMAN: Okay.  
3 MS. CORDRY: Some of the exhibits in 363.  
4 MR. GROSSMAN: Do you happen to know off the top  
5 of your head what they, what they say on this point?  
6 MS. CORDRY: I think I did look at some of those.  
7 I think the Argonne Laboratory study talked about that.  
8 THE WITNESS: Oh, that's right, yeah.  
9 MS. CORDRY: I think the Canada one talks about  
10 it.  
11 MR. GROSSMAN: Okay.  
12 MS. CORDRY: The DOE documents, I think, talk  
13 about it. I mean, I think there's a lot of studies --  
14 THE WITNESS: Yeah. Well, they all address it.  
15 It's just, you know --  
16 MS. CORDRY: -- that talk about how long you  
17 should, you know, how -- when it stops making sense to let  
18 your car idle and when you should turn it off.  
19 MR. GROSSMAN: Stops making sense in terms of  
20 pollutant emission?  
21 MS. CORDRY: Well, pollutants and greenhouse  
22 gases, both, which are --  
23 MR. GROSSMAN: Okay.  
24 MS. CORDRY: -- slightly different questions.  
25 THE WITNESS: And how efficient your car, if you

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1 have -- you know, it depends on the type of car you have,  
2 too, or if it's a truck or if it's a Prius. So it'll, it'll  
3 vary. I guess that's the main thing I'm saying. It's not,  
4 it's not a bright line, but there are studies looking at --  
5 MR. GROSSMAN: Okay.  
6 THE WITNESS: -- the average emissions.  
7 MR. GROSSMAN: Okay. You may go on.  
8 THE WITNESS: Okay. So I'll try to -- okay. So  
9 whatever -- the state's policy became completely clear in  
10 2009 when the state passed the Greenhouse Gas Reduction Act,  
11 which required that a plan be created to put the state on  
12 track to reduce greenhouse gases. So, so we're  
13 transitioning to the effect on greenhouse gases. So we're  
14 on track to reduce greenhouse gases 25 percent below what  
15 they were in 2006. A comprehensive report on how that goal  
16 is to be achieved was issued in October.  
17 MR. GROSSMAN: October of what?  
18 THE WITNESS: Of 2013, and it begins by explaining  
19 the problems from greenhouse gases and notes that Maryland  
20 has nearly as many greenhouse gas emissions as Norway and  
21 Sweden combined. It also noted that through 2005, Maryland  
22 has had growing emissions per capita while the U.S. overall  
23 was declining.  
24 MR. GROSSMAN: Let me see. Is that one of those  
25 exhibits?

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1 THE WITNESS: Yeah.  
2 MR. GROSSMAN: Hold on one second.  
3 THE WITNESS: That's Exhibit 8.  
4 MR. GROSSMAN: Okay. 363(e)?  
5 MS. CORDRY: (E) it looks like, yes.  
6 MR. GROSSMAN: The excerpts? Okay.  
7 MS. ADELMAN: (B)?  
8 MS. CORDRY: (E).  
9 MS. ADELMAN: (E).  
10 MR. GROSSMAN: (E).  
11 THE WITNESS: And the note that the Maryland had  
12 growing gas emissions per capita while the U.S. was  
13 declining is page 12 to 13.  
14 MR. GROSSMAN: Okay.  
15 THE WITNESS: Thus it discusses the need for  
16 Maryland to take the lead in reducing its output of such  
17 gases in order to reduce the impact of climate change in  
18 Maryland, which has significant vulnerabilities to severe  
19 weather events and rising sea levels. Notably, nitrogen  
20 oxide, a precursor to nitrogen dioxide, is approximately 310  
21 times as potent as a greenhouse gas as carbon dioxide and  
22 that's also in the report. Thus, to the extent some of the  
23 emissions of nitrous oxide from car engines idling at the  
24 gas station is not converted into nitrogen dioxide, which is  
25 the pollutant causing human health effects, the nitrous

