

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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: PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
: :
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A hearing in the above-entitled matter was held on December 6, 2013, commencing at 9:39 a.m., at the Stella B. Warner Council Office Building, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Patricia Harris, Esq.
Michael Goecke, Esq.

On Behalf of Kensington Heights Civic Association (KHCA):

Michele Rosenfeld, Esq.
Lerch Early & Brewer
3 Bethesda Metro Center, Suite 460
Bethesda, Maryland 20814

Karen Cordry, Esq.

On Behalf of Stop Costco Gas Coalition (SCGC):

Larry Silverman, Esq.

Also Present:

Erich Brann, Costco Representative
Jeff Ishida, Costco Representative
David Sullivan

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Henry Cole		6		
By Ms. Rosenfeld:			17	
BY Mr. Goecke:			23	

C O N T E N T S (Continued)

Guy Spaid	140			
By Mr. Silverman:	145			
By Ms. Cordry:			147	
By Ms. Harris:			153	
Mark Meszaros	163			
By Ms. Cordry:			174	
By Ms. Harris:			195	

E X H I B I T S

Exhibit No.	Marked/Received
407 Fox Leader EPA Air Quality Modeling Group Memo	59

P R O C E E D I N G S

1 MR. GROSSMAN: This is the 23rd day of the public
2 hearing in the matter of Costco Wholesale Corporation, Board
3 of Appeals No. S-2863, OZAH No. 13-12, petition for special
4 exception pursuant to Zoning Ordinance Section 59-G-2.06 to
5 allow petitioner to construct and operate an automobile
6 fueling station which would include 16 pumps. The subject
7 site is located at 11160 Veirs Mill Road, Silver Spring,
8 Maryland, Lot N-631, Wheaton Plaza, Parcel 10, also known as
9 the Westfield Wheaton Mall, and is zoned C-2.

10 The hearing was begun on April 26th, 2013 and
11 resumed for many sessions thereafter. It was noticed to
12 resume again today. We don't have a next session yet
13 specified so unless Dr. Cole speaks very quickly and
14 everybody else's witnesses fit on, we will be scheduling
15 additional days as soon as I hear from the parties as to
16 agreeable dates to them all, hopefully finishing in January.

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 report
20 and recommendation to the Board of Appeals which will make
21 the decision in the case. Will the parties identify
22 themselves, please, for the record?

23 MR. BRANN: Erich Brann for Costco.
24 MR. GROSSMAN: Mr. Brann.
25

1 MS. HARRIS: Good morning. Pat Harris on behalf
2 for Costco.
3 MR. GROSSMAN: Ms. Harris.
4 MR. GOECKE: Good morning. Mike Goecke for
5 Costco.
6 MR. GROSSMAN: Mr. Goecke.
7 MS. CORDRY: Karen Cordry for Kensington Heights.
8 MR. GROSSMAN: Ms. Cordry.
9 MR. ROSENFELD: Michele Rosenfeld with Kensington
10 Heights.

11 MR. GROSSMAN: Ms. Rosenfeld.
12 MR. SILVERMAN: Larry Silverman for the Coalition
13 to Stop Costco Gas.

14 MR. GROSSMAN: Mr. Silverman.
15 MS. ADELMAN: Good morning, Mr. Grossman. Dr.
16 Mark Adelman for the coalition.

17 MR. GROSSMAN: Dr. Adelman. And I see some of the
18 usual characters including Mr. Sullivan in the back row. I
19 take it there's nobody else here who wishes to offer
20 testimony that's not to be called by a party. All right.
21 So we resume with the direct examination of Dr. Cole unless
22 there is some other preliminary matter. Anybody? No.

23 THE WITNESS: I have a preliminary matter. I
24 wanted to answer a question that was raised yesterday.
25 MR. GROSSMAN: All right. And, Dr. Cole, you're

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1 still under oath. Okay, sir. Yes. Yes.
2 (Witness previously sworn.)
3 DIRECT EXAMINATION
4 THE WITNESS: Okay. So you asked whether the
5 emissions, the reason for greater emissions at slower speeds
6 is because the cars were stopping and moving more slowly and
7 spending more time.
8 MR. GROSSMAN: Right.
9 THE WITNESS: And the second -- that is, that does
10 contribute to more emissions but as I said, there's another
11 factor involved which is the efficiency factor. At slower
12 speeds or idling, the motors are not sufficient, the systems
13 are not sufficient so there's more pollution. So I just
14 wanted to call your attention to the Clagett Report the
15 Federal Highway Administration Report, and this is, I think
16 this is their figure 5 in that report. And you know what?
17 I'm going to need your wonderful pointer --
18 MR. GROSSMAN: Oh, now, you made my day.
19 THE WITNESS: So if they ask you was this a
20 justified expense, yes, I believe it was justified. Dr.
21 Cole has requested many times.
22 MR. GROSSMAN: Thank you.
23 THE WITNESS: So here we have --
24 MR. GOECKE: I'm sorry. Is this part of an
25 exhibit or --

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1 MS. ROSENFELD: It's part of Exhibit No. 404(c),
2 the Clagett Report.
3 MR. GOECKE: Thank you.
4 THE WITNESS: So here we have cruising and here we
5 have idling and here we have acceleration, so you can see
6 that the cruising emissions are a lot lower than the idling
7 and the accelerating emissions. And the reason I blew up
8 the vertical axis and the units was to show that these units
9 are in grams per vehicle hour, not in terms of grams per
10 vehicle mile. So this is a measure of what, what's
11 happening per unit mile.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: I give you that information.
14 MR. GROSSMAN: I appreciate that.
15 THE WITNESS: The second thing I want to address
16 is you mentioned a 25 percent figure with regard to --
17 MR. GROSSMAN: NO2.
18 THE WITNESS: -- NO2, and you said that it was 25
19 percent even though there are some things in there, the
20 conversions of, for example, MOVES to, MOBILE to MOVES, that
21 that would more than compensate.
22 MR. GROSSMAN: Well, I asked you whether that was
23 the case because I recall the testimony that Dr. Sullivan,
24 Mr. Sullivan gave along those lines.
25 THE WITNESS: So I did some checking and looked at

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1 EPA guidelines with regard to this very issue and they're,
2 they frame it in terms of tiers, and I can give you the
3 reference for this.
4 MR. GROSSMAN: I take it it's tiers, T-I-E-R-S,
5 rather than T-E-A-R-S.
6 THE WITNESS: Yes.
7 MR. GROSSMAN: You can never tell.
8 THE WITNESS: I want to consult my, my report to
9 make sure. So tier 1 is 100 percent. This is, let's say is
10 where you start. If you have reasons, the guidance says, if
11 you have reasons to suspect that you don't have complete
12 conversion, you go to tier 2. Tier 2 is 80 percent. It was
13 revised from 75 percent upward to 80 percent in a memo, a
14 regulatory memo which I can, I can give you the reference.
15 MR. GROSSMAN: Would you please give us the
16 reference for that?
17 THE WITNESS: Okay. Let me look that up. It's,
18 it's an EPA document. The date is June 28th. The year is
19 2010. and it's a memorandum from the modeling group at the,
20 the modeling group at EPA, and it's, I believe it's Fox, and
21 it's called Applicability of Appendix W Modeling Guidance
22 for the One Hour NO2 National Ambient Air Quality Standard.
23 MR. GROSSMAN: You're reading just the name of the
24 memo. Do you have the memo with you?
25 THE WITNESS: I have the memo on the computer but

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1 not a hard copy. I would be glad to --
2 MR. GROSSMAN: Is that in the record yet?
3 MS. ROSENFELD: Appendix W is in the record. I
4 don't believe the memo is.
5 MR. GROSSMAN: Are you saying the memo is
6 reflected in Appendix W?
7 MS. ROSENFELD: An interpretation of Appendix W.
8 THE WITNESS: It's for your clarification.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: A later document that clarifies.
11 MR. GOECKE: But I don't think it's on the record
12 to answer your question.
13 MR. GROSSMAN: Right. Would you be so kind to --
14 MS. ROSENFELD: Yes. Of course.
15 MR. GROSSMAN: -- have him print it out and let's
16 put it in the record?
17 MS. ROSENFELD: Yes.
18 THE WITNESS: We will do that. Thank you. I
19 don't know what this is. So tier 1, 100 percent. Tier 2,
20 if you have reasons to suspect that not all of the NOx is
21 converted to NO2, you go to 80 percent. Tier 3 is sort of
22 what I described yesterday which is you have to go through
23 an analysis that takes into consideration the ozone
24 concentrations and that takes into consideration the highest
25 NOx predictions and the ozone concentrations, so you have to

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1 do an analysis. So that analysis has not been done, so
2 where we are is Mr. Sullivan's reports. He uses 100
3 percent. Normally when you depart from, when you go from,
4 from one tier, particularly something from like tier 2 to
5 tier 3, you get the consensus of the regulatory agency.
6 There's a process that you go through.
7 MR. GROSSMAN: There's no process available here.
8 THE WITNESS: Yes. I understand. I'm just
9 stating that, that for the record, that it's when you go to
10 more advanced stages, it becomes more complicated and
11 there's, to have some review of the way the analysis is
12 done. My main point is that analysis, if there's a reason
13 to go to any lower value such as 25 percent, which is
14 nowhere near tier 1 or tier 2, you have to, you have to show
15 a lower value through a very detailed analysis that requires
16 looking at monitoring, that requires looking at the modeling
17 and whatnot. Okay?
18 MR. GROSSMAN: All right.
19 THE WITNESS: So those were my two points. Thank
20 you.
21 MR. GROSSMAN: You're welcome.
22 MS. ROSENFELD: And, Mr. Grossman, I do think that
23 that memo is in the record. I think it's 391(a) in the
24 exhibits.
25 MR. GROSSMAN: All right.

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1 MS. ROSENFELD: And I will double-check and
2 confirm that. If it's not the same memo, then I --
3 THE WITNESS: We'll print it out.
4 MS. ROSENFELD: We'll print it and file it.
5 MR. GROSSMAN: Let me see 391(a).
6 MS. CORDRY: I think there might have been
7 confusion because 391(a) refers to a June 29th and that's
8 cover memo to the memo he's talking about but I think the
9 two probably were put in together.
10 MR. SILVERMAN: That's it.
11 MR. GROSSMAN: Oh, yes. 391(a) looks like, looks
12 like that memo. Well, he said June 28th I think.
13 MS. CORDRY: Yes.
14 MR. GROSSMAN: This says June 29th.
15 MS. ROSENFELD: There's a transmittal memo dated
16 June 29.
17 MR. GROSSMAN: I see.
18 MS. ROSENFELD: And then the attachment is June
19 28.
20 MR. GROSSMAN: Let me take a quick look and see if
21 it's evident in the, in the file. Oh, yes. Here's the June
22 28th memo. And where was it in this memo that we're talking
23 about that you rely on it?
24 THE WITNESS: Okay. It's -- you have to go into
25 the, into it and it says tier 1, tier 2. Is that --

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1 MS. ROSENFELD: Dr. Cole, do you have a page
2 number?
3 THE WITNESS: Can I see the document and I'll help
4 you find it? Thank you.
5 MR. GROSSMAN: You're welcome.
6 THE WITNESS: Oops. There it goes. What, what
7 was it?
8 MR. GROSSMAN: The June 28 memo.
9 MS. ROSENFELD: 391(a).
10 THE WITNESS: Exhibit 91(a)?
11 MS. ROSENFELD: 391(a).
12 MR. GROSSMAN: But you have it on your computer.
13 You can just tell me on your computer the page number and
14 then I can reference it.
15 THE WITNESS: Let's do it that way. Come on,
16 baby.
17 MS. CORDRY: And it looks like --
18 THE WITNESS: Okay. Here it is. So it is by
19 Tyler Fox. It's March, it's stamped March 1st.
20 MR. GROSSMAN: No. June 28, 2010 is what you
21 referred to.
22 THE WITNESS: Okay. Well --
23 MR. GROSSMAN: This is from Anna Marie Wood.
24 THE WITNESS: No. This -- no.
25 MR. GROSSMAN: Oh, that's a different memo?

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1 THE WITNESS: This is -- I'm sorry. This is,
2 there's some confusion on the dates because this says --
3 this is the memo that I'm referring to and it's, it's
4 stamped March 1st, 2011.
5 MR. GROSSMAN: Oh.
6 THE WITNESS: And it's --
7 MR. GROSSMAN: Well, that's not what you, what you
8 stated before.
9 THE WITNESS: I understand, but I think there's
10 some confusion because the memo that you have first -- who
11 is the author of --
12 MR. GROSSMAN: The memo of June 28, 2010 is from
13 Anna Maria Wood, acting director.
14 THE WITNESS: Okay. Yes. Right.
15 MR. GROSSMAN: Air quality policy division.
16 THE WITNESS: Okay. Let me clarify this now. I
17 get it. So what I said was that this memo is a, I don't
18 understand the dates. Okay. What date --
19 MR. GROSSMAN: I see there's another memo behind
20 that memo, or it looks like it's continuing page numbers and
21 that's the one from Tyler --
22 THE WITNESS: All right. I'm going to make a
23 suggestion.
24 MR. GROSSMAN: Well, hold on a second. That's the
25 one from Tyler Fox, same date, and maybe that's the one

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1 you're talking about.
2 THE WITNESS: Yes.
3 MR. GROSSMAN: And it's just continuing page
4 number from, from the memo that, in Exhibit 391(a). All
5 right. So what was your suggestion, Dr. Cole?
6 THE WITNESS: My suggestion is that we print this
7 out, put it in as a new exhibit.
8 MR. GROSSMAN: Well, what's the this that you're
9 referring to?
10 THE WITNESS: Okay.
11 MR. GROSSMAN: Before when you read it off, you
12 said June 28, 2010.
13 THE WITNESS: Right. What I'm --
14 MR. GROSSMAN: What are you talking about?
15 THE WITNESS: I'm talking about the memorandum
16 that is on this page which is stamped March 1, 2011.
17 MR. GROSSMAN: Okay. So there's a memo on March
18 1, 2011 from Tyler Fox, and that's the memo that you were
19 referring to before --
20 THE WITNESS: Yes.
21 MR. GROSSMAN: -- that you characterized as a June
22 28th memo.
23 THE WITNESS: Yes.
24 MR. GROSSMAN: Okay. Now, is that memo in the
25 record, the Tyler Fox memo of --

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1 MS. ROSENFELD: The March 1 --
2 MR. GROSSMAN: -- March 1, 2011?
3 MS. ROSENFELD: -- 2001, 2011 is not in the
4 record. We will provide that to you.
5 MR. GROSSMAN: Okay.
6 MS. CORDRY: The 2010 one, that's the one you have
7 in the record, and then 2011 looks like an updating of that
8 one. That would be page 14.
9 MR. GROSSMAN: Page 14 of this memo?
10 MS. CORDRY: Of -- yes.
11 MR. GROSSMAN: Of the Tyler Fox memo?
12 MS. CORDRY: Yes. Page 14 of that whole one that,
13 391 is in the, that's in the record and that talks about
14 tier 1, and then I think that's an updated. The March 11,
15 2011 is an updating for the June --
16 MR. GROSSMAN: All right. But what page of the
17 March 11?
18 MS. CORDRY: Okay.
19 MR. GROSSMAN: March 1, 2011 memo was it?
20 THE WITNESS: All right. I'm giving you -- you
21 want the page numbers?
22 MR. GROSSMAN: Right.
23 THE WITNESS: Okay. Here it comes. It's the
24 discussion of the tiered approach is from page 5, then it
25 gets into tier 2, tier 3, and it stretches out to page 8.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: Okay?
3 MR. GROSSMAN: Pages 5 to 8.
4 MR. GOECKE: May we have a chance to review this
5 document since it's not in the record and it sounds like we
6 haven't been provided with it?
7 MR. GROSSMAN: Absolutely. And what I suggest, if
8 you can, since you have, apparently have it on your
9 computer, Ms. Cordry?
10 MS. CORDRY: I have the 2010. I'm not sure if I
11 have the 2011.
12 MR. GROSSMAN: Oh, okay.
13 MS. CORDRY: But I can --
14 MR. GROSSMAN: I was going to suggest e-mailing me
15 a PDF of it and we can print it out here and put it in the
16 record today.
17 MS. CORDRY: I have a thumb drive. He could copy
18 it to my thumb drive and then we can do all those various
19 things.
20 MR. GROSSMAN: All right. Then during a break,
21 you could thumb drive it and then you can PDF it to me and
22 then I'll print it out and we'll stick it in the record and
23 then --
24 THE WITNESS: Mr. Grossman, just to be clear, what
25 I'm referring to is this March 1, 2011 document. Let's make

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1 sure we have the right one.
2 MR. GROSSMAN: Right. That was the point.
3 THE WITNESS: I think this is the clearest and
4 most recent explanation.
5 MR. GROSSMAN: Okay. All right. You want to
6 continue your questioning?
7 MS. ROSENFELD: I would, yes. And yesterday when
8 we left off, there was a discussion of inherent versus non-
9 inherent, and I'm just going to withdraw that line of
10 questioning.
11 MR. GROSSMAN: Okay.
12 MS. ROSENFELD: And ask some, I do have some
13 additional follow-up questions.
14 MR. GROSSMAN: Okay.
15 CROSS-EXAMINATION BY MS. ROSENFELD
16 MS. ROSENFELD: Dr. Cole, in your opinion, is a
17 gas station located next to a loading dock an aggravating or
18 mitigating factor when considering the concentrations of air
19 emissions?
20 THE WITNESS: It would be an aggravating factor.
21 MS. ROSENFELD: And is a station located in a very
22 busy parking lot an aggravating or a mitigating factor in
23 the concentration of air emissions?
24 THE WITNESS: That would be an aggravating factor.
25 MS. ROSENFELD: And in your opinion, is the

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1 location of the facades of the mall, the warehouse facade,
2 the Target facade and the proposed eight-foot wall, are they
3 aggravating or mitigating factors in, in the concentration
4 of air pollution?
5 THE WITNESS: I believe under certain
6 circumstances, they would be aggravating factors.
7 MS. ROSENFELD: And did you find any analysis in
8 Mr. Sullivan's report that took into account those physical
9 features on the property?
10 THE WITNESS: I didn't see any accounting for
11 that.
12 MR. GROSSMAN: As to the -- I know you said the
13 wall. What was the other of the last two in your last
14 sentence?
15 MS. ROSENFELD: The facade of the warehouse --
16 MR. GROSSMAN: Oh, the facade of the buildings.
17 MS. ROSENFELD: -- station and the --
18 MR. GROSSMAN: Okay.
19 MS. ROSENFELD: Of the warehouse and the facade of
20 the Target.
21 THE WITNESS: Let me make a clarification. There
22 was discussion of the wall with regard to the CALPUFF
23 modeling but I am not aware of the specific results of that
24 analysis that, that look at the wall. In other words, is
25 there a specific, have I seen a specific paragraph or table

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1 or discussion or isopleths that specifically reflect
2 whatever impact the wall, we're talking about the eight-foot
3 wall to the south --
4 MR. GROSSMAN: Right. Let me ask you a question
5 about that.
6 THE WITNESS: Yeah.
7 MR. GROSSMAN: You said it could be aggravated, it
8 depends on the circumstances. I presume you're talking
9 about on the mall itself.
10 THE WITNESS: Yes.
11 MR. GROSSMAN: Okay. I presume that it also could
12 be alleviating in some way the wall to the people beyond the
13 wall, people to the south and west of the site that are --
14 THE WITNESS: Well, let me --
15 MR. GROSSMAN: -- that are between, that are on
16 the other side of the wall, is that correct?
17 THE WITNESS: That's a very good question. So if
18 you had a, for example, a north, northerly wind or a
19 northwesterly wind, perhaps that wall would be somewhat
20 protective of let's say the nearest home.
21 MR. GROSSMAN: When you say a northwesterly wind
22 or a northerly wind --
23 MR. COLE From --
24 MR. GROSSMAN: -- you're talking about from the
25 north?

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1 THE WITNESS: Yes.
2 MR. GROSSMAN: I always get a little confused
3 about that.
4 THE WITNESS: Well, it's --
5 MR. GROSSMAN: That terminology in weather.
6 Whether --
7 THE WITNESS: Almost --
8 MR. GROSSMAN: -- when they say it's a northeaster
9 or whatever, whether it's coming from the north or wherever
10 but all right. So you're saying coming from the north.
11 THE WITNESS: Eight years of training in
12 meteorology probably.
13 MR. GROSSMAN: I've had it compacted into a few
14 sessions.
15 THE WITNESS: So one other thing that's not been
16 explored is the possibility that with winds from let's say
17 the northwest, that some of the emissions could be channeled
18 between the warehouse and the wall, move down the road. In
19 other words, you've got sort of a canyon effect.
20 MR. GROSSMAN: Right.
21 THE WITNESS: Which is a known term in air
22 pollution, meteorology, as the canyon effect which, which
23 creates a channeling of winds. And so under that
24 circumstances, perhaps without getting into any discussions
25 of levels, it is possible that under those circumstances

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1 that more could be transported toward the homes beyond --
2 MR. GROSSMAN: To the east.
3 THE WITNESS: -- the wall and also the Stephen
4 Knolls School.
5 MR. GROSSMAN: You're not saying that is
6 happening. You're saying that's a possibility.
7 THE WITNESS: That's a possibility. It is a
8 possibility that has not been examined.
9 MR. GROSSMAN: Okay.
10 MS. ROSENFELD: Dr. Cole, to summarize, would you
11 please give your professional judgment as to the overall
12 levels of NOx that under the modeling in the August 2013
13 report you think are likely on the, on the, within the
14 neighborhood, both on the mall parcel and the adjoining
15 properties.
16 MR. GROSSMAN: Are you talking about one hour
17 measurements?
18 MS. ROSENFELD: One hour measurements.
19 THE WITNESS: Are you talking about measurements,
20 are you talking about modeling results? Could you rephrase
21 that, clarify?
22 MS. ROSENFELD: In your professional judgment,
23 does Mr. Sullivan's August 2013 report predict that one hour
24 levels of NOx would be below or above EPA National Ambient
25 Air Quality Standards?

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1 THE WITNESS: Right. Well, there are a number of
2 results which are included in the August 2013 report. Some
3 of them are clearly above the standard of 190 micrograms per
4 cubic meter. A few are below. The ones which are below
5 have retreated from conservative methods used in earlier, in
6 the earlier November 2012 report. But he does present
7 evidence that shows exceedances of the 190 microgram per
8 cubic meter National Ambient Air Quality Standard for NO2.
9 MS. ROSENFELD: And I would have the same question
10 for PM2.5.
11 THE WITNESS: PM2.5 for the August report?
12 MS. ROSENFELD: For the August report.
13 THE WITNESS: He comes, the evidence that Mr.
14 Sullivan presents you're talking about. You're talking
15 about my understanding of his results?
16 MS. ROSENFELD: My question is do you, in your
17 opinion, have they been appropriately modeled.
18 THE WITNESS: Oh.
19 MR. GROSSMAN: Has what been appropriately
20 modeled? Let's get a question that fully frames the
21 question.
22 MS. ROSENFELD: Okay. Have the projections for
23 maximum limits of PM2.5 been accurately modeled in Mr.
24 Sullivan's August 2013 report?
25 THE WITNESS: Okay. My judgment is they have not.

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1 MS. ROSENFELD: And if properly modeled, in your
2 professional judgment, would levels of PM2.5 be below the
3 EPA National Ambient Air Quality Standards?
4 THE WITNESS: I, I want to phrase it this way.
5 There is a high probability that if the deficiencies that I
6 talked about at length yesterday were corrected, that you're
7 already at, using his methods, Mr. Sullivan's methods,
8 you're at 11.2 which is, in my judgment, very, very close to
9 the standard and when you're in a situation like that, you
10 should rely on conservative values. And he, in my opinion,
11 the deficiencies are sufficiently significant to, to make it
12 likely that there would be an exceedance of that 12
13 microgram per cubic meter level.
14 MS. ROSENFELD: Okay. Mr. Grossman, I have no
15 further questions.
16 MR. GROSSMAN: All right. Do we have any cross-
17 examination?
18 MS. CORDRY: Yes. And I did just send you, I was
19 able to pull down that report from the web and just send it
20 over to you also.
21 MR. GROSSMAN: Thank you. So at the break, I'll
22 print it out and if Mr. Goecke is nice, I'll give him a copy
23 too.
24 MR. GOECKE: I would appreciate that. Thank you
25 so much.

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1 CROSS-EXAMINATION BY MR. GOECKE
2 MR. GOECKE: Good morning, Dr. Cole.
3 THE WITNESS: Good morning.
4 MR. GOECKE: I'd like to go back briefly to your
5 time at EPA just to get some clarity and what it was that
6 you were doing there.
7 MS. ROSENFELD: Objection, Mr. Grossman.
8 MR. GROSSMAN: Why are we back to, to voir dire?
9 MR. GOECKE: It's not voir dire. It's to the
10 weight of his testimony based on his qualifications.
11 MR. GROSSMAN: That's a voir dire question.
12 Questions that go to his expertise are to be handled during
13 the voir dire.
14 MR. GOECKE: Okay. But I think you've admitted
15 him as an expert and he's going to be allowed to testify to
16 the weight of his, to the, you know, what you're going to
17 give weight, you're going to base the weight of his
18 testimony based on his qualifications.
19 MR. GROSSMAN: Certainly.
20 MR. GOECKE: So if that is important, if his
21 qualifications are important, I think there are additional
22 questions that based on what I heard yesterday, that go to
23 the weight of his credibility.
24 MR. GROSSMAN: Based on the substantive testimony,
25 questions have arisen after the voir dire? Testimony that

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1 he gave after the voir dire?
2 MR. GOECKE: I believe that's right.
3 MR. GROSSMAN: Well --
4 MS. ROSENFELD: Well, Mr. Grossman, I continue my
5 objection. During voir dire yesterday, you, yourself
6 identified that there were areas that based on the voir
7 dire, you would consider the weight of the testimony in
8 light of that.
9 MR. GROSSMAN: Right.
10 MS. ROSENFELD: The time for that has passed.
11 MR. GROSSMAN: I would agree. I'm going to give
12 him a little leeway. Let's see what the question is and
13 we'll see. I agree with you. I mean, fundamentally, it's a
14 sound objection but let's hear what your question is.
15 MR. GOECKE: Thank you. Just, and maybe I'm just
16 reaffirming what --
17 MS. ROSENFELD: Perhaps he can proffer the
18 question.
19 MR. GROSSMAN: Yes. Sure.
20 MR. GOECKE: Well, one of the things I wanted to
21 establish is to confirm that he wasn't involved in actually
22 granting permits while at EPA, that he was not involved
23 in --
24 MS. ROSENFELD: He testified to that.
25 MR. GROSSMAN: He said he was not the regulator,

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1 he was an advisor.
2 MR. GOECKE: He was an advisor, right, and so his
3 role did not involve actually the granting of permits based
4 on the --
5 MR. GROSSMAN: I think that was covered.
6 MS. ROSENFELD: Asked and answered.
7 MR. GROSSMAN: Right. I think that was covered.
8 MR. GOECKE: Yes. Okay. Well, I'm just
9 confirming that.
10 MR. GROSSMAN: Okay. Now I'm going to sustain the
11 objection because I think, I think that Ms. Rosenfeld is
12 right on that objection.
13 MR. GOECKE: And also, Dr. Cole, you talked
14 yesterday about some of the corporations that you've
15 represented.
16 MS. ROSENFELD: Objection. Same objection.
17 MR. GROSSMAN: Sustained. Well, I'll take that
18 back in terms of I should give you an opportunity to respond
19 to the objection. What's your response to the objection I
20 guess on the same grounds of this being a voir dire
21 question?
22 MR. GOECKE: He testified a lot yesterday about
23 what should and should not be done, and so what I'm trying
24 to find out is what's his history in terms of actually, he
25 testified he hasn't done his own air modelings but he's

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1 critiqued other people's air modeling.
2 MR. GROSSMAN: Right.
3 MR. GOECKE: And so in that experience, what has
4 he seen, what has been done, what is common because he's
5 talking about a lot of things that are common and things
6 that aren't common and so if this is true, then he should be
7 able to identify other examples where this has taken place.
8 MR. GROSSMAN: Those are really voir dire
9 questions. I don't think -- and it's really, you know,
10 that's, it's not going to have a huge impact on the way I
11 evaluate his evidence in any event but those are voir dire
12 questions so I sustain the objection. If you were
13 introducing evidence of bias, that would be a different
14 issue. That would go beyond the voir dire. But I don't
15 think you're suggesting that any corporate alliance he may
16 have had somehow introduces bias, so that's not suggested.
17 MR. GOECKE: Yes.
18 MR. GROSSMAN: This is, this is just regarding the
19 voir dire questions.
20 MR. GOECKE: Well, I would proffer it does go to
21 bias to the degree that he hasn't represented companies,
22 developers, people seeking a permit in the context of the
23 applicant here. He represents the other side consistently,
24 people trying to restrict folks from getting developments
25 accomplished, from folks trying to get permits.

