

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 February 24, 2014, commencing at 9:41 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, 2nd Floor Council Hearing Room, Rockville, Maryland 20850
before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

For the Applicant:

Patricia Harris, Esq.

Mike Goecke, Esq.

Lerch, Early & Brewer, Chartered

3 Bethesda Metro Center, Suite 460

Bethesda, Maryland 20814

For Kensington Heights Civic Association:

Michele Rosenfeld, Esq.

The Law Office of Michele Rosenfeld, LLC

11913 Ambleside Drive

Potomac, Maryland 20854

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1 MR. GROSSMAN: Mr. Brann, you look familiar.
2 MS. HARRIS: Good morning. Pat Harris on behalf
3 of Costco.
4 MR. GROSSMAN: Ms. Harris.
5 MR. GOECKE: Mike Goecke for Costco.
6 MR. GROSSMAN: Mr. Goecke.
7 MS. CORDRY: Karen Cordry for Kensington Heights.
8 MS. ROSENFELD: Michele Rosenfeld for Kensington
9 Heights.
10 MR. GROSSMAN: Ms. Rosenfeld.
11 MR. SILVERMAN: Larry Silverman for the Coalition
12 to Stop Costco Gas, good morning.
13 MS. ADELMAN: Good morning, Mr. Grossman. Abigail
14 Adelman for the --
15 MR. GROSSMAN: Mrs. Adelman.
16 MS. ADELMAN: -- Coalition to Stop Costco Gas.
17 MR. GROSSMAN: Okay. And in the audience here, I
18 see we have a number of people. And are some of them here
19 to testify?
20 MS. ADELMAN: Yes.
21 MR. GROSSMAN: Sir, do you wish to state your
22 name, please?
23 MR. STATLAND: I'm a chauffeur.
24 MR. GROSSMAN: All right, an anonymous chauffeur.
25 Ma'am, are you here to testify today?

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1 PROCEEDINGS
2 MR. GROSSMAN: This is the 26th day of a public
3 hearing in the matter of Costco Wholesale Corporation, Board
4 of Appeals No. S-2863, OZAH No. 13-12, petition for a
5 special exception pursuant to Zoning Ordinance Section
6 59-G-2.06 to allow petitioner to construct and operate an
7 automobile filling station which would include 16 pumps.
8 The subject site is located at 11160 Veirs Mill Road, Silver
9 Spring, Maryland; that's Lot N, 631 Wheaton Plaza, Parcel
10 10, also known as Westfield Wheaton Mall, and it is zoned
11 C-2, general commercial.
12 The hearing was begun on April 26, 2013, and
13 continued for many days thereafter. The sessions scheduled
14 for February 13 and 14 had to be canceled because snow shut
15 down the Government. The hearing was noticed to resume
16 again today. The next session will be tomorrow, February
17 25, 2014, here in the second floor hearing room of the COB
18 at 9:30.
19 This hearing is conducted on behalf of the Board
20 of Appeals. My name is Martin L. Grossman. I'm the Hearing
21 Examiner, which means I will take evidence and write a
22 report and recommendation to the Board of Appeals which will
23 make the decision in this case. Will the parties identify
24 themselves for the record, please?
25 MR. BRANN: Good morning. Erich Brann for Costco.

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1 MS. STATLAND: Yes.
2 MR. GROSSMAN: And what's your name, please?
3 MS. STATLAND: Ann Statland.
4 MR. GROSSMAN: Okay.
5 MS. STATLAND: And --
6 MR. GROSSMAN: Yes.
7 MS. STATLAND: -- this lady is as well.
8 MR. GROSSMAN: Yes, ma'am.
9 MS. HOUSEWORTH: Yes, I'm Deborah Houseworth.
10 MR. GROSSMAN: All right. Sir?
11 MR. SIMS: Doug Sims, S-I-M-S, Doug Sims.
12 MR. GROSSMAN: All right. Oh, I know you. You're
13 a familiar face.
14 MS. DUCKETT: Yeah.
15 MR. GROSSMAN: Why don't you announce yourself for
16 the record, please.
17 MS. DUCKETT: Eleanor Duckett, Kensington View.
18 MR. GROSSMAN: Ms. Savage?
19 MS. SAVAGE: And Donna Savage, Kensington Heights.
20 MR. GROSSMAN: All right. All right. Let's start
21 out with some preliminary matters.
22 MS. ADELMAN: Mr. Grossman, may I interrupt for a
23 second?
24 MR. GROSSMAN: Certainly.
25 MS. ADELMAN: Ms. Houseworth has a standing

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1 appointment that she needs to make, and earlier we were
2 discussing it, and everyone here on this side of the table
3 is in agreement that perhaps she could go first before we go
4 into preliminary matters, but of course, it's up to you.
5 MR. GROSSMAN: Well, we'll get to our preliminary
6 matters, and then we'll have her. How long can she stay?
7 Is that a real problem?
8 MS. CORDRY: Yes.
9 MS. ADELMAN: Yes.
10 MR. GROSSMAN: For a few minutes?
11 MS. CORDRY: Well, it might take --
12 MS. HOUSEWORTH: 10:30.
13 MS. CORDRY: -- it might take more than a few
14 minutes of preliminary matters, I think, possibly today.
15 MR. GROSSMAN: That's true. All right.
16 MS. ADELMAN: Thank you, sir.
17 MR. GROSSMAN: If we're all agreed --
18 MS. HARRIS: We have no objection.
19 MR. GOECKE: No objection.
20 MR. GROSSMAN: Okay. All right. Ms. Houseworth,
21 do you wish to take the stand, please? Will you state your
22 full name and address, please?
23 MS. HOUSEWORTH: Deborah Houseworth, 2726 Blaine
24 Drive, Chevy Chase, Maryland.
25 MR. GROSSMAN: And Deborah is spelled D-E-B-R-A or

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1 O-R?
2 THE WITNESS: O-R-A-H.
3 MR. GROSSMAN: All right. Would you raise your
4 right hand, please?
5 (Witness sworn.)
6 MR. GROSSMAN: All right. Let's move this chair
7 back a little bit so we can see you. All right. All right.
8 Do you have testimony you wish to offer today?
9 THE WITNESS: Yes, sir.
10 MR. GROSSMAN: You may proceed.
11 DIRECT EXAMINATION
12 THE WITNESS: Okay. I'm here today to express my
13 concern over the addition of a Costco gas station to what I
14 consider an already dangerous parking lot. I've been to
15 Wheaton Costco more than two dozen times and have never had
16 what I would call a good experience in the parking lot.
17 Once over the Christmas holidays I returned home
18 very shaken, concerned for the safety of myself and others.
19 On this occasion, the first available spot was 15 rows back
20 from the Costco entrance. This section, which is one of the
21 smallest portions of the entire parking lot, is 15 rows
22 deep, each row having 42 cars, slots. Upon exiting Costco,
23 there is a cart path dividing the 42-car length, but it only
24 goes five rows deep. Because the only other solution is to
25 walk to the end of the aisle and walk down the main roadway

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1 in lots of traffic, many people jump the curb with their
2 extra-wide Costco carts; then they weave between the cars
3 and across the aisles, which are lined up with cars waiting
4 for spaces. It truly feels like an accident waiting to
5 happen.
6 Since there is so much congestion and a very
7 small, inadequate loading area, pedestrians have no option
8 but to push these large, wide carts to their cars. Carts
9 are abandoned, and drivers weave in and out around either
10 carts or cars waiting for spaces. There are no adequate
11 safe pathways, and as I said, you are forced to walk down
12 the main street if you don't jump the curb. I feel that
13 adding additional traffic to this area will be a hazard to
14 pedestrians.
15 Another issue is the entrance off of University
16 Boulevard onto Valley View Drive. Valley View Drive is very
17 short before you come to a three-way stop. With the
18 increased traffic, it often backs onto University Boulevard.
19 A three-way stop with this volume of traffic seems like a
20 poor choice. I watch many people pull into the middle of
21 the intersection, question themselves, pause or stop, barely
22 missing a collision. People seem confused --
23 MR. GROSSMAN: Excuse me a second. Are you
24 talking about the intersection at the ring road? Is that
25 the three-way stop you're talking about?

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1 THE WITNESS: You come off of University, and you
2 make a right onto Valley View, and the Giant is on the left.
3 MR. GROSSMAN: You come off of University going
4 which direction to make a right?
5 THE WITNESS: I don't know which direction. The
6 Giant is there and you're behind Target.
7 MR. GROSSMAN: I'm trying to --
8 MS. CORDRY: Could we point to things on the map
9 and see if that will help?
10 MR. GROSSMAN: Yes.
11 MS. CORDRY: All right. Are you talking about
12 coming in this entrance here from University Boulevard, take
13 this little -- and this is Valley View?
14 THE WITNESS: Uh-huh. And that's, yes, and
15 that's --
16 MS. CORDRY: Coming in here and turning right
17 here?
18 THE WITNESS: Yes, right there.
19 MR. GROSSMAN: So, okay, coming in here, you're --
20 MS. CORDRY: Okay. And is this the
21 intersection --
22 MR. GROSSMAN: Hold on, Ms. --
23 THE WITNESS: Yes.
24 MR. GROSSMAN: You have to identify it for the
25 record also.

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1 MS. CORDRY: Okay. I'm sorry, coming into
2 University Boulevard from the west, heading east --
3 MR. GROSSMAN: Okay.
4 MS. CORDRY: -- turning right into the Valley View
5 entrance --
6 THE WITNESS: Yes.
7 MS. CORDRY: -- and then coming up here to the
8 three-way stop, where this is the Giant --
9 THE WITNESS: Yes.
10 MS. CORDRY: -- immediately to the left, and this
11 is the intersection you're talking about, three-way stop.
12 MR. GROSSMAN: All right. So that's the three-way
13 stop at the ring road.
14 THE WITNESS: Yes, sir.
15 MS. CORDRY: And this is the one I think we've
16 referred to --
17 MR. GROSSMAN: Okay.
18 MS. CORDRY: -- as Intersection 16 on many
19 occasions.
20 MR. GROSSMAN: Yes. I just wanted to make sure we
21 were --
22 MS. CORDRY: Right.
23 MR. GROSSMAN: -- because she just said turning
24 onto Valley View; so I wasn't sure --
25 MS. CORDRY: Right.

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1 MR. GROSSMAN: I want to make sure we're talking
2 about the same direction. Okay.
3 MS. CORDRY: And as long as we're here, do you
4 want to point out to me where you were talking about in
5 terms of the parking before? Perhaps you can just --
6 THE WITNESS: So this is the -- back here.
7 MS. CORDRY: In this area?
8 THE WITNESS: Yes.
9 MS. CORDRY: Okay. This is --
10 THE WITNESS: So I parked back here, 15 rows back.
11 MS. CORDRY: -- the Target. This is Costco.
12 MR. GROSSMAN: Ms. Houseworth, I can't see when
13 you do that --
14 THE WITNESS: Sorry.
15 MR. GROSSMAN: -- so let me give you my famous
16 laser pointer here so you can actually point to it.
17 THE WITNESS: The pen?
18 MR. GROSSMAN: Yes. This is the trigger --
19 THE WITNESS: Okay.
20 MR. GROSSMAN: -- and if you can -- you can resume
21 your seat and then --
22 THE WITNESS: Oh.
23 MR. GROSSMAN: -- point with the laser pointer.
24 There's a trigger on the front.
25 THE WITNESS: Oh, a trigger on the front. I see.

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1 Okay. So this is 15 rows back. I parked approximately
2 right there. There's the curb that everybody, excuse me,
3 lots of people jump in order, with their carts.
4 MR. GROSSMAN: Okay. So we're talking about the
5 parking lot that is right adjacent to the subject site here?
6 THE WITNESS: Yes.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: Yes, sir.
9 MR. GROSSMAN: All right. You can leave it
10 there --
11 THE WITNESS: Okay.
12 MR. GROSSMAN: -- in case you have to point to it
13 again.
14 THE WITNESS: Okay. So people seem confused as to
15 who has the right-of-way, and the volume of cars that wait
16 there is quite significant now that Costco has come in.
17 This entrance will be used by more automobiles if the Costco
18 gas station is opened, and then I feel it will be extremely
19 dangerous.
20 I also feel that a large-pump gas station is
21 incompatible with a few of the six goals of the Wheaton
22 Sector Plan: the second goal -- most of this has to do with
23 pedestrian traffic -- the second goal, which says, in the
24 plan, is to re-invigorate Wheaton's downtown by creating a
25 walkable community, which I think will be a problem with

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1 adding more traffic; and the fifth goal of that plan also
2 says: Design quality public spacing, spaces, inviting to
3 pedestrians.
4 The Costco food store is here to stay and is good
5 economically for the Wheaton area, but I feel the addition
6 of a gas station will create a very unsafe environment for
7 pedestrians and increase the volume of traffic to an
8 unmanageable number. This seems contrary to the county's
9 initiative called Heads Up in Parking Lots. A Montgomery
10 County news release from 11/21/2013 stated that in 2012, 423
11 reported pedestrian collisions happened and that one-third
12 of these were in parking lots and garages. This was a 39
13 percent increase in one year. I applaud the county for
14 initiating this campaign to help solve a problem and protect
15 its citizens. I feel adding a mega Costco gas station to an
16 already challenged parking lot will create a pedestrian
17 hazard area.
18 MR. GROSSMAN: All right. Is that your, complete
19 your testimony?
20 THE WITNESS: Yes, sir.
21 MR. GROSSMAN: All right. Now you're subject to
22 cross-examination. We'll start out with Mrs. Adelman. Do
23 you have questions?
24 MS. ADELMAN: No, sir.
25 MR. GROSSMAN: All right, none for the Coalition.

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1 Kensington Heights?
2 MS. ROSENFELD: Yes. Thank you.
3 CROSS-EXAMINATION
4 BY MS. ROSENFELD:
5 Q Ms. Houseworth, when you were describing where you
6 were parking and you described a, there is an area where
7 people can walk and they would jump a curb, could you just
8 maybe explain better where you're looking at, what the curb
9 is --
10 A Right.
11 Q -- what purpose you think it serves, and how
12 things really function?
13 A Well, my understanding is the entrance is about
14 here, and there are five rows and then there is a curb. So
15 there's a --
16 MR. GROSSMAN: All right. Just for the record,
17 the about here you're talking about is the entrance on, I
18 guess you'd call it the southwest corner insert of the -- I
19 don't know how to best describe it. What's the best
20 description of that intersection?
21 BY MS. ROSENFELD:
22 Q Is that the entrance to the mall? Is --
23 A No. That's a --
24 MR. GROSSMAN: It's an entrance to the mall, but
25 what --

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1 BY MS. ROSENFELD:
2 Q And is that between the Target and the Costco
3 warehouse?
4 A Yes.
5 MR. GROSSMAN: Okay.
6 BY MS. ROSENFELD:
7 Q Okay.
8 A Yes, it's right there. The tire center is here
9 and then the Costco entrance, and Target is over here.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: And you come out of the Costco, and
12 you can cut -- there's a path where you can push your cart
13 to five rows and then it stops. So --
14 MR. GROSSMAN: All right, five rows to the west
15 and then it stops.
16 BY MS. ROSENFELD:
17 Q Is that a striped pedestrian path?
18 A It is a striped pedestrian path --
19 Q Okay.
20 A -- which is good so you don't happen to walk down
21 here and walk all the way over here and then, you know, get
22 into this back lot.
23 MR. GROSSMAN: By the here, you're talking about
24 -- I'm identifying these things for the record.
25 THE WITNESS: Yes, sir.