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1 oxide itself will be a highly potent greenhouse gas  
2 generator.  
3 The plan also discusses how reducing greenhouse  
4 gases will assist in reducing the co-pollutants that were  
5 covered by the National Air Quality Standards. That's on  
6 page 49 to 50. The report notes that Maryland has achieved  
7 a reduction in vehicle miles traveled since 2008 below  
8 projections, and this has been a benefit to achieving total  
9 reductions needed to meet the goal. So driving has  
10 decreased; so that's good. And increase, increase in CAFE  
11 standards is expected to also produce a beneficial effect.  
12 So approximately 10 percent of the overall  
13 reductions are expected to come from reducing car use and  
14 improving the efficiency of what is used. Both of these  
15 increases will reduce the need for more gas sales -- so  
16 that's one point -- and the need to build any more gas  
17 stations. So gas, if gas use is decreasing, you don't  
18 really need more gas stations.  
19 Our proposed recommendation is to make the current  
20 idling law more stringent where there are stations and to  
21 enforce it more consistently. Overall, the need to reduce  
22 greenhouse gases also underscores the need to avoid creating  
23 additional idling hot spots where they do not exist now, and  
24 that's the main point, because that's what would happen  
25 here. And the report states that enforcement of the idling

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1 law is essential to achieving greenhouse gas benefits and  
2 that's on page 117.  
3 In addition to the Maryland goals, Montgomery  
4 County has adopted its own climate change plan, and the bill  
5 established a sustainability working group and charged it  
6 with developing the climate action plan to reduce countywide  
7 greenhouse gas emissions to 80 percent below the amount in  
8 the base year, which was fiscal year 2005, and including a  
9 plan to stop increasing countywide greenhouse gas emissions  
10 by 2010 and achieve an actual reduction of 10 percent every  
11 five years through 2050. Two of its recommendations dealt  
12 directly with reducing idling -- again, the issue here --  
13 one for the county workforce and the other for the public at  
14 large. Nowhere in there is there a recommendation that the  
15 county should approve projects that unnecessarily create  
16 added idling.  
17 The federal government and international bodies  
18 are also concerned with reducing greenhouse gases and  
19 dealing with climate change --  
20 MR. GROSSMAN: What page is that on?  
21 THE WITNESS: Which one? The --  
22 MR. GROSSMAN: The county should not approve --  
23 THE WITNESS: That is Exhibit 9, okay, page 5 to,  
24 on page 5 and page 12.  
25 MR. GROSSMAN: And this is in 363(e)?

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1 THE WITNESS: Yes, I --  
2 MS. CORDRY: Looks like that would be --  
3 THE WITNESS: Yeah, it's Exhibit 9.  
4 MS. CORDRY: It looks like it would be Exhibit F,  
5 363(f).  
6 MR. GROSSMAN: All right. 363 --  
7 THE WITNESS: (F).  
8 MR. GROSSMAN: Hold on. 363(f), and what page?  
9 THE WITNESS: Page 5 and 12, or I'm sorry, pages  
10 90 to 92.  
11 MR. GROSSMAN: Pages 90 to 92. And what was --  
12 (f) was?  
13 THE WITNESS: Yeah, I'm not sure exactly which, I  
14 have -- it might have been repeated on one of those pages.  
15 MR. GROSSMAN: Hold on one second.  
16 MS. CORDRY: Yes, that's the Montgomery County  
17 Climate Protection Plan.  
18 MR. GROSSMAN: Right.  
19 MR. GOECKE: I'm sorry. Do you have a copy of  
20 that? The version we have doesn't include those pages.  
21 THE WITNESS: The Montgomery County Protection  
22 Plan?  
23 MR. GOECKE: Yes.  
24 MS. HARRIS: Yes. It seems what was sent to us  
25 were just excerpts.

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1 MS. CORDRY: Yes.  
2 MS. HARRIS: It didn't include those pages.  
3 MS. CORDRY: Let me see what she's got.  
4 THE WITNESS: Yeah, these are -- let's see. Oh,  
5 here's some, and these are just copies. I don't think I  
6 have the full one.  
7 MS. CORDRY: What page are you referring to?  
8 THE WITNESS: So --  
9 MS. CORDRY: Well, in any case --  
10 THE WITNESS: Yeah. So it's two of the  
11 recommendations that were in there.  
12 MS. CORDRY: All right. Are the recommendations  
13 in there?  
14 THE WITNESS: Yeah, that's what I'm trying to  
15 find. I thought it was on -- do you have the right page  
16 there?  
17 MS. CORDRY: I'm looking at page ES-8. Is that  
18 the recommendations you're talking about?  
19 THE WITNESS: Oh, where are you looking at? (F)?  
20 MS. CORDRY: Transportation, is that what you're  
21 looking at?  
22 THE WITNESS: Yeah, that's probably -- yeah, this  
23 looks like the page.  
24 MS. CORDRY: Okay. So if you look at ES-8, I  
25 think that has the recommendations there.