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1 MS. ROSENFELD: Again, objection. Objection. We
2 covered the companies that he represented. There were a
3 number of companies that he identified and if that question
4 had arisen, it was an opportunity for him to request --
5 MR. GOECKE: But that's in a different --
6 MS. ROSENFELD: -- that on voir dire.
7 MR. GOECKE: But that's in a different context.
8 This goes to this context here.
9 MR. GROSSMAN: I don't think it, it doesn't sound
10 like a different context the way you've described it so I'm
11 going to sustain that objection also. I don't see any
12 reason to retrace those steps.
13 MR. GOECKE: Dr. Cole, you testified that you met
14 with Mr. Sullivan and members of his staff to develop a
15 protocol for the air modeling in this case, is that correct?
16 THE WITNESS: That's correct, yes.
17 MR. GOECKE: Okay. And you also testified that
18 you agreed with several aspects of the protocol with Mr.
19 Sullivan.
20 THE WITNESS: That's right.
21 MR. GOECKE: When did you meet with Mr. Sullivan
22 to discuss the protocol?
23 THE WITNESS: September 2012. I can only guess at
24 the date.
25 MR. GOECKE: And at that time, had you made up

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1 your mind as to whether or not the Costco gas station, the
2 proposed Costco gas station would be detrimental to the
3 health of the community, the neighborhood?
4 THE WITNESS: That was not the purpose of the
5 meeting. The purpose of the meeting was, was to discuss
6 modeling. That's what I did.
7 MR. GROSSMAN: That's not his question. His
8 question was at the time, had you made up your mind as to
9 whether or not --
10 THE WITNESS: I --
11 MR. GROSSMAN: Let me ask the question. At the
12 time, had you made up your mind whether or not the proposed
13 Costco gas station would be detrimental to the health of the
14 community?
15 THE WITNESS: No.
16 MR. GROSSMAN: Okay.
17 MR. GOECKE: Okay. And so as of September 2012,
18 you thought it was possible that the Costco gas station
19 would not be detrimental to the health of the neighborhood.
20 THE WITNESS: I had concerns but I hadn't seen the
21 -- you're asking me to -- I'm sitting down, we're talking
22 about modeling protocol and I haven't seen the results of
23 modeling based on the protocol so I did not have the
24 judgment.
25 MR. GOECKE: Okay. On your website, you talk

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1 about the, your involvement in the Costco case, don't you?
2
3 MS. ROSENFELD: Objection. Beyond the scope.
4 MR. GROSSMAN: Well, I think that's a -- he can
5 answer that question so I'll overrule that objection. On
6 your website, do you talk about --
7 THE WITNESS: Can you show me what you're talking
8 about?
9 MR. GOECKE: Do you not know?
10 MR. GROSSMAN: Can you answer that question? Do
11 you --
12 THE WITNESS: I don't recall.
13 MR. GOECKE: Do you recall posting a blog spot on
14 your website about celebrating 20 years of your company?
15 THE WITNESS: Of what?
16 MR. GOECKE: Of celebrating the 20 year
17 anniversary of your company.
18 THE WITNESS: Yes. That's right.
19 MR. GOECKE: And in that blog spot, you talked
20 about some of the successes your company has had?
21 MS. ROSENFELD: Objection. Relevance?
22 MR. GOECKE: Bias.
23 MR. GROSSMAN: I guess we're going to find out.
24 I'm going to overrule the objection until I get the rest of
25 the questions.

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1 MR. GOECKE: Thank you, Mr. Grossman.
2 MR. GROSSMAN: It's cross-examination. I have to
3 give him some leeway.
4 MR. GOECKE: Is that true, that you talked about
5 some of the successes and representative matters in that
6 blog post?
7 THE WITNESS: I believe so.
8 MR. GOECKE: And one of the matters that you were
9 representing the local community to stop the Costco gas
10 station.
11 THE WITNESS: That's the name of the coalition.
12 MR. GOECKE: Okay. So you're denying that your --
13 MR. GROSSMAN: Well, I don't -- he didn't, he
14 didn't say --
15 MR. GOECKE: I realize that that's the name of the
16 coalition that's paid you and --
17 THE WITNESS: For example, let's say I worked for
18 Philips Electronics. That doesn't mean that I support every
19 aim of Philips Electronics.
20 MR. GOECKE: But that's not my question, sir.
21 THE WITNESS: I was hired by a firm to investigate
22 the modeling analysis and ancillary information, and I did
23 that.
24 MR. GROSSMAN: Mr. Goecke, it's time to tell him
25 what exactly the statement was that you are referencing.

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1 MR. GOECKE: I'm trying to pull it up right now.
2 The statement I believe was that he is working with a local
3 group, with a neighborhood group, to prevent Costco from
4 opening a gas station.
5 MR. GROSSMAN: Well, let's get the exact wording
6 of the statement and see if he agrees that he said it.
7 MR. GOECKE: So on the, on your web page, you have
8 examples of projects, and you have a posting Henry S. Cole
9 and Associates, Incorporated celebrating 20 years providing
10 environmental science for communities.
11 MR. GROSSMAN: What's the date of that?
12 MR. GOECKE: June 27th, 2012.
13 MR. GROSSMAN: Okay.
14 MR. GOECKE: And the quote says currently provides
15 support to community organizations in Maryland to prevent
16 gasoline mega station from locating adjacent to residential
17 communities. So as of June 27th, 2012, you were already
18 committed to preventing the Costco gas station.
19 THE WITNESS: I think what that statement says or
20 meant to say was that I'm supporting an effort, just as your
21 experts are working to support an effort of the company that
22 you represent, I was representing a, a group, the coalition
23 in this case, that had an objective.
24 MR. GOECKE: What was their objective?
25 THE WITNESS: I think the name of it, the name of

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1 the, it's the Stop Costco Gas Coalition, right?
2 MR. GOECKE: Right.
3 THE WITNESS: Right. What I'm saying is that I
4 worked for that organization which had that aim just as your
5 expert witnesses are working for a corporation that has a
6 specific objective.
7 MR. GOECKE: So your objective was to stop the
8 Costco gas station.
9 THE WITNESS: I didn't say that. Those are your
10 words.
11 MR. GOECKE: Well, you said that your objective
12 was the same as your organization that hired you.
13 THE WITNESS: No. I did not say that. You're
14 trying to put words in my mouth and I don't think that's
15 fair. I don't think that's fair.
16 MR. GOECKE: Okay.
17 THE WITNESS: What I said --
18 MR. GOECKE: So you weren't --
19 THE WITNESS: What I said --
20 MR. GOECKE: You weren't trying to prevent the
21 Costco gas station?
22 MS. ROSENFELD: Objection. Mr. Grossman, he's
23 badgering the witness.
24 MR. GROSSMAN: I don't think he's badgering the
25 witness. There is some disagreement about what his words

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1 mean. You did say that you were working for an organization
2 to prevent the Costco gas station.
3 THE WITNESS: The organization was working to
4 prevent the gas station.
5 MR. GROSSMAN: But you were providing --
6 THE WITNESS: I was providing scientific support,
7 which is the role that I play everywhere, for a group that
8 has specific objectives just as Mr. Sullivan and other
9 experts support the work of theirs. So let's not have a
10 double standard, please, Mr. Goecke.
11 MR. GROSSMAN: Well, right now --
12 MR. GOECKE: I'm just trying to find out what your
13 standard is.
14 MR. GROSSMAN: -- we're not addressing, it's not a
15 question of a double standard. The question is whether you
16 had made up your --
17 THE WITNESS: I have --
18 MR. GROSSMAN: Well, let me finish.
19 THE WITNESS: Sorry.
20 MR. GROSSMAN: The question is whether you had
21 made up your mind at a particular point or that you were
22 providing support to prevent a gas station as of June 27,
23 2012. We're not talking about Mr. Sullivan now. We're
24 talking about you. So we'll deal with Mr. Sullivan's
25 biases, if any, or his predilections, if any, in terms of a

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1 separate analysis in his cross-examination but now we're
2 talking about whether you had any predilections or leanings
3 or biases at the time. So that's the question.
4 THE WITNESS: The framework here is the stance
5 which I took going into the protocol discussion, and I
6 worked for the staff for two organizations. I think at that
7 time, I was working not for the coalition but for the
8 Kensington Heights Civic Association, so there were two
9 organizations that retained me. Both of those organizations
10 had an objective.
11 MR. GROSSMAN: Right.
12 THE WITNESS: My -- I was hired to provide
13 scientific support, as my website states, and to analyze the
14 detailed work in many reports, in fact that Mr. Sullivan
15 provided, to see if they held water from a scientific
16 standpoint, to see if they were accurate, whether they
17 followed EPA guidance, et cetera. That's the job that I
18 did.
19 MR. GROSSMAN: Okay. All right. Mr. Goecke.
20 MR. GOECKE: Your website also says that Henry S.
21 Cole and Associates, Incorporated is a unique environmental
22 consulting firm that provides a unique line of scientific
23 communication support and advocacy. Is that a fair
24 description about what you do?
25 THE WITNESS: Yes. That's my words.

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1 MR. GOECKE: Okay. And so in addition to
2 scientific help, you offer communication support.
3 MR. GROSSMAN: He answered that.
4 MR. GOECKE: Okay. And --
5 THE WITNESS: I'm communicating right now so the
6 answer is yes.
7 MR. GOECKE: Right. And you're advocating right
8 now as well.
9 THE WITNESS: That's your word.
10 MR. GROSSMAN: Well, is that not your word? You
11 provide advocacy?
12 THE WITNESS: It's not my word.
13 MR. GROSSMAN: Is that what --
14 THE WITNESS: My --
15 MR. GROSSMAN: What did the website say?
16 MR. GOECKE: That provides --
17 THE WITNESS: You said right now.
18 MR. GOECKE: Right now as you're testifying.
19 THE WITNESS: Right now what I'm doing is giving
20 my best scientific judgment of an analysis done by one of
21 your consultants.
22 MR. GOECKE: Okay. Let's talk about the urban
23 versus rural issue for a little bit. You testified
24 yesterday that you agree with the statement of Mr.
25 Sullivan's 2012 report that the neighborhood is comprised of

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1 something in between urban and rural.
2 THE WITNESS: I would agree with that.
3 MR. GOECKE: Okay. So is it fair to say that a
4 portion of the neighborhood is more urban than other
5 portions of the neighborhood?
6 THE WITNESS: I refer you back to EPA guidance and
7 the analysis that Mr. Sullivan did looking at the three
8 kilometers, and he did that analysis in, in his November
9 2012 report. He concluded that the rural dispersion
10 coefficients were applicable in this particular case. He
11 also stated that there were particular site circumstances
12 that suggested an intermediate value between urban and
13 rural.
14 MR. GROSSMAN: Dr. Cole, that's not actually the
15 question he asked. He asked whether it's fair to say that a
16 portion of the neighborhood is more urban than rural. I
17 think that was your question.
18 MR. GOECKE: That was.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: The mall is more urban than the
21 surrounding, the areas that surround the mall.
22 MR. GOECKE: And --
23 THE WITNESS: The mall is part of the neighborhood
24 so, yes.
25 MR. GOECKE: Are there any characteristics, are

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1 there any rural characteristics on the mall property itself?
2 THE WITNESS: Well, right now, there's a grassy
3 area.
4 MR. GOECKE: And how big is that?
5 THE WITNESS: It's perhaps as big as the gas
6 station.
7 MR. GROSSMAN: Are you referring to the area in
8 the --
9 THE WITNESS: To the west.
10 MR. GROSSMAN: -- extreme southwest corner --
11 THE WITNESS: Yes.
12 MR. GROSSMAN: -- of the mall that was the
13 original proposed site of this gas station?
14 THE WITNESS: That's correct.
15 MR. GROSSMAN: Okay.
16 MR. GOECKE: And so what percentage of the mall
17 parcel itself is urban and what portion of it is rural?
18 THE WITNESS: What portion is urban?
19 MR. GOECKE: Yes.
20 THE WITNESS: Maybe 75 percent.
21 MR. GOECKE: Because of the grass?
22 THE WITNESS: The grass, the -- yeah.
23 MR. GOECKE: Is --
24 THE WITNESS: Maybe it's less. I don't know.
25 You're asking me to -- can you show me a map and I'll give

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1 you a better answer?
2 MR. GROSSMAN: Mr. Brann, would you put up the
3 map, please? And I'm not sure whether you were answering
4 that question as to the entire mall parcel or you were
5 answering that question as to the parking lot in the
6 southwest corner.
7 THE WITNESS: I don't know what -- if he would
8 rephrase the question.
9 MR. GOECKE: I'm sorry.
10 MR. GROSSMAN: Were you asking about the entire
11 mall parcel or were you talking, when you asked about
12 percentage, or were you asking about just the parking lot
13 area where the, in which the subject site --
14 MR. GOECKE: Okay.
15 MS. ROSENFELD: I would ask Mr. Goecke to identify
16 the mall parcel for the witness, please.
17 MR. GOECKE: Sure. So we've got Exhibit 159 up
18 here and we've got two lines on this exhibit. The more of a
19 lighter fuchsia colored line, that's the mall property and
20 then beyond that, we've got the more purplish line that
21 represents what everyone has agreed now is the neighborhood
22 in question with the exception of the needs analysis. So
23 the portion, the property surrounded by the pink, what
24 percentage of this area is rural and what percentage of that
25 area is urban.

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1 THE WITNESS: Maybe it's 80 percent. Eighty
2 percent urban.
3 MR. GOECKE: Okay. And can you show us the 20
4 percent of the rural characteristics on the property?
5 MR. GROSSMAN: You can use my wanted laser
6 pointer.
7 THE WITNESS: I almost didn't. I think we're
8 talking about, we're talking about this area.
9 MR. GROSSMAN: Okay. Indicating the grassy area
10 of the location, proposed location of the original site of
11 the Costco gas station.
12 MR. GOECKE: All right. Thank you.
13 THE WITNESS: Well, in fact, in my presentation, I
14 didn't make any distinction. I accepted the fact that the
15 entire mall was urban.
16 MR. GOECKE: But yet it's my understanding that
17 you're advocating that the modeling for the model property
18 should be done as rural, not urban.
19 THE WITNESS: I'm saying that to follow EPA
20 guidance would be to, because of the three kilometer system
21 and in the November 2012 report, Mr. Sullivan acknowledged
22 that following EPA guidance would give you a rural
23 characteristic to this site. And he then, just to be fair,
24 he also stated that in his opinion, given the complexity of
25 this site, that the value lies somewhere between, the

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1 correct dispersion coefficient lies somewhere between urban
2 and rural.
3 MR. GOECKE: Okay. A couple questions. First of
4 all, so you're saying that the EPA guidelines prevents Mr.
5 Sullivan from treating the mall portion as urban?
6 THE WITNESS: I didn't say that.
7 MR. GOECKE: Okay. So he can treat that as urban.
8 THE WITNESS: I said he explained the guidance. I
9 have --
10 MR. GOECKE: I'm not asking about your
11 understanding about what he said in his report. I'm asking
12 about what your understanding as an expert is of the EPA
13 guidelines.
14 THE WITNESS: My, my understanding of the
15 guideline is that you start with the three kilometer rule.
16 MR. GOECKE: Okay.
17 THE WITNESS: You see as, exactly as Mr. Sullivan
18 did. Mr. Sullivan concluded, using that model, that, and
19 that guideline, that the rural characteristic, the rural
20 dispersion coefficients should be used.
21 MR. GOECKE: Because they predominated for the
22 three kilometer area.
23 THE WITNESS: And that is what he did use.
24 MR. GOECKE: For the three kilometer area.
25 THE WITNESS: And that's what he presented his

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1 results for the mall --
2 MR. GOECKE: Right.
3 THE WITNESS: -- using the rural. He also
4 compared urban and rural for selected receptors. So the
5 guidance, to get back to your principal question --
6 MR. GOECKE: Right.
7 THE WITNESS: -- does allow for some judgment to
8 be made. It's not a hard and fast rule.
9 MR. GOECKE: Right.
10 THE WITNESS: So Mr. Sullivan then made a judgment
11 as to what he felt was the most accurate characteristic
12 which was between urban and rural, okay?
13 MR. GOECKE: For the three kilometer area.
14 THE WITNESS: No. For the case.
15 MR. GOECKE: For the what?
16 THE WITNESS: Not for the three kilometer rule.
17 For the analysis, for the modeling. The guidance talks
18 about what do, what dispersion coefficients do you use,
19 urban or rural.
20 MR. GOECKE: But he modeled the whole three
21 kilometer area, didn't he?
22 THE WITNESS: No.
23 MR. GOECKE: He didn't.
24 THE WITNESS: Did not.
25 MR. GOECKE: Okay. And where in his report do you

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1 contend that his, his description of the area as being
2 somewhere between urban and rural only applies to the
3 neighborhood? First of all, is it your contention that's
4 what he's saying, that the characterization of being between
5 urban and rural applies only to the neighborhood, or what
6 does that apply to?
7 THE WITNESS: His modeling, it applies to the area
8 that he models.
9 MR. GOECKE: And you're not ware that he modeled
10 the whole three kilometer area.
11 THE WITNESS: He modeled the roadways around the
12 area but that does not extend out to three kilometers.
13 MR. GOECKE: And then in terms of, again, back to
14 focusing on the mall parcel itself, the pink highlighted
15 area, the pink bordered area, you identified a grassy area
16 in the southwestern portion of the property. But you're
17 aware that if the gas station was built, that that area is
18 going to be paved over.
19 THE WITNESS: I, I have no argument with
20 classifying an entire mall as urban.
21 MR. GOECKE: Okay. So it would be appropriate to
22 model the mall parcel as urban.
23 THE WITNESS: I didn't say that. That's not what
24 I said.
25 MR. GOECKE: Okay. I misheard you then. I

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1 thought you said you have no -- tell me what you said.
2 THE WITNESS: You need to listen carefully, okay?
3 Let's slow down.
4 MR. GROSSMAN: Don't lecture the questioner. Just
5 tell us what you said.
6 MR. GOECKE: Okay.
7 MR. GROSSMAN: You said you had no problem with --
8 THE WITNESS: I feel, I feel --
9 MR. GOECKE: -- the entire --
10 THE WITNESS: Wait a minute. I feel like he's
11 continually putting words into my mouth.
12 MR. GOECKE: Dr. Cole, did you say you have no
13 problem with the whole mall area being characterized as
14 urban?
15 THE WITNESS: That's correct.
16 MR. GROSSMAN: I think that's what he was
17 suggesting.
18 THE WITNESS: I said nothing about the modeling
19 itself because the modeling goes to the dispersion
20 coefficients and EPA guidance, which Mr. Sullivan followed,
21 has a specific method for determining which set of
22 dispersion coefficients to use. He followed that and he
23 acknowledged in his 2012 report that when you go through
24 that analysis, you find that the majority of the three
25 kilometer area is classified as rural, not urban. That's

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1 his analysis, not mine, okay?
2 So where does that get you? That informs your
3 choice of dispersion coefficients and following EPA
4 guidance, that leads you to the conclusion that one should
5 use rural coefficients because the majority of the three
6 kilometer area is rural in nature, at least in terms of the
7 EPA's classification scheme which Mr. Sullivan utilizes.
8 Then the issue is not what's applied, is not about modeling
9 the mall. It's about what dispersion coefficients you use
10 in a situation where you have most of the three kilometer
11 area which is classified as rural. This is important
12 because the rural dispersion coefficients give you
13 significantly higher concentrations than the urban
14 coefficients, so there is a further point in the guidance.
15 MR. GOECKE: And which guidance are you referring
16 to?
17 THE WITNESS: I'm referring to the modeling
18 guidance.
19 MR. GROSSMAN: EPA.
20 THE WITNESS: EPA's modeling guidance.
21 MR. GROSSMAN: Appendix W?
22 THE WITNESS: Appendix --
23 MR. GROSSMAN: W.
24 THE WITNESS: -- W which lays out the three
25 kilometer method. It then does allow for some judgment

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1 based on a site specific analysis. Mr. Sullivan did such an
2 analysis and it was his judgment on, I think it's page 26 of
3 his November '12 report, that states that his best judgment
4 is that the dispersion coefficient would lie somewhere
5 between the urban and the rural coefficients.

6 MR. GROSSMAN: What's your best judgment on that
7 point?

8 THE WITNESS: My best judgment is that there are
9 so many uncertainties in determining dispersion coefficients
10 that the greater the uncertainty, the more necessary it is
11 to use conservative, the most conservative recommendation in
12 the guidance.

13 MR. GROSSMAN: Let me ask you this. If you were
14 to restrict the consideration not to the three kilometer
15 radius but just to the neighborhood as defined by the
16 technical staff, that is to the mall area and to the
17 immediate environs to the south and west, that little
18 additional area demarked by purple on Exhibit 159, what, in
19 your judgment as an expert, forget about what Mr. Sullivan's
20 judgment is, what, in your judgment as an expert, would be
21 the appropriate coefficients to apply to modeling that area?

22 THE WITNESS: As a scientist, I can't agree with
23 the premise of the question because as I presented on the
24 flip chart yesterday, the, the air that reaches the mall has
25 a history. That's why EPA guidance states it's three

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1 kilometer rule. So I think that rule is sound unless
2 someone can do an analysis that shows that something else
3 should apply. So you're asking this question in the context
4 of modeling as someone who has both done modeling, done
5 modeling development and has evaluated many modeling
6 studies. You, you would have to look at a broader area to
7 understand the characteristic of the air and the turbulence
8 regime that's occurring within the site being modeled.

9 MR. GROSSMAN: All right. Understanding that
10 qualification, I'm still interested in getting an answer to
11 my question because I'd like to know your professional
12 opinion when you're dealing with an area that is mostly
13 urban, that is the mall area, the neighborhood that I have
14 to look at in terms of my land use analysis which will
15 incorporate questions, in this case, of the air modeling.
16 But the neighborhood that I have to look at is the
17 neighborhood defined by technical staff so that's why I'm
18 very specifically asking you for your professional opinion
19 as to if you had to choose the coefficients to use in
20 modeling that area, the defined neighborhood, what would you
21 do?

22 THE WITNESS: Well, you're asking a hypothetical.

23 MR. GROSSMAN: I am because that's the, that is a
24 hypothetical based on the fact that I have to analyze it.

25 THE WITNESS: Since you're asking a hypothetical,

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1 I'm going to broaden the question a bit. And the question
2 then is if you're going to look at that issue, then you need
3 to look at all of the emissions in that same area. You may
4 impact by restricting the analysis in that fashion. You may
5 in fact reduce concentrations by having a, a lax or let's
6 say dispersion coefficient. The urban -- but you're also,
7 in the same breath, giving a requirement that there be a
8 complete inclusion of all sources within the neighborhood.

9 Now, Mr. Sullivan has testified that in that
10 immediate area, there's something like 52 fast food
11 restaurants. He went to great lengths to explain how many
12 particulates come from the frying of hamburgers and whatnot
13 but that's not included in his modeling. And so if you're
14 going to look at an issue of is the standard, for example,
15 for particulate, particulate matter, if the standard is
16 exceeded and we're already at an, with his modeling, at
17 11.2, what's the impact of adding in all of the things which
18 he believes are so important?

19 MR. GROSSMAN: Well, right now, I'm not addressing
20 his modeling but if I understand your answer, you're saying
21 that a use of general background, if you're going to be more
22 specific, more site specific, that is to limit it to the
23 general neighborhood as opposed to the three mile radius,
24 then you'd have to do analysis beyond just applying general
25 background. Is that what you're saying?

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1 THE WITNESS: Well, and he's done --

2 MR. GROSSMAN: Not, not him. I'm talking to you
3 about what you would do.

4 THE WITNESS: What I would do is if the case that
5 you described and it was a restricted analysis, I would also
6 have to look more carefully because the analysis is
7 restricted to that area. I would have to look very, very
8 carefully at all of the emission sources, people backing in
9 and out of their driveways, people on, people going in and
10 out of fast food restaurants.

11 MR. GROSSMAN: Is that, can that kind of modeling
12 really be done the way you're suggesting it, people backing
13 out of their driveways included into the modeling?

14 THE WITNESS: I'm sure you could make an estimate
15 of that. Mr. Sullivan --

16 MR. GROSSMAN: Rather than using background --
17 forget about what Mr. Sullivan, I'm asking your opinion as
18 an expert. Forget about what Mr. Sullivan says.

19 THE WITNESS: My opinion as an expert is that you
20 can't do a proper modeling analysis, period, by defining the
21 dispersion coefficients based on that narrow, that narrow
22 definition of your modeling, of your --

23 MR. GROSSMAN: Of the area.

24 THE WITNESS: Of the area from which you, from
25 which you discern dispersion coefficients. I pointed out

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1 yesterday that the atmosphere has a memory, meaning that
2 you're bringing air in from, from a relatively rural area,
3 what EPA describes as rural, with less turbulence.
4 MR. GROSSMAN: This is going to be true whether or
5 not, whether or not you have a three mile radius, you're
6 always going to have air from outside.
7 MR. SILVERMAN: Three kilometers, sir.
8 MR. GROSSMAN: Three kilometers. That's correct.
9 Whether or not you have a three kilometer radius, you're
10 going to have air coming in from the outside, correct?
11 There's going to be air coming in from the outside of that
12 three kilometer radius too so I think at some point, you
13 have to have a selected area. They selected three
14 kilometers. I'm just asking you if the area --
15 THE WITNESS: I'm sorry. You said they. Who
16 selected?
17 MR. GROSSMAN: The EPA selected three
18 kilometers --
19 THE WITNESS: Right.
20 MR. GROSSMAN: -- as a radius to define a modeling
21 area, and you suggested that you can't model in a smaller
22 area without being a whole lot more specific as to other
23 background elements rather than just taking --
24 THE WITNESS: Oh, I --
25 MR. GROSSMAN: -- general background if I

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1 understood what you said.
2 THE WITNESS: I'm just saying that if we're going
3 into hypotheticals, I'm expanding on your hypothetical.
4 MR. GROSSMAN: Well, I, I mean, I call it a
5 hypothetical. It's really not a hypothetical in the sense
6 that this is the area that I must analysis. I'm not saying
7 I'm not interested in the entire three kilometer radius.
8 I'm saying that I'm required to concentrate on the general
9 neighborhood under the Zoning Ordinance.
10 THE WITNESS: Okay.
11 MR. GROSSMAN: So I am looking at, at the general
12 neighborhood so that's why I'm trying to ask for your
13 professional expert opinion --
14 THE WITNESS: All right.
15 MR. GROSSMAN: -- as to what the appropriate
16 coefficients would be to apply to the general neighborhood.
17 THE WITNESS: Okay. I'm going to first --
18 MR. GROSSMAN: And I won't ask that question
19 again. That's the last time I'm going to ask it.
20 THE WITNESS: I --
21 MR. GROSSMAN: So this is your final crack at it.
22 THE WITNESS: I'm going to say this. The
23 applicant, the paradigm that they're using in terms of --
24 MR. GROSSMAN: I'm not asking about the applicant.
25 THE WITNESS: I'm sorry. I --

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1 MR. GROSSMAN: I'm asking for your professional
2 opinion.
3 THE WITNESS: I'm giving my opinion.
4 MR. GROSSMAN: Not of their expert.
5 THE WITNESS: I've given you my opinion that it
6 would be scientifically unsupportable to restrict the
7 analysis of dispersion coefficients to, to the area that
8 defines the neighborhood. I'm sorry to repeat that over and
9 over again but I am not going to depart from my scientific
10 judgment.
11 MR. GROSSMAN: Okay. Thank you. All right, Mr.
12 Goecke.
13 MR. GOECKE: Dr. Cole, when you testified that you
14 thought there might be an exceedance of the one hour NO2 NAC
15 standards, the location of that violation would occur where?
16 THE WITNESS: Well, I showed some slides that --
17 MR. GOECKE: In the gas station queue,
18 thereabouts?
19 THE WITNESS: Well, one analysis, there were a
20 number of different analyses presented.
21 MR. GOECKE: I'm not asking about Mr. Sullivan's
22 analysis. I'm asking about your opinion.
23 THE WITNESS: My opinion is that it's based on Mr.
24 Sullivan's results.
25 MR. GOECKE: Because you didn't do any of your own

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1 calculations.
2 THE WITNESS: Okay.
3 MR. GOECKE: That's true, right?
4 THE WITNESS: It's, it's true but it's not my job.
5 That's your consultant's job is to support your client's
6 application. That is not my job. And I would state Mr.
7 Sullivan, if you want to get into this and you want to ask
8 that kind of question, I'm going to tell you that Mr.
9 Sullivan testified that he received over \$400,000 for his
10 modeling efforts to this, to the point where he testified.
11 I can tell you that mine is perhaps less than a tenth of
12 that amount. With the amount of support that I have, it is
13 not possible for me to do an AERMOD air modeling. Even if I
14 was, my company was equipped to do so, it's not.
15 MR. GOECKE: How expensive is it to do air
16 modeling?
17 THE WITNESS: Excuse me?
18 MR. GOECKE: How much would it cost you to do the
19 modeling?
20 THE WITNESS: Ask -- I haven't used the modeling
21 in this particular case, and I believe that Mr. Sullivan has
22 given you some estimates.
23 MR. GOECKE: So you don't know.
24 THE WITNESS: I don't know what he spent.
25 MR. GOECKE: No. I'm not asking --

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1 THE WITNESS: He said 400 --
2 MR. GOECKE: -- you what he spent sir.
3 THE WITNESS: He spent --
4 MR. GOECKE: I'm asking you. You said -- excuse
5 me. You testified that it's cost-prohibitive for you to do
6 an air modeling analysis here. How much would it cost?
7 THE WITNESS: It's going to cost at least
8 \$100,000.
9 MR. GOECKE: Why? Why would it cost that much?
10 THE WITNESS: Because you have to realize that I
11 have had to review successive --
12 MR. GOECKE: Sir, you're getting into -- I'm
13 asking you why do you think it's so expensive to do air
14 modeling.
15 THE WITNESS: Because there are a lot of
16 databases. Because you have to use a great deal of
17 judgment, that means consulting hours. You're paying staff
18 to collect data from databases, to massage the databases.
19 MR. GOECKE: Okay. But in this case, you were
20 provided with the data that Mr. Sullivan used.
21 THE WITNESS: Right. That's what I said. That's
22 what I'm relying on.
23 MR. GOECKE: Okay. So that wouldn't --
24 THE WITNESS: I'm relying on --
25 MR. GOECKE: That wouldn't have cost you anything.