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1 MR. GROSSMAN: When you say here, the record is
2 not clear. You're saying you don't have to walk all the way
3 to the south of the parking lot, you have a striped area on
4 the northern part of that parking lot?
5 THE WITNESS: Correct --
6 MR. GROSSMAN: Okay.
7 THE WITNESS: -- which is excellent, but what
8 happens, since it's only five rows deep, is people get to
9 the end there where the cart can't go any further and they
10 push it over the curb --
11 MR. GROSSMAN: Okay.
12 THE WITNESS: -- through the cars.
13 BY MS. ROSENFELD:
14 Q So the striped pedestrian path is bisected by a
15 curb?
16 A You walk five rows on the path and then there is a
17 curb. This probably indicates that curb, I'm just guessing,
18 this long thing here. So there's a curb there. So --
19 MR. GROSSMAN: Pointing to the drive aisle --
20 THE WITNESS: Okay.
21 MR. GROSSMAN: -- that's a north-south drive
22 aisle.
23 MS. CORDRY: No.
24 MS. ADELMAN: No. No.
25 THE WITNESS: No.

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1 MR. GROSSMAN: No?
2 MS. CORDRY: No. That is an actual --
3 UNIDENTIFIED SPEAKER: Curb.
4 MS. CORDRY: -- curb.
5 MR. GROSSMAN: That is curbing? Okay.
6 MS. CORDRY: An elevated --
7 MR. GROSSMAN: All right. So pointing out a
8 curbing, north-south. All right.
9 THE WITNESS: So the only other way, once you get
10 there, is -- the only other way is to go on the main road,
11 which is here, is to come out of Costco, drive down here, go
12 down the main road to go into this back parking lot.
13 MR. GROSSMAN: By the main road, you're talking
14 about -- main road being the ring road, or you're talking
15 about the main road being a road inside the parking lot?
16 THE WITNESS: Inside the parking lot. There's --
17 MR. GROSSMAN: Okay.
18 THE WITNESS: -- two lanes that go directly here
19 and go to the front of Costco.
20 MR. GROSSMAN: All right. Okay. All right.
21 THE WITNESS: So --
22 BY MS. ROSENFELD:
23 Q And so, in your experience, what do people tend to
24 do based on your observations?
25 A They jump the curb with their carts and then walk

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1 through the rest of the parking lot through the cars --

2 Q And --

3 A -- and there's no path.

4 Q And is the curb located between two parallel

5 parking aisles where cars would park, facing each other, or

6 is the curb located in the drive aisle? Where --

7 A Cars are facing each other, yes.

8 Q And the curb is in between the two --

9 A Yes.

10 Q -- rows of cars?

11 A Correct.

12 Q Does the striped pedestrian path continue on the

13 other side of the curb?

14 A No.

15 Q Okay.

16 MR. GROSSMAN: I don't know that this curb -- is

17 it intended that that particular curb that we're discussing

18 is going to be part of the final plan on the site plan, as

19 planned, Ms. Harris?

20 MS. HARRIS: The north-south curb?

21 MR. GROSSMAN: Yes.

22 MS. HARRIS: That was installed because everything

23 to the west of there is labeled Target parking. So Target

24 wanted that curb to be put in.

25 MR. GROSSMAN: All right.

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1 MS. HARRIS: So it's a permanent fixture of the

2 parking lot.

3 MR. GROSSMAN: Okay. I just wanted to make sure

4 we weren't talking about something that wouldn't exist if

5 the gas station were approved. So --

6 MS. HARRIS: It's there, no matter what.

7 MR. GROSSMAN: Okay. Thank you.

8 BY MS. ROSENFELD:

9 Q And in your experience, when you're driving east

10 on University, making a right onto Valley View, how long

11 does it take you to actually enter the mall parcel, either

12 in terms of minutes or seconds or number of light changes?

13 A Like I said, I -- probably out of a couple dozen

14 times, I had to wait there through two or three lights

15 during, during, you know, high season, of course. It

16 doesn't always happen, but it does back up onto

17 University --

18 Q And what do --

19 A -- where it didn't used to, but --

20 Q And when -- I didn't mean to cut you off. I'm

21 sorry.

22 A That's okay. Go ahead.

23 Q And when you say high season, what do you mean by

24 that?

25 A Like holiday time. Christmastime was, which is

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1 when it's used to a lot of this, when it's pretty bad.

2 Q And what do you consider to be the Christmastime

3 season? Is it a matter of days or --

4 A No. I'd say a couple of weeks before Christmas.

5 Super Bowl was pretty bad too. Nobody -- I shouldn't go on

6 Super Bowl, but --

7 Q And once you turn onto Valley View, how long does

8 it take you actually to reach the intersection with the ring

9 road itself?

10 A Well, I'd say there's approximately eight cars,

11 eight to 10 cars between the stop sign and University. So

12 it depends on the amount of traffic there, of course.

13 You've got three, three ways and eight to 10 cars, so five

14 minutes --

15 Q Okay.

16 A -- this is probably guessing now.

17 MS. ROSENFELD: I have no further questions.

18 Thank you, Mr. Grossman.

19 MR. GROSSMAN: Ms. Duckett, do you have questions?

20 MS. DUCKETT: I have a question.

21 BY MS. DUCKETT:

22 Q You said -- and Ms. Harris said that Target wanted

23 that curb put in in between the area in front of Target and

24 the area in front of Costco -- and you said the carts jump

25 the curb, that people have to physically make it. What

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1 happens to the carts once they get over? Like, did you take

2 a cart to your car and --

3 MR. GROSSMAN: Well, one question at a time. What

4 happens to the carts after they make it over the curb?

5 MS. DUCKETT: Yes.

6 THE WITNESS: Well, there are carts, places to

7 leave your cart --

8 BY MS. DUCKETT:

9 Q Cart return.

10 A -- for Target as well. So there are cart stands

11 there for them to be left. They're not Costco's, but there

12 are cart stands, yes, but people jump the curb with their

13 carts, which means they look to come between the cars the

14 rest of the way to their car unless, like I do, I walk all

15 the way down to the main road and walk down the main road

16 because I don't want to scratch a car with my cart, because

17 they're so wide.

18 Q So when you took the cart, you returned it to --

19 is there a difference in the cart returns? Like, does one

20 say Target and one say Costco?

21 A I'm not sure. There are no signs that I'm aware

22 of that say that's Target's parking lot. It makes sense

23 that it was originally -- Target is on that end, but it does

24 not say parking for Target only.

25 Q Thank you.

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1 MR. GROSSMAN: All right.
2 MS. ADELMAN: Mr. Grossman, may I change my mind
3 and have the Coalition ask a question?
4 MR. GROSSMAN: Certainly, Mrs. Adelman.
5 BY MS. ADELMAN:
6 Q Is it your experience, once a person has
7 negotiated the parking lot, after they're with their
8 purchases from Costco, and unloaded their purchases into
9 their car, first, my first question is, is there adequate
10 space to unload your purchases?
11 A Well, my experience is, in the crowded days,
12 there's a lot of cars waiting and, you know -- so there's
13 cars passing, and so it is a problem, as in lots of parking
14 lots, to, to do that. Because the traffic, there were so
15 many people trying to get their space close to the Costco, I
16 find it concerning while you're trying to unload the carts.
17 Q Yes.
18 A My other concern is people, just not the fault of
19 Costco, leave their carts without putting them where they
20 belong. So it adds additional problems to an already
21 crowded parking lot.
22 Q Thank you for that. That was my second question.
23 Do people return their carts to the place they should or
24 just leave them?
25 A No. There are places, but people don't do it.

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1 Q Yes. So it's an added -- I'm testifying, aren't
2 I?
3 MR. GROSSMAN: It's all right. It's actually
4 cross-examination. So you're allowed to lead the witness.
5 MR. SILVERMAN: You're allowed to ask leading
6 questions.
7 MS. ADELMAN: Oh, I am? Oh.
8 BY MS. ADELMAN:
9 Q So those carts become yet another obstacle in
10 negotiating the parking lot?
11 A Correct.
12 Q Thank you.
13 MR. GROSSMAN: All right. Ms. Harris, questions?
14 MS. HARRIS: Mr. Goecke.
15 MR. GOECKE: I have a few, actually.
16 MR. GROSSMAN: Mr. Goecke.
17 BY MR. GOECKE:
18 Q Ms. Houseworth, when you testified about parking
19 in what I guess we're now referring to as the Target section
20 of the parking lot, is that every time or just on one
21 occasion?
22 A No, most of the time I park in that back area.
23 Q Okay. Are you aware of any other parking for the
24 Costco warehouse?
25 A Yes. I had someone tell me they actually pushed

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1 their cart through the mall. So I know that you can
2 literally take your cart anywhere if you so choose to, but
3 yes, I know there's other parking areas.
4 Q You know that there's parking in a lot behind the
5 Costco?
6 A Yes, uh-huh.
7 MR. GROSSMAN: In the garage?
8 BY MR. GOECKE:
9 Q In the garage rather, sorry.
10 A Yes, I do.
11 Q Have you ever parked in the garage?
12 A No.
13 Q But that's an option for you if you wanted to park
14 there?
15 A Yes.
16 Q And then you wouldn't have to navigate the parking
17 lot that makes you so uncomfortable?
18 A (No audible response.)
19 Q Right?
20 MR. GROSSMAN: You have to answer yes or no.
21 THE WITNESS: Correct, sorry.
22 BY MR. GOECKE:
23 Q Is there a reason why you don't park in the
24 garage?
25 A Because the entrance that I had described is the

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1 most convenient one for me. If I come down Georgia Avenue
2 where, I can't remember the name of the gym is, that
3 entrance also doesn't have a -- let's see how to describe
4 it. Let's see. Is this -- this is Georgia, correct?
5 MS. CORDRY: Yes.
6 MS. ADELMAN: Yes.
7 MR. BRANN: That's Veirs Mill.
8 MS. CORDRY: Actually, that's Veirs Mill.
9 THE WITNESS: That's Veirs Mill. Okay.
10 MR. BRANN: Here's Georgia.
11 THE WITNESS: This is Georgia?
12 MS. ADELMAN: To the right.
13 BY MR. GOECKE:
14 Q To the right of your --
15 MR. GROSSMAN: What are you looking for,
16 Ms. Houseworth?
17 THE WITNESS: Well, the other way for me to come
18 is to come up Georgia, you make, you bear to your left to go
19 in, and there's a gym there, but the stop sign there isn't,
20 it's not a, it's not a dedicated stop; it's a merge. So
21 people are always confused there as to, to go around behind
22 the theaters. I'm sorry. I can't, I don't have a good -- I
23 can't quite see that, where it is. So I don't go in that
24 entrance because it's further for me to go, to come around
25 that way to go to that parking lot. So I tend to come in

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1 the back way, which is more convenient for me.
2 BY MR. GOECKE:
3 Q Okay. So, in other words, the method that you go
4 to the mall that you're testifying about today as being
5 problematic for you is actually more convenient than the
6 other option, as you see it?
7 A It is more convenient, and although I might find a
8 solution by parking in the garage, I'm not sure that
9 everyone else that is going to park in that area is not
10 going to have the same experience that I do. It's always
11 full. It's very -- always full.
12 Q How long have you known about the parking garage
13 being a parking option?
14 A I've seen it. I guess I've always known it was
15 there. Like I said, I'm speaking from my own experience,
16 but this parking lot is used by -- it's like 630 cars and
17 it's always full. So 629 other people park there and have
18 the same experience I do, or could have the same experience
19 that I do.
20 Q Yes. I'm assuming you go to shop at the mall on
21 different days of the week and at different times of the
22 day?
23 A Correct.
24 Q And so the amount of traffic that you described on
25 Valley Mill would vary, depending on what time of day or

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1 what day you were going to the mall?
2 A Correct.
3 Q Okay. So the averages or the figures you gave
4 before to Ms. Rosenfeld about how many cars were there, is
5 that just an estimate or is that a worst-case scenario or
6 where did you get those numbers from?
7 A Well, the math, from 15 and 42 is 630. I'd say at
8 least half the time I've been there, it's been fairly full.
9 I don't go on weekends either, typically, because I have
10 flexibility. Sometimes the parking lot might be two-thirds
11 full, but it's rarely -- that section is rarely empty.
12 Q Yes. Is it your testimony that the parking lot is
13 dangerous today already?
14 A I think so.
15 Q Yes. And so in your, in your opinion, any
16 additional cars would make a dangerous situation even more
17 so?
18 A Yes.
19 Q So, in other words, you would oppose any new
20 construction in the mall, not just the -- not just the
21 Costco gas station?
22 A Well, I couldn't say that. I think the difference
23 is that area will have more cars coming into it and that
24 particular area would be much more dangerous.
25 Q Yes, but say, for example, if they put a fast-food

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1 restaurant in that location. You would oppose that because
2 that would increase traffic as well?
3 A Probably, correct.
4 MS. ADELMAN: Mr. --
5 MS. ROSENFELD: No, we get to redirect.
6 MS. ADELMAN: Oh.
7 MS. ROSENFELD: Recross.
8 MR. GROSSMAN: Is somebody -- I didn't hear an
9 objection. I just heard a lot of --
10 MS. ROSENFELD: No, there's no objection --
11 MR. GROSSMAN: Okay. Okay.
12 MS. ROSENFELD: -- at this time.
13 BY MR. GOECKE:
14 Q I'm sorry. Your answer was probably, yes?
15 A Yes, probably.
16 Q Yes. Thank you. You referenced an article that
17 talked about an increase in accidents in parking lots in
18 Montgomery County. Do you know if that's due to an increase
19 in the existence of parking lots or whether there's more
20 accidents incurring in the parking lots that already exist?
21 A I don't know the answer to that.
22 Q Yes.
23 A I, I looked this up because I saw the Heads Up on
24 Parking Lots on the sides of buses, on the banners, with the
25 initiative to, to help this problem. So I looked up what

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1 that meant, and I found the article that talked about why
2 this initiative was put in place, was because there was
3 concern over the accidents and injuries in parking lots.
4 Q In your testimony you referred to the aspiration
5 to make downtown more walkable, but you would agree that the
6 mall is not part of the downtown area?
7 A Correct, yes.
8 Q Are you also aware that as part of the proposed
9 Costco gas station, Costco is willing to install a
10 pedestrian path along the ring road?
11 A No.
12 Q You are not aware of that?
13 A I'm not aware of that.
14 Q Would you agree that if you were to install a
15 pedestrian path along the ring road, that would make it more
16 pedestrian-friendly?
17 A I don't know how to answer that. I don't know
18 that I particularly would want to walk around the gas
19 station, you know, wouldn't want to make that a walking path
20 -- near a gas station with lots of cars idling.
21 Q Yes, I'm sorry. I mean, the pedestrian would not
22 go around the gas station itself. It would go around the
23 ring road where this sort of pinkish fuchsia-colored line
24 is. So you would agree that if somebody wanted to take a
25 walk around the mall, that would be a place they could do

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1 it?
2 A Yes.
3 Q Safely?
4 A Yes.
5 MR. GOECKE: No further questions.
6 MR. GROSSMAN: All right. Thank you very much,
7 Ms. Houseworth. I appreciate your --
8 MS. ROSENFELD: Mr. Grossman --
9 THE WITNESS: You're welcome.
10 MR. GROSSMAN: -- coming down here and --
11 MS. ROSENFELD: Mr. Grossman --
12 MR. GROSSMAN: Yes. Hold on one second.
13 MS. ROSENFELD: -- may I ask several follow-up
14 questions?
15 MR. GROSSMAN: No. This is, you had -- in fact,
16 three members of the opposition did cross-examination. So I
17 think that's more than sufficient. There's no recross on
18 cross. Also, thank you for using my laser pointer. That
19 allows me to further amortize the \$20 county expense over
20 another hearing date.
21 THE WITNESS: Okay.
22 MR. GROSSMAN: Appreciate you taking your time to
23 come down here and share your views with us.
24 THE WITNESS: Thank you.
25 MS. STATLAND: Does the county get a discount on

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1 that?
2 MR. GROSSMAN: Probably not.
3 MR. SILVERMAN: Paid extra. Paid extra.
4 MR. GROSSMAN: You know, Ms. Houseworth's
5 testimony made me think. I don't recall testimony
6 previously about the north-south curb that she referred to.
7 Am I just forgetting it? We've had 10 months of testimony
8 here. Or has it just not been mentioned? Anybody have --
9 MS. ADELMAN: I don't believe it's been mentioned
10 before.
11 MS. HARRIS: I don't think it's been mentioned
12 before.
13 MR. BRANN: It shows up very clearly on a closer
14 -- more close-up aerial photos. It was something that was
15 put in at Target's insistence.
16 MR. GROSSMAN: Yes. I just found it interesting
17 that --
18 MS. ADELMAN: But we have not.
19 MR. GROSSMAN: -- we've had 10 months of testimony
20 and nobody's mentioned it before. So you --
21 MR. BRANN: Yeah. It's not really been an issue.
22 MR. GROSSMAN: -- you have broken new ground here,
23 Ms. Houseworth. Thank you.
24 MS. HARRIS: Which is not easy to do.
25 MR. GOECKE: It's not easy.