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1 THE WITNESS: Develop comprehensive idling  
2 policies supporting Maryland's vehicle anti-idling law with  
3 an emphasis on both education and outreach as well as  
4 effective enforcement of the law. That's T-9 under  
5 Transportation.  
6 MR. GROSSMAN: No, I'm looking for the one that  
7 you quoted earlier which said that the county should not  
8 approve projects that were --  
9 THE WITNESS: Oh, what I said was nowhere in there  
10 is there a recommendation that the county -- I'm sorry. I  
11 -- nowhere in the report is there a recommendation that the  
12 county should approve projects that unnecessarily create  
13 idling. I'm sorry. That's, that's kind of --  
14 MR. GROSSMAN: Well, that's not shocking that they  
15 wouldn't --  
16 THE WITNESS: Yeah, right.  
17 MR. GROSSMAN: -- recommend that the county  
18 increase idling.  
19 THE WITNESS: Right, right, right, but they do,  
20 they do recommend that hot spots not be created, and this  
21 would be certainly a hot spot.  
22 MR. GROSSMAN: So there's nothing -- there isn't  
23 any, any section of this, of this document that says that  
24 the county should not approve projects that will increase --  
25 THE WITNESS: No, no, no, no, no, no, no. No.

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1 MR. GROSSMAN: Okay.  
2 THE WITNESS: I mean, no, not specifically.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: The federal government -- so the  
5 federal government and international bodies, as I mentioned,  
6 also are concerned with greenhouse gases in dealing with  
7 climate change, both from health and climate change  
8 perspective.  
9 In short, at every level of government, this  
10 strong concern with reducing these emissions and approving  
11 this gas station would go in the wrong direction from both  
12 the health and greenhouse gas perspective. Not only do we  
13 not need another gas station -- so that's a whole nother  
14 issue -- but also we do not, certainly do not need one that  
15 creates a problem that does not now exist, in essence, a hot  
16 spot for pollutants that affect human health and greenhouse  
17 gases. So there is -- I would assert that there's no  
18 justification for approval of this station.  
19 MR. GROSSMAN: Okay.  
20 THE WITNESS: And that's it.  
21 MR. GROSSMAN: All right. Any cross-examination  
22 from the Stop Costco Gas Coalition?  
23 MS. ADELMAN: No, sir.  
24 MR. GROSSMAN: From Kensington Heights?  
25 MS. ROSENFELD: No.

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1 MR. GROSSMAN: Kensington View is not here. The  
2 applicant, cross-examination?  
3 MS. HARRIS: Just one moment.  
4 MR. GROSSMAN: All right.  
5 MR. GOECKE: No questions.  
6 MR. GROSSMAN: No questions?  
7 MR. GOECKE: No.  
8 MR. GROSSMAN: Okay. All right. Thank you very  
9 much, Ms. Michels.  
10 THE WITNESS: Thank you.  
11 MR. GROSSMAN: I appreciate your coming down here  
12 and sharing your --  
13 THE WITNESS: And should I leave these here or  
14 take --  
15 MR. GROSSMAN: Well, as I understand it --  
16 THE WITNESS: Those --  
17 MS. HARRIS: All of those are, yes, they're  
18 already admitted.  
19 MR. GROSSMAN: -- these are already, those  
20 documents have already been submitted. So --  
21 MS. CORDRY: Yes. Yes.  
22 MR. GROSSMAN: -- you can take those with you.  
23 Thank you. All right. So I think we've talked about  
24 procedural matters. Whoops. Careful, careful.  
25 MR. BRANN: Okay. You're free.