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1 THE WITNESS: I'm relying on his modeling based on
2 and in conjunction with EPA guidance to determine whether or
3 not his analysis supports. And your, your model is that
4 you're using, your framework is that you use EPA standards
5 and EPA methods, so a large part of my analysis was to see
6 did Mr. Sullivan use a, did Mr. Sullivan A, follow EPA
7 guidance, B --
8 MR. GOECKE: Sir, you're not answering my
9 question.
10 THE WITNESS: Would you restate your question?
11 MR. GOECKE: My question is why do you think it
12 would be so expensive for you, you, I'm not asking what Mr.
13 Sullivan did or what you think you did, in this case, to do
14 an air model analysis when Mr. Sullivan provided you with
15 the information, when the AERMOD software is available for
16 free to anyone, why would it have been so expensive for you
17 to do an air modeling analysis in this case?
18 THE WITNESS: Because I would have -- in my case,
19 I would have hired a subcontractor.
20 MR. GOECKE: Because you don't do air modeling.
21 THE WITNESS: I stated that in the voir dire.
22 MR. GOECKE: So you couldn't have done the air
23 modeling.
24 THE WITNESS: I've already testified that I have
25 not used AERMOD. That's, that's in the record.

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1 MR. GOECKE: And that's why you would have needed
2 to hire a subcontractor.
3 THE WITNESS: That's right. A standard practice
4 in consulting is to have subcontractors. That would have
5 been expensive. You're talking 100,000 bucks.
6 MR. GOECKE: And so the bulls-eye plume that you
7 talked about where you think there might be a one hour NO2
8 exceedance, again, that's around the gas station queue, is
9 that fair to say?
10 THE WITNESS: When the 2012 analysis, when
11 corrected for the ozone background, which is --
12 MR. GOECKE: The ozone background?
13 THE WITNESS: No. The NO2 background.
14 MR. GOECKE: Okay. I thought you said ozone.
15 THE WITNESS: If I said ozone, I meant NO2.
16 MR. GOECKE: That's why I stopped you.
17 THE WITNESS: So when you use, when Mr. Sullivan
18 repeated his 2012 analysis with 2012 emissions, the, both
19 the gas station, if you look at the isopleths, it was my
20 judgment that both the loading dock and the gas queue
21 contributed to the area of maximum concentrations. I
22 testified yesterday that when, in the August 2013 report,
23 that Mr. Sullivan reduced without taking any judgment about
24 whether the 98 percent reduction in emissions from the
25 loading dock is accurate or appropriate. When he did that

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1 analysis, you find an exceedance zone around the gas
2 station. You find that, the area of maximum distinctly in
3 and adjacent to and you find the 200 microgram per cubic
4 meter isopleth in part of the parking lots.
5 MR. GOECKE: And that's using the rural analysis.
6 THE WITNESS: That was using the rural analysis,
7 yes.
8 MR. GOECKE: What are the rural characteristics of
9 a gas station area and a loading dock area?
10 THE WITNESS: I think we went over this. If
11 you're talking, are you talking -- let me get clarification.
12 Are you talking about the choice of dispersion coefficients?
13 MR. GROSSMAN: I think he asked you what are the
14 rural characteristics of the loading dock and --
15 THE WITNESS: I've already stated.
16 MS. ROSENFELD: Asked and answered.
17 THE WITNESS: I have stated very clearly that the
18 mall itself is likely to be an urban, characterized as
19 urban. I also testified that that is not the end of the
20 question.
21 MR. GOECKE: And if we go --
22 THE WITNESS: You have to --
23 MR. GOECKE: And if we go further out from the
24 neighborhood, if we go one-and-a-half or two kilometers out,
25 it's fair to say that that area may be more correctly

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1 characterized as rural.
2 THE WITNESS: EPA would characterize that area as
3 rural.
4 MR. GOECKE: And you're not concerned about any
5 exceedances at those locations.
6 THE WITNESS: For NOx, I think the evidence is
7 that there would be exceedances. If you used the best
8 scientific judgment, relied on conservative methods, relied
9 on EPA's MOVES model, for example, then you would find
10 exceedances of NO2 in the, in the mall area near the gas
11 station.
12 MR. GOECKE: Not further out from the mall. Not
13 in the rural area.
14 THE WITNESS: Well, the best evidence is that the
15 levels of NO2 would be lower outside of the mall, okay? So
16 for PM2.5, I think it's a different story because there,
17 you're dealing with already high background values and
18 you're, the question is if you add more, an additional
19 source with known emissions and you created additional
20 traffic, the question then becomes pertinent at the margins
21 where people live.
22 MR. GOECKE: Mr. Grossman, I think this might be a
23 good chance to take a break if that's okay with you.
24 MR. GROSSMAN: I don't think there's a problem
25 with that. All right. So it's 5 to 11. Let's break until

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1 11:00 or so.
2 (Whereupon, at 10:55 a.m., a brief recess was
3 taken.)
4 MR. GROSSMAN: It says here air quality modeling
5 group. Is that group part of EPA?
6 THE WITNESS: Yes, it is.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: It's in the Office of Air Quality
9 Planning and Standards.
10 MR. GROSSMAN: Okay. So memo entitled Fox Leader
11 EPA Air Quality Modeling Group Re: Additional Clarification
12 for Application of Appendix W Modeling One Hour NO2
13 Standard.
14 (Exhibit No. 407 was marked
15 for identification.)
16 MR. GROSSMAN: All right. I think I said a
17 mouthful. All right. Mr. Goecke, you want to continue your
18 cross-examination?
19 MR. GOECKE: Thank you. And so I just want to
20 pick up where we left off, Dr. Cole, and make sure I heard
21 you correctly before the break. It's your testimony that
22 for exceedances of the NAC standards in the residential
23 portion of the neighborhood, there may be a PM2.5 standard
24 but the NO2 violation you're most concerned about is on the
25 mall parcel itself.

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1 THE WITNESS: That's correct.
2 MR. GOECKE: Okay. And do you have a --
3 THE WITNESS: But just, can I just --
4 MR. GOECKE: Sure.
5 THE WITNESS: I'm not saying that there wouldn't
6 be a PM2.5 problem within the mall. In other words, for
7 PM2.5, it's the entire neighborhood that would be in the
8 exceedance zone in my judgment.
9 MR. GOECKE: Okay. And you have a copy of Mr.
10 Sullivan's November 19, 2012 report? Do you have a copy?
11 THE WITNESS: The November?
12 MR. GOECKE: Yes.
13 THE WITNESS: If you show me the, what you're
14 referring to, I'd appreciate it.
15 MR. GROSSMAN: Do you have a copy of the report
16 with you from November 2012?
17 THE WITNESS: I do, yes.
18 MR. GROSSMAN: Are you going to refer to it?
19 MR. GOECKE: I'm going to refer to it, yes. If
20 you would, if you would get that, please, I would appreciate
21 it.
22 THE WITNESS: All right. Okay. You're saying the
23 November?
24 MR. GOECKE: Yes. The November 19, 2012 report.
25 THE WITNESS: Got it, yes.

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1 MR. GOECKE: And if you would please turn to page
2 69.
3 THE WITNESS: Which page?
4 MR. GOECKE: Sixty-nine. And this is Exhibit
5 15(a) for the record.
6 THE WITNESS: Okay.
7 MR. GOECKE: And this is table 1-14, and it's
8 called predicted rural and urban concentrations for PM2.5.
9 And if you could just take a moment to look this over, I
10 wanted to ask you some questions about the incremental
11 increase from the gas station. And so applying the urban
12 annual incremental increase, which is in the bottom right-
13 hand section of tale 1-14, it gives the total model and it's
14 listed for the home, the nearest home, it just says home but
15 I think that mean the nearest home, the school and the pool.
16 THE WITNESS: So the column where it says total
17 model is 12.24? Is that --
18 MR. GOECKE: No.
19 THE WITNESS: -- what you're referring to?
20 MR. GOECKE: No. The --
21 THE WITNESS: The home.
22 MR. GOECKE: So, yes, so I'll be more clear. So
23 we'll go down to the bottom table.
24 THE WITNESS: The bottom table.
25 MR. GOECKE: The bottom table using the urban

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1 runs.
2 THE WITNESS: Okay.
3 MR. GOECKE: And if you go down to the third row
4 from the bottom where it says total models, and then we're
5 going to follow that line all the way over to the right.
6 THE WITNESS: The total, the yellow portion,
7 correct?
8 MR. GOECKE: It's the yellow portion. That's
9 correct, yes. And then the three final columns are for the
10 home, the school and the pool. And so for the home, it
11 should read 4.95E-03. Do you see that?
12 MR. GROSSMAN: You say it should read. You mean
13 it does read.
14 MR. GOECKE: Well, mine reads that way, yes. It
15 does read.
16 THE WITNESS: You're talking about which, the
17 background or total?
18 MR. GOECKE: The total model.
19 THE WITNESS: The total model is IE.07 for the
20 home. Is that what you're referring to?
21 MR. GOECKE: No. If I may approach.
22 THE WITNESS: I'm on page 69.
23 MR. GOECKE: Yes.
24 MR. GROSSMAN: Point it out to Ms. Rosenfeld at
25 the same time.

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1 MR. GOECKE: Sure.
2 THE WITNESS: I don't understand what the
3 difference --
4 MR. GROSSMAN: Well, don't discuss it until we, in
5 fact, right now, just -- have you had an opportunity to look
6 that over?
7 THE WITNESS: Yes, I have.
8 MR. GROSSMAN: Okay. Mr. Goecke, you're question?
9 MR. GOECKE: My question is based on this chart,
10 what is the annual incremental increase under the urban
11 modeling for the total model analysis in that column?
12 MR. GROSSMAN: Of?
13 MR. GOECKE: Of the home.
14 MR. GROSSMAN: Of which substance?
15 MR. GOECKE: PM2.5. Sorry.
16 THE WITNESS: Which home is this?
17 MR. GOECKE: The nearest home.
18 THE WITNESS: Okay. It says, if I'm reading this
19 correctly, it says 4.95 times 10 to the minus 30.
20 MR. GOECKE: And so how many decimal points do we
21 have?
22 THE WITNESS: Well, that would be .05.
23 MR. GOECKE: .05?
24 THE WITNESS: .05.
25 MR. GOECKE: Isn't it .005?

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1 THE WITNESS: No. .10 to the minus three would be
2 -- I'm not sure I've got it right.
3 MR. GOECKE: Take your time.
4 THE WITNESS: Rounded to the nearest point would
5 be .005.
6 MR. GOECKE: Okay. And that's micrograms per
7 cubic meter?
8 THE WITNESS: That's what the chart says, yes.
9 MR. GOECKE: Yes. And do you know the background
10 level for this area for PM2.5?
11 THE WITNESS: It's stated on this chart as 12.1.
12 MR. GOECKE: That's true. It is stated as 12.1,
13 right. And so this other contribution at the home, .005,
14 when you compare that to 12.1, do you consider this to be a
15 significant level?
16 MR. GROSSMAN: You mean do you consider the
17 increase to be a significant amount?
18 MR. GOECKE: Right. That's correct, yes.
19 THE WITNESS: Well, for starters, as I said, I
20 have some serious reservations about the modeling that was
21 done to forecast this.
22 MR. GOECKE: Okay. Let me ask you a different
23 question, putting that on hold for the moment. What do you
24 consider to be a significant level?
25 MR. GROSSMAN: Significant increase?

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1 MR. GOECKE: I'm sorry. Yes. A significant
2 increase. Thank you.
3 THE WITNESS: I believe that EPA has a, a level
4 and I believe that this is below that level. I'll say that.
5 MR. GOECKE: Okay. If I told you that the EPA's
6 significant impact level was .3 micrograms per cubic meter,
7 would that, does that sound familiar?
8 THE WITNESS: If you can, if you show me that.
9 MR. GOECKE: But sitting here, you don't know one
10 way or the other.
11 THE WITNESS: I forget that value.
12 MR. GOECKE: Okay.
13 THE WITNESS: But this is, I can see this is
14 probably below that level.
15 MR. GOECKE: Okay. And based on the, the flaws
16 that you think are in Mr. Sullivan's methodology, what do
17 you think the correct number is?
18 THE WITNESS: I have not done that --
19 MR. GOECKE: So you don't know.
20 THE WITNESS: -- analysis. I would point out that
21 this table does not say where it's going on in the mall. It
22 focuses on, on the homes which are further from the source
23 that we're talking about.
24 MR. GOECKE: Okay. Have you done calculations for
25 the mall area?

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1 THE WITNESS: Have I done calculations for the
2 mall area?
3 MR. GOECKE: Yes.
4 THE WITNESS: No, but I have reviewed Mr.
5 Sullivan's calculations.
6 MR. GOECKE: Right. And the PM2.5 annual
7 standard, does that apply to non-residential areas?
8 THE WITNESS: A standard is a standard. It
9 applies everywhere.
10 MR. GOECKE: In terms of the next column referring
11 to the school and the total model incremental increase from
12 gas station activities, can you tell us what that number
13 would be?
14 THE WITNESS: It's 3.4 times 10 to the minus 3.
15 That would be .003.
16 MR. GOECKE: And would you do the same calculation
17 for the pool entry, please?
18 THE WITNESS: That would be about the same as
19 well, 003.
20 MR. GOECKE: I'm sorry, sir?
21 THE WITNESS: .003.
22 MR. GOECKE: Okay. And so you agree that all
23 three of these levels are lower than the EPA significant
24 impact level.
25 THE WITNESS: All three of these model levels in

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1 the urban chart are below the, below that level.
2 MR. GOECKE: Yes. Okay. Is it your contention
3 that using a rural analysis, they would violate the
4 significant impact level?
5 THE WITNESS: You're talking about the total
6 model?
7 MR. GOECKE: Total modeled, yes, so if you look at
8 the table, the incremental total modeled levels in the top
9 chart, top table there rather. So for the home, for
10 example, it's 1.20E-02. What would that number be?
11 THE WITNESS: Let me just make sure I'm getting it
12 right. That would be .012 micrograms per cubic meter.
13 MR. GOECKE: So still below the EPA's .3 microgram
14 per cubic meter significant impact level.
15 THE WITNESS: It's below what you've stated is the
16 level.
17 MR. GOECKE: Right. I will proffer that that's
18 the level. And it sounds like you're not, you don't know
19 otherwise at this point. And for the school?
20 THE WITNESS: It's about point, it's about .009.
21 MR. GOECKE: Okay. And finally, for the pool?
22 THE WITNESS: It's again, it's about .009.
23 MR. GOECKE: So according to Mr. Sullivan's
24 analysis, the incremental increase from the proposed gas
25 station uses will not exceed the EPA's significant impact

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1 level for PM2.5 on an annual basis.
2 THE WITNESS: It does not exceed the .3 that you
3 proffered as the, the significant level.
4 MR. GOECKE: Now, you have criticized other
5 portions of Mr. Sullivan's methodology. You stated that he
6 underestimated the number of cars at the mall site during
7 peak hour traffic. Is that fair to say?
8 THE WITNESS: I relied on other witnesses'
9 testimony.
10 MR. GOECKE: Okay. So you did no independent
11 analysis of the traffic at the mall.
12 THE WITNESS: Right.
13 MR. GOECKE: And in relying on other witnesses'
14 testimony, you're referring to Ms. Cordry I assume and Dr.
15 Adelman?
16 THE WITNESS: I looked at Ms. Cordry's analysis.
17 MR. GOECKE: Anyone else?
18 THE WITNESS: I think that was the main, yes, the
19 main thing I looked at.
20 MR. GOECKE: And --
21 THE WITNESS: There may have been something else
22 but --
23 MR. GOECKE: And in your under --
24 THE WITNESS: I also looked at the videos, the
25 tables that you presented which produced a lot of evidence.

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1 I believe it's on the record.
2 MR. GOECKE: Did you review Mr. Guckert's traffic
3 analysis?
4 THE WITNESS: I was present when he went through
5 his analysis. This is not, just to be clear, it's not my
6 field of expertise.
7 MR. GOECKE: I understand. And I understand that
8 you relied on other people. I'm just trying to find out who
9 you relied on and to what degree. Did you consider Mr.
10 Guckert's analysis in drawing your opinions, in reaching
11 your opinions in this case?
12 THE WITNESS: I understand that is the starting
13 point or the basis that Mr. Sullivan used. In terms of
14 reviewing it, I looked at the figures and had, didn't
15 independently go out and do counts or anything to evaluate
16 the figures.
17 MR. GOECKE: I understand. And so based on Mr.
18 Guckert's figures and then when you, when you compare that
19 to Ms. Cordry's testify, in your opinion, how far off was
20 Mr. Guckert for the peak hour traffic at the mall site?
21 THE WITNESS: I showed a graph, figure yesterday
22 that showed the compounding effects of vehicles during,
23 particularly during high-use periods. I'm not going to use
24 the word peak because it's one particular apex but during
25 high-use periods, you have to look at a lot of interacting

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1 variables which compound one another. We're talking about
2 adding cars, slow speeds. So when you add cars, there's
3 more emissions from the speeds, from the, from the greater
4 number of vehicles. Greater number of vehicles mean that
5 speeds are reduced such as on the Ring Road around the
6 entrances and exits.
7 So there's a, there's the issue of slowing speeds.
8 That in itself becomes an exponential problem because then
9 you start to get congestion and congestion means you have
10 backups with idling, and so all of those things combine to
11 contribute emissions in what I judge to be a nonlinear way.
12 Have I done that analysis, quantitative analysis, the answer
13 is no.
14 MR. GOECKE: Okay.
15 THE WITNESS: But I would also say that neither
16 has the applicant, neither has Mr. Sullivan.
17 MR. GOECKE: Okay. So you have general concerns
18 about the methodology but you haven't done any specific
19 analysis to determine what the --
20 THE WITNESS: I looked at a conceptual, I did a
21 conceptual analysis of the compounding problems with more
22 vehicles and as I stated, I believe that those errors
23 propagate and compound and believe that that analysis, that
24 quantitative analysis that might have been done was not done
25 in Mr. Sullivan's --

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1 MR. GOECKE: Well, we just looked at page 69 of
2 Mr. Sullivan's November 2012 report and he, he showed what
3 he thought the incremental increase was going to be under
4 gas station activity, and you're saying that doesn't include
5 an analysis of the traffic on the Ring Road?
6 THE WITNESS: I'm saying to the extent that Mr.
7 Guckert's analysis did not account for the accurate number
8 of vehicles, that it would affect this analysis.
9 MR. GOECKE: Okay.
10 THE WITNESS: I think particularly, it might add
11 along the traffic in the Ring Road. It would be something
12 to look at in conjunction with the nearest receptors that,
13 the nearest home, for example, or for the school or for the
14 other homes that lie fairly close.
15 MR. GOECKE: So it's your contention that if Mr.
16 Guckert's numbers are incorrect, then Mr. Sullivan's
17 calculations would, by extension, be incorrect as well.
18 THE WITNESS: Be incorrect but by more than of a
19 linear factor because of the compounding effect.
20 MR. GOECKE: But yet, as you sit here today, you
21 don't know how far off Mr. Guckert's reports may have been
22 or --
23 THE WITNESS: I didn't do that quantitative
24 analysis. Neither did Mr. Sullivan.
25 MR. GOECKE: Nor do you know what the nonlinear

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1 fact might be in Mr. Sullivan's conclusions.
2 THE WITNESS: No, but I, I would have liked to
3 have seen that kind of analysis in Mr. Sullivan's work.
4 MR. GOECKE: Do you know what the rate of speed
5 was that Mr. Sullivan estimated for traffic along the Ring
6 Road?
7 THE WITNESS: If I'm remembering -- could you,
8 could you point to where he has stated that?
9 MR. GOECKE: Well, I'm asking if you know.
10 THE WITNESS: I'm going to say I believe it was 15
11 miles per hour.
12 MR. GOECKE: Okay. And do you think that's
13 accurate or not accurate?
14 THE WITNESS: I think that would not be accurate
15 at times of heavy use traffic such as the holiday season.
16 MR. GROSSMAN: While Mr. Goecke is cogitating, let
17 me see if you can clear something up for me I'm a little
18 confused about. You said earlier, regarding PM2.5 that the
19 entire neighborhood is likely to be in exceedance under the
20 PM. Is that, did I understand you correctly to say that?
21 THE WITNESS: I believe based on the evidence in
22 this record, that is true.
23 MR. GROSSMAN: And I am asking you to clarify how
24 does that jive with your answers in cross-examination
25 regarding the predicted levels at the home, closest home,

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1 the school and the pool which appear to be so far below the
2 EPA significant impact numbers?
3 THE WITNESS: I agree. I agree with that.
4 MR. GROSSMAN: So how did, I don't understand how
5 those two statements or observations can coincide. Can you
6 explain?
7 THE WITNESS: In my judgment, looking at EPA
8 guidance, if in fact we accept the figures that are referred
9 to on this table --
10 MR. GROSSMAN: This table being 69 of --
11 THE WITNESS: Page 69.
12 MR. GROSSMAN: -- Mr. Sullivan's November 2012 --
13 THE WITNESS: The current standard is 12
14 micrograms, 12 micrograms per cubic meter for the annual
15 standard. Unless I'm not seeing it correctly, I believe
16 that all of these projections at the home, the school, the
17 pool, et cetera, are above 12, the standard of 12.
18 MR. GROSSMAN: I see, but not from the
19 contribution of the gas station but just in general. Am I
20 misunderstanding this?
21 THE WITNESS: That's the, that would be the sum of
22 background plus all modeled sources in this particular
23 analysis. In other words, let me be clear, if we look at
24 all of the sources that Mr. Sullivan used in his analysis,
25 whether he uses urban or rural coefficients in this

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1 particular 2012 analysis, he comes up with values that are
2 higher than the standard. Now, I don't agree with all of
3 his computations of emissions as I've stated, for example,
4 in discussing MOVES versus, MOVES versus MOBILE6 which is
5 particulates is off by, the MOBILE6 is low by a factor of 10
6 at low speeds.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: So that is not included here. Also,
9 I believe that there are many sources within the mall, such
10 as loading docks from other places, garbage trucks, which
11 are notorious for the diesel emissions, so I think these
12 numbers are likely to be on the low side. I would, however,
13 state that this particular table gives no information
14 whatsoever about conditions, model concentrations within the
15 mall.
16 MR. GROSSMAN: No. I understand that. I'm just
17 trying to understand the two statements. That is the
18 statement that you believe that PM2.5 levels would be in
19 exceedance throughout the neighborhood, not just in the
20 mall, and the other information about what the increment
21 would be from the gas station because my job is not to
22 review what happens on the mall in general but rather, what
23 adverse impacts, if any, would result from the proposed gas
24 station. So my question goes to whether or not the
25 suggested increases in PM2.5 in the general neighborhood,

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1 that is the home, the school and the pool, I'm not talking
2 right now, I think you made your point about on the mall,
3 but at the home and the school and the pool in terms of
4 PM2.5. It just appears from the numbers, does it not, that
5 the levels of increase from the gas station would be de
6 minimis. Is that not true from these numbers?
7 THE WITNESS: From --
8 MR. GROSSMAN: Even taking your uncertainties into
9 account, aren't these numbers so low in terms of the
10 increment that they're de minimis in terms of PM2.5 at the
11 home, the school and the pool? We're talking about using
12 urban standards, .003, at the school, same thing at the pool
13 and .005 at the closest home and using the, the rural
14 standards, .012 at the home, .009 at the school and .009 at
15 the pool, and even taking your uncertainty principal into
16 account, aren't those incremental levels very low from the
17 proposed gas station?
18 THE WITNESS: Well, however, I want to refer to
19 EPA guidance which I believe is in the record.
20 MR. GROSSMAN: Right.
21 THE WITNESS: The compliance rule.
22 MR. GROSSMAN: Right.
23 THE WITNESS: It states, it's basically a rule
24 that requires an evaluation of potential sources.
25 MR. GROSSMAN: Right.

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1 THE WITNESS: And the rule, and my understanding
2 of it, states that you don't add something that would A,
3 that would A, bring you over a standard, B, that would make
4 it more difficult to obtain a standard. If you're over, you
5 don't want to add something according to this compliance
6 rule, and this rule goes to site-specific projects.
7 MR. GROSSMAN: Right, but aren't those, the site-
8 specific projects, aren't those the ones that produce
9 significant amounts of, of pollutants, not, in terms of EPA
10 and gas, individual gas stations? They don't control it
11 that way, do they?
12 THE WITNESS: Well, I think there, we get into
13 the, we get into the issue of what's going on on the mall.
14 I know you're trying to focus on the neighborhood but --
15 MR. GROSSMAN: Well, I'm focusing, first of all,
16 I'm focusing on --
17 THE WITNESS: I'm not making --
18 MR. GROSSMAN: -- the gas station, proposed gas
19 station because I'm not allowed to tell the neighborhood,
20 I'm not allowed to tell Westfield what they want to do on
21 the mall. In fact, I'm not allowed to tell anybody
22 anything. I just make a recommendation to the Board of
23 Appeals as to whether or not the proposed gas station would
24 create a significant problem, I'm putting that, I'm couching
25 that in general terms, and so that's what my question

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1 addresses. I do have to obviously consider EPA standards
2 because those are the standards, apparently the ones that
3 are out there. The question is how do I apply them to this
4 case in terms of this particular project because if in fact
5 levels are over, if they are over the EPA standards
6 regardless of the gas station and the gas station would
7 create an insignificant amount of additional pollution at
8 the home, the school and the pool, at least as to those, and
9 pollution on the PM2.5, at least as to those, wouldn't I
10 conclude that that's not a significant problem? That's --
11 THE WITNESS: You might have a point for the
12 boundary sites, the home, the pool and the school.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: But --
15 MR. GROSSMAN: I understand. This is a difficult
16 question and it's difficult for me and I'm trying to --
17 THE WITNESS: Yeah. I --
18 MR. GROSSMAN: -- understand, you know, your
19 analysis of all this and I'm, I am concerned about your
20 point about uncertainty and that sort of thing but when you
21 get down to the incremental levels, it appears to me,
22 correct me if I'm wrong, when you talk about incremental
23 levels of even using the rural standards of .009 at the pool
24 and .009 at the school in terms of micrograms per cubic
25 meter, we're talking about levels that are so small that it

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1 seems to me, and tell me if I'm wrong about this, that even
2 your uncertainty issues wouldn't, wouldn't create that,
3 wouldn't make that into a significant problem.
4 THE WITNESS: I think I can concede the, that
5 point but within a very important, but I'm not making any
6 concessions with regard to the concentrations within the
7 mall.
8 MR. GROSSMAN: I understood that.
9 THE WITNESS: So please --
10 MR. GROSSMAN: You're very clear about that. I
11 understand that. Okay.
12 THE WITNESS: It's very different, okay, within
13 the mall.
14 MR. GROSSMAN: Okay. Thank you.
15 MR. GOECKE: And even picking up on that point,
16 Dr. Cole, you mentioned that the, talking about the
17 conversion from MOBILE6 to MOVES for idling or slow traffic,
18 it's about a 10 time conversion, but that applies only to
19 the idling traffic or to slow moving traffic.
20 THE WITNESS: If you look at the graphs which I
21 showed yesterday --
22 MR. GOECKE: Right.
23 THE WITNESS: -- that would apply, let's say, to
24 idling one mile per hour, two miles per hour, perhaps three
25 miles per hour, stop and go traffic. Then you also have

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1 correction factors at faster speeds. Remember that I like
2 the expression flat line. MOVES is, I mean MOBILE6 is
3 totally insensitive to speed so we saw those curves where,
4 where exponential and so as you increase the speed, the
5 margin, the correction factor is decreased, yes.
6 MR. GOECKE: You pointed out, Dr. Cole, correctly,
7 that the November 2012 report lists the background of 12.1,
8 but you're aware that Mr. Sullivan revised that background
9 figure in his later report?
10 THE WITNESS: I am.
11 MR. GOECKE: And that was based on technical staff
12 recommendation and the Council of Governments most recent
13 data.
14 THE WITNESS: I, I am not aware. If you can show
15 me a document that states the staff's recommendations. I'm
16 not, I don't want to make any comments until --
17 MR. GOECKE: No, no. And I'm not sure there is a
18 document to be fair. I think Mr. Sullivan testified about
19 that when he was on the stand but, but I mean, do you have
20 any, do you dispute that the Council of Governments data
21 shows a current background level and again, my understanding
22 is they estimate the last three years would be 10.8
23 micrograms per cubic meter for PM2.5?
24 THE WITNESS: Well, there's what the Metropolitan
25 COG puts forth which is based on, which is based on sites

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1 which in my judgment, are not totally, are not
2 representative of this particular area.
3 MR. GOECKE: I'm sorry. Which sites are not
4 representative?
5 THE WITNESS: The sites that I believe are
6 Rockville and Beltsville were used.
7 MR. GOECKE: You discussed what monitoring sites
8 to use with Mr. Sullivan and the staff in your protocol
9 meeting, didn't you?
10 THE WITNESS: I don't recollect that.
11 MR. GOECKE: You don't recall agreeing --
12 THE WITNESS: I think there may --
13 MR. GOECKE: -- on the sites a part of the
14 protocol meeting?
15 THE WITNESS: -- there may have been a statement
16 about highest values and nearest sites but that was before
17 I, let's say, did an analysis.
18 MR. GOECKE: I'm sorry. I think we spoke over
19 each other there. You don't recall talking to Mr. Sullivan
20 and his staff about which monitoring sites to use as part of
21 your modeling protocol?
22 THE WITNESS: I don't recall.
23 MR. GOECKE: You don't recall providing him any
24 input on which sites to use?
25 THE WITNESS: No.