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1 MR. GROSSMAN: Right. All right. Thank you.
2 THE WITNESS: Thank you very much.
3 MR. GROSSMAN: I guess we'll turn now to our
4 preliminary matters, and since our last session, there have
5 been the following significant filings and e-mail exchanges.
6 I have Exhibits 450 to 456. I know that something else was
7 filed I saw this morning, but we'll get to that in a minute,
8 I presume.
9 450 was an e-mail exchange between Mr. Silverman
10 and myself regarding the standards to apply to the case and
11 whether there's a remedy if standards change after the
12 special exception -- if a special exception is granted. 451
13 is an e-mail from Ms. Holland, Cindy Holland, attaching a
14 summary of her proposed testimony as Exhibit 451(a); Exhibit
15 452, e-mails regarding additional hearing dates; Exhibit
16 453, an e-mail from Ms. Rosenfeld, transmitting documents
17 regarding traffic and supplemental needs analysis; 454, a
18 notice of additional hearing dates on March 3 and March 11
19 agreed to by the parties; Exhibit 455, e-mail exchange with
20 Ms. Harris regarding documents for Mr. Guckert's rebuttal
21 testimony. 456 was a memorandum from Pat Harris, submitting
22 hard copies of exhibits for Mr. Guckert's rebuttal, and I
23 think that's it in terms of exhibits. As I say, I did
24 receive an additional filing. I saw an e-mail when I got in
25 this morning from Ms. Harris with something else from

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1 Mr. Guckert's testimony, but it's not yet exhibitized. So I
2 guess we'll deal with that later on if and when it's
3 introduced.
4 Witnesses scheduled for today: Ms. Houseworth,
5 who just testified, Ms. Statland, Mr. Sims, Ms. Holland is
6 on the agenda if she appears, Ms. Savage, and Mr. Guckert.
7 Is there anybody else who's on the agenda for today?
8 (No audible response.)
9 MR. GROSSMAN: Okay. For tomorrow, Dr. Jison is
10 supposed to return to complete her testimony. Is there
11 anybody else scheduled for tomorrow?
12 MS. ROSENFELD: Excuse me. I'm sorry. Did I hear
13 you say Mr. Guckert is expected to testify today?
14 MR. GROSSMAN: Yes.
15 MS. ADELMAN: Do you, are you --
16 MS. ROSENFELD: And when was that --
17 MS. ADELMAN: Yes.
18 MR. GROSSMAN: That was --
19 MS. ROSENFELD: -- identified?
20 MR. GROSSMAN: -- I guess you had left early last
21 session, and maybe it came up at that point.
22 MS. HARRIS: If I could, I think --
23 MR. GROSSMAN: Yes.
24 MS. HARRIS: -- the thought was, if the opponents
25 finish their case, Mr. Grossman wanted to make sure that we

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1 continued, and so he's on call. That's the way it was left.
2 MS. CORDRY: I think --
3 MR. GROSSMAN: Right. So we were trying to fill
4 up that spot for today to make sure we use the whole day.
5 And so Mr. Guckert was --
6 MS. ROSENFELD: And I --
7 MR. GROSSMAN: -- was scheduled, because
8 originally you had, you had pressed for having -- you said
9 you didn't see any reason why Mr. Guckert couldn't do his
10 rebuttal before the, before Dr. Jison because --
11 MS. ROSENFELD: That --
12 MR. GROSSMAN: -- one thing had nothing to do with
13 the other, and I --
14 MS. ROSENFELD: That is the case, but we did
15 expect to have documents 10 days in advance. Some of these
16 documents were delivered at 10 o'clock on Friday night and,
17 I understand, another one as late as this morning perhaps.
18 MR. GROSSMAN: There was a document as late as
19 this morning. What about that, Ms. Harris?
20 MS. ROSENFELD: That's --
21 MR. GROSSMAN: Hold on. Hold on one second.
22 MS. HARRIS: The most recent one was forwarded at
23 noon on Saturday, I believe, and that was a result of --
24 Mr. Guckert unfortunately was away all last week, and so we
25 only met with him on Saturday morning, and then we realized,

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1 oh, there was one other piece of, one other document that he
2 may be testifying to. That was submitted previously. The
3 documents were submitted, I believe it was Friday, Friday,
4 that he was going to be providing. We were working
5 furiously to prepare our case, and as I understood
6 Mr. Grossman during the last hearing, the 10-day rule is not
7 necessarily applicable to rebuttal. I mean, we were doing
8 the best we could to get it as soon as we could.
9 MR. GROSSMAN: All right.
10 MS. ROSENFELD: And as I recall those discussions,
11 we did agree that we would consider reducing the 10-day
12 rule, but to be quite candid, to receive them late on a
13 Friday and be expected to be prepared to cross-examine them,
14 the witness on Monday, this is not the only case I have and
15 I was not reading Mr. Guckert's materials over the weekend.
16 MR. GROSSMAN: Why isn't this your only case?
17 MS. ROSENFELD: It should be.
18 MR. GROSSMAN: It's getting to be my only case.
19 MS. ROSENFELD: It should be.
20 MS. CORDRY: I mean, one of the other concerns is
21 that there was no report with these documents. It was
22 simply a set of random documents. We have no idea what he
23 intends to testify to with respect to those documents. It
24 was also, we were trying to push, when we were still
25 expecting we would have documents, at one point, one of the

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1 reasons why some of the dates were scheduled is because that
2 would then be at least 10 days from --
3 MS. ROSENFELD: That's correct.
4 MS. CORDRY: -- such-and-such dates and so forth.
5 I, in looking at --
6 MS. ROSENFELD: It was out --
7 MR. GOECKE: -- in looking at the kind of
8 materials that were presented, I don't see anything in them
9 that suggests that they're somehow recent. I mean, most of
10 them seem to be things dealing with some observations in
11 December. I don't know why we would be waiting until, you
12 know, two days before or three days before a hearing to
13 present documents dealing with observations made two months
14 before.
15 MR. GROSSMAN: Ms. Harris.
16 MS. HARRIS: As I said before, it was a matter of
17 -- I mean, like the opponents, we've been working at,
18 furiously, based on what's coming up next, and we were only
19 able to focus on Mr. Guckert's rebuttal testimony last week,
20 and part of that was, most of it was being done while he --
21 virtually, because he was away. And it was only toward the
22 end of last week that we had determined which exhibits were
23 going to be used, and in fact, his office hadn't prepared
24 those exhibits until the end of last week, some of them.
25 MS. ROSENFELD: And --

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1 MS. HARRIS: So --
2 MR. GROSSMAN: Hold on one second, Ms. Rosenfeld.
3 MS. HARRIS: So we, some of them were prepared
4 earlier, but we weren't going to submit piecemeal until we
5 had everything and knew exactly what our rebuttal case was
6 going to focus on.
7 MR. GROSSMAN: All right. Yes, Ms. Rosenfeld.
8 MS. ROSENFELD: I don't have the specific dates in
9 mind, but I think it has been several months since our last
10 traffic testimony was put before the Hearing Examiner. It's
11 been -- Mr. Guckert is not responding to testimony or
12 exhibits that were submitted within the last days or weeks.
13 MR. GROSSMAN: Is Mr. Guckert's rebuttal, does it
14 address traffic in December during the holiday season as
15 well?
16 MS. HARRIS: I don't recall that it does,
17 specifically.
18 MS. CORDRY: I'm sorry. It is an hour-long video
19 taken on December 21st. It has purchase prices at the
20 Brandywine station, which came out at the Brandywine
21 station, purchase prices at the Brandywine station on
22 December 21st. I'm not sure why we're talking about
23 Brandywine when that has never appeared in this case before,
24 but it absolutely does deal with testimony during December.
25 MR. GROSSMAN: Okay.

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1 MS. HARRIS: The point of that document is simply
2 to show the level of cars exiting a station. We did it on
3 December 21st because we were trying to get as many cars --
4 we were trying to get a busy situation, but it wasn't
5 specific to December 21st, by any means.
6 MS. CORDRY: Well --
7 MR. GROSSMAN: No. It's the busyness aspect of it
8 that's --
9 MS. ROSENFELD: Mr. Grossman, I'd like to take the
10 exhibits in turn if we're going to be dealing with
11 Mr. Guckert's exhibits, but --
12 MR. GROSSMAN: Well, no, we're not, I'm not
13 deciding whether to ban any exhibits. That's not the issue.
14 MS. ROSENFELD: I understand.
15 MR. GROSSMAN: I just wanted to understand exactly
16 what Mr. Guckert's rebuttal was in terms of the holiday
17 season, because I know that the opposition has sought to put
18 in evidence regarding the holiday season and the impacts of
19 that. So I just wanted to hear that in that context.
20 MS. HARRIS: No, and I mean, the Brandywine
21 station does not, is a less busy station than what we
22 anticipate this one to be. So the reason we went at the
23 time we did was simply to try to make it match up as closely
24 as possible. But there are other, he will testify that
25 there's other characteristics of the Brandywine station that

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1 made that one -- there were some similarities that were the
2 reason that he chose that one to film.
3 MR. GROSSMAN: Okay.
4 MS. ROSENFELD: In which case I would question its
5 relevance at all because there clearly are other stations
6 that are much similar in size and characteristics.
7 MR. GROSSMAN: I'm not going to preclude them from
8 their rebuttal.
9 MS. CORDRY: Well --
10 MR. GROSSMAN: The question is a timing question
11 in terms of when they do their rebuttal, and I understand
12 that issue, but I did say that often rebuttal testimony,
13 there isn't any advanced notice. We are trying to give
14 advanced notice here for all testimony so that we get a fair
15 presentation and a fair ability to cross-examine and
16 respond --
17 MS. ADELMAN: Mr. Grossman --
18 MS. HARRIS: I mean, that's --
19 MR. GROSSMAN: Let me finish, please.
20 MS. ADELMAN: Oh.
21 MR. GROSSMAN: Given the technical aspects of this
22 case and the volume of the evidence. So that's what we're
23 trying to do. Mrs. Adelman, yes.
24 MS. ADELMAN: Mr. Grossman, Dr. Adelman was going
25 to cross-examine Mr. Guckert, and we were out of town as of

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1 last Thursday and returned home late last night, and he is,
2 has not had a chance to look at the documents that came in
3 while we were away.
4 MR. GROSSMAN: All right.
5 MS. HARRIS: As a practical matter, we had been
6 informed weeks ago now that I thought Donna Savage's
7 testimony was going to take a fair amount of time.
8 MS. CORDRY: It will. It will.
9 MS. HARRIS: So, as a practical matter, this may
10 be all moot anyway.
11 MR. GROSSMAN: This may be a moot point. All
12 right. Why don't we, since he's on call and not here, we
13 don't necessarily have to decide whether or not he'll appear
14 today. Perhaps what we can do is, you know, have him on one
15 of the other dates. So let's see how it proceeds today.
16 All right. Today also was supposed to be parties'
17 submissions of agreed and unagreed conditions and objections
18 to exhibits.
19 MS. HARRIS: And we have copies of our -- oh, we
20 have copies of the conditions that we'll circulate, and then
21 I can provide electronic copies later.
22 MR. GROSSMAN: All right. When you say the
23 conditions you'll circulate --
24 MS. HARRIS: Proposed.
25 MR. GROSSMAN: -- are these the agreed-upon

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1 conditions with the other side?
2 MS. HARRIS: No.
3 MR. GROSSMAN: Oh.
4 MS. HARRIS: As I had understood, you wanted us to
5 first circulate --
6 MR. GROSSMAN: No. Actually, I wanted you to
7 contact each other --
8 MS. HARRIS: Okay.
9 MR. GROSSMAN: -- and see what you all agreed to,
10 and then you would submit jointly a set of agreed-upon
11 conditions, should the special exception be approved by the
12 Board of Appeals, and then additional conditions that either
13 side might wish, in that event, that are not agreed to. Why
14 am I getting a blank --
15 MS. ROSENFELD: It's fair to say that has not
16 happened.
17 MR. GROSSMAN: -- expression from Ms. Rosenfeld?
18 MS. ROSENFELD: Because Ms. Rosenfeld was under
19 the impression that this was going to be happening at a
20 later stage. I didn't realize that today was the day, and
21 we can certainly work with the applicant and coordinate
22 among ourselves and provide something to you within the next
23 10 days or so.
24 MR. GROSSMAN: Maybe you weren't in the room when
25 that was, when the date was set but that was the date that

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1 -- today was the date that was set for that and also to
2 discuss objections, or to have parties' submissions of
3 objections to exhibits.
4 MS. ROSENFELD: I would ask -- well, if today
5 is --
6 MR. GROSSMAN: Well, obviously, neither side has
7 apparently done that. So --
8 MS. ROSENFELD: Right. Right.
9 MS. CORDRY: How about --
10 MS. HARRIS: Well, we've, right, we did the first
11 step, but we haven't coordinated with the opponents. So we
12 can certainly share with them our list and then have a
13 discussion.
14 MR. GROSSMAN: All right. Let's do that, and at
15 the March 3 --
16 MS. ROSENFELD: Perhaps we could set --
17 MR. GROSSMAN: -- at the March 3 proceeding, we
18 can go over it, but I'd obviously like to see it in advance
19 of the March 3 proceeding, or maybe at this point it'd be
20 better to do it at the March 11 one. If you submit them,
21 submit your jointly agreed ones on March 3 so I have a
22 chance to look them over and any things that you don't, or
23 that you haven't agreed to. So the written submissions by
24 the March 3 hearing date and then we'll discuss them all at
25 March 11.