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1 THE WITNESS: Okay, thank you.  
2 MR. BRANN: Uh-huh.  
3 MR. GROSSMAN: It looks more hazardous than  
4 idling. It was a hazard of moving. All right. So if there  
5 is nothing else then, then in terms of the witnesses on  
6 December 5, we start out with Dr. Cole and then we have  
7 Ms. Adelman as one possibility and Donna Savage and --  
8 MS. ROSENFELD: And, Mr. Grossman, what --  
9 MR. GROSSMAN: Yes.  
10 MS. ROSENFELD: -- I'd like to do is e-mail no  
11 later than Monday who the witnesses --  
12 MR. GROSSMAN: Okay.  
13 MS. ROSENFELD: -- following Dr. Cole might be.  
14 MR. GROSSMAN: All right.  
15 MS. ROSENFELD: Keeping in mind that you don't  
16 want any short days.  
17 MR. GROSSMAN: Right.  
18 MR. SILVERMAN: God forbid.  
19 MR. GROSSMAN: I mean, I don't have a problem with  
20 Dr. Jison or Dr. Breyse to being in there on the 5th,  
21 depending on the situation with the applicant. I'm just,  
22 you know, want to make sure we, we are occupying our days.  
23 MS. ROSENFELD: And we're trying to, again, to --  
24 MR. GROSSMAN: Right.  
25 MS. ROSENFELD: -- coordinate the schedules of

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1 people who have --  
2 MR. GROSSMAN: Sure.  
3 MS. ROSENFELD: -- jobs during the day. So --  
4 MR. GROSSMAN: Right.  
5 MS. ROSENFELD: -- until I can consult with  
6 them --  
7 MR. SILVERMAN: And Dr. Breyse works by the hour.  
8 So we need to be cautious.  
9 MR. GROSSMAN: All right. Okay. Is there  
10 anything further we need to discuss?  
11 (No audible response.)  
12 MR. GROSSMAN: All right. Then we'll hear from  
13 you regarding schedules, and I will see you on December 5.  
14 MR. GOECKE: Thank you.  
15 MS. ROSENFELD: Thank you.  
16 MR. GROSSMAN: Thank you.  
17 MS. HARRIS: Thank you. Have a Happy  
18 Thanksgiving.  
19 MR. SILVERMAN: Happy Holidays.  
20 MR. GROSSMAN: Yes, Happy Holidays. I should have  
21 added that.  
22 MS. CORDRY: Happy Holidays, with my apologies for  
23 being late.  
24 MR. GROSSMAN: I understand. Thank you.  
25 (Whereupon, at 5:37 p.m., the hearing was

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1 adjourned.)  
2 C E R T I F I C A T E  
3 DEPOSITION SERVICES, INC., hereby certifies that  
4 the attached pages represent an accurate transcript of the  
5 electronic sound recording of the proceedings before the  
6 Office of Zoning and Administrative Hearings for Montgomery  
7 County in the matter of:  
8 Petition of Costco Wholesale Corporation  
9 Special Exception No. S-2863  
10 OZAH No. 13-12  
11  
12 By:  
13  
14  
15 Wendy Campos, Transcriber  
16  
17  
18  
19  
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21  
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24  
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	257:11,12	21:24;174:2	14:17;18:15,18;37:9; 153:2;179:15;213:9; 246:6;267:7;270:5; 277:21;285:14	199:21;200:15; 269:5;274:9
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<b>\$12 (1)</b> 269:15	<b>accident (2)</b> 248:10,13	<b>actually (72)</b> 7:18;14:15;17:10; 18:13;24:18;25:19; 29:16;40:5;75:16; 81:25;84:8;88:13; 89:22;96:24;101:16; 103:13;105:11;106:4, 13;118:12,17;128:15; 130:10;136:23,25; 140:18;141:1;142:4; 144:3,20;154:7;156:6; 157:13;161:16;163:24; 165:13,24;169:15; 170:25;186:13;193:8; 201:17;202:23;203:19; 210:1,11;212:25; 216:3;220:16;221:16; 222:15,16,19;224:12; 227:19;242:5,9; 246:22,24;247:4; 248:9;250:15,20; 252:8,14,25;273:10; 277:7;281:12;282:17; 283:6,7	<b>addressing (4)</b> 128:10;194:8,10,11	<b>Advisory (1)</b> 180:18
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