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1 MR. GOECKE: You don't recall Mr. Sullivan
2 changing the sites based on your input?
3 THE WITNESS: No, I don't. If I did, I don't
4 recall. I did, talking to him --
5 MR. GOECKE: But you -- I'm sorry. Go ahead.
6 THE WITNESS: I did, once reviewing the location
7 of the sites, of reviewing EPA's data from those sites and
8 taking a careful look at the area of the satellite
9 photographs and whatnot, I had qualms about the
10 representativeness of those sites.
11 MR. GOECKE: And did you ever --
12 MR. GROSSMAN: Of Rockville and Beltsville.
13 THE WITNESS: Yeah.
14 MR. GROSSMAN: What about Arlington?
15 THE WITNESS: Was that used for particulates? I -
16 -
17 MR. GROSSMAN: I'm just, I'm asking. Whether or
18 not it was used, I've seen the site mentioned.
19 THE WITNESS: For NOx, it was. I think it was
20 used for particulate but --
21 MR. GROSSMAN: What's your feeling about the,
22 about that particular site as a, as a background?
23 THE WITNESS: It's, it's located to the south of a
24 large part of the Washington Metropolitan Area so it, it may
25 not pick up the sum of emissions from the Washington Metro

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1 Area which is a, it's a congested part of, there's a lot of
2 traffic within the city and its immediate surroundings. So
3 because of the prevailing tendency for southerly winds --
4 MR. GROSSMAN: Those are winds coming from the
5 south?
6 THE WITNESS: Yes. From the south. That
7 particular site may not have as marked background. Now, I'm
8 giving you a qualitative off-the-cuff --
9 MR. GROSSMAN: Right.
10 THE WITNESS: response. This is --
11 MR. GROSSMAN: Is there a particular site that you
12 picked out that you, monitoring a site for background that
13 you think is most expressive of the, the conditions around
14 the mall?
15 THE WITNESS: I want, I want to answer that in a
16 slightly different way if you would permit me to.
17 MR. GROSSMAN: All right. I guess I'll listen to
18 it and then decide.
19 THE WITNESS: What's critical is the modeling
20 method takes sources, modeled sources, right, and includes
21 the mall, the gas station, it includes roadways in the
22 surrounding area, so that's component one. Component two is
23 the background concentration that's used. Now, let's say
24 for the moment that Rockville is a good indication of
25 regional background. Let's say that it's the best

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1 available, okay, or Beltsville, so you take the highest of
2 those two. Then it's, I'm left as a scientist, as a person
3 familiar with air pollution, meteorology and experience with
4 the question what's in the near fields and has it properly
5 been counted for. If you're going to use that regional
6 model and assume that's okay for the air mass as a whole,
7 okay, then you have to make sure that what you're adding in
8 as a model source is complete. It counts for all of the
9 significant sources.
10 Now, on the other hand, if you were to, if you had
11 a monitoring site, if we were lucky enough to have a
12 monitoring site that was in this general neighborhood, then
13 maybe it's not so important that you include every last
14 site, every last source I should say but when you're using a
15 regional site that doesn't represent the immediate
16 conditions around the site, then it's important to account
17 for all of the particulate sources in this case that might
18 have a bearing on concentrations. My judgment --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: In my judgment, the, if we accept
21 for a moment the regional background site, I do not accept
22 the premise that all of the pertinent sources of
23 particulates have been included in the model.
24 MR. GROSSMAN: Of course, that wasn't my question
25 at all. If you haven't guessed yet, I don't deal well with

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1 suspense so I'd like to actually hear the answer to the
2 question which is do you have an opinion as to an
3 appropriate, the appropriate background monitoring source to
4 include in this background?
5 THE WITNESS: Well, there are some urban sources
6 and parts of Washington I believe that could be used.
7 MR. GROSSMAN: I mean, you would use those
8 monitors rather than Beltsville and Rockville to make this
9 determination?
10 THE WITNESS: I don't know the answer to your
11 question.
12 MR. GROSSMAN: All right.
13 THE WITNESS: I will, however, hope that you hear
14 my explanation about arriving at the total concentration.
15 MR. GROSSMAN: I understand your point. I just --
16 THE WITNESS: I don't, I don't know what the
17 answer is.
18 MR. GROSSMAN: All right. Let me ask you this
19 while we're on this general topic. If in fact the Council
20 of Governments reduced the background figure to 10.8 as
21 suggested by Mr. Goecke in recalling Mr. Sullivan's
22 testimony, does that change the figures on page 69 of the
23 November 2012 Sullivan report? And then are the figures
24 shown, as corrected by that change, now below the National
25 Ambient Air Quality Standards for PM2.5 at the home, the

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1 school and the pool, the closest home I should say, the pool
2 and the school?
3 THE WITNESS: Now, these are premised on the
4 background --
5 MR. GROSSMAN: 12.
6 THE WITNESS: -- 12. Okay.
7 MR. GROSSMAN: Right.
8 THE WITNESS: So if it drops to 10.8 as Mr.
9 Sullivan's reports, his August report --
10 MR. GROSSMAN: Right.
11 THE WITNESS: -- it gets you down to a lower value
12 which is, I think is the high is 11.2, in that range.
13 MR. GROSSMAN: So that would be below --
14 THE WITNESS: That's what his results show.
15 MR. GROSSMAN: Well, I'm asking you.
16 THE WITNESS: Yeah.
17 MR. GROSSMAN: I mean, I questioned you before
18 about the increments. Now I'm asking about overall PM2.5,
19 and I realize that you distinguish between the closest home,
20 the pool, the school on the one hand and the mall itself on
21 the other, but I'm just asking you right now about the
22 figures for the closest home, the pool and the school, PM2.5
23 overall levels taking into account your uncertainty issues,
24 et cetera. So are they --
25 THE WITNESS: Well --

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1 MR. GROSSMAN: Would they be below overall, below
2 NAAQ standard or above?
3 THE WITNESS: My judgment is that given that
4 you're around the number of 11, given all of the
5 uncertainties and the factors that I've discussed, depress
6 the predicted values, that there is a very strong
7 probability that these receptors, the home and the school,
8 the pool, would in fact exceed the standard of 12.
9 MR. GROSSMAN: Okay. That's what I understood you
10 to say. I just wanted to make sure I understood it in the
11 context that it reduced --
12 THE WITNESS: Yes.
13 MR. GROSSMAN: -- background. Okay. Thank you.
14 All right, Mr. Goecke.
15 MR. GOECKE: Returning, Dr. Cole, to the use of
16 different monitoring sites to serve as the background or to
17 provide us with the background data to use in Mr. Sullivan's
18 modeling, isn't it true that what Mr. Sullivan used was the
19 98th percentile of the reading depth of monitoring location
20 for NO2.
21 THE WITNESS: For NO2.
22 MR. GOECKE: Yes.
23 THE WITNESS: Yes.
24 MR. GOECKE: And so, and again, just the 98th
25 percentile means the it's, it's one of the highest readings,

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1 the second highest -- why don't you, you can probably
2 explain it better than I can. I'm struggling here.
3 THE WITNESS: The EPA guidance states that it is
4 the 98th percentile.
5 MR. GOECKE: And what does that mean?
6 THE WITNESS: It could be calculated in different
7 ways. What Mr. Sullivan does is he says he's got five years
8 of data, so that's 365 days per year, and what I believe he
9 does is he looks at all of the hours for all of those years
10 and it turns out that the 100, that the 98th percentile is
11 the 175th, the 175th highest hour. That's my understanding
12 of what he did, and I'm not necessarily arguing the fact.
13 MR. GOECKE: And so it's not like he took the
14 average number. He took one of the highest numbers and then
15 used, used that data to apply it to his modeling analysis
16 here.
17 THE WITNESS: He followed the guidance of using
18 the 98th percentile.
19 MR. GOECKE: Yes. And so that's a conservative
20 technique.
21 THE WITNESS: I don't concede that.
22 MR. GOECKE: That's not why the EPA requires that
23 because, isn't that why the EPA requires it because it's a
24 conservative methodology?
25 THE WITNESS: The reason -- I think that's their

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1 judgment. I think you're --
2 MR. GOECKE: Would -- I'm sorry. Go on.
3 THE WITNESS: Right. I just, I want to say that
4 as we've seen, the EPA standards tend to change so I, I'm
5 also aware that there will be testimony by health experts
6 and as stated in EPA circular, they have observed the
7 effects on sensitive people such as asthmatics that could be
8 affected by a 30 minute exposure. They don't say --
9 MR. GOECKE: Objection. This is hearsay.
10 MS. ROSENFELD: Hearsay?
11 MR. SILVERMAN: He's talking about EPA circular.
12 MS. ROSENFELD: He's talking about EPA --
13 MR. GOECKE: He's talking about what other people
14 might testify about in this case.
15 MS. ROSENFELD: He's proffering the basis for his
16 testimony.
17 THE WITNESS: That's -- did we submit that in the
18 record, the 30 minute --
19 MR. GOECKE: He's testified he's not a medical
20 expert.
21 MR. GROSSMAN: All right. I'm going to let him
22 testify as to what his understanding is upon which he --
23 THE WITNESS: I --
24 MR. GROSSMAN: Hold on. Upon which he bases his
25 conclusions. I'm not going to admit the statement for the

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1 truth of what's asserted therein.
2 MR. GOECKE: Thank you.
3 THE WITNESS: Before I get to that, can I
4 apologize to you for continually interrupting you. I have
5 to --
6 MR. GROSSMAN: It's a common thing. We all
7 interrupt each other. Don't worry about it.
8 THE WITNESS: But this was the family of my
9 origin. It as the common thing so I have to remember I'm
10 not at my family table so with all due respect.
11 MR. GROSSMAN: We serve blue cheese on crackers.
12 Don't worry about it. Okay. So the answer is I'm going to
13 overrule the objection as to hearsay because I'm not
14 admitting what you say about that for the purpose of the
15 truth of what's asserted therein which means it's not
16 hearsay under the technical verbiage.
17 MR. GOECKE: Right.
18 THE WITNESS: I am, I will leave it at this, that
19 we have several health experts who will testify on this
20 subject, and I will leave the final judgment, scientific
21 judgment in their hands but I think there is an EPA
22 reference to a 30 minute exposure being a problem for
23 sensitive populations.
24 MR. GROSSMAN: Okay.
25 MR. GOECKE: Does the EPA have a standard for 30

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1 minute exposures?
2 THE WITNESS: It does not.
3 MR. GOECKE: You talked about how the standards
4 the EPA enacts are dropping over time. Isn't it also true
5 that the levels of NO2 in the ambient are is dropping over
6 time?
7 MR. GROSSMAN: When you say dropping, you mean
8 becoming more stringent?
9 MR. GOECKE: No. That the levels of NO2 in the
10 ambient air, okay, in terms of the standards, yes. The
11 standards are becoming more stringent over time.
12 MR. GROSSMAN: Okay.
13 MR. GOECKE: And then turning to what's actually
14 in the ambient air, those levels are decreasing over time.
15 MR. GROSSMAN: Okay.
16 MR. GOECKE: Do you agree with that?
17 THE WITNESS: I would agree that that's what Mr.
18 Sullivan has presented evidence to that effect. However, I
19 have an important qualification caveat. If you also look at
20 EPA guidance, you'll see they're requiring the regions to
21 put NO2 monitors nearer to concentrated sources such as
22 roadways and in doing, the reason they give for doing that
23 is because they believe in their best judgment that the
24 sites that are currently being used are not representative
25 of those conditions. So there's a specific rule that

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1 acknowledges EPA's, that we may not be getting the best
2 information on NO2 values in regions such as the mall area
3 where you have three major arteries, you have a lot of
4 vehicle activity, so what results will the new monitoring
5 show? So I'm saying that Mr. Sullivan has presented
6 evidence which purports to show that, although that's all I
7 can say, but there's a very important caveat.
8 MR. GROSSMAN: Okay.
9 MR. GOECKE: And, Dr. Cole, when you talked about
10 the EPA encouraging modeling to, not monitoring, not
11 modeling, monitoring, to put monitors closer to the roadway,
12 you're talking about highway projects, aren't you?
13 THE WITNESS: They use the word roadways.
14 MR. GOECKE: Do you have a citation for this?
15 THE WITNESS: With all due respect, sir, I'd like
16 to get back to you on that.
17 MR. GOECKE: Do you know if it's in the Federal
18 Register or if this is a memo?
19 THE WITNESS: It is in the Federal Register. I
20 believe it's --
21 MS. ROSENFELD: It's in the record. We can
22 provide it.
23 MR. GOECKE: Maybe after the break, they can
24 identify it for us.
25 MS. ROSENFELD: Sure.

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1 MR. GOECKE: Okay. And so I'm not sure if you
2 answered my question. Do you disagree that NO2 ambient air
3 levels are dropping?
4 THE WITNESS: They may be dropping in general if
5 you look at three general monitors that are not necessarily
6 representative of this area. In fact, EPA has issued
7 guidance saying that they want monitors in more congested
8 areas and more trafficked areas.
9 MR. GOECKE: Okay. I'm sorry. So just to break
10 that down, you're saying they are dropping but only at
11 locations that aren't representative to this area?
12 THE WITNESS: I'm saying that the current data
13 which Mr. Sullivan cited --
14 MR. GOECKE: I'm not asking about Mr. Sullivan.
15 I'm asking about your opinion.
16 THE WITNESS: Well, it's my opinion on evidence
17 that's been provided in this case and in my opinion, there's
18 some evidence that regional levels are dropping. However, I
19 repeat my assertion that what counts is what's happening in
20 this particular area because the neighborhood is a, has a
21 particular traffic, is a highly trafficked area.
22 MR. GROSSMAN: I have to say I have some
23 difficulty reconciling that statement, that what counts is
24 in this particular area, with your telling me that you can't
25 model this particular area, you have to model out to the

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1 radius of three kilometers. I don't see how you reconcile
2 those two statements.
3 THE WITNESS: Can I --
4 MR. GROSSMAN: You may respond.
5 THE WITNESS: There are two considerations in
6 modeling, two distinct classes of input. One is emissions
7 and one is the characteristics of the atmosphere that
8 disperse, transport and disperse pollutants.
9 MR. GROSSMAN: I understand.
10 THE WITNESS: You also have atmospheric chemistry.
11 The emissions that affect a particular area such as this
12 neighborhood are both regional and local.
13 MR. GROSSMAN: Right.
14 THE WITNESS: The thing we're looking at here, if
15 you're talking about incremental inputs, you're looking at
16 an all model sorts. You're looking at an area with a lot of
17 congestion. So the three kilometers is to get the
18 dispersion characteristics of the atmosphere. That's a
19 separate issue than the emissions. You want to make sure
20 that your model incorporates all emissions that affect
21 concentrations because as I said, the concentrations are
22 proportional to emissions. If you miss significant
23 emissions or underestimate the emissions, the concentrations
24 will be lower. The three kilometers has to do with the
25 turbulent nature of the atmosphere. Is it strong, is it

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1 breathe strong, is there more turbulence or less turbulence.
2 And that is affected by, in EPA's judgment, this three
3 kilometer zone. They pick that as a representative area
4 that would affect the turbulence in the atmosphere, and that
5 turbulence is then reflected in the dispersion coefficients
6 and you had a choice between urban and rural.
7 MR. GROSSMAN: I understand the distinction you're
8 making.
9 THE WITNESS: I hope I'm answering.
10 MR. GROSSMAN: No. I think you did directly
11 answer that question. I'm not sure that that distinction is
12 appropriate in this case, but I'll have to wrestle it out
13 later. Okay, Mr. Goecke.
14 MR. GOECKE: Yes. And now, it seems like you keep
15 going back to that three kilometer standard but you already
16 conceded that the EPA guidelines provide the modeler with
17 discretion in how to apply that urban, rural dichotomy.
18 THE WITNESS: And in fact, Mr. Sullivan did such
19 an analysis, page, I believe it's page 26 of his November
20 report, concluded that --
21 MR. GOECKE: Right. You already testified about
22 that.
23 THE WITNESS: Yeah.
24 MR. GOECKE: So and I'm still not sure if you've
25 answered my question about the dropping levels of NO2 in the

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1 ambient air but if we could look at your exhibit, not Mr.
2 Sullivan's exhibit, it was something that was actually
3 submitted on your behalf which is Exhibit 440(f), these are
4 images of the Wheaton Costco gas air monitoring locations,
5 and if you could turn to the Arlington picture.
6 MR. GROSSMAN: You said 440(f)?
7 MR. GOECKE: Yes. I'm sorry.
8 MR. GROSSMAN: I don't have a 440.
9 MR. GOECKE: 40, 404(f).
10 MR. GROSSMAN: Oh, okay. Now you were scaring me
11 because I thought there were 40 more exhibits than I had.
12 MR. GOECKE: You missed a day.
13 MR. GROSSMAN: I already have enough, thank you.
14 THE WITNESS: Let me see if I can get to that with
15 this big book.
16 MR. GROSSMAN: That's in the Power Point. It says
17 Power Point Wheaton Costco gas air monitor locations.
18 That's what it says on the --
19 MR. GOECKE: And I can bring you my copy if that
20 will be easier.
21 THE WITNESS: Well, let me -- this is in, I think
22 it's --
23 MR. GOECKE: These are the Google Earth pictures,
24 or they look like Google Earth.
25 THE WITNESS: I'm not sure which. There are many

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1 diagrams so if you could help me out, I would appreciate it.
2 MR. GOECKE: These are images that we received
3 from, and this is the diagram or the picture of the
4 Arlington monitor. In the upper left, you have NO2 one hour
5 98th percentile, and for 2008, you have listed 92.12
6 micrograms per cubic meters.
7 THE WITNESS: What exhibit is this?
8 MR. GROSSMAN: 404(f).
9 MR. GOECKE: This is 404(f).
10 MR. GROSSMAN: F as in Frank.
11 THE WITNESS: Help me out here so I don't have to
12 -- is this my submittal?
13 MR. GOECKE: It was submitted by Ms. Rosenfeld as
14 a document that you might rely on. Have you not seen this
15 before?
16 THE WITNESS: I have seen it.
17 MR. GROSSMAN: Yes. It was submitted --
18 MS. ROSENFELD: We did not, this is beyond the
19 scope of cross. We did not --
20 MR. GROSSMAN: You mean beyond the scope of
21 direct?
22 MS. ROSENFELD: Beyond the scope of direct. We
23 did not discuss these documents.
24 MR. GROSSMAN: I know, but it's fair that -- you
25 submitted it for him to, in his testimony so I think it's

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1 fair as part of cross-examination.
2 MR. GOECKE: Did you prepare this document?
3 THE WITNESS: I did not.
4 MR. GOECKE: But you've seen it before.
5 THE WITNESS: I think I have.
6 MR. GOECKE: Okay. And so again, it lists 92.12
7 micrograms per cubic meters as the NO2 one hour 98th
8 percentile in 2008. Did I read that correctly?
9 MS. ROSENFELD: I'm sorry. Which slide are you
10 on?
11 MR. GOECKE: The Arlington monitor. They're not
12 numbered.
13 THE WITNESS: Okay. I think I, I see what --
14 would you ask your question again?
15 MR. GOECKE: I asked did I read that correctly.
16 THE WITNESS: You did.
17 MR. GOECKE: Okay. And do you have any reason to
18 disagree that that's the monitoring, that that's the 98th
19 percentile level from the Arlington monitor for 2008?
20 THE WITNESS: I'll accept that.
21 MR. GOECKE: Okay. And will you accept the other
22 numbers on this page as well?
23 THE WITNESS: Since they were submitted apparently
24 by my counsel, I have no reason to dispute that.
25 MR. GOECKE: Okay. And then so you agree then

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1 that in 2012 and in 2013, the NO2 one hour 98th percentile
2 levels are at 82.72 micrograms per cubic meter.
3 THE WITNESS: Uh-huh.
4 MR. GOECKE: So it's dropped almost 10 micrograms
5 per cubic meters in the last five years.
6 THE WITNESS: Could I --
7 MR. GOECKE: Just answer my question, please.
8 THE WITNESS: Could you return?
9 MR. GOECKE: Could I repeat it?
10 THE WITNESS: No. Return to your seat so you're
11 not breathing down my neck.
12 MR. GOECKE: I will return.
13 THE WITNESS: It's not that I don't like you.
14 Just I need breathing space. Okay. So I'm going to --
15 MR. GOECKE: Just answer my question, please.
16 MR. GOECKE: I'm going to answer your question.
17 What you've shown shows a decrease. Now, I would like to
18 comment on the nature of trend analysis. You've given me
19 three points, okay. Now, it's a well-known fact that when
20 EPA looks at trends, they recognize, and this was certainly
21 part of my work, that weather conditions, climatic change,
22 atmospheric, weather conditions change from year to year.
23 MR. GROSSMAN: So you're saying that three points
24 does not a make, does not a trend make?
25 THE WITNESS: Three points does not a trend to

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1 make.
2 MR. GROSSMAN: Mr. Goecke, I also noticed that in
3 the same set of photographs in 404(f) in the Beltsville
4 monitor, that it appears that, if I'm reading this
5 correctly, the NO2 one hour 98th percentile reading in 2008,
6 it was 80, in 2012, it was 67. It went down but then it
7 went up in 2013 to 73.32, is that correct?
8 MR. GOECKE: That's what it says. That's right.
9 MR. GROSSMAN: So are you suggesting I should
10 reach any conclusion from the change on the Arlington one
11 where it decreased while the Beltsville one had actually
12 increased from 2012 to 2013?
13 MR. GOECKE: A couple things. Well, just as Dr.
14 Cole points out that the fewer data points you have, the
15 less reliable the data is. These are, these are not one
16 day. These are the entire year for the 98th percentile and
17 so when you go from 2008 to 2013, there's almost a seven
18 microgram per cubic meter drop even with the increase from
19 2012 to 2013. So I agree that --
20 MR. GROSSMAN: Might I not worry that, that it's
21 going up in Beltsville? It appears that the NO2 one hour
22 measurement is going up in Beltsville. I mean, just, just
23 referencing what you pointed out in Arlington.
24 MR. GOECKE: It's a fair point and I agree, and
25 I'm not sure if we submitted more data that provides a more

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1 comprehensive trend line but if we haven't, we may on
2 rebuttal. So your point is well-taken that this may not be
3 sufficient to show a trend, but the other point for
4 Arlington is this is a location that Dr. Cole specifically
5 was involved in selecting as part of the protocol process --
6 MS. ROSENFELD: Hearsay.
7 MR. GOECKE: -- to use for NO2.
8 MR. GROSSMAN: Well, yes. I sustain --
9 MS. ROSENFELD: There's no evidence.
10 MR. GROSSMAN: -- that objection because --
11 MR. GOECKE: I proffer that he, that he did.
12 MR. GROSSMAN: Okay.
13 MR. GOECKE: And we'll --
14 MR. GROSSMAN: Dr. Cole said he doesn't recall so.
15 MR. GOECKE: He didn't deny it.
16 MR. GROSSMAN: Well, he just doesn't recall so I
17 think that you can submit testimony regarding that but not
18 your own representation.
19 MR. GOECKE: Okay. Okay. And so after all that,
20 generally, do you agree or disagree that NO2 in the ambient
21 air, let's pull the lens back and not just focus on
22 Beltsville or Arlington, nationally is decreasing generally
23 over the last 10 years?
24 THE WITNESS: I'm going to --
25 MR. GROSSMAN: I'm going to stop you because I

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1 don't see how that's going to be --
2 MR. GOECKE: Okay. I'll move on.
3 MR. GROSSMAN: What bearing would that national
4 figure have on anything I have to analyze?
5 MR. GOECKE: Well, because part of his point is we
6 should think about what's going to happen in the future and
7 he's implying that because the EPA is making more stringent
8 the NAC standards, that we should be concerned about that
9 but, and I'll proffer that we'll present evidence on this
10 part. The reason why the EPA is lowering and making the
11 standards more stringent is because they can, because the
12 ambient air is improving, because technology is improving
13 and decreasing the amount of NO2 in the atmosphere.
14 MR. SILVERMAN: That is a contrary to law
15 assertion. If EPA is doing that, they're breaking the law.
16 MR. GROSSMAN: Hold on, Mr. Silverman. I think
17 the point is here what evidence am I going to be relying on
18 to reach any conclusions, and I don't think that a national
19 figure is going to be helpful to me in light of the fact
20 that we have local figures. So if I were going to reach any
21 conclusions about NO2 background and we have local figures,
22 I'm not going to look for a national figure.
23 MR. GOECKE: Okay. Bear with me a moment.
24 THE WITNESS: Excuse me. I would like to take
25 what's been euphemistically referred to as a health break.

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1 MR. GROSSMAN: I don't know if I'll call it a
2 health break, but how much longer do you think your cross-
3 examination will be, Mr. Goecke?
4 MR. GOECKE: I think that if we took a lunch break
5 now, it would help me get organized to quicken the remaining
6 cross-examination, also give us time to review the new
7 document that they provided today.
8 MR. GROSSMAN: All right. And what's your
9 guesstimate?
10 MR. GOECKE: An hour.
11 MR. GROSSMAN: Okay. Well, then I think that it
12 makes sense to take a lunch break now. It's relatively
13 early for our lunch breaks in this --
14 MR. GOECKE: I appreciate that.
15 MR. GROSSMAN: -- but you might actually get some
16 --
17 MR. GOECKE: Mr. Silverman asked me to --
18 MR. GROSSMAN: Mr. Silverman is advocating it.
19 I'll have to race him down to the lunchroom. All right
20 then.
21 THE WITNESS: Maybe there will be some more
22 selections left.
23 MR. GROSSMAN: Break until 1:00 then. All right.
24 Thank you.
25 (Whereupon, at 12:16 p.m., a luncheon recess was

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1 taken.)
2 MR. GROSSMAN: Back on the record. Mr. Goecke.
3 The ball is in your court.
4 MR. GOECKE: Okay. Ms. Rosenfeld said she had a
5 preliminary matter.
6 MS. ROSENFELD: There's a gentleman here who owns
7 one of the local gas stations. He came in during lunch.
8 And I've spoken with Mr. Goecke. I think we would all agree
9 to let him testify. I don't think he's going to be
10 particularly long.
11 MR. GROSSMAN: I --
12 MS. ROSENFELD: Before cross-examination resumes.
13 MR. GROSSMAN: Well, I have no problem after the
14 cross-examination and after the gentleman from the swimming
15 pool --
16 MS. ROSENFELD: Okay.
17 MR. GROSSMAN: -- testify. I have no problem with
18 having another witness if we can fit him in.
19 MS. CORDRY: Okay. He's going to have to stay all
20 afternoon because I think he was saying he's one of the only
21 two people who can work at his gas station and service bays
22 and was really hoping to be able to get back without being
23 here the whole time.
24 MR. GROSSMAN: Well, I mean, there are other
25 people that were here.