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1 MS. HARRIS: And just to be clear, so it should be
2 those that are agreed upon, then the opponents' suggested
3 conditions and applicant's suggested conditions?
4 MR. GROSSMAN: Right.
5 MS. HARRIS: Okay.
6 MR. GROSSMAN: Right. And the idea, we recognize
7 that the opposition in submitting conditions is not agreeing
8 to the special exception, but this is in case the Board of
9 Appeals decides that they will grant the special exception.
10 All right. And, once again, also the objections to any
11 exhibits, if there are objections. We often are relatively
12 forgiving in terms of exhibits. We generally admit almost
13 all exhibits and then treat the other questions relating to
14 them as going to the weight of the exhibit, but we certainly
15 listen to and rule on any objections there may be to
16 exhibits. So --
17 MS. ROSENFELD: When would you like those
18 objections?
19 MR. GROSSMAN: Same thing, March 3 so that we can
20 discuss any at the March 11 proceeding.
21 MS. ROSENFELD: Okay.
22 MR. GROSSMAN: And because of the nature of
23 objections, nothing prevents you folks from talking to each
24 other about them, but I don't require that you discuss your
25 objections in advance, but if you wish to work out a set of

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1 agreed exhibits, that would be even nicer, but you don't
2 have to. I --
3 MS. DUCKETT: I have a question.
4 MR. GROSSMAN: Yes, Ms. Duckett.
5 MS. DUCKETT: I came late to the last hearing, and
6 you had been discussing in the beginning closing arguments,
7 the written closing arguments.
8 MR. GROSSMAN: Right.
9 MS. DUCKETT: When are they due?
10 MR. GROSSMAN: Okay. I think what we agreed to
11 was that the applicant's brief would be due 30 days after
12 the final hearing date, Opposition brief due 20 days
13 thereafter, and a reply brief due 10 days thereafter. I
14 think that was the agreed-upon time element. And as far as
15 oral closing arguments, which have been requested, we would
16 set those for 10 days or so thereafter.
17 MS. DUCKETT: Okay.
18 MS. SAVAGE: These are all calendar days, not work
19 days?
20 MR. GROSSMAN: These are all calendar days. And I
21 think that in view, in light of the fact that I haven't put
22 a page limit on briefs, although I think it would be smart
23 if you self-limit yourselves, that 40 minutes to a side
24 would be sufficient for argument, for the oral argument.
25 MS. HARRIS: And just to be clear, when you say 40

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1 minute per side --
2 MR. GROSSMAN: That is, the applicant will have 40
3 minutes and the opposition will have 40 minutes, similar to
4 what the Council does when it has oral arguments on zoning
5 matters.
6 MR. SILVERMAN: The opposition is one or the --
7 MR. GROSSMAN: Yes, the opposition is one. It's
8 40 minutes to a side. And, also, I should announce here
9 that the additional hearing dates we have, we have March 3,
10 2014, and March 11, 2014, here in the second floor hearing
11 room of the Council Office Building at 9:30 a.m. And I
12 announce it here in the public hearing because, due to the
13 nature of the snowstorms, et cetera, the notice didn't get
14 out 15 days in advance of the March 3 hearing date. So the
15 statute provides that if we announce it at the public
16 hearing, that is sufficient. We did, we have been sending
17 out formal notices, even though we can just announce it at
18 the public hearing, just to make sure the community gets as
19 wide -- we get as wide a knowledge in the community as
20 possible.
21 MS. HARRIS: Mr. Grossman, if I could --
22 MR. GROSSMAN: Yes.
23 MS. HARRIS: -- go back just for one moment to the
24 oral argument discussion.
25 MR. GROSSMAN: Yes.

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1 MS. HARRIS: As does the Council, I just wanted to
2 confirm that the structure of the oral argument, the
3 applicant could in fact reserve a little bit of time for
4 rebuttal?
5 MR. GROSSMAN: That's correct.
6 MS. HARRIS: Okay. Thank you.
7 MR. GROSSMAN: Okay. Of course, they have a
8 better timing system than -- they have actual timers.
9 Somebody will have to track. Maybe I'll have a human timer
10 here or something, hadn't thought about that.
11 Okay. I also want to mention that something's
12 been brought to my attention, and since it's been brought to
13 my attention and it pertains to issues in this case, I want
14 to bring it to your attention. There was a House bill
15 introduced in the Maryland legislature, House Bill 1383,
16 introduced on February 12, 2014, which would require setback
17 certifications of 1,000 feet from schools, residences,
18 playgrounds, recreation areas, and so on, from large gas
19 stations or what's been defined as large gas stations. So I
20 bring it to your attention.
21 I'm going to mark it as an exhibit because it's
22 conceivable that I will drop a footnote, mentioning its
23 existence. Obviously, if it's not passed, it has no legal
24 impact on anything I would do, but since it came to my
25 attention, I did want to mention that it came to my

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1 attention. And in case anybody has anything to say about
2 it, I'm mentioning it now, and I'll give it an exhibit
3 number.
4 MS. ADELMAN: Mr. Grossman --
5 MS. HARRIS: Mr. Grossman --
6 MR. GROSSMAN: Hold on one second.
7 MR. GOECKE: In stereo.
8 MR. GROSSMAN: Let me give it an exhibit number
9 before I --
10 MS. HARRIS: You're probably going to say what I'm
11 going to say.
12 MS. ADELMAN: We're going to say the same thing;
13 so I'm going to say it since it's my bill.
14 MS. HARRIS: That's fine.
15 MR. GROSSMAN: All right. So this will be Exhibit
16 457.
17 MS. HARRIS: I defer to the author.
18 MR. GROSSMAN: That's Maryland House --
19 MS. ADELMAN: She does. Thank you.
20 MS. HARRIS: My pleasure.
21 MR. GROSSMAN: -- Bill 1383 regarding setbacks for
22 large gas stations. Okay.
23 (Exhibit No. 457 was marked
24 for identification.)
25 MS. ADELMAN: Mr. Grossman --

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1 MR. GROSSMAN: Mrs. Adelman.
2 MS. ADELMAN: -- and we also, I also submitted a
3 bill into the Senate and that's Senate Bill 631, and it's
4 the, it's essentially the same bill as the House bill.
5 MR. GROSSMAN: When you say you submitted it, has
6 somebody introduced it in the Senate?
7 MS. ADELMAN: Yes. It's introduced by Senator
8 Madaleno.
9 MR. GROSSMAN: Okay. And when was that
10 introduced?
11 MS. ADELMAN: When was it introduced? I don't
12 think I can answer that. The hearing in the finance
13 committee will be this coming Thursday, the 27th, but --
14 MR. GROSSMAN: Okay.
15 MS. ADELMAN: -- perhaps around the 12th of
16 February.
17 MR. GROSSMAN: All right. All right. Just so the
18 record is complete, would you provide us with a copy of that
19 bill as well?
20 MS. ADELMAN: Yes --
21 MR. GROSSMAN: Okay.
22 MS. ADELMAN: -- be glad to.
23 MR. GROSSMAN: All right. Anybody else want to be
24 heard on this? Ms. Harris.
25 MS. HARRIS: Ms. Adelman said exactly what I was

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1 going to say --
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: -- except I didn't know --
4 MR. GROSSMAN: Nobody told me about that yet.
5 Anyway, I like to -- as I said, it has no legal effect on
6 these proceedings unless they, the legislature adopts it,
7 but I did want to bring to the parties' attention something
8 that came to my attention that relates to matters before me.
9 Okay.
10 MR. GOECKE: Mr. Grossman, if I may, one other
11 comment on exhibits.
12 MR. GROSSMAN: Yes.
13 MR. GOECKE: On Friday evening I e-mailed you
14 Mr. Sullivan's rebuttal report. I'm not, that may not --
15 you may not have seen that yet, but you just haven't
16 commented on it. I just want to make sure that if you
17 haven't seen it, to --
18 MR. GROSSMAN: I saw that I got an e-mail related
19 to --
20 MR. GOECKE: Good.
21 MR. GROSSMAN: -- Mr. Sullivan's rebuttal
22 evidence. I haven't actually seen it yet. So --
23 MR. GOECKE: That's fine, and I've got hard
24 copies --
25 MR. GROSSMAN: Right.

1 MR. GOECKE: -- for everyone here today as well.
 2 MR. GROSSMAN: Okay. All right. Now, let's turn
 3 to Ms. Rosenfeld's e-mail issues, Exhibit 453. 453(a) and
 4 (d) are, one is an overview and -- one is excerpts and one
 5 is a more complete copy of the Annual Energy Outlook Early
 6 Release Overview for 2014. Did you want to comment on that?
 7 We're taking them one at a time. You had raised issues in
 8 your e-mail. So --

9 MS. ROSENFELD: Yes, and I do have copies for the
 10 parties here. We have comments on the review of the
 11 supplemental needs analysis that was provided by the staff.

12 MR. GROSSMAN: I know. I'm just going as the, as
 13 they were exhibitized, as 453(a) and (d), first of all, the
 14 Annual Energy Outlook. I'll get to your other submissions
 15 in a minute, but I was --

16 MS. ROSENFELD: Oh, okay.

17 MR. GROSSMAN: -- going to take them one at a
 18 time --

19 MS. ROSENFELD: Okay. Sure.

20 MR. GROSSMAN: -- just going by the exhibit
 21 numbers.

22 MS. ROSENFELD: 453(a), and which is 453(d)?

23 MR. GROSSMAN: (D) is the, was the --

24 MS. ROSENFELD: The full --

25 MR. GROSSMAN: -- the complete version of it, and

1 I think we probably already have it in the file. So --

2 MS. ROSENFELD: And were the excerpts exhibitized?

3 MS. CORDRY: They were actually -- excerpts were
 4 453(a).

5 MR. GROSSMAN: Yes.

6 MS. CORDRY: The complete report was 453(d).

7 MS. ROSENFELD: Got it.

8 MR. GROSSMAN: Right. Yes, and we have the whole
 9 thing in the file already.

10 MS. ROSENFELD: Okay. And, Pat and Michael, do
 11 you need copies?

12 MR. GOECKE: Sure. Thank you.

13 MS. ROSENFELD: And my e-mail speaks for itself.
 14 We were introducing this as supplemental analysis.

15 Ms. Cordry is happy to be cross-examined on it.

16 MR. GROSSMAN: Well, no, no. Let's deal first
 17 with the, with 453(a) and (d), the --

18 MS. ROSENFELD: Okay.

19 MR. GROSSMAN: -- Annual Energy Outlook. Is there
 20 any objection to that?

21 MS. HARRIS: No --

22 MR. GROSSMAN: Okay.

23 MS. HARRIS: -- I think we previously noted --

24 MR. GROSSMAN: Okay.

25 MS. HARRIS: -- that it's an update.

1 MR. GROSSMAN: All right. So then let's turn to
 2 Exhibit 453(b), which are the supplemental traffic
 3 observations for Thanksgiving through Christmas. And this
 4 was a contention because you attempted to have, introduce
 5 this earlier and I had ruled that you already had numerous
 6 bites at the apple regarding traffic and that I didn't see a
 7 need for additional traffic evidence after testimony from,
 8 both from Dr. Adelman and Ms. Cordry. Ms. Cordry had taken
 9 the stand on seven different days. So you can make your
 10 pitch again, which is what you asked to do in your e-mail.

11 MS. ROSENFELD: Yes. These are firsthand
 12 observations of traffic conditions over the holiday season,
 13 and this is information that was, could not have been
 14 presented before the holiday season because the conditions
 15 were unique to that, that period of time. I'd like to have
 16 them introduced into the record. They're fairly
 17 straightforward. Ms. Cordry would be happy to be
 18 cross-examined on these should the other side care to
 19 cross-examine her, and I'd like to again submit that given
 20 the fact that both the science as well as the circulation
 21 issues in this case relate directly to traffic, that it's
 22 germane.

23 MR. GROSSMAN: I don't doubt that it's germane.
 24 It's just a question of -- at some point, there has to be a
 25 completion of testimony, and it's no doubt that it's

1 relevant to these proceedings; it's just a question of when
 2 do you stop gathering relevant information. At some point,
 3 your proceeding has to end and you go to the next stage.
 4 That's the point. All right. Ms. Harris.

5 MS. HARRIS: I was surprised to see this again. I
 6 thought we exhaustively discussed this on January 10th and
 7 echo what you said previously. I mean, there's a point at
 8 which the data collection stops, and they had numerous
 9 opportunities to provide information on --

10 MS. ADELMAN: She wasn't on the stand.

11 MS. HARRIS: -- on traffic information, and --

12 MR. GROSSMAN: They did, but I mean, in fairness,
 13 when you use the word opportunity, they did not have an
 14 opportunity to present this particular parting information
 15 because -- they attempted on January 10 --

16 MS. HARRIS: Yes.

17 MR. GROSSMAN: -- and that concerned the December
 18 season. So, in fairness, I wouldn't say they had the
 19 opportunity before. The question is, when do you end the
 20 information gathering, is the issue. What about the fact
 21 that Mr. Guckert in his proposed rebuttal is going to
 22 address at least some traffic situations in December?

23 MS. HARRIS: Again, it was not because it was --
 24 well, the point of that was simply to try to get a station,
 25 a comparable -- a station that's comparable for a number of

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1 the physical components and get a station where the level of
2 activity was going to be comparable to what we anticipate
3 here. There had been numerous discussions about what things
4 would look like in terms of cars exiting the station. And
5 so the purpose of that video is simply to show what exiting
6 a station that's doing a comparable amount of business, what
7 that dynamic looks like. It's irrelevant that it was in
8 December.

9 MR. GROSSMAN: I don't know that it's irrelevant.
10 I mean, I have to say that I'm somewhat moved to change my
11 mind about my earlier ruling by the fact that he's going to
12 be addressing heavy traffic, holiday traffic situations,
13 even if it's at another, a comparable station. So it does
14 make me think twice about that. If Mr. Guckert is going to
15 be testifying not today or tomorrow, that would give him
16 further opportunity to respond to this information.

17 MS. HARRIS: Yes.

18 MR. GROSSMAN: So I'm inclined to change my mind
19 on this issue given what you've submitted about it, in terms
20 of potential rebuttal from Mr. Guckert.

21 MS. HARRIS: If we had had a similar station that
22 had a busy level of activity in September, October, then I
23 don't know -- that's why I'm trying to make the point that
24 the fact that it happened over the holiday season is not
25 really relevant; it's just that we were trying to get a

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1 station that had a certain level of activity.

2 MR. GROSSMAN: Well, I know, but the level of
3 activity is the issue. That is that what they're trying to
4 show is that activity is going to be heavier here during the
5 holiday season. I'm going to presume that. I mean, I don't
6 know that it's going to be a mind-boggling revelation that
7 there may be additional traffic during the holiday season,
8 but I'm not sure, given the fact that Mr. Guckert's rebuttal
9 is going to address the idea of increased traffic and how a
10 station handles that, I don't see there's a great reason not
11 to allow them to put in this summary, and if you wish to
12 cross-examine Ms. Cordry further on it, they have offered
13 her up.

14 MS. HARRIS: Can we have five minutes? I want to
15 discuss something with Mr. Goecke.

16 MR. GROSSMAN: Certainly. Let's --

17 MS. HARRIS: Thank you.

18 MR. GROSSMAN: -- before we break, though, let me
19 just make sure there's, that we handle the other proposed
20 exhibits. We'll finish the preliminary matters, and we'll
21 come back to this one after the --

22 MS. HARRIS: Okay.

23 MR. GROSSMAN: -- after you break. Okay. Then
24 there was 453(c), which is Ms. Cordry's Traffic
25 Analysis/Intersection Comparison Spreadsheet, and my

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1 question, was this already exhibitized? I mean, it's been
2 submitted again as 453(c).

3 MS. CORDRY: I don't think it was -- it was one
4 of --

5 MS. ROSENFELD: I didn't see it.

6 MS. CORDRY: -- the things we had sent in, at the
7 end of December and it was discussed in January, but it was
8 not exhibitized at that point. This is a document. It does
9 not have any new information in it.

10 MR. GROSSMAN: Right.

11 MS. CORDRY: It is simply a --

12 MR. GROSSMAN: It's additional argument and
13 analysis.

14 MS. CORDRY: Right. It's simply a set of --
15 taking the existing numbers and just doing some mathematical
16 calculations on them.

17 MR. GROSSMAN: Are you saying there's no
18 additional factual information?

19 MS. CORDRY: I would say there is exactly one
20 additional fact in there which is that the background --
21 there's quite a few things that were background buildings
22 that were supposed to be, you know, that Mr. Guckert was
23 putting into his calculations, and the only fact in there is
24 that, is to say which of them were built and which were not
25 built at the time he took his supplemental transit analysis

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1 in April. I don't think there's any dispute about that;
2 that, for instance, the Safeway building was not yet built,
3 the apartments down at, just below Georgia and Veirs Mill
4 were not yet built. So that is the only statement in there
5 that is a fact that has not previously been introduced.

6 MR. GROSSMAN: All right. Ms. Harris.

7 MS. HARRIS: This one especially, because this
8 could have been produced when they were testifying about
9 traffic. There's no new, as Ms. Cordry said, there's no new
10 information on this. The issue -- seven times Ms. Cordry
11 has testified about traffic --

12 MR. GROSSMAN: Right.

13 MS. HARRIS: -- why wasn't this introduced at the
14 time?

15 MR. GROSSMAN: Well, here's the point, though:
16 Once again, if I treat this as just -- if there's no new
17 factual information, it's just an advance on what their
18 argument is going to be, their brief. Doesn't that fall
19 into that same category as, that we talked about before on
20 another submission of theirs, that if they're just
21 submitting some argument in advance, I treat it as argument?
22 That's all. I don't see how that's objectionable --

23 MS. HARRIS: Okay.

24 MR. GROSSMAN: -- if that's the case.

25 MS. CORDRY: If I could, the only thing I would

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1 say is it might be helpful to people reading it if I took
2 about 15 minutes just to walk people through what the
3 calculations are, but --
4 MR. GROSSMAN: I don't think that's necessary at
5 this point if it's just argument.
6 MS. HARRIS: I don't think that's necessary
7 either. We'll accept it.
8 MS. CORDRY: Okay.
9 MR. GROSSMAN: Okay. So we'll treat it as
10 argument and analysis as part of your submission. Okay.
11 And let's see. Then we're down to Exhibit 453(e), which are
12 comments on the review of the supplemental needs analysis by
13 staff and additional evidence by Ms. Cordry. All right. So
14 what did you want to say about that, Ms. Rosenfeld?
15 MS. ROSENFELD: This, I believe, falls in the
16 category, again, of supplemental argument -- again, an
17 advance on the arguments that we'll be making. I apologize.
18 I'm reaching for a copy here.
19 MR. GROSSMAN: I know there was one piece of
20 information I saw in there that I didn't -- that's factual.
21 That is that the new Shell station may be opening. Isn't
22 that evidentiary? But other than that, it seemed to be,
23 once again, in the form of argument and analysis, although
24 I'm not sure that the opening of the new Shell station
25 impacts us at all, but I'm just saying that that's a piece

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1 of evidence as opposed to argument --
2 MS. CORDRY: Yes.
3 MR. GROSSMAN: -- but the rest of 453(e) looks to
4 be just argumentative --
5 MS. CORDRY: Right.
6 MR. GROSSMAN: -- and analysis and analytical.
7 MS. CORDRY: Right. The Shell station probably is
8 a piece of new evidence. It is one that replaces one of the
9 stations that was in the original need analysis that had
10 shut down; now it's reopening. Take that --
11 MR. GROSSMAN: Is there any reason to, given
12 that --
13 MS. ROSENFELD: It mentions it as a fact. I don't
14 see that there's any quantitative analysis associated with
15 that.
16 MR. GROSSMAN: I understand. I'm just saying
17 that --
18 MS. ROSENFELD: Okay.
19 MR. GROSSMAN: -- I was characterizing the
20 document as essentially an argument and analysis.
21 MS. ROSENFELD: Right, and that's --
22 MR. GROSSMAN: It does have that one piece of
23 factual evidence, as I looked through it, that appears to be
24 evidentiary, although I'm not sure it's a piece of evidence
25 that anybody objects to coming in. Ms. Harris, do you want

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1 to --
2 MS. HARRIS: We have no objection on this. It's
3 advanced argument.
4 MR. GROSSMAN: Okay. Yes. All right. So we'll
5 treat that document as argument and analysis and submit it
6 in that light. Okay. Any other procedural matters before
7 we give you the five-minute break to cogitate? Any other
8 preliminary --
9 MS. ROSENFELD: Mr. Grossman, at what point --
10 MR. GROSSMAN: Yes.
11 MS. ROSENFELD: -- would you like us to take up
12 potential objections to some of the exhibits that
13 Mr. Guckert has provided? Would you like us to bring that
14 up as his testimony, during the course of his testimony or
15 as preliminary --
16 MR. GROSSMAN: What would you like to do,
17 Ms. Rosenfeld?
18 MS. ROSENFELD: I think I would prefer to do that
19 in the context of his testimony.
20 MR. GROSSMAN: All right. I think that's
21 reasonable. Okay. So we'll take a break until -- it's now
22 12 minutes till 11:00 -- until five to 11:00. Is that good?
23 MS. HARRIS: Thank you.
24 MR. GROSSMAN: Thank you.
25 (Whereupon, a brief recess was taken.)

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1 MR. GROSSMAN: Just as we were breaking,
2 Ms. Cordry handed me a revised version of Exhibit 453(c).
3 Ms. Cordry, what are the changes --
4 MS. CORDRY: Okay. Let me --
5 MR. GROSSMAN: -- for the record?
6 MS. CORDRY: A couple of formatting things. I
7 lined things up better so it was easier to read the column
8 titles over the columns. Let's see. I added a, in Exhibit,
9 where it says Exhibit 7 there, about halfway down the front
10 page --
11 MR. GROSSMAN: I'm turning to 453(c) that's in the
12 file.
13 MS. CORDRY: Right.
14 MR. GROSSMAN: I don't see any difference in the
15 alignment from what I have in the file already.
16 MS. CORDRY: Well, see where it says Peak Hour
17 there --
18 MR. GROSSMAN: Peak Hour.
19 MS. CORDRY: -- about three lines down or three or
20 four lines down?
21 MR. GROSSMAN: Exhibit 7, Peak and --
22 MS. CORDRY: No, no. Starting at the top --
23 MR. GROSSMAN: Yes. Oh, I see, Peak Hour. Okay.
24 MS. CORDRY: The 4:45 to 5:45.
25 MR. GROSSMAN: Yes.

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1 MS. CORDRY: Moved that over so it lines up with
2 the column, easier to see that.
3 MR. GROSSMAN: Oh, okay, that's been moved over.
4 MS. CORDRY: Okay. A little further down there
5 where it says Exhibit 7 --
6 MR. GROSSMAN: Yes.
7 MS. CORDRY: -- there was supposed to have been a
8 calculation there, which was the percent, and it's now
9 labeled as Percent Increase Over Existing. So the 2729
10 there, the calculation of how much that was over the Exhibit
11 3 number above there, the 2272, it's now a percentage
12 calculation. It says 120 percent.
13 MR. GROSSMAN: Oh, I see. You added the, you
14 added the Percent --
15 MS. CORDRY: Right.
16 MR. GROSSMAN: -- Increase Over Existing.
17 MS. CORDRY: Right.
18 MR. GROSSMAN: Okay. Any other changes in this
19 document?
20 MS. CORDRY: Let's see. In the text directly
21 below there, there's several lines of text, it says, starts
22 out with Thus.
23 MR. GROSSMAN: Yes, Thus.
24 MS. CORDRY: Okay. The very last line there is
25 added, just -- Note: The background is expected to add 20

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1 percent or more to three of the four intersections, which is
2 just a reference to those, that calculation above there.
3 MR. GROSSMAN: All right.
4 MS. CORDRY: Let's see.
5 MR. GROSSMAN: Any other changes?
6 MS. CORDRY: Yes. On the next page where it says
7 Actual Counts STA, that was meant to be referencing the fact
8 that these were counts that were being taken from the
9 supplemental traffic analysis, but it was kind of hard to
10 see that. So I put a new line in there that says --
11 MR. GROSSMAN: I still don't see where you're --
12 Actual Counts, okay.
13 MS. CORDRY: Okay. That's what it said
14 originally, Actual Counts STA --
15 MR. GROSSMAN: Yes.
16 MS. CORDRY: -- on the original one. What I've
17 now added is just a heading line there: Supplemental
18 Traffic Analysis Weekend Count Without the Station or Most
19 Background. I haven't changed any numbers. I just put a
20 heading on there that made it easier to break that out and
21 see it.
22 MR. GROSSMAN: Okay.
23 MS. CORDRY: Okay. All the other numbers stay the
24 same, everything there, nothing else on that page. On the
25 third page there, on the right-hand column there, the first

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1 heading says, Actual Exhibit 3; then below that it says,
2 Projected dash. I referenced Exhibit 10. It actually was
3 supposed to be Exhibit 7 with just the warehouse built.
4 MR. GROSSMAN: Okay.
5 MS. CORDRY: So I also corrected then under NB. I
6 took out the reference, even though the gas station was not
7 built. So it just says: Average and above projections,
8 even though other background projects not built yet.
9 MR. GROSSMAN: NB standing for nota bene?
10 MS. CORDRY: Indeed. Indeed.
11 MR. GROSSMAN: Okay.
12 MS. CORDRY: And the other paragraph there is
13 rewritten slightly, as well, just to make reference to the
14 fact that I was changing that, and I think all the rest of
15 that, I think, stays the same. I don't think I changed
16 anything else.
17 MR. GROSSMAN: You say rewritten.
18 MS. CORDRY: What it said originally was: So even
19 if warehouse use was a little higher in the first month, the
20 other factors would surely make up for any drop there.
21 Average is 15.7 percent higher. I tried to make that a
22 little clearer by saying: So even if warehouse use was a
23 little higher in the first month, the absence of the other
24 trips would have brought the volume down. Without them, it
25 would have been even higher. The 1494 shown with the actual

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1 counts of, if you see that, Actual Counts Adelman, 1494 is
2 115.7 percent of the 1291 projected.
3 MR. GROSSMAN: All right.
4 MS. CORDRY: Okay. And I don't think anything
5 else changed. Let me just double-check that on the last
6 page. Actually, I took out my fourth paragraph on the last
7 -- the fourth conclusion on the last page and changed that.
8 It's just a very generalized -- Absent a consideration of
9 actual volumes versus predictions and, used in a variety of
10 traffic assumptions, the emissions calculations are likely
11 to be understated. Further, the higher --
12 MR. GROSSMAN: What I'm really trying to make sure
13 I have here --
14 MS. CORDRY: Right. Right. Right.
15 MR. GROSSMAN: -- is that it just still is just
16 analytical.
17 MS. CORDRY: Right. Right.
18 MR. GROSSMAN: Okay.
19 MS. CORDRY: Right, no new facts or anything like
20 that. So --
21 MR. GROSSMAN: Okay. So if there's no objection,
22 I'll just make this the --
23 MS. CORDRY: Yes, if you would, please.
24 MR. GROSSMAN: -- Exhibit 453.
25 MR. GOECKE: That makes sense.

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1 MS. CORDRY: Correct. Okay.
2 MR. GROSSMAN: I mean, 453(c) is what I should
3 say.
4 MR. GOECKE: Correct.
5 MS. CORDRY: Correct.
6 MR. GROSSMAN: And we'll remove the old one from
7 the file.
8 MS. HARRIS: Mr. Grossman --
9 MR. GROSSMAN: Yes.
10 MS. HARRIS: -- not to -- we were under the
11 impression that this exhibit was not going to be admitted
12 based on the discussion on January 10th. Now that it is
13 being admitted, obviously we need --
14 MR. GROSSMAN: By this exhibit -- that's a
15 different exhibit.
16 MS. HARRIS: I'm sorry, 453(c).
17 MR. GROSSMAN: No. That's --
18 MS. HARRIS: The one we were just discussing.
19 MR. GROSSMAN: No. The one we were just
20 discussing is --
21 MS. CORDRY: Yes, this is 453(c) --
22 MR. GROSSMAN: Right.
23 MS. CORDRY: -- the traffic analysis, yes.
24 MR. GROSSMAN: No, but it's the additional
25 observations that was the question of what would be not

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1 admitted. The analysis, we were saying, is going to be
2 treated just as analysis.
3 MS. HARRIS: No, I know, but previously, when they
4 tried to submit this on January 10th, it was --
5 MR. GROSSMAN: This being 453(c)?
6 MS. HARRIS: 453(c) -- it was determined that it
7 was not admissible, and now we've just decided this morning
8 that this is going to be admitted to evidence.
9 MR. GROSSMAN: No, I think that -- I think we're
10 talking about a different document.
11 MS. HARRIS: No. This is the same document.
12 MR. GROSSMAN: You may be right. I just want to
13 make sure I'm right. Ms. Cordry had supplemental traffic
14 observations, 453(b), as in boy.
15 MR. GOECKE: Yes.
16 MS. CORDRY: Correct.
17 MR. GROSSMAN: That was the question that I had
18 ruled on on January 10, that she was not allowed to
19 introduce additional observations regarding the Christmas,
20 the holiday season shopping, because at some point we had to
21 terminate the introduction of observations. 453(c) is
22 analytical, not observational. Now, are you saying that
23 453(c) refers to information contained in 453(b)? Is that
24 what you're saying, or --
25 MS. HARRIS: No. What I'm saying is back on

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1 January 10th there were four documents that they were trying
2 to submit for the record. We objected to it, and then we
3 went piecemeal by piecemeal --
4 MR. GROSSMAN: Okay.
5 MS. HARRIS: -- in discussing them. One was the
6 Energy Outlook, and we said that's fine, that's updated
7 analysis, but the two with which we did have an issue were
8 453(c) --
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: -- and the, and 453(b). And so we
11 left the January 10th hearing under the impression that
12 those were not coming in.
13 MR. GROSSMAN: Okay.
14 MS. HARRIS: Now, as of this morning, we are
15 learning that 453(c) is coming in. And so the point I
16 wanted to make is now I feel that, assuming Mr. Guckert is
17 going to go either this afternoon or tomorrow, I want him to
18 be able to evaluate this because he may, we may have to put
19 -- have him rebut some of the information in here.
20 MR. GROSSMAN: Okay. Well, my thinking is that we
21 won't have him until March 3.
22 MS. HARRIS: I need to find out if he's available
23 on March 3.
24 MR. GROSSMAN: Okay.
25 MS. ADELMAN: You won't have Mr. Guckert? Excuse

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1 me.
2 MR. GROSSMAN: Right. I was just going to try to
3 give the other side a little bit more time to look at the
4 documents and give him more time to consider 453(b) and (c).
5 So that was the --
6 MS. ROSENFELD: And thank you.
7 MS. HARRIS: So then that would mean --
8 MS. ADELMAN: Thank you.
9 MS. HARRIS: Okay. And so then just to be clear,
10 on March 3rd and March 11th, it would be Wes Guckert and
11 Mr. Sullivan?
12 MR. GROSSMAN: Right.
13 MS. HARRIS: Okay.
14 MS. CORDRY: Right.
15 MR. GROSSMAN: I mean, that's the -- plus the
16 other things we talked about we're going to be doing on
17 those days.
18 MS. ADELMAN: Right.
19 MS. HARRIS: Okay.
20 MR. GROSSMAN: That was my thinking, to try to
21 handle the concerns that have been raised about -- from both
22 sides, in effect.
23 MS. HARRIS: Okay. I just want to make sure that
24 Mr. Guckert --
25 MR. GOECKE: If not, he can go March 11th or

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1 March --
2 MS. HARRIS: Yes -- that he's available either the
3 3rd or the 11th.
4 MR. GROSSMAN: Okay.
5 MS. ROSENFELD: Mr. Grossman, thank you.
6 MS. ADELMAN: Thank you, Mr. Grossman.
7 MR. GROSSMAN: Okay. So anyway --
8 MS. ADELMAN: Well, a point of clarification, will
9 you let us know if he's --
10 MS. HARRIS: We're checking right now, actually.
11 MS. ADELMAN: Oh, okay. All right.
12 MS. HARRIS: So then the only other discussion is
13 453(b).
14 MR. GROSSMAN: Right, and those are the additional
15 observations.
16 MS. HARRIS: Observations. And upon further
17 reflection, as we understood, these are coming in because of
18 the information that -- the videotape that was taken during
19 the holiday break. Upon further reflection, we'd be willing
20 to withdraw that videotape as a rebuttal, a piece of
21 rebuttal evidence, and therefore it negates the need for
22 453(b) coming into the record.
23 MS. CORDRY: Well, that's not the only piece of
24 evidence about that station in December either.
25 MS. ROSENFELD: That's right.