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1 MS CORDRY: Do you have any problem with that?
2 MR. SPAID: No. There's no problem. No problem.
3 THE WITNESS: As far as that goes, I'm, I
4 committed to the day so I can go second to him.
5 MR. GROSSMAN: Well, I'll leave it to you to fight
6 it out. You can arm wrestle or, but in fairness, you would
7 go first after, after Dr. Cole so if you guys want to switch
8 the arrangement, that's fine with me too. Okay. Mr.
9 Goecke.
10 MR. GOECKE: Dr. Cole, yesterday you talked about
11 the what you referred to as the memory issue. You said the
12 air has memory when it's, when it's traveling from a rural
13 to an urban area.
14 THE WITNESS: It's a term of art. It doesn't mean
15 like --
16 MR. GOECKE: I understand that.
17 THE WITNESS: No brain cells up there, right.
18 MR. GOECKE: Is there a different term that's more
19 appropriate to use or --
20 THE WITNESS: Yeah. I think you could say that
21 the properties of a fluid --
22 MR. GOECKE: I'm sorry, of a fluid?
23 THE WITNESS: The properties of a fluid have some,
24 are conserved until they're, they begin to be, the boundary
25 begins to be changed. So we could call it, we could call it

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1 fluidity if you will. We could call it -- I think we -- is
2 there any question about understanding the concept or --
3 MR. GOECKE: I just want to talk to you a little
4 bit about that concept --
5 THE WITNESS: Okay.
6 MR. GOECKE: -- in terms of how it works. And
7 basically, my understanding is that as air travels from a
8 rural area to an urban area, its fluidity or dispersion
9 characteristics change as well.
10 THE WITNESS: Yes. But they don't -- they change
11 in a particular way so they, because the surface is at the
12 bottom of the air, the change comes from the bottom up and
13 as the air moves through the urban, the now urban surface,
14 that mixing layer that's characteristic of the urban will
15 grow, okay?
16 MR. GOECKE: Okay.
17 THE WITNESS: So what I'm saying is that now
18 you're talking about a gas station that's fairly near the
19 boundary between urban and rural so, so you need to be
20 careful about understanding this transition zone where
21 you're not getting the complete benefit of the urban mixing
22 or turbulence immediately.
23 MR. GOECKE: Okay.
24 THE WITNESS: So near the source you're not going
25 to have the full benefit. And I think in fairness to Mr.

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1 Sullivan, he, in his November report, page 26, understood
2 that there were different trajectories and his best estimate
3 was that there would be an intermediate value between urban
4 and rural dispersion coefficients.
5 MR. GOECKE: Let's assume a receptor of about five
6 feet in height. How far or what's the distance from the air
7 traveling from the rural to the urban environment at which
8 you would expect the receptor to recognize urban dispersion
9 characteristics?
10 THE WITNESS: I would have to work that. I would
11 have to make some assumptions and, and do that analysis
12 based on some assumptions and maybe some of the literature
13 that's been done on just that. I have not done analysis.
14 MR. GOECKE: So generally --
15 THE WITNESS: I'm just, I've said given the
16 absence of a whole micrometeorological study and really
17 digging into that, you know, I think you could take an
18 intermediate value.
19 MR. GOECKE: But at some --
20 THE WITNESS: But I think given the, given all of
21 the uncertainties, I think the best, my judgment would be to
22 use rural, the most conservative rural values which meets
23 EPA's criteria for the first line of the analysis.
24 MR. GOECKE: But you agree that at some point, the
25 air traveling from the residential neighborhood into the

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1 mall assumes the qualities of urban dispersion.
2 THE WITNESS: Let me say this. It assumes a lot
3 because we're in a case, we're in a case where we have
4 buildings and we may have, under certain situations, plumes
5 which encounter the building and then are reflected, we may
6 have semi-canyon effects where there are eddies which re-
7 circulate contaminates back toward the ground. This is a
8 very complex particulate situation which I haven't seen any
9 evidence in Mr. Sullivan's reports that he has either
10 factored that in in some way or that he has opted for a more
11 conservative choice which would be the rural dispersion in
12 this case.
13 MR. GOECKE: Is there a rule of thumb that you
14 would use in trying to determine the distance required for
15 the air to transform dispersion qualities?
16 THE WITNESS: No.
17 MR. GOECKE: No.
18 THE WITNESS: I'm not going to give you that. I
19 don't know is the answer.
20 MR. GOECKE: Okay.
21 THE WITNESS: I don't know what rule of thumb
22 would be appropriate without looking at the particular
23 nature of the two surfaces that we're talking about here.
24 MR. GOECKE: Do you agree that one of the
25 characteristics of an urban environment as opposed to rural

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1 is that the urban tend to be warmer, hotter?
2 THE WITNESS: Well, under many circumstances, that
3 would be true because these buildings give off heat.
4 However, I can think of circumstances when like a parking
5 lot would be covered with ice or snow where that wouldn't
6 necessarily be the case. So there are, I mean, I, it's true
7 that all those buildings do give off heat and add to the
8 conductive turbulence. I'm aware of that as a, as an air
9 pollution scientist, meteorologist.
10 MR. GOECKE: So generally speaking, you would
11 think that the parking lot in the area within the pink line
12 on Exhibit 159 would have warmer temperatures than, say, the
13 grass in the residential neighborhood to the south and to
14 the southwest of the mall property.
15 THE WITNESS: Well, the parking lot is, is black
16 so it absorbs heat. That's true. In the summertime, there
17 would be less impact from the heating of buildings probably,
18 but I would go back to the premise that there is a
19 transition zone and then in fact, the combination of
20 buildings and convection might give you high concentrations
21 with certain wind conditions.
22 So given the complexity of this situation, I think
23 I, if I were doing this modeling, I would use the, follow
24 EPA's guidance and use the rural dispersion coefficients to
25 build in some conservancy here because you don't know

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1 exactly all the factors that are affecting dispersion.
2 MR. GOECKE: Speaking of conservancy, the EPA's
3 National Ambient Air Quality Standards contain a level of
4 conservancy, don't they?
5 THE WITNESS: The levels that are set are based on
6 a process of considering what health effects, what research
7 has been done at a particular point in time. Yesterday, I
8 went to some length into the, what is recognized by many
9 scientists as a problem with the PM2.5 standard in that
10 you're lumping in particles, some of which are blocked by
11 the nose, the bigger particles, and others which descend
12 deep into the lungs and can cross biological membranes
13 because of their tiny size, and those particles have
14 enormous surface area that serve as deposition points for
15 other contaminates. I testified on that so --
16 MR. GROSSMAN: Enormous surface area relative to
17 their mass.
18 THE WITNESS: Yes.
19 MR. GOECKE: So you testified about some people
20 that, some criticisms of the EPA standards but you agree
21 that the Clean Air Act requires them to be protective of
22 public health.
23 THE WITNESS: That's the objective of the Clean
24 Air Act. It's not the objective as was referred to here
25 before, I believe, that you lower standards when the

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1 background, when the overall levels drop. The goal under
2 the standard is to protect public health. With, with the
3 level that's selected by EPA with a lot of guidance from its
4 Clean Air scientific group CASAC, and the CASAC specifically
5 has said that they're concerned about the area of PM2.5
6 because of the particle size issue and specifically
7 mentioned ultraflower, I'm sorry, ultrafine particles as a
8 concern.

9 MR. GOECKE: And you agree that the EPA
10 administrator is legally required to set standards that
11 protect the public health with an adequate margin of safety.

12 MS. ROSENFELD: Objection. He's asking for legal
13 conclusions.

14 MR. GROSSMAN: I sustain that objection.

15 MR. GOECKE: It is a regulation that he's
16 testified about at length and it's the basis of the Clean
17 Air Act.

18 MR. GROSSMAN: He can cite to the regulation but
19 you're asking him whether he's required, whether the EPA is
20 required under law to do something.

21 MR. GOECKE: Okay.

22 MR. GROSSMAN: If there's a specific regulation
23 you want to reference, that's fine but asking for his legal
24 opinion is something else.

25 MR. GOECKE: Fair enough. So without asking your

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1 legal opinion, to your knowledge, does the Clean Air Act
2 require the EPA administrator to set standards that are
3 protective of public health with an adequate margin of
4 safety?

5 THE WITNESS: That would be the requirement. I
6 think it's a legal interpretation.

7 MR. GROSSMAN: To your knowledge.

8 THE WITNESS: To my knowledge, it sounds right. I
9 think it sounds right.

10 MR. GOECKE: And to your knowledge, does that
11 include protecting sensitive populations including the
12 elderly and asthmatics?

13 THE WITNESS: It's aimed at that goal, that
14 objective.

15 MR. GOECKE: Okay.

16 THE WITNESS: But it's not a judgment about
17 whether it does.

18 MR. GOECKE: I'd like to turn to page 18 of
19 Exhibit 404(a) which is your slideshow presentation.

20 THE WITNESS: Okay. Do I have that?

21 MR. GROSSMAN: Well, we substituted 406 for
22 404(a).

23 MR. GOECKE: 406 became the revised 404(a).

24 MR. GROSSMAN: Right.

25 MR. GOECKE: Okay.

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1 THE WITNESS: Just to help me out, could you
2 please show me since there's some confusion.

3 MS. ROSENFELD: Let me give you a copy.

4 MR. GROSSMAN: Michele made copies.

5 THE WITNESS: All right. I just don't want to
6 turn my computer on again.

7 MR. GOECKE: I understand. So 406 is the full set
8 404(a).

9 MR. GROSSMAN: That's the one that contains the
10 extra, yes. The full set.

11 THE WITNESS: Which, which slide, please?

12 MR. GOECKE: Eighteen I believe.

13 THE WITNESS: Okay.

14 MR. GROSSMAN: Is that the one that had the
15 estimating maximum one hour NO2 concentration?

16 MR. GOECKE: Exactly. At the top of the page, it
17 reads estimating maximum one hour NO2 concentrations. And
18 your slide says, Dr. Cole, using Mr. Sullivan's judgment on,
19 quote, the most accurate dispersion for the site, end quote,
20 and then in parentheses, intermediate between rural and
21 urban coefficients, end parenthetical, coupled with his
22 factor of 2 to adjust for MOBILE6 to MOVES 2010.

23 So this says, if I understand this correctly,
24 you're taking Mr. Sullivan's numbers and then adjusting them
25 for the conversion from MOBILE6 to MOVES and coming up with

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1 what you think is the more appropriate measurements of the
2 one hour NO2 standards.

3 THE WITNESS: Yes.

4 MR. GOECKE: Okay. And so you say the maximum for
5 urban is 160 with a background of 90.

6 THE WITNESS: Right.

7 MR. GOECKE: But if I may approach, I promise not
8 to get too close this time, this is Dr. Sullivan, or Mr.
9 Sullivan's report from August 16th, 2013, Exhibit 255(a),
10 and I'm showing you page 30 of that report.

11 THE WITNESS: Okay.

12 MR. GOECKE: And this is figure 21. This is the
13 refined one hour NO2.

14 MR. GROSSMAN: That's figure 21?

15 MR. GOECKE: Figure 21, correct.

16 MR. GROSSMAN: Hold on. Let me get there.

17 MR. GOECKE: Sure. It's on page 30.

18 MR. GROSSMAN: Well, actually, my pages aren't the
19 same as your pages.

20 MR. GOECKE: Okay.

21 MR. GROSSMAN: So I'll go by the figure.

22 THE WITNESS: Excuse me.

23 MR. GOECKE: Okay. I'm looking at figure 21.

24 MS. ROSENFELD: Wait until he asks a question.

25 MR. GOECKE: Okay. And so the maximum urban

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1 concentration here says 113.4 micrograms per cubic meter, is
2 that correct?
3 THE WITNESS: That's what it says. I don't think
4 it's correct.
5 MR. GOECKE: Okay. But you agree that this is
6 what Mr. Sullivan came up with as part of his refined
7 analysis in August of 2013.
8 THE WITNESS: It is.
9 MR. GOECKE: Okay. So the number that you used on
10 page 18 of your slideshow was a different number.
11 THE WITNESS: That's correct.
12 MR. GOECKE: Okay. And just showing you quickly
13 on page 31, which is figure 22 of that same August 16th
14 report, the rural refined exposure maximum level is 129.7
15 micrograms per cubic meter, is that right?
16 THE WITNESS: Yes. I just want to make clear if I
17 may that while that's what the diagrams say, I would have to
18 state that there's no basis whatsoever that these
19 refinements, the refinements, particularly regarding the
20 reduction of exposure time, one hour standard is a one hour
21 standard, period, and what he's done is he's reduced the
22 emissions by two-thirds and I, frankly, I think that is a
23 serious error.
24 MR. GROSSMAN: You're talking about the 160
25 reduced to 113. Is that what you mean?

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1 THE WITNESS: Yes. I see no --
2 MR. GROSSMAN: Was that the result of taking
3 instead of the one hour, taking 20 minutes? Is that --
4 THE WITNESS: Yes.
5 MR. GROSSMAN: -- what caused that reduction?
6 THE WITNESS: Yes. So I don't accept that as
7 valid. I don't know why that was done. I've not seen
8 anything like that in other analyses.
9 MR. GOECKE: Okay. Putting aside those comments
10 for the moment, do you agree that if we use the refined
11 levels, the average then, as you did on page 18 to come up
12 with a half rural, half urban number and adjust them for
13 MOVES, we would come in beneath the 190 microgram per cubic
14 meter standard?
15 THE WITNESS: I haven't done that analysis.
16 MR. GOECKE: Okay. Can you walk through that with
17 me real quickly? So we take the maximum for urban at 113.
18 THE WITNESS: Yes.
19 MR. GOECKE: Do you want to do it on your own or
20 shall we walk through it together?
21 THE WITNESS: Keep going.
22 MR. GOECKE: And then you subtract the 90
23 background.
24 THE WITNESS: Okay.
25 MR. GOECKE: Which leaves you with 43 micrograms.

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1 I'm sorry, 23.
2 THE WITNESS: Twenty-three, right.
3 MR. GOECKE: Okay. And then the rural maximum
4 that Mr. Sullivan listed is 129.7. So if we substitute that
5 in place of the 217 and subtract 90, we get 39.7. Well, 38.
6 THE WITNESS: Okay. So we have the models --
7 MR. GOECKE: I'm sorry, 40.
8 THE WITNESS: What is it?
9 MR. GOECKE: I think it's 39.8 but we can round it
10 up to 40. Add those two together, 63.
11 THE WITNESS: Yes.
12 MR. GOECKE: Divide them by 2.
13 THE WITNESS: Divide them by 2?
14 MR. GOECKE: Aren't we averaging the two?
15 THE WITNESS: To get the average, okay.
16 MR. GOECKE: Right.
17 THE WITNESS: Yes. So what do you get?
18 MR. GOECKE: It's 31.5.
19 THE WITNESS: Okay.
20 MR. GOECKE: If we use your MOVES adjustment, we
21 double that, we get 62. Actually, we would get 63.
22 THE WITNESS: Okay.
23 MR. GOECKE: Add that to the background of 90 and
24 that would be 154.
25 THE WITNESS: Okay.

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1 MR. GOECKE: And right. And so, and the
2 adjustment for MOVES, now, this is doubling all of the NO2
3 concentrations but you agreed earlier that the doubling is
4 only appropriate for cars that are idling and traveling
5 three miles per hour and less.
6 THE WITNESS: Right. So you would have to have an
7 analysis if you wanted to do this. You'd have to have an
8 analysis that supports whatever other adjustment that you're
9 going to make but you need, you definitely need to have an
10 analysis to base something like that on.
11 MR. GOECKE: But you agree that not all cars on
12 the mall site are going to be traveling three miles per hour
13 or less.
14 THE WITNESS: Under circumstances, they may be,
15 the average may be lower than that.
16 MR. GOECKE: Okay.
17 THE WITNESS: When you have --
18 MR. GOECKE: But let's assume that the cars never
19 exceed three miles per hour on the mall site under your
20 hypothetical and therefore, it would be appropriate to, to
21 double the emissions level from MOBILE6 to MOVES by a factor
22 of 2, even doing that with the other numbers that Mr.
23 Sullivan has modeled, there still is no violation of the one
24 hour NO2 EPA NAC.
25 THE WITNESS: From my judgment, it's a violation

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1 of standard practices and it doesn't address the way that
2 models or results are evaluated against the Clean Air Act
3 which has a one hour standard.
4 MR. GOECKE: Is it standard practice to model, put
5 a receptor in the middle of the road?
6 THE WITNESS: Do we have a receptor in the middle
7 of the road?
8 MR. GOECKE: Isn't that effectively what we're
9 doing here by putting a receptor right in the gas queue?
10 THE WITNESS: Well, my understanding is that
11 looking at the isopleths go beyond the gas station, and I
12 also think that people are exposed in the gas station.
13 MR. GOECKE: You said that one of the reasons why
14 you think the refinements are inappropriate is because it
15 treats exposure levels, oh, I'm sorry, the model calculation
16 is based on the assumption that a person would be in the
17 queue for 20 minutes.
18 THE WITNESS: Repeat your question.
19 MR. GOECKE: Sure. Sure, sure, sure. My
20 understanding is that your criticism of one of Mr.
21 Sullivan's refinements is that you put the one hour standard
22 to one hour standard and it's not appropriate to only
23 consider a person being the gas queue for 20 minutes.
24 THE WITNESS: Well, what Mr. Sullivan did was he
25 assumed that for 20 minutes, you would be in a queue area

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1 and then for 40 minutes, you would be exposed to background
2 concentrations. If you look at the isopleths within the
3 mall, you will find that the values are much higher than
4 background so that particular, so there's two problems, in
5 my opinion, with that approach. In fact, three problems.
6 One problem is that the standard is a one hour standard.
7 The second problem is --
8 MR. GOECKE: And I'm sorry. Can you elaborate on
9 that? What is, you disagree with the standard? It's not
10 long enough or --
11 THE WITNESS: No. The standard is a one hour
12 standard. The modeling is one hour, looks at one hour at a
13 time. That's the way the analysis is done. You don't
14 suddenly come up with a, an assumed basis of what someone's
15 exposed to. The second problem, as I said --
16 MR. GOECKE: Okay. Let's focus on that for a
17 minute. So you say it's an assumed basis but are you aware
18 of where Mr. Sullivan got that 20 minute figure from?
19 THE WITNESS: I'm not.
20 MR. GOECKE: I'll proffer that he got it from
21 observations at the Sterling Costco gas station that
22 analyzed how long people spent in a queue, a 40 car queue.
23 THE WITNESS: Then let me state his method has a
24 second flaw. I'll get back to the first flaw. The second
25 flaw is that he assumes that the rest of people's exposure

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1 is that background. Now, on my experience, Mr. Sullivan has
2 his experience and his data, my experience is that when
3 people go shopping, particularly if you're going to have a
4 gas station next to the warehouse, next to Target, next to
5 all these other places, that people are going to spend time
6 back and forth from stores to their cars, rolling carts,
7 walking with kids and whatnot and to say that, to make some
8 assumption that the rest of the 40 minutes is at background,
9 I, I just don't buy that. There's just no basis for that.
10 So that's the second flaw.
11 The third flaw is that the one hour concentrations
12 are based on a particular scaling time of one hour. It's
13 well-known, as I said yesterday, it's well-known that when
14 you go to shorter averaging periods, the maximum
15 concentrations are higher and so if we're going to look at
16 the highest exposures, for example, for a 30 minute period
17 where EPA says that sensitive populations have a problem,
18 you've got to look at, you've got to look at a different
19 distribution. And it seems to me there are three distinct
20 flaws in this reduction which seems to be so vital to Mr.
21 Sullivan's results.
22 MR. GOECKE: And so you're saying that for the 40
23 minutes they're not in the queue, and we agree that people
24 may be in the queue for shorter than 20 minutes.
25 THE WITNESS: Well, I haven't done the study.

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1 That's the number that Mr. Sullivan uses.
2 MR. GOECKE: Okay. If you don't know, that's
3 fine. When they're not in the queue, let's say they're
4 roaming around the parking lot for an extended period of
5 time, the background levels used by Mr. Sullivan was the
6 98th percentile for the region so, so the majority of the
7 time, the background level is going to be less than 90
8 micrograms per cubic meter.
9 THE WITNESS: The issue was what is your -- the
10 modeling is done in the following way.
11 MR. GROSSMAN: Well, answer his question.
12 THE WITNESS: Repeat your question.
13 MR. GOECKE: Sure. Mr. Sullivan assumes that for
14 40 minutes, folks will get exposed to background levels of
15 ambient NO2 but that's based on the 98th percentile of
16 background levels. Ninety-seven percent of the time, the
17 background levels are going to be less than 90 micrograms
18 per cubic meter, isn't that right?
19 THE WITNESS: As I've stated just a minute ago, if
20 people are in the mall at a particular time when
21 concentrations are high because there's a lot of vehicle
22 traffic for example, congestion and whatnot, they're going
23 to be exposed for longer periods to levels that are much
24 higher than background as Mr. Sullivan's model results show.
25 MR. GOECKE: But don't Mr. Sullivan's isopleths

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1 show that once you get away from the queue, the numbers drop
2 dramatically?
3 THE WITNESS: Mr. Sullivan has not -- if you, if
4 you would show me what particular set of values you're
5 looking at and show me that super-imposed on the gas station
6 and on other parts of the mall, we might have an answer.
7 MR. GOECKE: Okay. Bear with me. If I may
8 approach you, Dr. Cole. I'm referring you to Exhibit
9 255(a), Mr. Sullivan's August 2013 report, figure 21, which
10 isn't as many isopleths as I would like, but if the maximum
11 is 113 at the bulls eye, then even within the special
12 exception area, it appears to me, it drops down to 100.
13 THE WITNESS: As I've stated, I don't accept that
14 set of results.
15 MR. GOECKE: Right.
16 THE WITNESS: As a scientifically valid or
17 consistent with EPA guidance.
18 MR. GOECKE: Right.
19 THE WITNESS: I don't accept it.
20 MR. GOECKE: Okay. But putting aside your --
21 THE WITNESS: Let's look at another, let's look at
22 the diagram that I do think is at least halfway better.
23 MR. GOECKE: And which one is that, Dr. Cole?
24 THE WITNESS: All right.
25 MR. GROSSMAN: Maybe figure 9. Take a look at

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1 figure 9.
2 THE WITNESS: Okay. That -- I just, before we
3 look at this, I want to make it clear that if we're looking
4 at figure 9, figures 9 and 10 actually --
5 MR. GROSSMAN: Is that, Mr. Goecke, does that, I
6 think that's the figures that you're talking about, is that
7 correct?
8 MR. GOECKE: I think both would work for purposes
9 of this discussion.
10 MR. GROSSMAN: Okay.
11 MR. GOECKE: And so on page 24, figures 9 and 10 -
12 -
13 MR. GROSSMAN: Of Mr. Sullivan's August --
14 MR. GOECKE: -- of Mr. Sullivan's --
15 MR. GROSSMAN: -- 2013 report.
16 MR. GOECKE: Thank you, yes, 255(a).
17 THE WITNESS: This is figure 9?
18 MR. GOECKE: Figure 9 and 10, right.
19 THE WITNESS: 9 and 10. I got it right here.
20 MR. GOECKE: So at the, in the top figure, figure
21 9, the maximum says 168 micrograms per cubic meter. This is
22 using the urban, urban dispersion model. And if you follow
23 the isopleths and we look toward, and then go towards the
24 northwest there, before, you know, once you get to what's
25 shown as the grassy area, it drops to 110 so it drops 58

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1 micrograms per cubic meters in a very short distance, right?
2 THE WITNESS: Yes.
3 MR. GOECKE: I mean, here's my point. Putting
4 aside whether you disagree with the precise numbers in the
5 study, the fact that the numbers drop off quickly in a short
6 period of time is consistent throughout all of these
7 isopleths.
8 MS. ROSENFELD: Is there a question in there?
9 MR. GOECKE: Do you agree?
10 MR. GROSSMAN: There's the question.
11 THE WITNESS: Well, you got a chuckle there so if
12 you could repeat it. I like chuckles so you need to repeat.
13 MR. GOECKE: Do you agree that the levels of NO2
14 dropped quickly?
15 THE WITNESS: In these different --
16 MR. GOECKE: In all of these isopleths but
17 specifically in figures 9 and 10.
18 THE WITNESS: Well, quickly is a relative term of
19 course.
20 MR. GROSSMAN: Yes. I think the --
21 MR. GOECKE: They do drop off, yes.
22 MR. GROSSMAN: Yes. The point I think he's making
23 and that's the question, you've raised the issue of people
24 going elsewhere in the mall after they leave the queue and
25 that they are still exposed so that, that Mr. Sullivan

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1 should not have reduced the one hour figure to 20 minutes.
2 And I think what is being suggested by the question is
3 whether or not your concern is a valid one since the, it
4 appears that the level, the concentration levels of the one
5 hour NO2 drop off so significantly away from, as you get
6 away from the gas station itself, that your concern about
7 the continuing exposure of people as they move away from the
8 gas station is unfounded, so comment on that.
9 THE WITNESS: Yeah. For example, if we looked at
10 figure 10, which I believe is a more appropriate set of
11 values --
12 MR. GROSSMAN: Right.
13 THE WITNESS: -- and we accept this without any
14 corrections for MOVES.
15 MR. GROSSMAN: Right.
16 THE WITNESS: Okay. And what I'm seeing south of
17 the Ring Road are values of 160, 170. Right at the Ring
18 Road it's between 180 and 170.
19 MR. GROSSMAN: Right.
20 THE WITNESS: The backgrounds sited in the same
21 figure as 90. 90.
22 MR. GROSSMAN: Right.
23 THE WITNESS: So we're talking about, in this
24 particular case, values that are double background. So to
25 assume that for 40 minutes, someone's exposed to 90, to me

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1 doesn't, won't work because if you accept my, the
2 deficiencies I've sited or correction factors that Mr.
3 Sullivan says could have made but didn't make --
4 MR. GROSSMAN: Right.
5 MR. GOECKE: -- mobile to MOVES and everything,
6 then these, these levels get even higher.
7 MR. GROSSMAN: So sum what you're saying is they
8 will not be exposed to the maximums after they leave the gas
9 station. They may be exposed to figures that are under the
10 NAAQS standard but they'll be above background levels. Does
11 that, does that fairly summarize what you're saying?
12 THE WITNESS: That's what I'm saying from the
13 standpoint of examining the evidence but as I said, I, my
14 judgment is that that's not a valid, to slice and dice the
15 one hour concentrations when that's the basis of your
16 modeling and that's the, without looking at --
17 MR. GROSSMAN: I understand your objection to
18 that.
19 THE WITNESS: Okay.
20 MR. GROSSMAN: I'm just saying that, just trying
21 to summarize what I understood to be your --
22 THE WITNESS: And that, I agree with what you
23 said.
24 MR. GROSSMAN: Okay.
25 MR. GOECKE: And that's applying the rural

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1 analysis.
2 THE WITNESS: Yes, but --
3 MR. GROSSMAN: But my summary applied to both.
4 THE WITNESS: Yes.
5 MR. GROSSMAN: My summary said his position is, as
6 stated, he doesn't like the idea of splitting up the one
7 hour standard the way you're suggesting to 20 minutes.
8 However, he concedes that, that as you get further away from
9 the gas station, you may be under the, the standard but you
10 won't be down to background levels is what I think he's
11 saying.
12 THE WITNESS: Even using the urban analysis, if
13 you look at the value right along the Ring Road, you're
14 getting something around 120. 120 is some 30 micrograms per
15 cubic meter above --
16 MR. GROSSMAN: They're placed above. That's what
17 I was saying.
18 MR. GOECKE: Right. And, yes. And that's correct
19 but if you're not on the Ring Road and if you're further
20 north in the parking lot or in the mall or other portions of
21 the property, you could be exposed to less than background
22 levels.
23 MR. GROSSMAN: You can't tell. The isopleths
24 don't extend that far.
25 MR. GOECKE: Less than 98th percentile background

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1 level.
2 THE WITNESS: I don't know what you mean by 90th
3 percentile.
4 MR. GOECKE: 98th percentile which is 90
5 micrograms per cubic meter.
6 THE WITNESS: I, I don't make any concessions on
7 that ground because as I said, in my view, there are
8 correction factors or the use of EPA sanctions, emissions
9 model would be, would give you twice the emissions here or
10 perhaps a little less but under peak conditions, I believe
11 that, that it would be reasonable to expect much higher
12 levels than what MOBILE6 gives. And the second thing, as
13 I've said, is I think conserve, conservatism, given the
14 complexity of this site and this analysis and following
15 EPA's first line of guidance, we would use the rural
16 dispersion coefficients which would again give you, as Mr.
17 Sullivan has conceded, would give you less dispersion and
18 higher concentrations.
19 So I think the analysis, particularly using the,
20 what I would call withered down exposure in the two-thirds,
21 going two-thirds down from the emissions to get at a 20
22 minute exposure and then adding a background concentration
23 which wouldn't apply to people using the mall and the gas
24 station, just in my judgment, that's a very problematic
25 analysis.