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1 MS. CORDRY: And the other point is, I mean, those
2 are valid separate observations. I would also say that, as
3 a matter of usefulness to you, with respect to all of these
4 discussions we had about the garage, I did actually take
5 more time in November and December to see what the garage
6 would be like at the heaviest period when people were
7 presumably using it more and whether that was a workable,
8 usable solution to that. So I think there are some
9 observations in there that are not simply duplicates of what
10 was there before.
11 MR. GROSSMAN: As I said before, I'm not saying
12 that this additional information is not relevant. It's just
13 a question of when you cut off the information gathering,
14 because unlike government in general, hearings, judicial or
15 quasi-judicial, have to have ending points. And so you do
16 have to have some point at which you say here's where it
17 stops and we have to consider what's in the record now, and
18 actually, that was the question, not whether it was
19 relevant, because I agree with you that the question of
20 traffic as it exists in the holidays is a relevant piece of
21 information.
22 MS. ROSENFELD: And with Mr. Guckert reappearing,
23 he can certainly rebut the observations that have been
24 provided.
25 MR. SILVERMAN: Sure.

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1 MR. GROSSMAN: Let's see if, when we find out if
2 Mr. -- I'm going to put this on the back burner for a few
3 minutes and find out if he's available on March 3.
4 MS. HARRIS: We're waiting.
5 MR. GROSSMAN: Okay. So let's move to something
6 else then.
7 MS. ROSENFELD: Mr. Grossman, are we finished with
8 preliminaries?
9 MR. GROSSMAN: I hope so.
10 MS. ROSENFELD: I'm here this morning for the
11 preliminary matters, and Ms. Cordry will be handling today's
12 witnesses --
13 MR. GROSSMAN: All right.
14 MS. ROSENFELD: -- from here on out. If there are
15 other preliminary discussions relating to witnesses or
16 timing or exhibits that may come up at the end of the day, I
17 would ask that you carry them over until tomorrow morning so
18 I could be present for them.
19 MR. GROSSMAN: Well, we'll try to the extent we
20 can. I mean, I can't, I mean --
21 MS. ROSENFELD: No, I understand.
22 MR. GROSSMAN: -- if we have to make decisions
23 about --
24 MS. ROSENFELD: I'm not talking about decisions
25 about the witnesses that are -- but if you're going to be

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1 talking about new scheduling dates or witness order --
2 MR. GROSSMAN: Right.
3 MS. ROSENFELD: -- I'd appreciate it if I could be
4 here. I will be here tomorrow.
5 MR. GROSSMAN: Okay. And we'll also ask
6 Ms. Cordry to keep you posted about anything that --
7 MS. ROSENFELD: Certainly.
8 MR. GROSSMAN: -- that transpires. And,
9 Ms. Harris, let me know, as soon as we hear back from
10 Mr. Guckert, about March 3.
11 MS. HARRIS: We will.
12 MR. GROSSMAN: Okay.
13 MS. ROSENFELD: Thank you, Mr. Grossman.
14 MR. GROSSMAN: And we'll miss you, Ms. Rosenfeld.
15 MS. ROSENFELD: Thank you. I'll miss you all as
16 well.
17 MR. GROSSMAN: All right. So then are we ready to
18 turn to the next community witness?
19 MS. ADELMAN: Yes, sir.
20 MS. CORDRY: Yes.
21 MR. GROSSMAN: Okay. And I think Ms. Statland was
22 listed as our next witness. Everybody agreeable? Are we
23 ready to go forward?
24 MS. CORDRY: Yes.
25 MR. GROSSMAN: Ms. Statland, would you mind taking

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1 the seat of honor, please?
2 MS. STATLAND: This one?
3 MR. GROSSMAN: Yes, please.
4 MS. STATLAND: Okay. Okay.
5 MR. GROSSMAN: Would you state your full name and
6 address, please?
7 MS. STATLAND: My name is Ann, A-N-N, Statland,
8 S-T-A-T-L-A-N-D. I'm at 3500 Saul, S-A-U-L, Road in
9 Kensington, Maryland.
10 MR. GROSSMAN: Okay. There's no e on Ann?
11 MS. STATLAND: No.
12 MR. GROSSMAN: Okay. All right. Would you raise
13 your right hand, please?
14 (Witness sworn.)
15 MR. GROSSMAN: All right. You may proceed.
16 DIRECT EXAMINATION
17 THE WITNESS: Okay. Good morning.
18 MR. GROSSMAN: Good morning.
19 THE WITNESS: Thank you for giving me the
20 opportunity to speak today. I am offering these remarks,
21 excuse me, not as an environmental expert or urban planner
22 or any other type of expert. I am offering these remarks
23 strictly as a concerned citizen and resident of Montgomery
24 County. I have no hidden or overt agenda or ax to grind. I
25 will not quote facts, figures, and statistics and will take

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1 up as little of your time as possible.
2 As a resident of Kensington, I am well aware of
3 the Costco gas station issue at Westfield Wheaton Plaza.
4 The more I observe and the more I hear, the more sympathetic
5 I am to the opposition's point of view toward the gas
6 station.
7 I've lived in Montgomery County since 1977, first
8 Bethesda, then Layhill Village, and now Kensington. I've
9 shopped at Westfield Montgomery Mall and Westfield Wheaton
10 Plaza for years and years, and I've shopped at Costco
11 Chantilly, Costco Pentagon City, Costco Columbia, Costco
12 Beltsville, Costco Gaithersburg, Costco Anne Arundel Mall,
13 and Costco Wheaton. I've noticed that Chantilly, Columbia,
14 Beltsville, and Anne Arundel Mall all have gas stations that
15 do not adjoin a residential area. I must admit -- and, of
16 course, it's too late now -- I am puzzled that an agreement
17 to put the gas pumps closer to Veirs Mill Road was never
18 reached. If it had been, we would not be here now.
19 Since I've lived in Montgomery County, I have
20 observed the County Council and County Executives enact
21 legislation and regulations affecting the quality of life of
22 residents, including but not limited to trans fat, calories
23 on menus, the bag tax, smoking regulations, noise control,
24 automobile maintenance, the gas tax, the booze tax, and
25 certainly the rain tax.

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1 Surely you are aware of the fact that Montgomery
2 County's 2012 RainScapes program is required by state and
3 federal law. The National Pollutant Discharge Elimination
4 System prohibits illicit flows into the stormwater drain
5 system as a protection against residential and commercial
6 water runoff that will eventually reach the Chesapeake Bay.
7 It is intended to protect Silver Creek and Sligo Creek,
8 among others. Illicit runoff from Westfield's Wheaton Plaza
9 has been and still is an ongoing issue.
10 I am completely at a loss as to how in the world
11 the Council would support gas pumps in a residential area
12 when it is such an obvious quality-of-life issue. What
13 happened to compassion for children and adults and the
14 possibility that the gas fumes could contribute to chronic
15 respiratory issues and those issues such as asthma, COPD,
16 heart ailments, diabetes, and even cancer?
17 Costco has millions and millions of dollars to
18 spend, arguing against the opposition, whereas every dime
19 spent fighting this issue has been donated. This is
20 certainly a David and Goliath situation, David being the
21 Coalition and Goliath being Costco. Wouldn't it be nice if
22 David could win again?
23 Incidentally, you may remember that on December
24 the 28th, 2013, there was a fire at one of the restaurants
25 in Westfield Wheaton Plaza and the entire mall was evacuated

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1 so as not to put customers at risk. I was told that the
2 complete evacuation was part of a disaster management plan.
3 I've never heard that mentioned by anyone associated with
4 Costco, and I wonder if they have such a plan and, if not,
5 why not. What would happen if a fire, such as the recent
6 fire, reached the gas pumps? That could easily be a total
7 disaster.
8 In my opinion, as long as there are any unresolved
9 issues, whether they be environmental, health, or traffic,
10 the members-only gas station proposed by Costco will not
11 serve the nearby residents well. Perhaps some sort of
12 compromise can be reached but only if Goliath is willing to
13 come to the table and be reasonable.
14 MR. GROSSMAN: All right. Cross-examination,
15 Mrs. Adelman?
16 MS. ADELMAN: No, I have no questions.
17 MR. GROSSMAN: All right. From KHCA, any
18 questions?
19 CROSS-EXAMINATION
20 BY MS. CORDRY:
21 Q Can you tell us again which of the stations that
22 you had, Costcos that you'd visited had gas stations? You
23 said Chantilly, Columbia.
24 A Chantilly has one. I haven't been to Chantilly in
25 years, but I've been to Chantilly, Columbia, Beltsville.

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1 Pentagon City does not have one. Let me -- Anne Arundel
2 Mall. Chantilly has one. Anne Arundel Mall has one.
3 Beltsville has one. That's the only ones I've been to.
4 Q Okay. And I think you were distinguishing those
5 as they were ones that they -- they were not close to homes?
6 A They are not close to homes at all.
7 Q And have you observed traffic in relationship to
8 those stations, cars trying to access the stations and/or
9 leave the stations?
10 A Yeah. They don't seem to have too much
11 difficulty.
12 Q In those particular ones, yes?
13 A Uh-huh.
14 Q Okay.
15 MS. CORDRY: Okay. I don't have any other
16 questions.
17 MR. GROSSMAN: Kensington View, any questions?
18 MS. DUCKETT: No, sir.
19 MR. GROSSMAN: All right. Mr. Goecke.
20 MR. GOECKE: Thank you, Mr. Grossman.
21 BY MR. GOECKE:
22 Q Ms. Statland, is it your contention or your
23 concern that the Costco gas station will impair the quality
24 of life for nearby residents?
25 A It is.

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1 Q And that's for health reasons?
2 A It could be for any number of reasons. It could
3 be health reasons. It could be the traffic, the increased
4 congestion in the area.
5 Q Yes. And you said it's located --
6 A Because there's residents on two sides.
7 Q Well, you realize that the gas station will be in
8 the mall parcel itself, that it's not in a residential
9 neighborhood?
10 A No, I understand it's not in a residential
11 neighborhood, but it's surrounded by residents on two sides.
12 Q Yes. And you're aware that there's a barrier
13 between where the gas station would go and where the
14 residences are?
15 A I am, yeah, be as it is, be as it may.
16 Q What does that mean?
17 A I just don't know how effective it would be.
18 Q At what?
19 A I don't know how effective the barrier would be.
20 Q Okay. Well, are you aware that people from the
21 residential homes will not be able to see the gas station?
22 A That might be true. No, I wasn't aware of that.
23 Q Okay.
24 A That might be true.
25 Q Would that change your impression about how it

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1 might impede the quality of life --
2 A No.
3 Q -- if those who live in the residential can't even
4 see it?
5 A No.
6 Q Why not?
7 A Because it's still there. The fumes are still
8 there, the -- it just, it would not affect my opinion at
9 all.
10 Q You talked about a lot of different Costco
11 warehouses and also warehouses that have a gas station
12 adjacent. Are you familiar with the Columbia gas station?
13 A No, I'm not.
14 Q Okay. What about Woodmore?
15 A No.
16 Q Okay. If I told you that there were residential
17 properties under construction near those facilities, what
18 would your response be?
19 A I have no response.
20 Q Yes.
21 A I'm not familiar with that at all.
22 Q Yes. So it's not your contention that there's no
23 other Costco gas stations near residential communities or
24 homes?
25 MS. CORDRY: Can you define what you mean by near?

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1 MR. GROSSMAN: Well, it's cross-examination. He
2 can ask that question. She testified that they were not
3 near residences. So he can certainly use the same term that
4 she used in her direct. Go ahead. Do you want to ask your
5 question again --
6 MR. GOECKE: Yes. I'm trying to remember it.
7 MR. GROSSMAN: -- because of that interruption?
8 BY MR. GOECKE:
9 Q It's not your contention that there are no Costco
10 gas stations anywhere that are near residential homes or
11 communities?
12 A No. No, because I don't -- I'm not familiar with
13 those other places at all.
14 Q And, in your opinion, what's a reasonable distance
15 between a gas station and a home -- between a gas station of
16 this size and a home?
17 A Well, never having measured, I'm just -- you might
18 be getting a little too technical for me here. I've just
19 never gotten to the measurements, but I don't know, 500
20 feet, 1,000 feet. That, to me, is reasonable.
21 Q Yes.
22 A That's what I've heard discussed. So that, to me,
23 is reasonable, but again, I'm not an, I'm not an expert at
24 all.
25 MR. GOECKE: I have no further questions. Thank

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1 to follow, but okay, and we'll have Mr. Guckert on March 11.
2 MS. ADELMAN: So the 25th will be a shorter day
3 then, most likely.
4 MS. CORDRY: Probably.
5 MS. ADELMAN: Yes.
6 MR. GOECKE: The 25th. Today is the 24th.
7 MR. GROSSMAN: That's tomorrow.
8 MS. ADELMAN: Yes, tomorrow.
9 MS. CORDRY: Yes.
10 MR. GOECKE: Yes.
11 MS. HARRIS: Sounds it.
12 MR. GROSSMAN: All right. Well, let's see where
13 we go now. Shall we turn to Mr. Sims?
14 MS. CORDRY: Yes.
15 MR. GROSSMAN: Mr. Sims, we invite you up to the
16 chair of honor, otherwise known as the hot seat. All right.
17 Mr. Sims, will you state your full name, please, and
18 address?
19 MR. SIMS: My name is Doug Sims. I live at 2900
20 Peregoy Drive, Kensington, Maryland.
21 MR. GROSSMAN: And Sims is spelled with two m's?
22 MR. SIMS: Just one m.
23 MR. GROSSMAN: One m?
24 MR. SIMS: Yes.
25 MR. GROSSMAN: Aha. That's two misspellings I've

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1 had already today. And I'm sorry. What was your address
2 again?
3 MR. SIMS: It's 2900 Peregoy Drive.
4 MR. GROSSMAN: Okay. And would you raise your
5 right hand, please?
6 (Witness sworn.)
7 MR. GROSSMAN: All right. You may proceed.
8 DIRECT EXAMINATION
9 THE WITNESS: All right. I have some pictures
10 that I'd like to distribute first.
11 MR. GROSSMAN: All right.
12 THE WITNESS: I have five of them. So I'll give
13 one to you.
14 MR. GROSSMAN: Thank you.
15 THE WITNESS: And --
16 MS. HARRIS: Thank you.
17 MR. GOECKE: Thank you.
18 MR. SILVERMAN: Thank you.
19 MS. ADELMAN: Thank you.
20 THE WITNESS: I just want to point out where I
21 live.
22 MR. GROSSMAN: Let me mark this as Exhibit 458.
23 THE WITNESS: Peregoy Drive, right at the
24 intersection of Peregoy and Coronada.
25 MR. GROSSMAN: Hold on one second, sir, if you

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1 would. And I'm going to ask you to use my infamous --
2 THE WITNESS: All right.
3 MR. GROSSMAN: -- laser pointer, if you would.
4 Thank you. And Exhibit 458 is --
5 THE WITNESS: Right here.
6 MR. GROSSMAN: Hold on one second, if you would.
7 I just have to write this down so that we don't lose track
8 of our exhibits -- is four photos submitted by Doug Sims.
9 All right. And now before you go on, let's have you
10 identify what these photos are. Figure 1 --
11 (Exhibit No. 458 was marked
12 for identification.)
13 THE WITNESS: Figure 1 is at the end of Peregoy
14 Drive, looking up at the ring road, and you'll see a pickup
15 truck parked on the ring road right on that embankment.
16 Figure 2 --
17 MR. GROSSMAN: Hold on one second. Let's deal
18 with Figure 1 first.
19 THE WITNESS: Okay.
20 MR. GROSSMAN: Peregoy Drive. And so you're
21 looking from Peregoy Drive up to the mall?
22 THE WITNESS: Right.
23 MR. GROSSMAN: All right. And I'm looking in the
24 center of that photograph in Figure 1. I'm seeing a truck.
25 THE WITNESS: Right.