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1 MR. GOECKE: Well, just to clarify one thing,
2 figure, figures 9 and 10 don't include the refined analysis.
3 MR. GROSSMAN: They include the mathematical
4 correction.
5 MR. SULLIVAN: The 20 minutes, those are -- the
6 113 included 20 minutes. That one, as I recall, included 60
7 minutes of exposure.
8 MR. GOECKE: David, I think Mr. Grossman's
9 question is they corrected the background conversion error.
10 MR. GROSSMAN: Right.
11 MR. GOECKE: But they don't --
12 MR. GROSSMAN: They didn't do the other changes on
13 figures 9 and 10. It's figure 21 or --
14 MR. GOECKE: Figure 21 and 22 --
15 MR. GROSSMAN: -- whatever it was that did.
16 MR. GOECKE: -- show those numbers. That's right.
17 And all of these numbers, even the refined modeling numbers,
18 assume that all the emissions from the cars will be 100
19 percent, or that the NO2 is, of the NO and NOx, it's assumed
20 to be 100 percent NO2, right?
21 THE WITNESS: That's what Mr. Sullivan did.
22 MR. GOECKE: And you agree that in reality, it's
23 not going to be 100 percent NO2.
24 THE WITNESS: Well, I would go to EPA's guidance
25 on the subject. We put into the record earlier that --

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1 MR. GROSSMAN: The three tier analysis.
2 THE WITNESS: -- the three tier analysis. So tier
3 1 is 100 percent which is what Mr. Sullivan used. Tier 2 is
4 80 percent which doesn't buy you a whole lot in terms of
5 reduction. Tier 3 requires an analysis where you consider
6 ozone concentrations and you have to use either the ozone
7 limiting method or another model, the name of which, it's an
8 acronym, it incorporates the interplay between dispersion
9 and chemistry.
10 The critical value, critical term in these is
11 ozone concentration which is a very, very fast reaction, and
12 I would say that if you consider a code orange day or a day
13 with high ozone, the air is already perhaps unhealthful and
14 now you're adding NOx at a time when the NOx is exposed to a
15 lot of ozone, you have a rapid conversion to NO2. So but I
16 repeat, I don't find anything in the record that would
17 substantiate going below the 100 percent. They would have
18 to justify, and they haven't done that analysis.
19 MR. GROSSMAN: Okay.
20 MR. GOECKE: In this situation, the proposed
21 Costco gas station, do you have any sense of what the
22 proposed half life would be of the NO2, from the NO to the
23 NO2.
24 THE WITNESS: When you have ozone in the air, it's
25 a matter of seconds or tens of seconds. Are you talking

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1 about the half life of production or decay?
2 MR. GOECKE: Production.
3 THE WITNESS: Okay. So that's a very, very fast.
4 You can go to anywhere in the literature since the days of,
5 the days when father chemistry was developed. You'll find
6 that's a basic very, very rapid reaction.
7 MR. GOECKE: But isn't it true that for that to,
8 for that conversion to happen, it requires complete mixing
9 at the molecular level?
10 THE WITNESS: I won't, I think that the scientists
11 at EPA, in developing this tier approach, particularly at
12 tier 3 which I don't think has been done here, they account
13 for both dispersion and for the chemistry so the ozone, I'm
14 saying the ozone reaction is very quick and you're going to
15 have, you're going to have mixing of the atmosphere due to
16 turbulence. EPA has come up with this three-tiered approach
17 and if you're going to consider tier 3, it's the burden of
18 the applicant to do a tier 3 analysis which has not been
19 done. They hadn't done tier 2 or tier 3. They have
20 presented tier 1 which is 100 percent.
21 MR. GOECKE: Well, tier 2 doesn't require any
22 analysis. I thought you testified you used 80 percent.
23 THE WITNESS: Right. So I'm saying he could, he
24 could perhaps justify going from tier 1 to tier 2. He
25 hasn't done that and nor has he gone to the, excuse me, tier

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1 3. To test the hypothesis that you're talking about, the
2 level of mixing, you would have to go to tier 3.
3 MR. GOECKE: Yesterday you testified a bit that
4 lakes have wind dispersion and I believe you testified that,
5 or maybe you can tell me, do lake breezes, do they flow from
6 cold to hot or hot to cold?
7 THE WITNESS: Lake breezes --
8 MR. GOECKE: So the wind, you know, over the lake
9 and --
10 THE WITNESS: Right.
11 MR. GOECKE: -- onto the shore. How does that
12 work?
13 THE WITNESS: The temperature difference between
14 land and lake during the daytime, and this is extremely
15 important in making a distinction, during the daytime, let's
16 say during the summertime, and that's also an important
17 distinction, daytime --
18 MR. GROSSMAN: Well, before you make the important
19 distinction, why do I care about lakes. Unless you tell me
20 there's a lake nearby, why do I care?
21 MR. GOECKE: Costco is going to apply for a new
22 special exception in which we're -- no.
23 MR. GROSSMAN: Gas station next to a lake.
24 MR. GOECKE: Yes. To mitigate the carbon, it's
25 going to be --

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1 MS. CORDRY: He's going to build a big swimming
2 pool which needs another special exception right there.
3 MR. GROSSMAN: But seriously, Mr. Goecke, why do I
4 care about that?
5 MR. GOECKE: Heat inversion. Heat islands.
6 MR. GROSSMAN: I understand but why bring up a
7 lake?
8 MR. GOECKE: Because --
9 MR. GROSSMAN: Why go into, have the witness go
10 into a lengthy explanation about lakes, lake effects?
11 MR. GOECKE: I didn't commiserate it to be as
12 lengthy as it is. I'm apologize for that, but I'm just
13 trying to establish the principal that the air travels from,
14 from the warmer, I'm sorry, from the colder to the warmer
15 and so if that's true on a lake, why wouldn't it be true at
16 the Costco gas station during nighttime conditions.
17 THE WITNESS: I'm going to explain.
18 MR. GROSSMAN: All right. Well, let's ask that
19 question.
20 THE WITNESS: Okay.
21 MS. ROSENFELD: I object. This is beyond the
22 scope of direct examination. We didn't discuss inversions,
23 we didn't discuss nighttime conditions.
24 MR. GROSSMAN: No. He's discussed air movement.
25 You certainly can't restrict cross-examination when you've

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1 asked the witness about air movement so it's legitimately
2 within the scope of direct. It's just that it may not be
3 within the scope of anything that I could effectively apply
4 in my analysis so I think you might consider whether or not
5 it's going to be useful.

6 MR. GOECKE: Okay. If I can just take a short
7 break, I think I might be almost done.

8 MR. GROSSMAN: All right. We'll take a five
9 minute break.

10 (Whereupon, at 1:59 p.m., a brief recess was
11 taken.)

12 MR. GROSSMAN: Back on the record. Mr. Goecke.

13 MR. GOECKE: Final question, Mr. Grossman, for
14 you, Dr. Cole. Assuming, is it reasonable to assume that
15 absent ice on the parking lot that's somehow not on the
16 grass and the yards of the neighborhood, residential
17 property, is it reasonable to assume that the mall property
18 is going to be warmer than the residential properties?

19 THE WITNESS: That would be true. Let's say in
20 the nighttime. I would say given the amount of,
21 particularly in the wintertime when the buildings are giving
22 off heat when the surface is not, if it's not ice covered
23 and it's absorbing, okay. I'll agree with it.

24 MR. GOECKE: Okay. And if those are the
25 conditions then, isn't it true that the air would travel

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1 from the colder areas to the warmer areas?

2 THE WITNESS: Well, there are some factors that --
3 the analogy that you gave with the lake breeze is basically
4 where you have a lake, a marine environment and then you
5 have lands, okay? The reason why there's the circulation is
6 because the temperature gradient affects the horizontal
7 pressure gradient, it creates a slope in the pressure
8 gradient.

9 In this particular case, we need to look at a
10 number of factors. I've already mentioned there's a wall,
11 there is buildings that affect circulation. And there's
12 also a slope surrounding the eastern parts of the western
13 and southern parts of this and when you have a slope, the
14 nomenclature is gentle, gentle terrain slope. We're not
15 dealing with, we're not dealing with the Rocky Mountains
16 here. We're dealing with a gentle slope. It's a
17 significant slope that drops off 30 or 40 feet very quickly.
18 What you get in a situation like that is a pool of cool air
19 in the lower area. You have whatever air there is on the
20 slopes begins to cool and due to gravitational flow, it
21 flows down and rests in the lower area.

22 Now, that has an impact on the pressure gradient
23 in the following way. You have the atmosphere essentially
24 contracts when you, when it's cooler. If you can consider
25 the air is sort of stretching on the mall property in the

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1 circumstance that you talked about, that creates a slope in
2 the isopleth, isobars that give you a horizontal pressure
3 gradient. In fact, from the top of the slope to the basin
4 area, it's called, sometimes called drainage flow. So given
5 the fact that you have a slope alters the basic premise and
6 must be considered in such an analysis.

7 MR. GROSSMAN: So if I can summarize what you just
8 said, generally, air will travel from the cooler to the
9 warmer area but when you have a slope, it complicates the
10 amounts.

11 THE WITNESS: And when you have walls and barriers
12 and buildings and things.

13 MR. GROSSMAN: Okay.

14 THE WITNESS: The flow is going to be different
15 than it would be under the, let's say, a more even
16 transition, so I don't hear that, addressing that in the
17 question so I thought I would elaborate.

18 MR. GOECKE: I'm sorry. You don't hear what?

19 MR. GROSSMAN: He didn't hear you reflecting on
20 that point.

21 THE WITNESS: In your --

22 MR. GOECKE: The point of the slope?

23 THE WITNESS: In your, in your conceptual analog
24 with the, with the lake and the land, it's important to look
25 at the distribution of when you have this gentle terrain

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1 down slope gravity flow, how that would impact the
2 distribution of pressure gradients.

3 MR. GOECKE: Okay. Thank you.

4 THE WITNESS: That's my judgment.

5 MR. GROSSMAN: Okay.

6 MR. GOECKE: No further questions.

7 MR. GROSSMAN: And that's your last word unless
8 there's redirect.

9 MS. ROSENFELD: We have no redirect.

10 MR. SILVERMAN: No.

11 MR. GROSSMAN: Okay. Thank you, Dr. Cole. See,
12 wasn't that easy? All right. So who did we select as our
13 next witness? Are we going to have the gentleman from the
14 gas station? All right. We'll give Dr. Cole a moment to --

15 THE WITNESS: Please.

16 MR. GROSSMAN: -- clear his debris. Don't forget
17 as early as possible next week to let me know about the
18 dates because we want to get notices out in time for people
19 to, to adjust their schedules.

20 MS. CORDRY: Do you have any information now,
21 Michele?

22 MS. ROSENFELD: I have not had a chance to e-mail
23 anybody.

24 MS. CORDRY: All right.

25 MS. ROSENFELD: Actually, Mr. Grossman, while

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1 we're waiting, I can give you those, and Mr. Goecke, the
2 references to the Federal Register --
3 MR. GROSSMAN: Okay.
4 MS. ROSENFELD: -- that we discussed earlier. The
5 first one is Volume 78, No. 10, pages 3238 through 3241.
6 MR. GROSSMAN: That's 3239 through --
7 MS. ROSENFELD: 3241, and that's 2003, 13. I'm
8 sorry, 2013. The next one is Volume 75, No. 26, page 6496,
9 and that's 2010. And the last one is Volume 76, No. 161.
10 MS. CORDRY: My handwriting so that's why she's
11 having trouble reading it. It's 54313 to 54315. These are
12 all in that legal analysis memo.
13 MR. GOECKE: I'm sorry. 54313.
14 MS. CORDRY: 313.
15 MR. GROSSMAN: Are those the page references?
16 MS. CORDRY: Yes.
17 MR. GROSSMAN: Isn't that wonderful we live in a
18 society where you can have pages in the 54,000 range?
19 MS. CORDRY: Right. And that's only like halfway
20 through the year.
21 MR. GROSSMAN: Doesn't that warm your heart.
22 MS. CORDRY: All new regulations.
23 MR. GOECKE: And these are in the record already
24 you said?
25 MS. CORDRY: Those are all in the legal analysis.

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1 MS. ROSENFELD: They're in the legal analysis,
2 exhibit number --
3 MR. GOECKE: That Dr. Cole prepared?
4 MS. ROSENFELD: Well, no. It was filed on behalf
5 of KHCA. It's Exhibit No. 404(e).
6 MS. CORDRY: And those are all references to near-
7 road monitors is the term that was actually used.
8 MR. GOECKE: Okay.
9 MS. ROSENFELD: And the --
10 MR. GROSSMAN: Those are all near-road monitor
11 references?
12 MS. ROSENFELD: -- indication was that Dr. Cole
13 might reference some of that information.
14 MR. GROSSMAN: As opposed to near a highway.
15 MS. CORDRY: Right. I mean, the term that's used
16 is near-road.
17 MR. GROSSMAN: All right, sir. Would you state
18 your full name and address, please?
19 THE WITNESS: Okay. I'm Guy Spaid, Junior, and
20 I'm from 11249 Veirs Mill Road. That's our business. It's
21 a Sunoco Station there, and we've been there since '59.
22 MR. GROSSMAN: Well, hold on one second before you
23 go on.
24 THE WITNESS: Oh, okay.
25 MR. GROSSMAN: Would you spell your name, please?

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1 THE WITNESS: S-P-A-I-D. First name Guy.
2 MR. GROSSMAN: S-P-A-I-D?
3 THE WITNESS: Uh-huh.
4 MR. GROSSMAN: Okay. And first name spelled G-U-
5 Y?
6 THE WITNESS: Correct.
7 MR. GROSSMAN: And the address you gave was of
8 your business?
9 THE WITNESS: Yes.
10 MR. GROSSMAN: And you're here on behalf of Sunoco
11 operated at that address?
12 THE WITNESS: Yes.
13 MR. GROSSMAN: All right. Would you raise your
14 right hand, please?
15 THE WITNESS: Certainly.
16 (Witness sworn.)
17 MR. GROSSMAN: All right.
18 THE WITNESS: All right.
19 MR. GROSSMAN: Are you here at the request of any
20 organization or just on behalf of Sunoco?
21 THE WITNESS: On behalf of our business.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: Yeah.
24 MR. GROSSMAN: All right. You may proceed.
25 DIRECT EXAMINATION

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1 THE WITNESS: Okay. My dad came here from
2 Washington, D.C. He did many stations downtown in D.C. and
3 eventually ran the Sunoco dealer training facility to train
4 new dealers to operate their own places. He eventually came
5 out here to Veirs Mill Road in '59 and, and he was active
6 until 2012 when he passed on, so my brother and I pretty
7 much run the place now. And I'm a master mechanic by trade
8 and so my brother and I both work, you know, the service and
9 the, you know, station there. It's got three bays. We do
10 state inspections, tire repair, all the sort of normal
11 stuff, you know.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: And so I guess the point that I
14 wanted to make was that nationwide fuel sales are declining
15 at a rate of like two to four percent. I don't have
16 documentation to back that but we --
17 MR. GROSSMAN: But we do have, it's been put in
18 the record by --
19 THE WITNESS: We see that Congress is going to put
20 some more tax on it, and that's because of declining revenue
21 I assume, and so the increase on the fuel mileage with every
22 new model year has unintentional negative impact on our
23 industry so I don't think that was planned. So the
24 arrangement we have with Sunoco is we're, we lease the
25 facility from them. A third party owns the ground. They

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1 own the facility on the property. We pay them rent. We
2 have a supply agreement with them and only can buy from
3 them.
4 They basically manage our margins and put sales
5 incentives in place to make sure that we maintain a certain
6 sales figure and in previous years -- it's called a rebate.
7 They rebate X number of cents per gallon back if you go over
8 a certain amount that they determine over a previous year's
9 sales. And it wasn't to long in the past that the rebate
10 figures were at 105 percent. In other words, it was a
11 growing market and they expected you to grow with the
12 market. Well, currently, they're at 95 percent so they
13 realize that, you know, there's less sales to be had.
14 There's a finite number of gallons to be sold.
15 So anyway, if we open a Costco and take a million
16 gallons out of the month, out of the monthly, you know, pool
17 that all the stations share, it will definitely have a
18 detrimental impact on my business. There is no doubt. I
19 will probably be one of the first casualties I would guess.
20 I don't know. You know, when one, when one location puts a
21 sale out or a promotion, it's at the expense of the
22 surrounding stations. There just are no new gallons to be
23 had so I think, you know, we've already suffered some losses
24 on tires and batteries to them that I, I know for a fact
25 that, you know, we are pulling from the same customer pool

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1 in spite of a membership.
2 So I don't know. The oil company pretty much
3 expects us to maintain over 100,000 gallon sales volume for
4 it to provide them return on investment and --
5 MR. GROSSMAN: 100,000 gallons --
6 THE WITNESS: Gallons per month.
7 MR. GROSSMAN: Per month. Okay.
8 THE WITNESS: Yeah. They want that as a minimum
9 and in order to maintain all the environmental stuff and the
10 facility and all, that's their part of the pie and they,
11 they take the profit, you know, from the gas and the rent we
12 pay them and do a fair job at maintaining the facility.
13 It's definitely not the greatest place in the world but it's
14 still there.
15 MR. GROSSMAN: Did you say you rent? I thought
16 you said there was a third party still that owns --
17 THE WITNESS: Third party --
18 MR. GROSSMAN: -- owns the land.
19 THE WITNESS: -- owns the land. Sunoco has a
20 contract with them.
21 MR. GROSSMAN: Okay. And then --
22 THE WITNESS: And we --
23 MR. GROSSMAN: -- are you franchised or whatever
24 with Sunoco?
25 THE WITNESS: We basically just pay them rent.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: Which pretty much amounts to the
3 same thing. They pretty much dictate what we can do.
4 MR. GROSSMAN: Do you, in effect, sublease through
5 Sunoco? I mean, you have other arrangements with them,
6 obviously about, about the gas sales you have to have and
7 what they --
8 THE WITNESS: Yes. It's a whole big contract.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: It's, it's a franchise but it isn't.
11 MR. GROSSMAN: All right.
12 THE WITNESS: So --
13 MR. GROSSMAN: All right.
14 THE WITNESS: I don't know. So I think in the
15 past, we had -- during the convenience store craze when they
16 were converting everything in the world to sell Twinkies and
17 well, we, it's probably been 20 years ago, we went that
18 route.
19 MR. GROSSMAN: So you have a convenience store at
20 your site.
21 THE WITNESS: We just have a tiny snack shop
22 though.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: It's, you know, pretty miniscule but
25 they were going to convert the facility to a full-blown

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1 convenience store and at that time, the public thought there
2 would be somewhat of a loss if they, you know, lost another
3 service facility. At that time. I don't know how they feel
4 now.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: But I would guess maybe someone
7 would miss us if we were gone. I don't know. So, so
8 basically I'm here because I think it will impact our
9 business enough that it may cause us to fail. I don't know
10 so.
11 MR. GROSSMAN: So your bottom line is you oppose
12 the special exception?
13 THE WITNESS: Pretty much. And I think --
14 MR. GROSSMAN: You said pretty much.
15 THE WITNESS: Yes.
16 MR. GROSSMAN: Do you have reservations?
17 THE WITNESS: No. I mean, I respect their right
18 to do business and all but as far as need, we certainly
19 could sell twice as much gallons as we do now and there
20 probably still would not be people waiting in line at all.
21 So currently, I may have one or two cars that wait on a
22 Friday evening but for the most part -- I have eight pumps.
23 A Friday evening might use seven of them at a time but
24 there's certainly room for more sales, you know, if needed.
25 MR. GROSSMAN: All right.

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1 THE WITNESS: That's about, that's about all I
2 have to say I guess.
3 MR. GROSSMAN: All right. Does the coalition have
4 any questions?
5 MR. SILVERMAN: Yes.
6 CROSS-EXAMINATION BY MR. SILVERMAN
7 MR. SILVERMAN: If the gasoline sales dropped off,
8 you couldn't maintain the rest of your business to service
9 and so forth.
10 THE WITNESS: Well, it's definitely, it would
11 affect it. I know Costco uses it as a loss leader probably
12 and it does drive traffic through your location and
13 hopefully, you're able to sell them something else while
14 they're there.
15 MS. CORDRY: Actually, just to clarify, Mr.
16 Silverman is from the Stop Costco Gas Coalition. This is
17 Costco on this side of the table.
18 THE WITNESS: Okay. Okay.
19 MR. SILVERMAN: Also, my daughter had her car
20 inspected at your station.
21 THE WITNESS: Uh-oh.
22 MS. CORDRY: We hope it passed.
23 THE WITNESS: I hope it passed.
24 MR. GROSSMAN: Let's keep the extraneous things
25 out.

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1 MR. SILVERMAN: Right. Yes, sir.
2 MR. GROSSMAN: All right.
3 MR. SILVERMAN: Yes, sir. And in terms of the
4 non-gas services you provide, repairs and so forth --
5 THE WITNESS: Yes.
6 MR. SILVERMAN: -- how many folks do you provide
7 services to in the course of a month would you say?
8 THE WITNESS: Well, I would -- we're open six
9 days. I would, you know, it varies according to how
10 extensive the repair is or if it's just plugging a tire, you
11 know. I would guess it's 10 to 15 a day, various things so.
12 MR. SILVERMAN: You have a lot of repeat business?
13 THE WITNESS: We do. A lot of longtime customers.
14 We're finding a lot of -- it's difficult to replace some of
15 the older customers that have retired to Leisure World and
16 wherever.
17 MR. SILVERMAN: And you offer air fill-ups or do
18 you have an air pump?
19 THE WITNESS: We do, and it's 24 hours. It is
20 coin operated. That does help maintain it. We had to go
21 that route, I regret, because of vandalism. And I have a
22 five horsepower compressor that ran all night after they
23 stole the air hose and it burned it up and put us out of
24 business the next day, so that's the reason for that. So
25 now it's a little tiny compressor and if they carry it off,

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1 you know, oh, well.
2 MR. SILVERMAN: Is there a bathroom available for
3 your customers?
4 THE WITNESS: There is.
5 MR. SILVERMAN: I have nothing further.
6 MR. GROSSMAN: Kensington Heights?
7 MS. CORDRY: I have a few.
8 CROSS-EXAMINATION BY MS. CORDRY
9 MS. CORDRY: I have a few. Can you tell us what
10 hours you operate?
11 THE WITNESS: It's 7:00 to 10:00, seven days.
12 MS. CORDRY: Okay.
13 MR. GROSSMAN: I thought you said six days. I
14 thought you said you were open six days.
15 THE WITNESS: Repairs. Sunday is a strictly gas
16 day.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Yeah.
19 MR. GROSSMAN: So you're 7:00 to 10:00 for seven
20 days of gas.
21 THE WITNESS: Yeah.
22 MS. CORDRY: And you said they want you to sell
23 about 100,000 gallons at least a month. Are you selling
24 that now?
25 THE WITNESS: We are. Over that, yes.

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1 MS. CORDRY: And do you remember what your maximum
2 has been at any point in the past?
3 THE WITNESS: As far as yearly or --
4 MS. CORDRY: Or monthly. Whichever way is easier
5 to --
6 THE WITNESS: I think we've sold as much as
7 175,000.
8 MS. CORDRY: So at this point, are you generally
9 in the 100,000 range?
10 THE WITNESS: Yeah. Closer to 100 than that,
11 yeah.
12 MS. CORDRY: So you've lost close to half your
13 maximum, from selling at your maximum.
14 THE WITNESS: Yeah. It's definitely on the
15 decline.
16 MS. CORDRY: What about the service business? Is
17 there as much, many service customers as you used to have?
18 THE WITNESS: No, because you do have, I mean, you
19 have other places that are picking off the oil changes and
20 the easy work, you know.
21 MS. CORDRY: What about --
22 THE WITNESS: So we get what's left.
23 MS. CORDRY: What about the cars themselves? Are
24 they --
25 THE WITNESS: They are definitely more, you know,

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1 they actually, they actually outlive their emission controls
2 in many cases so.
3 MS. CORDRY: Yes. In Costco's need report, its
4 experts suggested that, you know, stations would be able to
5 survive on their service business or that that would keep
6 their customers. Do you, can you survive on your service
7 business alone?
8 THE WITNESS: We couldn't at this point, no.
9 MS. CORDRY: And how many people currently work at
10 the station during the day?
11 THE WITNESS: Four.
12 MS. CORDRY: Okay.
13 THE WITNESS: Yeah. It's down from about when my
14 dad had it long ago, I think it was eight or ten during the
15 day.
16 MS. CORDRY: And in recent years -- how many right
17 now? You said four. How many are for service and how many
18 for the station?
19 THE WITNESS: My brother and I basically do all
20 the service work and the rest are cashiers.
21 MS. CORDRY: Okay.
22 THE WITNESS: So.
23 MS. CORDRY: Do you usually have two at a time
24 then or something during the day?
25 THE WITNESS: Generally, one and someone that

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1 roams around.
2 MS. CORDRY: Okay. And with this person that
3 roams around, are they available then to help customers with
4 their cars and --
5 THE WITNESS: Yeah. They answer the phone and,
6 you know, help with air in tires and that sort of thing.
7 MS. CORDRY: Okay. If someone came in and needed
8 help with having their gas pumped, is there someone
9 available there to do it?
10 THE WITNESS: We do that during the day. In the
11 evening, we feel it might not be, since there's only one
12 person there, we feel it's not as safe to have someone, you
13 know, right by themselves so.
14 MS. CORDRY: But every time someone comes in
15 during the day, there's someone --
16 THE WITNESS: Yeah.
17 MS. CORDRY: -- available to help someone?
18 THE WITNESS: Yes.
19 MS. CORDRY: Okay. And you said there's only the
20 two of you now doing service work. How many did there used
21 to be at the max?
22 THE WITNESS: We had five at one time. Yeah.
23 Cars just don't need as much as they used to.
24 MS. CORDRY: Okay. And you said, let's see, I
25 think you said you had bathrooms, you said you had air, some

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1 convenience store. What about --
2 MR. GROSSMAN: A snack shop.
3 MS. CORDRY: A small, small snack shop, yes. What
4 about windshield washer fluid? Is that, do you have --
5 THE WITNESS: Yeah. We have all that. Oils,
6 fluids and wiper blades which we can install any of that on
7 the spot usually but --
8 MS. CORDRY: Let's see. And if I understand this,
9 you're saying you used to have to grow your market in order
10 to be able to get those rebates and now it's changed that
11 they're not expecting you to sell as much as you did the
12 prior year, you still get the rebate?
13 THE WITNESS: Well, it's in place so you don't get
14 lazy basically because if you start as oh, so and so called
15 in sick, well, we'll go ahead and close, it sort of keeps
16 that from happening. You have to be open, you know, for the
17 gallons to go out the door.
18 MS. CORDRY: Right.
19 MR. GROSSMAN: Well, do you make all of your gas
20 sale money from the Sunoco rebate or is there some other
21 source of money?
22 THE WITNESS: It's probably, let's see, I would
23 guess it would be 20 percent so it's a big deal if you miss
24 it.
25 MR. GROSSMAN: No. That's --

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1 THE WITNESS: I mean it's 20 percent of the
2 monthly profit.
3 MR. GROSSMAN: But when you say monthly profit,
4 does that include --
5 THE WITNESS: All in gasoline.
6 MR. GROSSMAN: On gasoline itself.
7 THE WITNESS: Yes.
8 MR. GROSSMAN: Okay. So you make your own profit
9 plus a Sunoco rebate.
10 THE WITNESS: Yeah. Yes.
11 MR. GROSSMAN: On gas sales. Okay.
12 THE WITNESS: Yeah.
13 MS. CORDRY: And has your profit margin stayed the
14 same, gone up, gone down over the last few years?
15 THE WITNESS: You know, if you calculate in credit
16 cards which didn't exist when my dad started, he made four
17 cents a gallon when it was 29.9, and we're not far from that
18 now. You subtract the credit cards out of that so.
19 MS. CORDRY: The gas is 29.9 these days?
20 THE WITNESS: That was a, it was awhile back.
21 MS. CORDRY: Yes.
22 THE WITNESS: I have pictures.
23 MS. CORDRY: Right. Right. So gas is about 10
24 times as much, and you're not making much more on a cents
25 per gallon basis than --

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1 THE WITNESS: No.
2 MS. CORDRY: -- than you did then.
3 THE WITNESS: Not really. It's just more
4 efficient. It's sold more efficiently I guess. There is no
5 one -- you don't have a staff of three or four people out
6 washing windows which is unfortunately, so.
7 MS. CORDRY: So and I think you said you thought
8 you might be one of the first casualties. Do you --
9 THE WITNESS: I feel that only because we're the
10 closest. You know, maybe it's like a nuclear blast. You
11 know, the closest ones will go first.
12 MR. GROSSMAN: The rest sort of linger on and
13 suffer.
14 MS. CORDRY: Let's see. Okay. I don't have any
15 further questions.
16 THE WITNESS: Okay.
17 MR. GROSSMAN: Does Costco have any questions?
18 MS. HARRIS: Yes. Just a few.
19 THE WITNESS: All right.
20 CROSS-EXAMINATION BY MS. HARRIS
21 MS. HARRIS: Hi. How are you?
22 THE WITNESS: I hope I can answer.
23 MS. HARRIS: I'm sure you can. What percentage of
24 your profits are from gas sales approximately?
25 THE WITNESS: Let's see. I would guess probably

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1 half I would suppose.
2 MS. HARRIS: And you noted that you're making four
3 cents a gallon currently?
4 THE WITNESS: I would guess it's in the four to
5 six cent range.
6 MS. HARRIS: And do you know how that range, how
7 that compares to your competitors?
8 THE WITNESS: I do not, no.
9 MS. HARRIS: You're right next door to the
10 Freestate, is that correct?
11 THE WITNESS: Yes. And they're fierce too.
12 MS. HARRIS: Exactly. So were you there before
13 the Freestate?
14 MS. HARRIS: We were. It was a Scot. I don't
15 remember if anyone remembers that long ago. They've always
16 been a thorn in the side over there somewhere.
17 MS. CORDRY: I'm sorry. Is the question before
18 the Freestate as a Freestate or before the station?
19 THE WITNESS: It was -- let's see. It was a
20 Freestate. There was something in between and then it was a
21 Scot before that.
22 MS. HARRIS: So did your business suffer when the
23 Freestate opened?
24 THE WITNESS: They're more aggressive for sure,
25 yeah.