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1 MR. GROSSMAN: Okay. And, all right, did you take
2 this photo yourself?
3 THE WITNESS: I did.
4 MR. GROSSMAN: And when did you take this photo?
5 THE WITNESS: I took it on Saturday.
6 MR. GROSSMAN: This past Saturday?
7 THE WITNESS: This past Saturday, right.
8 MR. GROSSMAN: All right. So February 23 --
9 UNIDENTIFIED SPEAKER: 2.
10 MR. GROSSMAN: -- 22 rather.
11 MS. ADELMAN: 2.
12 MR. GROSSMAN: February 22, 2014. And does this
13 photograph accurately depict the scene as you saw it?
14 THE WITNESS: Yes.
15 MR. GROSSMAN: All right. So that's Figure 1.
16 And --
17 THE WITNESS: And also in Figure 1, the caption
18 Costco Is 85 Yards From Truck at Top, I think I did that
19 from Google Maps. I just looked at Costco. I didn't -- the
20 gas station will be closer than that.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: That's the existing Costco building.
23 MR. GROSSMAN: Okay. And then Figure 2, the
24 caption is View of Ring Road Embankment 25 Yards From the
25 End of Peregoy Drive. And where is this taken from?

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1 THE WITNESS: This is the same -- that red diamond
2 at the end is the dead end of Peregoy. So that's just
3 walking back --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- to get another perspective.
6 MR. GROSSMAN: All right. So it's just a, it's a
7 broader view --
8 THE WITNESS: A broader view.
9 MR. GROSSMAN: -- of the same scene?
10 THE WITNESS: And my house would be, on Figure 2,
11 would be where that fire hydrant is, would be maybe one
12 house back out of view from that fire hydrant.
13 MR. GROSSMAN: All right, fire hydrant on the
14 right. Okay.
15 THE WITNESS: So it's pretty close to my house.
16 MR. GROSSMAN: All right. And, once again, you
17 took this at the same time?
18 THE WITNESS: Yes. All of these pictures were --
19 MR. GROSSMAN: And it accurately depicts the
20 scene?
21 THE WITNESS: -- been taken on Saturday.
22 MR. GROSSMAN: All right.
23 THE WITNESS: Figure 3, I walked up to the ring
24 road, and I'm just looking down at the dead end of Peregoy.
25 MR. GROSSMAN: All right. So you're looking the

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1 opposite direction now from the ring road?
2 THE WITNESS: Now I'm on top of the ring road near
3 where that pickup truck is --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- looking down.
6 MR. GROSSMAN: Looking back towards your house?
7 THE WITNESS: Looking back towards my house,
8 right.
9 MR. GROSSMAN: All right. And you took this at
10 the same time?
11 THE WITNESS: The same -- all these are on
12 Saturday.
13 MR. GROSSMAN: All right. And --
14 THE WITNESS: Figure 4, I'm walking along the ring
15 road to the left or, I guess, south or east and looking at,
16 in the backyards of houses, down the slope from the ring
17 road.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: There's a child's play set there in
20 the backyard of that house.
21 MR. GROSSMAN: All right. And these photos were
22 also taken at the same time?
23 THE WITNESS: Same, same day, Saturday.
24 MR. GROSSMAN: And they all accurately depict the
25 scene as you saw it?

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1 THE WITNESS: Yes, they do.
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: And, Mr. Grossman, what exhibit was
4 this?
5 MR. GROSSMAN: This is Exhibit 458.
6 MS. HARRIS: Thank you.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: And, again, I guess, I live right
9 there. All right.
10 MR. GROSSMAN: Okay, sir.
11 THE WITNESS: And I've read over some of the
12 reports. Dr. Cole's report used the term downslope in his
13 report entitled Expert Opinion on Costco's Air Quality
14 Assessment dated March 26, 2013. He used the same word in
15 his comments submitted to the Montgomery County planning
16 staff on January 15th, 2013. In his report he described how
17 pollutants concentrated on areas situated beneath the source
18 of pollution and this happens because the polluted air
19 cools --
20 MR. GOECKE: Objection. Is this expert testimony
21 or --
22 MR. GROSSMAN: I think he's quoting from
23 Mr. Sullivan's report. Is that correct?
24 THE WITNESS: That is paraphrasing. That --
25 MR. SILVERMAN: Dr. Cole's report.

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1 MS. HARRIS: Dr. Cole.
2 MR. BRANN: Dr. Cole.
3 THE WITNESS: -- is not a direct quote.
4 MS. ADELMAN: Dr. Cole's --
5 MR. GROSSMAN: I'm sorry, Dr. Cole's report.
6 THE WITNESS: That is not a direct quote what I'm
7 saying right now. This is just reading from Dr. Cole's
8 report.
9 MR. GROSSMAN: Okay. Well, we'll overrule the
10 objection in understanding that this is just his
11 interpretation of Dr. Cole's report.
12 MR. GOECKE: Thank you.
13 MR. GROSSMAN: Go ahead, sir. Start that sentence
14 again.
15 THE WITNESS: Because my understanding is that the
16 downslope flow happens because polluted, polluted air cools
17 overnight and it flows down a slope -- in our case, the
18 houses near the ring road.
19 Now, I will quote from the Montgomery County
20 Planning Department report. This is the report from
21 Montgomery County Planning Department dated February 14th,
22 2013, and it says -- and this is a direct quote -- EPA
23 standards and methodologies used to evaluate modeling
24 results are not site-specific. And, also, it states that
25 gas stations are considered to be hot spots for air toxics

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1 compounds found in car exhaust, which Montgomery County
2 Planning Department states will be in our yards, most of
3 these compounds are surely toxic.
4 Gas stations are not -- I know they're not
5 generally considered to be pollution sources severe enough
6 to threaten public health, but what I want to ask you to
7 consider is the word generally. It's hard to see how our
8 topographic situation is typical. I think, absent a study
9 showing otherwise, the VOCs and gasoline and other
10 heavier-than-air pollutants in car exhaust may create an
11 unacceptable concentration of toxic air that will settle
12 into the neighborhood beneath the ring road.
13 And, finally, there's young children living on
14 Peregoy Drive closer to the ring road than where I live. In
15 fact, Mark Meszaros's house, right at the, on the same side
16 of the street that I am, is right next to the ring road and
17 he's got a child. If the gas station was moved 300 feet
18 from the pool, why is it okay for it to be closer than that
19 to the children who would have to breathe the bad air all
20 the time? And that's it. Thanks.
21 MR. GROSSMAN: All right. Let's start with
22 Ms. Duckett first. Any questions?
23 CROSS-EXAMINATION
24 BY MS. DUCKETT:
25 Q The only question I have is, you started to show

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1 in the beginning where Peregoy is. Can you show that on the
2 map?
3 A At the dead end of Peregoy? Let's see. Right
4 there is the dead end of Peregoy Drive, and there's the gas
5 station.
6 MR. GROSSMAN: Pointing essentially to the
7 southwest corner --
8 THE WITNESS: Right. Here's the --
9 MR. GROSSMAN: -- just southwest of the mall.
10 THE WITNESS: -- ring road embankment.
11 MR. GROSSMAN: Right.
12 MS. DUCKETT: Thank you.
13 THE WITNESS: I guess it goes all around the ring
14 road, but it varies in elevation.
15 MR. GROSSMAN: Okay.
16 MS. DUCKETT: Thank you.
17 THE WITNESS: Uh-huh.
18 MR. GROSSMAN: All right. Ms. Adelman, do you
19 have any questions?
20 MS. ADELMAN: No, sir.
21 MR. GROSSMAN: Does --
22 MS. ADELMAN: Oh, wait a minute. I'm sorry,
23 Mr. Grossman. I forgot to ask Mr. Silverman.
24 BY MR. SILVERMAN:
25 Q Sir, you took your photographs from the street

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1 level?
2 A Yes.
3 Q If you had taken photographs from the second floor
4 of your house or one of the houses on the block, what --
5 could you describe what that would look like?
6 MR. GROSSMAN: Well, I'm not sure I can allow that
7 question, if he had, what it would look like. You can ask
8 him if he's observed from his, from his home.
9 MR. SILVERMAN: I will. Thank you, sir.
10 THE WITNESS: I live in a rambler. So --
11 BY MR. SILVERMAN:
12 Q I see.
13 A -- it's at street level.
14 Q I see.
15 A Yeah.
16 Q Have you observed the mall from a second floor
17 building on your block?
18 A No.
19 Q Okay. Thank you.
20 MR. GROSSMAN: All right. Any questions from
21 Kensington Heights Civic Association?
22 MS. CORDRY: I don't think so, no.
23 THE WITNESS: Okay.
24 MR. GROSSMAN: All right. Mr. Goecke?
25 MR. GOECKE: Just a few, Mr. Grossman. Thank you.

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1 BY MR. GOECKE:
2 Q Mr. Sims, you testified about your review of
3 Dr. Cole's report and of the reports from the Planning
4 Commission. Did you review any of Mr. Sullivan's reports in
5 this case?
6 A I haven't had time to review all of the reports,
7 but I think -- no, I can't specifically say I remember
8 anything in Dr. Sullivan's report, but I --
9 Q You can't remember or you didn't have time to
10 review them?
11 A I believe I've looked at them, but I don't
12 remember anything that I've read from them.
13 Q Okay. So when you say absent a study showing that
14 the gas station is not likely to emit toxic levels of
15 emissions, you're aware that such a study exists?
16 A That a study exists that shows the gas station is
17 not likely to produce a high level of toxic emissions?
18 Q That will violate the EPA National Ambient Air
19 Quality Standards.
20 A I'm not aware of that, but I did say at the
21 beginning of my report that the EPA standards were not
22 site-specific, and I think that the site, our particular
23 site characteristics in conjunction with, you know, being
24 lower than the source is different than what the EPA
25 standards -- the EPA standards may not address that.

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1 Q Yes. And that's based on what?

2 A The fact that our neighborhood is below the

3 emission source, that the emission source will create a hot

4 spot, by all accounts, and that there's likely to be

5 down-flow drainage into our neighborhood from the, by the

6 hot spot and it's not going to -- you know, we don't live,

7 like, in a flat --

8 Q Right. But your opinion is based on your review

9 of Dr. Cole's report and of the staff report?

10 A That's correct.

11 Q Okay.

12 MR. GOECKE: And if I may approach, Mr. Grossman?

13 MR. GROSSMAN: Absolutely. I think Ms. Adelman is

14 chasing you, though.

15 MS. HARRIS: Been tripping.

16 BY MR. GOECKE:

17 Q Mr. Sims, I'd like to show you Exhibit, what's

18 marked as 458. This is the pictures that you took.

19 A Yes, right.

20 Q And Figure 1, if we can look at that, which is the

21 image in the upper left-hand corner, as the hill slopes down

22 towards the neighborhood --

23 A Uh-huh.

24 Q -- would you also agree that then there's, that

25 there's a lip that, that -- where the stuff actually goes

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1 back up?

2 A Are you talking about in this, in this gully here?

3 Q In that gully there, exactly.

4 A There's a gully there, correct. Yeah, I'm sure

5 there's like a small lip --

6 Q Okay.

7 A -- I mean, I don't know. Okay.

8 Q Okay. And so would you agree then that to the

9 extent that air might be flowing down, that that lily and

10 that gully, or the lip and the gully would affect it?

11 A So if we could envision the air then being like a

12 pool of some denser, you know, the pollutants and the smog

13 being some denser thing than air, it's probably going to

14 overflow the lip at some point, once it builds up, and then

15 flow back into the neighborhood.

16 Q And what's your basis for that belief?

17 A Well, I mean, it's not going to -- where would it

18 go? I mean, it builds up there in the gully. Where would

19 it go from there? It has to go somewhere. It's not going

20 to go back up the hill. It'd probably flow down, into the

21 rest of the neighborhood.

22 Q Yes. Do you know what an Arid Permeator is?

23 A I beg your pardon?

24 Q Do you know what an Arid Permeator is?

25 A No, I don't.

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1 Q If I were to tell you that Costco had a device

2 called an Arid Permeator that was going to capture over 99

3 percent of the volatile organic compounds that were

4 emanating from the storage tank, would that -- is that news

5 to you?

6 A From the storage tank itself?

7 Q Yes.

8 A I mean, I'm happy to know that any kind of, what's

9 it, vapors, oh, it's got a particular name for it, you know,

10 coming from the storage tank, I mean, I think, I think --

11 I've heard that recapture, you know, recapture technology is

12 an effect for that. So that's good. The planning report

13 did talk about the thing breathing, but if Costco's got

14 something that will capture that, that's great. I guess

15 what I'm more concerned about is --

16 Q But the bottom question is, you weren't aware of

17 that before then?

18 A I was aware that they, that underground storage

19 tanks have some kind of recapture technology so that the

20 vapors don't escape from it.

21 Q Thank you.

22 MR. GOECKE: I have no further questions.

23 MR. GROSSMAN: Okay. I thank you very much,

24 Mr. Sims, for --

25 THE WITNESS: Okay.

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1 MR. GROSSMAN: -- coming here and sharing your

2 views about the situation.

3 THE WITNESS: Okay. All right. Thank you.

4 MR. GROSSMAN: Appreciate it. All right. Thank

5 you. Shall we now turn to Ms. Savage?

6 MS. CORDRY: We certainly can. Can we take a

7 short break and/or consider whether we want to do an early

8 lunch and have her go together, or do you want to --

9 MR. GROSSMAN: Early lunch? Mr. Silverman will

10 not have an early lunch.

11 MR. SILVERMAN: Well, you know, I had a late

12 breakfast and it was really awful. It'd be nice to have an

13 early lunch.

14 MR. GROSSMAN: Ms. Harris? All right. Well,

15 we'll give her the five-minute break. I don't want to do an

16 early lunch. Let's --

17 MS. CORDRY: Okay. Okay.

18 MS. ADELMAN: Yes.

19 MR. GROSSMAN: -- start out with Ms. Savage.

20 MS. CORDRY: All right. A five-minute break or so

21 would be great.

22 MR. GROSSMAN: So we'll come back at five to

23 12:00.

24 (Whereupon, a brief recess was taken.)