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1 MR. GROSSMAN: By more aggressive, I take it you
2 mean they have prices that are lower --
3 THE WITNESS: Yes.
4 MR. GROSSMAN: -- as opposed to going out and
5 flagging people --
6 THE WITNESS: Yes. They are.
7 MR. GROSSMAN: -- to come off the road into
8 their station?
9 THE WITNESS: Yeah. They are.
10 MS. HARRIS: I believe you noted or you said that
11 you would be one of the first casualties or so you would
12 guess.
13 THE WITNESS: I just speculate that.
14 MS. HARRIS: Speculate, yes.
15 THE WITNESS: I don't know.
16 MS. HARRIS: And are you familiar with the
17 phenomena that's happening all over the county, and
18 particularly in Bethesda, where gas stations are in fact
19 closing?
20 THE WITNESS: Well, I assume it's from ground
21 rents and stuff that make it too unprofitable. I don't
22 know.
23 MS. HARRIS: Do you have a sense if in fact your
24 station closed what Sunoco would do with that property?
25 THE WITNESS: Typically, they, they put them up

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1 for sale and put a contract out that forbids a new gas
2 station from being built there. That's what they've
3 typically done. They've done it in Bethesda and in fact,
4 they renovated one down there and then tore it down two
5 months later. Very strange logic on their part.
6 MS. HARRIS: So some people have testified during
7 this proceeding that a gas station really doesn't belong in
8 a central business district and so it's likely that there
9 could be another use on the site.
10 THE WITNESS: Banks seem to be pretty, pretty
11 common everywhere.
12 MS. HARRIS: A natural evolution.
13 THE WITNESS: It's a good thing there isn't
14 special exemptions on those.
15 MS. HARRIS: You noted that you're already
16 suffering from, you see some effects from the Costco
17 Warehouse I believe in terms of tire and --
18 THE WITNESS: Yeah. We've lost a few batteries
19 and whatnot. I mean, I see cars that we have recommended a
20 battery and then it shows up with a Costco battery in it so,
21 after we change its oil, so I know it's happening and, you
22 know, we're sharing the same pool.
23 MS. HARRIS: So your concern, at the end of the
24 day, is the competition that Costco is going to present to
25 your business.

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1 THE WITNESS: Yeah. I know they will. I mean,
2 I'm no dummy I guess.
3 MS. HARRIS: And I think you testified that
4 because of a number of things including taxes, and we all
5 know that gas prices are increasing, is that correct?
6 THE WITNESS: Yes. Which I'm not sure why but.
7 MS. HARRIS: And so would you also agree that as
8 gas prices increase, the consumer becomes even more price
9 sensitive and getting a gas as cheaply as possible is
10 important to them?
11 THE WITNESS: It, it is but then they seem to lose
12 track of, you know, I don't know how they compare qualities
13 between fuels for instance. I don't know. It's one of the
14 few products that actually has the price posted. People are
15 always silly how they shop for it.
16 MS. HARRIS: Okay.
17 THE WITNESS: If they needed, you know, if they
18 needed toilet paper, we're not going to shop for that. We
19 need it, we need it. We'll go to the closest place and get
20 it so, but it's not like that on gas. People will drive 10
21 miles to save a nickel. It just doesn't make --
22 MS. HARRIS: So the consumer is price sensitive.
23 THE WITNESS: Yes. Pretty much.
24 MS. HARRIS: No other questions. Thank you.
25 THE WITNESS: Okay.

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1 MR. GROSSMAN: All right.
2 THE WITNESS: All right.
3 MR. GROSSMAN: Well, thank you very much, Mr.
4 Spaid, for --
5 THE WITNESS: All-righty. Thank you.
6 MR. GROSSMAN: -- coming down here and sharing
7 your views.
8 THE WITNESS: All-righty.
9 MR. GROSSMAN: All right. Our next victim. All
10 right, sir. Would you state your full name and address,
11 please?
12 THE WITNESS: Yes. Excuse me. My name is Mark
13 Meszaros and I live at 2810 Peregoy Drive. That's in
14 Kensington, Maryland.
15 MR. GROSSMAN: 2810?
16 THE WITNESS: 2810.
17 MR. GROSSMAN: Peregoy Drive?
18 THE WITNESS: Uh-hum. P-E-R-E-G-O-Y.
19 MR. GROSSMAN: All right. Would you raise your
20 right hand, please?
21 (Witness sworn.)
22 MR. GROSSMAN: All right. And you're here on
23 behalf of Kenmont Swim Club?
24 THE WITNESS: I am.
25 MR. GROSSMAN: All right.

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1 MR. GOECKE: One point, Mr. Grossman. I thought
2 the last time he was here, he was going to submit something
3 if he was testifying on behalf of the swim club.
4 MR. GROSSMAN: There was a conversation about
5 that.
6 MS. ROSENFELD: Well, actually, we were. I don't
7 represent the swim club, and I had asked for information but
8 didn't get it so I had nothing to forward.
9 MR. GROSSMAN: All right. What about that?
10 THE WITNESS: As far as that goes, I'm, I guess
11 the only response is we're a swim club and all of us are
12 volunteers and I wish I can say that I had the ability and
13 we, as a group, had the ability to pull things together in
14 that manner. We worked up until the last minute to try to
15 put together the information and so I'm really, just a
16 matter of doing the best that we could in the time and
17 resources --
18 MR. GROSSMAN: Well, I guess the question is what
19 evidence do we have that you represent the views of the swim
20 club.
21 THE WITNESS: Oh, well. I'm sorry.
22 MR. GROSSMAN: That's the --
23 THE WITNESS: As far as that is concerned, so I
24 just, I got off the phone with the president of the, of the
25 Board though it occurs to me if we're going to come at it

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1 from that angle, then that is a predicament because there's
2 no, there's nothing actually handed to Dan Mueller,
3 otherwise he was elected so there isn't anything --
4 MR. GROSSMAN: Who is Dan Mueller?
5 THE WITNESS: Dan Mueller is the president of the
6 Board.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: And there's -- actually, I don't
9 want to lay, throw further questioning underneath it,
10 underneath the question that you're asking but if I were to
11 turn to Dan Mueller, who is available to me right now and to
12 ourselves if needed though he is at work, and ask him to, he
13 certainly will put together a sentence or two to attest that
14 I'm here to represent the community and the Board of Kenmont
15 but at that point then, we're left in a bit of a quandary,
16 right, because being what Kenmont is, it's not as if
17 something goes on the public record when our president
18 switches from one person to another.
19 MR. GROSSMAN: No. I don't think that's a
20 problem. If we have something, if we have a writing from
21 the president of the swim club, you can submit that
22 afterwards subject to your testimony conceivably being
23 stricken if we don't have something that it satisfies a
24 concern that you're representing the views of the swim club.
25 I don't think anybody would object to your testifying today

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1 and being subject to cross-examination and then
2 subsequently, if need be, if we don't get any evidence
3 that's sufficient that you represent the group, then your
4 testimony can be stricken. Can we work that way?
5 MR. GOECKE: That's fine, Mr. Grossman.
6 THE WITNESS: Sure. And as far as that's
7 concerned, that will be no issue. I did speak to him about
8 that last night, late, and he said, as I mentioned, he would
9 be available if we needed something along those lines.
10 MR. GROSSMAN: All right. So you can just send a
11 letter to me.
12 THE WITNESS: Uh-huh.
13 MR. GROSSMAN: You have my office address and all
14 that. If you don't, we can give that to you.
15 THE WITNESS: Okay. I will actually take --
16 MR. GROSSMAN: And, from him, and just indicating
17 that you, your views, as expressed here, represent the views
18 of the Kenmont Swim Club.
19 THE WITNESS: Okay. I will do that and not to
20 belabor the point, we will get you a letter to that effect
21 though as I asked Dan last night, so does the Kenmont Pool
22 have letterhead or otherwise and not to his knowledge.
23 MR. GROSSMAN: He doesn't --
24 THE WITNESS: It's just not the kind of
25 organization we are so --

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1 MR. GROSSMAN: He doesn't have to send it on a
2 letterhead if it doesn't exist. He can just indicate his,
3 his title and sign as, as whatever his position is and send
4 that to me and that would be sufficient. In the meantime,
5 you can tell me under oath what is the basis for your
6 contention that you represent the swim club.
7 THE WITNESS: So what is the basis of our
8 concerns?
9 MR. GROSSMAN: No, no. You say you represent the
10 swim club. Was it just a statement from the president? Did
11 the Board vote to say we want you to say this? How, how do
12 you come to --
13 THE WITNESS: I was requested to speak on their
14 behalf. The Board got together and there's been various
15 different persons from the Board who have spoken at
16 different parts of this process over the last couple of
17 years and at the moment, the active members of the Board did
18 not have any flexibility for the 5th or the 6th of December
19 and asked if I would, you know, as they know that I've been
20 an active member of this process and I'm, and in fact, I've
21 been asked to join the Board which I've declined for the
22 moment as I have other things that have kept me busy. I, I
23 said I would go ahead and, and read the information that was
24 put together.
25 MR. GROSSMAN: Okay. Are you an official of the

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1 organization?
2 THE WITNESS: I'm not at this time.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: I am a member of the community.
5 MR. GROSSMAN: And you said the statement that we
6 put together. This was a statement that the Board approved?
7 THE WITNESS: Yes. Yes.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: These are the -- what I'm reading to
10 you is what Dan and myself and others have worked on and
11 short of, you know, a couple of things.
12 MR. GROSSMAN: I know you worked on it. Was
13 this --
14 THE WITNESS: Exactly.
15 MR. GROSSMAN: -- a statement that was approved by
16 the Board.
17 THE WITNESS: Yes, it was.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: I'm sorry. To that end, it is.
20 MR. GROSSMAN: Okay. All right. Then go ahead.
21 THE WITNESS: Okay.
22 DIRECT EXAMINATION
23 THE WITNESS: So and to that end, because I do
24 want to state to, the words. I apologize for reading from
25 the page, if you will, but I do need to try to stay close to

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1 what it was that as a group, we, you know, we agreed to and
2 we can then take it from there. So as I said, my name is
3 Mark Meszaros and I am a member of the Kenmont swim,
4 swimming pool. I'm also a member of the Kensington Heights
5 community as the address would, would indicate. I live
6 adjacent, and the pool is adjacent to the Wheaton Westfield
7 Mall property. I've been asked to speak on behalf of the
8 pool as a representative of that community and its Board of
9 Directors.
10 Kenmont Swim and Tennis Club was founded in 1958.
11 Its goal is not to be a for profit business but to provide
12 recreational facility for the community. Kenmont was a
13 founding member of the Montgomery County Swim League. It
14 would be interesting to note that the Montgomery County Swim
15 League had 14,400 active participants this past summer. The
16 Kenmont pool is home to the Tsunami Swim Team and open daily
17 from May through September. There are 1400 members in
18 Kensington, Wheaton and Silver Spring. Further, another
19 1300 guests visit the pool, swim meets, day camps and as
20 friends and family.
21 MR. GROSSMAN: I'm sorry. How many members did
22 you say, sir?
23 THE WITNESS: 1400 members.
24 MR. GROSSMAN: And how --
25 THE WITNESS: Approximately.

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1 MR. GROSSMAN: All right.
2 THE WITNESS: And approximately 1300 guests that
3 come to the facility over that time period.
4 MR. GROSSMAN: In what time period?
5 THE WITNESS: It's May through September.
6 MR. GROSSMAN: Okay. So in a given year.
7 THE WITNESS: Uh-huh. That's right. That's
8 correct.
9 MR. GROSSMAN: Now when you say 1400 members, is
10 that member families or --
11 THE WITNESS: No. That's a total count of --
12 MR. GROSSMAN: A person count.
13 THE WITNESS: A person count, yes.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: Of that, approximately 60 percent
16 are below the age of 18. The Kenmont Swim and Tennis
17 facility has, opposes the Costco gas station as sited. The
18 Board of Directors is greatly concerned about the traffic,
19 fumes, pollution that would result from the mega gas station
20 being built in the parking lot adjacent to the pool
21 facility. Why this impacts us very directly is that the
22 fundamental purpose of Kenmont is to provide outdoor
23 activities that include physical and cardio exercise in and
24 around the pools, basketball and volleyball courts.
25 MR. GROSSMAN: I'm sorry.

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1 MS. HARRIS: Mark, can you slow down just a little
2 bit? That would be helpful.
3 THE WITNESS: Sure.
4 MS. HARRIS: Thank you.
5 MR. GROSSMAN: And while you, you've now used two
6 names for your club or group. You said Kenmont Swim Club,
7 then you said Kenmont Swim and Tennis.
8 THE WITNESS: Yeah.
9 MR. GROSSMAN: What's the official name for it?
10 THE WITNESS: I think it officially goes as the
11 Kenmont Swim and Tennis Club. We tend to just call it
12 Kenmont.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: And at the end of the day, it's
15 really just the pool.
16 MR. GROSSMAN: I just want to identify it
17 correctly in my report.
18 THE WITNESS: Okay.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Okay. So for the health of the
21 community, of persons who use Kenmont, the Kenmont facility
22 for the last 54 years, the Board of Directors believes that
23 the placement of the Costco gas station is an incompatible
24 land use and will have a significant negative impact on the
25 Kenmont facility and the health of its patrons. The risks

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1 created by Costco gas station to Kenmont are health, safety
2 and financial. Some of these are factual and others are
3 perceived but in the end, just as tangible to their impact
4 to Kenmont.
5 Although we have seen studies that suggest the air
6 quality is within EPA standards, we also recognize that this
7 gas station will not improve the environment for the
8 swimming pool patrons. It is also clear to the Kenmont
9 Board that the models and information are disputed. To
10 break it down more simply, clearly, the gas station is not
11 going to improve the quality of the environment for our pool
12 community so it is only a question of the factor of its
13 negative impact. By example, the offered suggestion of a
14 green wall, which we now understand no longer even extends
15 to cover the pool area, in the end is just an attempt to put
16 a box around the issue. It is therefore all but, in the
17 end, an admission of the challenges and problems with trying
18 to site such a facility and corral it.
19 By placing the Costco gas station at the presently
20 located site, it will put the largest fueling station in
21 Montgomery County just over 300 feet from the baby pool,
22 main pool and lap pools. Members and guests often stay at
23 the pool for many hours a day and this would potentially
24 expose them to further airborne pollutants during their
25 visits. Many members, particularly children, visit the pool

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1 daily and repeatedly, would be repeatedly exposed to the
2 same risk. The times when these children are at the pool
3 coincides with the time of air when the D.C. area tends to
4 have the most frequent warnings of air quality.
5 When -- what this leads to is effectively a piling
6 on of further burden from the perspective of the pool user.
7 While at the swimming pool, it is common for users to
8 breathe deeply as they're working out vigorously. Common
9 activities include swim practice for the swim team made up
10 of children, for the most part, under the age of 16 years
11 old. The practices start at 7:00 a.m. in the morning and
12 continue at various times throughout the day. What seems
13 clear to ourselves and is not acceptable is that for the
14 purposes of a membership organization like Costco and their
15 regional client base will in fact place a hot spot of burden
16 directly next to Kenmont.
17 In addition to the fact that those pool members,
18 who are not Costco members today, will have a multiplier of
19 negative effect and that not only will Kenmont be devalued
20 but then further, and we believe reasonably, likely side
21 effect is that other fueling stations in our community will
22 likely disappear and therefore, as consumers, we will then
23 no longer have the options we do today.
24 The traffic to the mall has massively jumped since
25 the Costco, since the Costco store opened. Our first person

1 experience is that it's basically Christmas every day. In
2 the past years when the mall had the Hecht's and the Macy's,
3 the parking lots only carried the amount of traffic during
4 the holidays that we now see daily, particularly directly
5 adjacent to the pool and at the intersections on the mall
6 property closest to the pool we've witnessed long lines of
7 traffic and what we've affectionately started to call MRRR,
8 or Mall Ring Road Rage and have photos of accidents that
9 have happened on the mall Ring Road since the opening of the
10 Costco.

11 We are concerned for the patrons and children who
12 transit the pool to the mall as designed with the design
13 location of this gas station as it will bring further
14 traffic onto the Ring Road which is already at troubling
15 levels. To reach the proposed gas station location, traffic
16 only have two path lanes, one of which has to funnel past
17 the pool. This will have the effect of increasing traffic
18 nuisance and additional pollutants to the Kenmont facility.

19 I'd like to also take the time to point out that
20 the pool wasn't open at Christmas in the past so that extra
21 load of traffic that we, that is people who live close by
22 the mall, certainly saw, it didn't impact the operations of
23 Kenmont because it wasn't a time when the pool was in
24 season. Now that it is Christmas every day and we do see
25 this traffic, we do experience it and it means that there

1 is, without question, a higher degree of everything that
2 comes along with that traffic.

3 And we do believe that the way the gas station is
4 designed at this time, it's going to in fact increase that
5 even further. Not only because it's a draw but because of
6 the way that the layout is designed. It loops those people
7 who didn't choose to gas up before they went into the store
8 and forces them to come back around a second time on the
9 Ring Road that happens to be the Ring Road portion adjacent
10 to the swimming pool.

11 We also recognize that -- I'm sorry. I lost my
12 place. Idling cars are endemic to this type of fueling
13 station which creates noise, emissions and safety problems.
14 Further, the handling of hazardous materials in such a
15 constrained, physical space is troubling and not what, not
16 what Costco and Westfield originally wanted as they had
17 sited the gas station elsewhere.

18 During our very first meeting with Costco and
19 Westfield going back three years, we asked if they could
20 move the site from, at the time, the location to in fact the
21 location where it is being proposed now, and we were told by
22 Costco and Westfield that that was not an acceptable
23 alternative because they deemed it to be unsafe. Also, they
24 pointed out that there were existing uses along the edge of
25 the store which prohibited them from siting it, ironically,

1 to where it is sited now and that is, they said, at the
2 entrance, the repair shop and the loading docks, and felt
3 that that would not be a good place to put the gas station.
4 And I can say that in truly first person because I was the
5 person in the room who couldn't wait to ask the question if
6 they could just simply please move the gas station closer to
7 themselves and a little bit further away from us.

8 MR. GROSSMAN: Okay. And so if I understand
9 correctly, you, in effect, asked them to move it to the
10 present location.

11 THE WITNESS: I did.

12 MR. GROSSMAN: But even then, you still don't want
13 the gas station.

14 THE WITNESS: We did. At the time, it was a, I
15 think that the proper way to frame that is a bit shell-
16 shocked. We're, at this point, being blasted with a fair
17 amount of information that's being, you know, clearly has
18 been under quite a bit of thought. Slides are going up,
19 graphical renderings of how things will look, and we're only
20 days into realizing that this is even afoot and that we have
21 this concern.

22 So in terms of those questions, at the time, I
23 can't say that it was well thought out on my part or maybe
24 others in the room. We were pretty much coming from zero to
25 100 in a matter of a few moments and I think that framed my

1 question at the time, although, I see it as pertinent now as
2 being my God, what do we do here. This, something needs to
3 happen. What can we ask.

4 MR. GROSSMAN: So who was it, Mr. Meszaros, that
5 you spoke to from Costco who said to you that the presently
6 proposed site would be unsafe?

7 THE WITNESS: You know, I don't recall if we were,
8 and I suspect not, filming yet at the time but I know that
9 others were in the room. Mr. Ishida and others.

10 MR. GROSSMAN: Mr. Brann? You motioned to Mr.
11 Brann.

12 THE WITNESS: Yes. And now as to who answered the
13 question, it is my recollection that a member of the
14 Westfield staff actually fielded the question because I
15 remember thinking to myself that it was interesting that a
16 member of Westfield responded versus a member of Costco.

17 MR. GROSSMAN: Do you remember who that was from
18 the Westfield staff?

19 THE WITNESS: I can't tell you if it was Mr. Brann
20 or if it was, if it was the manager who was presenting.

21 MR. GROSSMAN: Okay. Go ahead.

22 THE WITNESS: So we also recognize that Costco and
23 Westfield will follow their best practices and believe that
24 they intend to do so in terms of handling the hazardous
25 materials in this confined space. That is up until the

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1 point where it doesn't as we do recognize that there's
2 reasons called an accident.
3 As the design is at this time, we also know from
4 the storm water drainage or otherwise that we are all
5 delivered, one, as myself as a homeowner, and two, also the
6 pool itself received copies, the area that our children,
7 mine in particular, call the creek is in fact the area that
8 unfortunately, the surface of the parking lot drains down
9 to. It has been worked over in this process of building out
10 and now I have to say it looks a bit prettier when I look
11 out my bedroom window and down onto it into the culvert that
12 lies between myself and the mall property and the swimming
13 pool area just to the north but in fact, it's, it's open
14 drainage and that certainly gives us pause and cause for
15 concern.
16 The Board is also concerned about the long-term
17 financial viability of the club if the proposed gas station
18 were to be built. We believe that the gas station, such as
19 proposed, should not be allowed to be built in such close
20 proximity of the pool as it is the financial and operational
21 hardships to the stable, to one of the few stable community
22 pools in Montgomery County. It could in fact, and we are
23 concerned, could damage the club financially. We have
24 already had at least one member pull their member
25 application and request for their monies back upon learning

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1 about the gas station, and this is of course only on the
2 speculation that a gas station might be built and we're
3 concerned, of course, that if this were to happen, what
4 would happen in terms of the overall membership.
5 Placing the largest fueling station ever to be
6 sited in Montgomery County next to Kenmont and its
7 neighbors, we believe, puts a disproportionate burden on the
8 local community. The community does not need the station.
9 The shareholders of Costco may feel different but their
10 will, money and power should not be allowed to steamroll the
11 local impacted Kenmont community.
12 The swimming pool has been an anchor to our
13 community for 50 years. The loss of the facility would do
14 irreparable harm to Kensington. Kenmont opposes the
15 location of the gas station so that the pool can continue
16 the tradition of creating a safe and healthy environment for
17 our community.
18 MR. GROSSMAN: All right. Actually, before we
19 begin cross-examination, I'm taking another five minute
20 break.
21 (Whereupon, at 3:04 p.m., a brief recess was
22 taken.)
23 MR. GROSSMAN: All right. Cross-examination from
24 the coalition?
25 MR. SILVERMAN: No, thank you.

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1 MR. GROSSMAN: From Kensington Heights.
2 MS. CORDRY: We decided I'd take this one.
3 MR. GROSSMAN: All right, Ms. Cordry.
4 MS. CORDRY: Okay.
5 CROSS-EXAMINATION BY MS. CORDRY
6 MS. CORDRY: Mr. Meszaros, if you could ask the
7 Hearing Examiner to hand you his magic laser pointer.
8 MR. GROSSMAN: Oh, yes. You know I love when
9 somebody uses my laser pointer.
10 THE WITNESS: I was looking forward to that
11 MS. CORDRY: I think we're going to invest in one
12 of those ourselves. Should make my cat happy too. Okay.
13 You gave us your home address. Can you tell us or show us
14 with the pointer on the map where you live?
15 THE WITNESS: Right here.
16 MR. GROSSMAN: So you're right at the corner, the
17 southwest corner --
18 THE WITNESS: Yes.
19 MR. GROSSMAN: -- of the mall.
20 THE WITNESS: That is right.
21 MS. CORDRY: Where are you in terms of on the
22 street? Are you --
23 THE WITNESS: Last house.
24 MS. CORDRY: Last house. Okay.
25 THE WITNESS: As I mentioned earlier, my, all the

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1 work that was done right here as far as the storm drain, we
2 watched. The kids were enamored by watching the bulldozers
3 out the bedroom window.
4 MS. CORDRY: We won't ask about Mr. Sheveiko's
5 view on that. We'll move on from that part of it. But go
6 to that meeting, for instance, that you were at with Costco,
7 and where was that, and Westfield, where was that meeting
8 held?
9 THE WITNESS: It was at Kenmont at the pool.
10 MS. CORDRY: Okay. And when you asked the
11 question about whether it could be moved from that spot
12 right there, which of course was practically outside, I
13 guess, your bedroom window, was, moving it over next to the
14 store, was that the only suggestion that was made at that
15 meeting?
16 THE WITNESS: No. We, we asked about a number of
17 different locations. At the time, we asked about over
18 closer to what used to be the Circuit City. At the time, it
19 was vacant. I think something else is back into that
20 location in the meantime which would be, we asked about this
21 area over here. We were told that --
22 MR. GROSSMAN: This area over here, you mean on
23 the eastern corner of the --
24 THE WITNESS: Correct. That would be out of the
25 doors of the JC Penney, and that's what we were told, that

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1 that area is committed to JC Penny and so it couldn't be
2 used for this purpose. We then asked about the defunct gas,
3 auto facility, the Rockmont dealership or whatever it is
4 there.
5 MR. GROSSMAN: And that's along the northeast side
6 of the mall.
7 THE WITNESS: And also made a point that being
8 that, the point that I remember making when I asked about
9 that one was to point out that this Costco is on the
10 backside of the mall and as far as signage is concerned, you
11 know, being a salesman at that moment in time, I was trying
12 to make the suggestion that wouldn't it be great to have a
13 Costco gas station right out on Veirs Mill Road where folks
14 could, you know, have entry and exit that wasn't forced onto
15 the Ring Road, it allowed them to have signage that was
16 right on the road and at the time, we were told a number of
17 different things. One was that was against Costco policy.
18 They talked about having to have it within line of sight of
19 the front doors.
20 MR. GOECKE: And I'm sorry. For the record, can
21 you say who told you this?
22 THE WITNESS: The representatives who were at the
23 meeting at the time.
24 MR. GOECKE: Costco representatives or Westfield?
25 THE WITNESS: You know, being our very first

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1 meeting, I can tell you that the delineation of the lines
2 between those persons who were employed with Costco and
3 Westfield was still something we were learning so as to
4 which member of the team that sat before us giving this
5 presentation from Costco and Westfield to answer each one of
6 these individually, I wouldn't be able to tell you that
7 exactly.
8 MR. GOECKE: I would object therefore , Mr.
9 Grossman, as hearsay. If he doesn't know who says it, if it
10 wasn't a party of Costco it was someone from Westfield, he
11 doesn't know who this person was, it's very prejudicial to
12 us for him to be testifying about these comments and we
13 don't even know who the, who the speaker was.
14 MR. SILVERMAN: Mr. Ishida is here. I mean, if
15 he's not telling the truth, then we have ample opportunity
16 to show that it's not true.
17 MS. CORDRY: Mr. Ishida and Mr. Brann were both
18 there. These are statements being presented as a position
19 of the parties who are acting in concert to put the station
20 on the mall. I don't think it's hearsay and I certainly
21 think if there's any question about trying to determine if
22 you want to rebut it, Mr. Silverman's point is probably
23 correct.
24 MR. GROSSMAN: Well, it would be hearsay if
25 they're offering it to prove the truth of the matter. It

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1 may or may not be taken as that. It's an admission if it
2 comes from the party. It may be admissible under other
3 exceptions to hearsay rule in any event. But I also do get
4 the feeling along with what Ms. Cordry just suggested that,
5 that even though the Westfield is not a party to this, they
6 were acting in concert to, to have this gas station special
7 exception so I think it's close enough given our relaxed
8 hearing, hearsay standards here.
9 I'm going to allow it and whether or not it's -- I
10 would certainly allow you to call a witness to rebut it if
11 it's an inaccurate statement. That is if a Costco official
12 disputes whether or not they do want a, their gas station to
13 be within sight of their warehouse, if that's a disputed
14 issue, then you can certainly call somebody to dispute it
15 and --
16 MR. GOECKE: Well, not only that. The other
17 issue, I think, the one where he's claiming that somebody
18 from Westfield testified that this location was unsafe is
19 what he said as well.
20 MR. GROSSMAN: That he said before and it was not
21 objected to.
22 MR. GOECKE: Well, first he testified that it was
23 a Costco person. The he changed his testimony and said it
24 was someone from Westfield.
25 MS. CORDRY: And it still wasn't objected to.

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1 MR. GROSSMAN: Yes.
2 MS. HARRIS: You're right --
3 MR. GROSSMAN: He wasn't entirely sure.
4 MS. HARRIS: And this is a delayed objection.
5 MR. GOECKE: This is a delayed -- you're right.
6 So I would, I guess I would move to strike the testimony.
7 MS. HARRIS: To the extent you allow those.
8 MS. CORDRY: And I would make my same point, that
9 these two parties were presenting their position about how
10 and where and why the station should be there and why the
11 community should not object to it as a concerted set of
12 positions.
13 MR. GROSSMAN: All right. Let --
14 MS. CORDRY: Certainly Westfield was not denying
15 that.
16 MR. GROSSMAN: Let me respond this way. I'm not
17 going to strike it but I'm not going to make a determination
18 of safety of the station based on a witness' recollection of
19 a Costco or Westfield person thinking that it might not have
20 been safe at the time because there has been lots of
21 evidence here regarding safety in both directions and that's
22 what I'm really going to rely on.
23 MR. GOECKE: Okay.
24 MR. GROSSMAN: So I don't think you have to quiver
25 about that. I'm not going to recommend termination of an

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1 application based on a recollection of the witness about a
2 safety comment. So you may proceed.
3 THE WITNESS: And I would need help to answer.
4 MR. GROSSMAN: Where were we?
5 MS. CORDRY: Okay. I think you had just indicated
6 that --
7 THE WITNESS: Right. Oh, I'm sorry.
8 MS. CORDRY: -- that there were several places
9 where --
10 THE WITNESS: Yes. We did. And we talked about
11 that, of the car dealership as another location. It was
12 already, by that point, out of business and we tabled that
13 as I mentioned. I suggested also that we give them a street
14 side marquee space and then I, as a response to that,
15 besides the line of sight from the front door, I do recall
16 having a direct conversation with a Westfield employee who
17 talked about the difficulties of Montgomery County in
18 allowing something like that on a roadside that, that I came
19 away with the understanding that that probably wouldn't find
20 approval from Montgomery County because Montgomery County
21 wants to see that kind of thing pushed away and not on
22 marquee front space like that.
23 MS. CORDRY: Now, can you also indicate on there
24 where the baby pool is on the map?
25 THE WITNESS: The way that it's laid out, the baby

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1 pool is here, the lap pool is located here. I'm sorry, the
2 lap pool is the top one, and in the center is where we
3 consider is the general pool where the --
4 MS. CORDRY: So of the facilities there, the baby
5 pool is the closest to where the --
6 THE WITNESS: Yes.
7 MS. ROSENFELD: Could you identify more
8 specifically where here is?
9 THE WITNESS: Yeah. I'm sorry. It's -- under
10 this shot from above, you don't see it, baby pool not being
11 a large body. It basically sits underneath what this tree
12 is covering right here.
13 MR. GROSSMAN: It's immediately to the west of
14 the, of the mall and I don't know exactly how far, how many
15 feet. Do you know how many feet is that the swimming pool
16 is from the mall itself?
17 THE WITNESS: I don't.
18 MR. GROSSMAN: Okay.
19 MS. CORDRY: You mean from the Ring Road?
20 MR. GROSSMAN: Yes. From the Ring Road.
21 MS. CORDRY: I think we had testimony that I think
22 the property lines were like 350 feet from the existing
23 special exception to the property line of the mall, of the
24 pool.
25 MR. GROSSMAN: Right. We have testimony about

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1 that.
2 MS. CORDRY: Right.
3 MR. GROSSMAN: I just, I don't recall how far it
4 is.
5 MS. CORDRY: I'm just saying --
6 MR. GROSSMAN: I was just trying to identify for
7 the record where he was saying ---
8 MS. CORDRY: Right.
9 MR. GROSSMAN: -- the pool was located. I know we
10 have plenty of maps and so on so.
11 MS. CORDRY: In previous years, when people were
12 at the mall, or I'm sorry, at the pool, do people go between
13 the pool and the mall?
14 THE WITNESS: Yeah. Absolutely. I mean, as far
15 as that's concerned, certainly we, this issue
16 notwithstanding, see the mall as our neighbor, as a member
17 of our community and so, yeah. We're probably first and
18 foremost the patrons, including Kenmont, of the mall and
19 want to see it be a successful entity without question.
20 Examples of that aren't just simply that we have occasional
21 families who go over to the various different stores and to
22 Costco and otherwise because we certainly, we certainly do
23 but when we have our swim meets and otherwise, it is very
24 common for the opposing team, as well as our own, to pick
25 one of the two restaurants and move en masse across,

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1 effectively, this parking lot from this location on over.
2 Throughout any given week, of course there's a constant flow
3 back and forth between both adults and children who are
4 going to and from.
5 Separately, if I can take the opportunity, I know
6 there's plans, I don't have all clarity on it but as a
7 Kenmont community, we do kind of feel like we're playing
8 chicken if we walk across there because there's just,
9 there's very little sidewalk or safety real estate for a
10 pedestrian to get from one side to the other as it is now.
11 MS. CORDRY: As it is now. And in prior years
12 before the warehouse was built, was there less traffic
13 there?
14 THE WITNESS: Remarkably less traffic. I mean, we
15 went through two phases that are within the last decade that
16 I can describe to you because that's approximately the
17 period of time that I've lived here. It's actually closer
18 to 12 years now, but there was a period when both Hecht's
19 and Macy's were in business and they certainly generated
20 nowhere close to the amount of traffic that we see just
21 where the Costco, Costco store today. In fact, if I could
22 summarize it from my view, the mall is able to handle the
23 amount of traffic that is coming and going. It's entrances
24 and exits and otherwise were appropriate.
25 The -- when Hecht's closed then of course we saw

1 even less traffic onto that backside because the Hecht's
2 used to be located in what is almost by color, you can see a
3 slightly different color in here of the roof of the Costco
4 store and that more or less encompasses where the Hecht's
5 sat. And when that closed, after the Macy's, Hecht's
6 acquisition and otherwise, then one can say there was a,
7 yeah, a significant drop in traffic because that whole
8 backside of the mall was a worry to us because it, it was
9 not going in what we would consider necessarily the proper
10 direction in terms of commerce and success and certainly,
11 that had then a different set of concerns for us.

12 MS. CORDRY: I think you mentioned that traffic
13 was much, is now much heavier on that side. There are two
14 intersections I would ask you to think about. One is where
15 the cross aisle there that's just directly to the south of
16 the Target store and comes out to the Ring Road. Point your
17 pointer -- yeah. That intersection.

18 THE WITNESS: This one.

19 MS. CORDRY: Then just above there where there's
20 the three-way intersection going out to Valley View. Have
21 you had observations about the traffic at those
22 intersections?

23 THE WITNESS: Yeah. I mean, from two different
24 perspectives, I can give those. One is the pool was open
25 after the Costco store. Well, the Costco store opened while

1 the pool was still in its season this year and I can say
2 that that's where that whole mall Ring Road rage thing comes
3 from because we would sit in this area here and --

4 MR. GROSSMAN: This area here being --

5 THE WITNESS: That --

6 MR. GROSSMAN: -- right around the pool area.

7 THE WITNESS: Correct. On the pool deck itself
8 and otherwise, and it was such a jump. Again, prior to
9 Costco opening was when the Hecht's was gone so we went from
10 a traffic level, a number of years ago, to a lower traffic
11 level and then we jumped to a phenomenal traffic level. And
12 so what we were growing accustomed to as the adjacent
13 neighbors of Kenmont is, you know, now we heard far more
14 frequent instances of cars screeching as obviously, somebody
15 applied brakes late or overly, aggressively, honking, which
16 was emanating from these two decision places for drivers,
17 and the noises that go along with that. And there's
18 definitely times where you could almost time when you wanted
19 to exit if you wanted to go in that direction for the pool
20 by just listening to the sound of the traffic because it
21 definitely reaches higher pitches and lower pitches
22 throughout the day.

23 MS. CORDRY: And would you see cars backing up
24 from either one of those intersections?

25 THE WITNESS: I don't know that I've ever seen

1 anybody who backed away from the intersection. I've seen
2 some remarkably and profoundly foolish things in my opinion,
3 but then I don't think the mall property has a lock on that.
4 The place that I witnessed the car accident was at this
5 intersection right there.

6 MR. GROSSMAN: This is immediately to the south of
7 the proposed site.

8 THE WITNESS: Yeah. Actually, it is. Of course
9 at the time right now, that's not the case but, yeah. There
10 was, I was taken by the level of impact or the level of
11 damage between the two vehicles of my remark and I can
12 certainly produce those photographs if, if one is
13 interested. I was shocked at how much damage there was to
14 the vehicle. It seemed to me that the individual involved
15 was going far beyond what ought to, one ought to be in a
16 parking lot to achieve that level of damage.

17 MS. CORDRY: Do you remember approximately what
18 time of year that was?

19 THE WITNESS: That was, the accident would have
20 been just post-side, it would have been just post-side of
21 the pool season. Roughly, it was in the fall because I own
22 a business in Silver Spring and I was contracted to do work
23 at the Dick's both before opening and then after, and it was
24 at some point after that. I was coming around to drop my
25 wife to the Metro.

1 MR. GROSSMAN: Dr. Cole will tell you he's pleased
2 that the vehicle was going fast because it was producing
3 less pollution.

4 THE WITNESS: Dr. Cole may see it that way. I
5 think the gentleman whose car was involved probably would
6 have wished he hadn't.

7 MR. GROSSMAN: All right.

8 MS. CORDRY: Are there occasions when there are
9 idling vehicles near your house?

10 THE WITNESS: Well --

11 MS. CORDRY: Approximate or --

12 THE WITNESS: Yeah. I mean both, this is -- it's
13 certainly a problem for the pool. We don't experience it as
14 much during the daytime. What we do experience presently
15 today and certainly leads to our concerns then about having
16 the fuel trucks that we expect to see with the gas station
17 ultimately is that because of the, what I've come to
18 understand from others and certainly logically see myself is
19 that the Ring Road is a very logical place for a truck
20 driver to park rather than to turn inbound where he has to
21 avoid curving and other things. Even though this is, really
22 is an enormous landscape of asphalt, what I generally have
23 seen is that they just simply drive in and park because
24 there is two lanes there.

25 MR. GROSSMAN: You said they drive in. They come

1 in off Valley View?
 2 THE WITNESS: Whether they have entered from this
 3 direction or from Valley View and come this way around --
 4 MR. GROSSMAN: Whether from Veirs Mill side or the
 5 Valley View side, they --
 6 THE WITNESS: Yeah. What they do is they head to
 7 the outside of the Ring Road.
 8 MR. GROSSMAN: Okay. Along the southern Ring
 9 Road, they do the same, park.
 10 THE WITNESS: Right. So effectively, they get
 11 themselves in the position where they're going counter-
 12 clockwise on the Ring Road.
 13 MR. GROSSMAN: Okay.
 14 THE WITNESS: Because that puts them against the,
 15 against the woods, against the outer barrier, and then
 16 that's where they park and just sit and they leave their,
 17 their trucks running. And sometimes also, it sounds like
 18 there's a second engine running otherwise which I believe is
 19 the, sometimes they have the refrigeration trucks that sit
 20 along that area. I, myself have to say it's something that
 21 just probably within the week I experienced it. As I was
 22 putting my children to bed, I noticed it and as I went
 23 myself to bed which tends to be about, they go to bed about
 24 8:00, I go to bed around midnight. I noticed that the
 25 trucks were still idling and I thought okay those guys have

1 been up there awful long.
 2 And this time around, it also occurred to me that
 3 my neighbor across the street who just by grade and
 4 elevation happens to be, her home happens to be one full
 5 story above ours. If you, if you look between the two
 6 homes, you'll see that we basically set down from her house
 7 and my advantage is because of a drop in elevation that
 8 happens off of the edge of the mall property right here --
 9 MR. GROSSMAN: Along the southwest corner.
 10 THE WITNESS: My top of my home does not clear
 11 this, this level so --
 12 MR. GROSSMAN: That's the mall level.
 13 THE WITNESS: That's correct. So I look down into
 14 that culvert I mentioned earlier whereas the individual
 15 directly across the street from me, she had this trough
 16 effectively, you know, I don't know, is that 30, if I had to
 17 measure it, 30, 40 feet directly out her window and would
 18 have been looking in the window of the truck itself.
 19 MR. GROSSMAN: Okay.
 20 MS. CORDRY: Were you able to actually see what
 21 the truck, did you observe it at all or just hear it?
 22 THE WITNESS: No. Because we're at that lower
 23 elevation, when I look up towards the mall, I tend to see
 24 the Target sign and the Costco signs and the signage and the
 25 lighting. I don't, I don't tend to be able to look up and

1 see that.
 2 MS. CORDRY: Have you made any change with respect
 3 to your children in letting them go to the mall from the
 4 pool?
 5 THE WITNESS: At this point, the children who live
 6 at home with me, I have a son who is a Marine and in the
 7 Middle East at the moment, so for him --
 8 MS. CORDRY: You let him go to the mall by
 9 himself.
 10 THE WITNESS: -- there's absolutely no change. As
 11 far as my ten-year-old and my six-year-old, I have concerns
 12 for them. Certainly as a community, as a community of
 13 parents, you know, we talk about the fact that our children
 14 basically idle through the summer orbiting in -- well,
 15 actually, ironically, now that I see this other drawing
 16 right here, many of the, our friends' families, myself in
 17 the Kenmont community, while certainly not all of us for
 18 sure, are right within this section right here.
 19 MR. GROSSMAN: This section being the extended
 20 area on the map showing the technical staff's definition of
 21 the general neighborhood.
 22 THE WITNESS: And I can say that, you know,
 23 there's probably times where my kids ride their bicycles to
 24 the pool, we have started to allow them to do that, and ride
 25 home and they, and they never leave and that, that's where

1 they'll stay, you know, for potentially weeks over the
 2 summer, never actually leaving this area right here because
 3 they don't need to. I mean, if we take them out to dinner,
 4 it's to Elevation Burger which is next to Costco.
 5 It's one of the benefits and certainly why I can
 6 state, from both I think Costco, its Board and my own
 7 personal perspective, is we have no issue with the mall. It
 8 was there in the 1970's when I grew up in this area and it's
 9 there now after I've purchased my home. I just see
 10 personally and certainly, I know that the members of the
 11 Kenmont Board see a paradigm of difference between a Chick-
 12 fil-A and, you know, 12 million gallons of fuel that has to
 13 be transported in and distributed out and everything that
 14 goes along with that.
 15 MS. CORDRY: Have you noticed outside seating by
 16 where the Elevation Burger is and the other restaurants
 17 there?
 18 THE WITNESS: Yeah. Not Panera's best but, yeah.
 19 Both Panera and Elevation Burger do have external seating
 20 outside.
 21 MS. CORDRY: Have you noticed people sitting out
 22 there eating?
 23 THE WITNESS: They do.
 24 MS. CORDRY: Staying for more than 20 minutes?
 25 THE WITNESS: Because particularly Panera provides

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1 wi-fi, I can say that some, I, myself will park over there
2 in that, the Panera. In my case, before it was the
3 Starbucks which is around the other side of the mall. The
4 seating is more comfortable and I'll work there, sometimes
5 sitting for hours.
6 MS. CORDRY: In terms of the financial stability
7 of Kenmont you talked something about, and it's one of the
8 few stable pools in this area, has Kenmont had any occasion
9 to combine with any other pool?
10 THE WITNESS: We've had a number, and that's been
11 really one of the reasons why it's mainly managed to stay
12 successful. You know, a community pool like Kenmont has
13 changed, it's generationally changed the usage of it, the
14 amount of patrons that one has. I think that's just a
15 natural part of the community's ebb and flow. I can say
16 that for our part, this Kenmont community, when we moved in
17 12 years ago, was still full of people who were the many in
18 case, many cases the original homeowner from 1950s and
19 slowly in this last just 12 years, these people have moved
20 on and now we have young children in many of these homes.
21 It's truly a dynamic shift of what's happened in
22 the neighborhood so now, you know, we have a lot of small
23 children there and so I see that pool usage really climbing
24 again compared, maybe one indication of that is when we
25 joined there, the pool was an available facility. Nowadays,

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1 it has been impacted and is dropping again and I think in
2 part, I can't figure out why we have more families and the
3 pool and has less of a waiting list but we did have 10 or 15
4 people on a list last year and that dropped from the year
5 before and the only explanation that we had was either just
6 the natural ebb and flow or that people were preferring to
7 go to another place.
8 MS. CORDRY: Are you aware of other pools though
9 in this area that have closed and are no longer here?
10 THE WITNESS: Yeah. There used to be another pool
11 out here, the name of which I don't recall, closed a number
12 of years back. All of its community --
13 MR. GROSSMAN: Out here you mean to the extreme
14 eastern side of the, that Exhibit 159 did we say?
15 MS. CORDRY: Yes.
16 MR. GROSSMAN: Of Exhibit 159.
17 THE WITNESS: We also, just right on Connecticut
18 Avenue, which would be off the map, another pool just closed
19 this past year and is being converted to homes.
20 MR. GROSSMAN: Ms. Cordry, we're pretty far afield
21 here. I mean, I don't really, I'm not going to reach any
22 conclusions that the pool is going to be driven out of
23 business by the gas station so.
24 MS. CORDRY: Well, I'm not entirely sure that
25 that's --

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1 MR. GROSSMAN: I understand but, I mean, he's
2 testified. It's part of the record.
3 MS. CORDRY: Right.
4 MR. GROSSMAN: But going as to what other pools
5 far out in the area, that's just way beyond, I think the
6 scope of the direct.
7 MS. CORDRY: I think he did talk about the
8 stability of the pool and how it was being affected and so
9 forth so it's just--
10 MR. GROSSMAN: Right. Stability of his pool. Not
11 other pools in the area.
12 MS. CORDRY: Well, if there's a dropping number of
13 pools --
14 MR. GROSSMAN: That's not going to be a factor in
15 what --
16 MS. CORDRY: All right. I'm sorry. I was
17 explaining why I was asking about that.
18 MR. GROSSMAN: -- in what I consider seriously
19 with all the issues in this case.
20 MS. CORDRY: Okay. I have no further questions.
21 MR. GROSSMAN: Any cross-examination, Ms. Harris?
22 MS. HARRIS: Yes. Thank you.
23 CROSS-EXAMINATION BY MS. HARRIS
24 MS. HARRIS: Mr. Meszaros, you had noted that, I
25 believe you said that you could not recall the, who informed

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1 you that the, the location that's presently being proposed
2 would be unsafe. You don't recall who that was?
3 THE WITNESS: There were -- the answer is that
4 there were two persons who were leading the conversation
5 from Costco and two persons at that meeting who were leading
6 the conversation from Westfield, Jim Agliata and Mr. Brann
7 from Costco and Mr. Ishida and a colleague whose name I
8 don't recall, and they, between the four of them was where
9 the answers were coming from. I just don't remember that
10 particular question.
11 MS. HARRIS: You don't remember.
12 THE WITNESS: Who fielded it.
13 MS. HARRIS: Do you recall correctly that they
14 said unsafe and that, or did they say that that was not the
15 preferred location?
16 THE WITNESS: They did in fact also say that it
17 was not their preferred location but we talked specifically
18 about the trucks and the entrances and exits and what they
19 will be used for there so specifically to your question of
20 whether they said the words unsafe, I can't, I won't go so
21 far as to say that was the word that was used. What I came
22 away with as the listener and party to the conversation was
23 clearly, that was a poor choice because of the intended
24 uses.
25 MS. HARRIS: You noted that the Hecht's -- you've

1 been a pool member for how many years?
 2 THE WITNESS: Let's see. We've -- roughly a
 3 decade.
 4 MS. HARRIS: Okay.
 5 THE WITNESS: We've been in the neighborhood about
 6 12 and I think we were about two years in the neighborhood
 7 when we joined.
 8 MS. HARRIS: Okay. So have you lived in the
 9 neighborhood the entire time that the Hecht's store was
 10 vacant?
 11 THE WITNESS: Yes. I do believe -- wow, that is
 12 stretching it right back to -- yes. I do recall going into
 13 the Hecht's and being a customer to the Hecht's at a time
 14 when I would have been living in the community.
 15 MS. HARRIS: So during -- and it was vacant for
 16 how many years?
 17 THE WITNESS: It's hard for me to recollect
 18 exactly but I would say at least six years it sat vacant.
 19 MS. HARRIS: And during that period of time, would
 20 you describe the mall as a successful mall?
 21 THE WITNESS: I certainly can say that from where
 22 I sat, I was concerned about the mall's success. I was
 23 concerned about that it wasn't, it wasn't reflective of the
 24 kind of neighborhood one would want to have and I do believe
 25 that contributing to that was the fact they were struggling

1 with what to do with the property.
 2 MS. HARRIS: And now do you consider it a
 3 successful mall?
 4 THE WITNESS: Yeah. This is where when it rains,
 5 it pours a little bit. I can say yes to that. I can say
 6 that right now, it is shopped to a level that even though I,
 7 just like yourself, have been to a Sam's Club or a Costco or
 8 otherwise, the level to which this store right now, where we
 9 sit today, has scaled to and the level of traffic and
 10 pressure that it's putting on the neighborhood, I think all
 11 of us, not necessarily naive individuals, are shocked as to,
 12 you know, where it's climbed to. I mean, success, I don't
 13 know what it means financially but boy, it's --
 14 MS. HARRIS: It's busy.
 15 THE WITNESS: To say the least.
 16 MS. HARRIS: You would say it's busy. I believe
 17 you said that to your knowledge, one member has pulled their
 18 name from the waiting list because of the pool.
 19 THE WITNESS: Yeah.
 20 MS. HARRIS: I mean, the proposed gas station.
 21 Did you have a conversation with that person?
 22 THE WITNESS: No, I did not. That was something
 23 that was discussed at a Board meeting that I was in
 24 attendance as a, as a guest.
 25 MS. HARRIS: And I believe you noted that there's

1 currently 10 to 15 members, a 10 to 15 member waiting list.
 2 THE WITNESS: Yes. As far as I know though, I
 3 haven't stated in a Board meeting now in this last six
 4 months, I think that that's somewhere where we were so it's
 5 down from where it was. When we, 10 years ago, I can say
 6 there wasn't one. In the ensuing years, and again, I, I
 7 personally believe it has a lot to do with the neighborhood
 8 turnover and the youth of the neighborhood --
 9 MS. HARRIS: Yes.
 10 THE WITNESS: -- it climbed up, and now it's
 11 dropped again a little bit and I'm not sure that I, if
 12 anybody has come up with an understanding as to why that is
 13 the case.
 14 MS. HARRIS: Are you familiar with the fact that
 15 as recently as, well, in September, the website for the pool
 16 actually said we have a waiting list of close to 50 people
 17 and were not accepting new waiting memberships --
 18 THE WITNESS: You know, I can't --
 19 MS. HARRIS: -- memberships on the waiting list?
 20 THE WITNESS: I can't speak to that because again,
 21 I'm not, as not a, as a member of the Board, I can say that
 22 what I wouldn't know the answer to there is that then if
 23 it's 50 persons or if it's 50 applications. Maybe the
 24 clarifying item there is that I mentioned there are
 25 approximately 1400 patrons to the pool but we're capped at

1 400 members so by family, there's only that amount.
 2 MS. HARRIS: And I believe you noted that there
 3 were truck noises coming from the Ring Road, is that
 4 correct?
 5 THE WITNESS: Correct.
 6 MS. HARRIS: And do you have any reason to know
 7 that those were Costco trucks?
 8 THE WITNESS: I can absolutely not tell you that
 9 it was specifically a Costco truck or otherwise. I can only
 10 tell you that the level of those kind of noises since the
 11 Costco has opened has hit a, as I mentioned, a different
 12 dimensional shift. We didn't hear those kinds of things
 13 frequently in the past.
 14 MS. HARRIS: Have you ever complained to either
 15 Westfield or Montgomery County Department of Permitting
 16 Services or even Montgomery County Police regarding the
 17 noises from the Ring Road in the evening?
 18 THE WITNESS: At this time, because of our also in
 19 the last years, there are more frequent interaction with
 20 Costco through this entire process, I have spoken to various
 21 different Westfield staff about what could be done in this
 22 regard, could signage be put up that directs truck drivers
 23 and otherwise to please move themselves towards and away
 24 from the residential edge, and the response that I came away
 25 with at the time was that that's something that would have

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1 to be addressed specifically to Costco and others and not to
2 the Westfield management.
3 MR. GROSSMAN: Concerning the Ring Road? I mean,
4 Westfield told you that you have to talk to Costco about the
5 Ring Road?
6 THE WITNESS: Yeah.
7 MR. GROSSMAN: Okay.
8 MS. HARRIS: Well --
9 MR. GOECKE: Objection. Hearsay.
10 MS. HARRIS: No other questions, thank you, with
11 that.
12 MR. GROSSMAN: All right. You returned the
13 pointer. I feel blessed. It's been used so much I --
14 THE WITNESS: Maybe I've made a missed assumption
15 that I was --
16 MR. GROSSMAN: I sat here for months with this
17 pointer in my pocket and I never used it. Then I realized
18 well, if I want to have it used, it's really going to have
19 to be used by the witnesses and not by me so. All right. I
20 thank you very much, sir, for taking the time to come down
21 here. I appreciate your testimony.
22 THE WITNESS: Thank you. I appreciate everybody.
23 MR. GROSSMAN: And also, your waiting around and
24 letting the other witness go first. That was very kind of
25 you. All right. Do we have another witness?

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1 MS. ROSENFELD: We do not.
2 MS. CORDRY: Not with Abigail sick.
3 MR. GROSSMAN: Okay. All right. How many more
4 witnesses do you have in addition to --
5 MS. ROSENFELD: We have Dr. Breyse, we have Dr.
6 Jison, we have Donna Savage and Abigail.
7 MR. GROSSMAN: So four more witnesses. How long
8 would you anticipate Ms. Adelman's testimony would be and
9 how long would you anticipate Ms. Savage's testimony?
10 MS. ROSENFELD: I would expect Mrs. Adelman to
11 probably be between an hour to two at the most. Ms. Savage,
12 I would think, would probably go, could go as long as three
13 hours.
14 MR. GROSSMAN: Is Ms. Duckett is going to be, do
15 you know if --
16 MS. ROSENFELD: I do not expect that she will
17 testify.
18 MR. GROSSMAN: Okay.
19 MS. ROSENFELD: She --
20 MS. CORDRY: Virginia Sheard?
21 MS. ROSENFELD: I think they're going to rely on
22 their written submissions. They're already in the record.
23 MR. GROSSMAN: Ms. Sheard has already testified.
24 MS. CORDRY: That's true. That's true.
25 MS. ROSENFELD: Right.

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1 MR. GROSSMAN: So I'm sorry. How long did you say
2 Ms. Savage was guesstimated?
3 MS. ROSENFELD: I would estimate she could be as
4 long as three hours. Maybe not but I'm, I'm giving you my
5 best --
6 MR. GROSSMAN: Dr. Jison?
7 MS. ROSENFELD: I would expect her to be at least
8 a couple of hours.
9 MR. GROSSMAN: And Dr. Breyse?
10 MS. CORDRY: Almost the same. I mean, put
11 together, the four witnesses probably will take two days I
12 would think between all their testimony and the cross and so
13 forth. And if there's anyone else comes forward from the
14 community, we've been having people popping up.
15 MR. GROSSMAN: All right. So we set four days.
16 MS. CORDRY: I would say at least, yes.
17 MR. GROSSMAN: Okay. All right. So let's try to
18 get together, as I said ,and early next week, let me know
19 four days that you all agree on. I don't know. Hopefully,
20 we'll be -- put a couple of spare backups on there just in
21 case for some reason I can't do it on my calendar. All
22 right. Anything else that we need to cover before we break?
23 We can always communicate by e-mail as we've been doing. If
24 there's nothing else, I hope you all have a great -- yes,
25 sir?

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1 THE WITNESS: I just, if I could stop you
2 afterwards and grab a copy of your card so I can get this --
3 MR. GROSSMAN: Absolutely. Certainly. I hope you
4 all have a great holiday.
5 (Whereupon, at 3:51 p.m., the hearing was
6 concluded.)
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C E R T I F I C A T E

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

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

By:

Josephine Hayes, Transcriber

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