25 MR. GROSSMAN: All right. Back on the record. I

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1 should mention I just got an e-mail from Ms. Holland, saying
2 she will not be here today or tomorrow.
3 MS. CORDRY: Oh, okay.
4 MR. GROSSMAN: All right. So, Ms. Savage, are you
5 ready for the hot seat?
6 MS. CORDRY: And Abigail --
7 MS. SAVAGE: Yes, Abigail is my giver-outer of
8 exhibits.
9 MS. CORDRY: Yes, she's coming.
10 MR. GROSSMAN: She wasn't here. We'll wait for
11 Ms. Adelman to come back.
12 MS. SAVAGE: Good. It'll take me a minute or two
13 to set myself up here.
14 MR. GROSSMAN: Okay. I hear you are the conveyor
15 of exhibits; so your presence is absolutely required.
16 MS. ADELMAN: That's true, and Dr. Adelman has
17 been reached and is glad to hear he doesn't have to come in
18 this afternoon.
19 MR. GROSSMAN: All right. All right. Are you
20 ready, Ms. Savage?
21 MS. SAVAGE: No.
22 MR. GROSSMAN: No? Okay.
23 MS. SAVAGE: Sorry.
24 MR. GROSSMAN: We don't always allow water up here
25 for witnesses. We find it shortens their testimony if

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1 they're thirsty.
2 MS. HARRIS: She said she wanted to get done
3 early.
4 MR. GROSSMAN: There you go.
5 MS. SAVAGE: That's right.
6 MR. GROSSMAN: I notice they didn't give me water
7 up here either this time. So maybe they're trying to hint
8 that --
9 MS. SAVAGE: Oh, how did that happen?
10 MR. GOECKE: Sending a message to all of us.
11 MS. SAVAGE: Yeah.
12 MS. CORDRY: Oh, there isn't any water, is there?
13 MS. HARRIS: We didn't get it either.
14 MS. SAVAGE: Okay.
15 MS. CORDRY: I knew there was something missing on
16 this table.
17 MR. GROSSMAN: I think somebody was trying to tell
18 us we're taking too long for this hearing.
19 MR. SILVERMAN: Taking too long for this hearing.
20 MS. SAVAGE: Okay.
21 MR. GROSSMAN: You ready?
22 MS. SAVAGE: I'm ready.
23 MR. GROSSMAN: Will you state your full name and
24 address, please?
25 MS. SAVAGE: Donna R. Savage. My address is 1084

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1 McComas Court, Kensington Heights, Maryland.
2 MR. GROSSMAN: All right. And you're here today,
3 testifying on -- well, let me swear you in first.
4 MS. SAVAGE: Okay.
5 MR. GROSSMAN: Would you raise your right hand,
6 please?
7 (Witness sworn.)
8 MR. GROSSMAN: All right. And you're here,
9 testifying as an individual or on behalf of a group today?
10 THE WITNESS: As a group?
11 MS. CORDRY: Yes.
12 THE WITNESS: Yes. Thank you. Okay. I wasn't
13 sure, sorry.
14 MR. GROSSMAN: Which group are you testifying --
15 THE WITNESS: As a group, Kensington Heights Civic
16 Association.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Sorry.
19 MR. GROSSMAN: All right. Now, are you going to
20 be questioned?
21 MS. CORDRY: Yes, I will ask --
22 THE WITNESS: Yes.
23 MS. CORDRY: -- her some questions. I mean, a lot
24 of it is going to be free-flowing testimony, but I will try
25 to start this process and help guide it along and so forth.

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1 MR. GROSSMAN: All right. Thank you. You may
2 proceed.
3 DIRECT EXAMINATION
4 BY MS. CORDRY:
5 Q So, Ms. Savage, you stated your name and address.
6 Can you show us on Exhibit 159 there, the large map we've
7 been working off, where you live?
8 A Sure, and I even brought my own, sorry.
9 MR. GROSSMAN: Thanks a lot.
10 THE WITNESS: It's a cat toy. Where am I here? I
11 think that's me right there, that house right there. That
12 is McComas --
13 MR. GROSSMAN: The far southwest corner of the
14 map.
15 THE WITNESS: That's correct, far southwest
16 corner.
17 MR. GROSSMAN: Exhibit, is it 159, did we say?
18 MS. CORDRY: 159, I believe that is, yes.
19 MR. GROSSMAN: Yes.
20 MR. BRANN: 159, that's correct.
21 THE WITNESS: Okay.
22 MR. GROSSMAN: Okay.
23 BY MS. CORDRY:
24 Q And about how far are you from where the existing
25 Costco warehouse and the proposed gas station would be?

1 A I would say about a mile and a quarter, far enough
 2 away that I -- I don't expect to be directly affected by the
 3 fumes and the traffic except when I go to the mall.
 4 Q What's your general view of the proposed gas
 5 station?
 6 A I am opposed to it.
 7 Q And why would that be if you're not close enough
 8 to be affected directly?
 9 A Well, it certainly is going to adversely affect me
 10 while I'm at the mall -- and I do shop there -- or if I'm
 11 visiting neighborhood friends who live adjacent to the mall.
 12 But it's primarily because of my background and activism in
 13 the Wheaton and Kensington area over many years that I
 14 believe this proposed gas station would deeply and
 15 permanently undercut the plans for redevelopment and the
 16 expectations that residences and businesses have of that
 17 plan and of redevelopment. And, also, I'm supporting my
 18 Kensington Heights neighbors who will be affected, as I
 19 would hope they would support me if my home were similarly
 20 threatened.
 21 Q And can you describe a little more in detail about
 22 what you refer to as your activism in the Wheaton/Kensington
 23 area?
 24 A Okay. I think, where's my -- okay, never mind. I
 25 have lived in Kensington Heights since 1992, so 22 years,

1 and I became involved with the local civic association,
 2 KHCA, in the mid-1990s when we were reinvigorating
 3 ourselves. And I was elected the KHCA vice president from
 4 '97 to 2001 and elected president from 2001 to 2005, and
 5 actually, there is a -- I had thought my résumé was on file
 6 already. It was not. So, Abigail, if you, from No., from
 7 that first segment. The Costco folks have a copy of my
 8 résumé, and Abigail has additional copies to give out. But
 9 anyway, I was elected president from 2001 to 2005, and I
 10 remained a member of the executive committee for about -- as
 11 the immediate past president for about four years after
 12 that.
 13 Q Okay. Can we stop a moment and let the Hearing
 14 Examiner --
 15 A Okay.
 16 MS. CORDRY: We'd like to just mark her résumé as
 17 an exhibit.
 18 THE WITNESS: Yes. Oh, okay, sorry. Sorry.
 19 MR. GROSSMAN: Yes. We'll mark that as Exhibit
 20 459 --
 21 THE WITNESS: I should know this by now. Okay.
 22 459, okay.
 23 MR. GROSSMAN: -- as Donna Savage résumé. Okay.
 24 (Exhibit No. 459 was marked
 25 for identification.)

1 THE WITNESS: Okay. Due to turnover in the
 2 leadership at KHCA, I was serving again as interim president
 3 in early 2010 when Costco first announced their intention to
 4 build the warehouse and when they also demanded that a
 5 zoning text amendment be passed to allow them to bypass this
 6 special exception process that we're now in.
 7 BY MS. CORDRY:
 8 Q And did that zoning text amendment pass?
 9 A It did not pass and that's why we are here,
 10 because we're going through that special exception process
 11 that the ZTA was trying to avoid -- would have avoided.
 12 Q In addition to what you just stated, have you had
 13 any other involvement in the local community over the last
 14 several years?
 15 A Yes. I was the KHCA land use chair for most of
 16 the time since 2009, and outside of KHCA I've also been
 17 involved in the greater Wheaton area as well, not just
 18 within Kensington Heights. I was a member of the Wheaton
 19 Urban District Advisory Committee for six years, from 2001
 20 to 2007. WUDAC is 11 members appointed by the County
 21 Executive and confirmed by the County Council to provide
 22 advice on all matters affecting the Wheaton Urban District
 23 area, which is the downtown.
 24 MR. GROSSMAN: I don't think you have to go
 25 through it all because your résumé is in the record now. It

1 summarizes your background. So --
 2 THE WITNESS: Okay. Okay.
 3 MS. CORDRY: Well, we would like to make sure that
 4 it's clear, for instance, what WUDAC does, what basis that
 5 gives her to have the kind of opinion that she's going to be
 6 expressing. So --
 7 MR. GROSSMAN: Well, are you introducing her as an
 8 expert?
 9 MS. CORDRY: Well --
 10 THE WITNESS: Quasi.
 11 MS. CORDRY: -- I don't know if there's somewhere
 12 between someone who knows nothing of the area and someone
 13 who's been very deeply involved in these issues for many
 14 years and has at least a level of experience that I think
 15 gives her a basis for you to give greater weight to her
 16 testimony than someone who had not been involved before. So
 17 I think --
 18 MR. GROSSMAN: An informed layperson.
 19 MS. CORDRY: An informed layperson, yes, as all of
 20 us today are in this hearing.
 21 MR. GROSSMAN: All right. All right. Well --
 22 THE WITNESS: All right. I don't know.
 23 MR. GROSSMAN: -- you can keep it, but keep it
 24 brief --
 25 MS. CORDRY: Yes.

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1 MR. GROSSMAN: -- because you don't have to recite
2 everything that's on your résumé since it's in the record.
3 MR. GOECKE: And we would stipulate, Mr. Grossman,
4 that she has a long history of activism involvement in
5 county affairs.
6 MS. CORDRY: Well, again, I'd just like to have
7 her describe briefly what these major organizations do and
8 what the role is that they play. So --
9 MR. GROSSMAN: Okay. Go ahead. Go ahead.
10 MS. CORDRY: Okay.
11 BY MS. CORDRY:
12 Q Just describe briefly what WUDAC does.
13 A Okay. WUDAC provides special services to the
14 central business district of Wheaton to ensure that downtown
15 Wheaton is maintained cleanly, safely, and attractively to
16 promote a vibrant, social, and business environment and
17 long-term economic viability and vitality. That's -- I took
18 that directly from their website.
19 Q Okay. You've referenced here the Coalition of
20 Kensington Communities and the Montgomery County Civic
21 Federation. Can you tell us about those very briefly?
22 A Yes. The Coalition of Kensington Communities,
23 CKC, was founded in 2002. Kensington Heights Civic
24 Association, with me as its representative, formed at that
25 time, 2002; and their goal is to enhance the quality of life

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1 in the Kensington area, and as I said, we were a founding
2 member. It's a unified body at present with six civic
3 associations, and toward this end, the group works with
4 local governments to address issues of urban design,
5 recreation, transportation, pedestrian accessibility, and
6 economic growth affecting greater Kensington -- also from
7 their website.
8 Q Do you still participate in that? Besides --
9 A Yes.
10 Q -- being the one founding member, do you still
11 participate in it?
12 A Yes. Yes. We are still active.
13 Q And you personally?
14 A And I personally am still KHCA's representative to
15 that group, yes. And you wanted me to talk about the Civic
16 Federation too. I think --
17 Q Yes.
18 A -- most people know about that, but that was
19 founded in 1925, and its mission is to preserve and improve
20 the quality of life for all current and future residents of
21 Montgomery County. And they've been doing this for a very
22 long time, as I said, and I have been -- what did I say on
23 here? I've been the representative since 2009, something
24 like that, sorry.
25 Q All right.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: It's here somewhere, but for a
3 while.
4 BY MS. CORDRY:
5 Q So based on that experience and those memberships
6 and so forth, have you had occasion to become involved with
7 the county zoning process?
8 A Yeah. We've had -- there have been plans to
9 rezone and/or develop within Kensington Heights, and those
10 have been proposed over the years, and I've been involved in
11 those proposals. I've also been peripherally involved in
12 proposals of redevelopment in other communities besides
13 Kensington Heights.
14 MR. GROSSMAN: And has appeared before me.
15 THE WITNESS: Exactly. I was getting to that.
16 MS. CORDRY: We will come back to that. We will
17 come back to that.
18 BY MS. CORDRY:
19 Q Have you had occasion to be involved with a
20 special exception request before?
21 A Not directly. This was the first time that
22 Kensington Heights has faced a request for a major
23 development that included a special exception, but since
24 this process began more than four years ago, oh my goodness,
25 I and others in Kensington Heights have become rather

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1 familiar with the requirements of a special exception for a
2 gas station.
3 Q And is there a particular portion of those
4 requirements that you are primarily testifying about here
5 today?
6 A Yes. The Montgomery County Code states at Section
7 59-G-2.06 that a special exception for a gas station may
8 only be granted if the Board of Appeals finds that, Section
9 3 says: The use at the proposed location will not adversely
10 affect nor retard the logical development of the general
11 neighborhood or of the industrial or commercial zone in
12 which the station is proposed, considering service required,
13 population, character, density, and number of similar uses
14 -- I know I probably didn't have to say that to you, but I
15 just want to point that out -- and this is the foundation
16 upon which the Planning Board based its recommended denial
17 of the special exception application. You can turn that
18 around and state it affirmatively, which I'm going to do
19 throughout here, and that is, if the use at the proposed
20 location will adversely affect or retard the logical
21 development of the general neighborhood or the relevant
22 commercial zone, this proposed use should not be permitted.
23 I will testify with supporting, supporting
24 evidence about numerous adverse effects the proposed gas
25 station would have on the development of Wheaton and the

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1 ways in which it contradicts the letter and spirit of
2 Wheaton's sector plan. From this evidence, I believe it
3 will be clear for you and the Board of Appeals that the
4 special exception application does not meet the standard for
5 approval.
6 My testimony is going to touch on six primary
7 areas in which Section 59-G-2.06 would be violated if this
8 proposed gas station were permitted to go forward, and those
9 six areas are the wording and intent of the Wheaton Sector
10 Plan, the county's general goals and how this proposed gas
11 station doesn't fit, expectations of the community regarding
12 Wheaton redevelopment, Wheaton as a transit hub, Wheaton
13 defined by its small businesses, and Westfield Wheaton's
14 future.
15 MR. GOECKE: I'm sorry. What was the fifth one?
16 THE WITNESS: The fifth one, Wheaton defined by
17 its small businesses.
18 MS. HARRIS: And what was the last one?
19 THE WITNESS: Westfield Wheaton's future. Each of
20 the --
21 MR. GROSSMAN: Well, I guess, I guess, let's take
22 them from the top again, just so --
23 THE WITNESS: Okay. I should, I should also point
24 out that as we give out the exhibits, you'll be getting a
25 packet for each of those six areas and they'll be a little

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1 sticky on it that says what that area is, but I'll go
2 through them again.
3 MR. GROSSMAN: Number one.
4 THE WITNESS: Number one --
5 MR. GROSSMAN: Slowly.
6 THE WITNESS: Sorry. I'm from New York
7 originally.
8 MR. GROSSMAN: Me too, but --
9 THE WITNESS: The wording and intent of the
10 Wheaton Sector Plan.
11 MR. GROSSMAN: All right. Wording and intent of
12 the Wheaton Sector Plan.
13 THE WITNESS: Okay.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: The county's general goals and how
16 this proposed gas station doesn't fit.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Expectations of the community
19 regarding Wheaton redevelopment.
20 MR. GROSSMAN: Okay. Four?
21 THE WITNESS: Wheaton as a transit hub.
22 MR. GROSSMAN: Five?
23 THE WITNESS: Wheaton defined -- is defined by its
24 small businesses.
25 MR. GROSSMAN: And six?

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1 THE WITNESS: Six is Westfield Wheaton's future.
2 MR. GROSSMAN: You understand, I won't be able to
3 read any of this after a couple of hours because of my
4 handwriting.
5 THE WITNESS: That's why you'll have my little
6 stickies.
7 MR. GROSSMAN: All right. Go ahead.
8 THE WITNESS: So I just, I have, as I said, I
9 organized my exhibits such that you'll, for -- when we get
10 to each of those topics, you'll get --
11 MR. GROSSMAN: Right.
12 THE WITNESS: -- a little packet of exhibits, and
13 so you'll have to do (a), (b), and (c), but you could keep
14 those all as one number, if you want to do it that way, and
15 then do (a), (b), and (c) or however you want to do it, but
16 that's what I thought would work best.
17 MR. GROSSMAN: Okay. Thank you.
18 THE WITNESS: Okay.
19 BY MS. CORDRY:
20 Q Okay. So let's turn to the Wheaton Sector Plan
21 itself --
22 A All right.
23 Q -- which is what we are dealing with here, of
24 course, and you've stated that you believe that the proposed
25 gas station does not conform with the sector plan. Can you

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1 start out by telling us what you mean by that?
2 A Well, if Costco gas station does not conform with
3 the letter or spirit of the Wheaton Sector Plan, both -- I
4 think that plan is in evidence as Exhibit 150, is my, 1-5-0.
5 MR. GROSSMAN: It's in a couple of places. I
6 don't remember the number.
7 THE WITNESS: Yeah. Okay. And I just want to
8 make sure that -- you guys have a copy.
9 MS. HARRIS: We do. Thanks.
10 THE WITNESS: Do you have a copy --
11 MR. GROSSMAN: Handy?
12 THE WITNESS: -- on hand?
13 MR. GROSSMAN: It's in a box, but --
14 THE WITNESS: Okay. Well, you'll just have to
15 believe me that I'm reading -- well, they'll check me, I'm
16 sure.
17 MR. GROSSMAN: Well, we can get it out of a box.
18 THE WITNESS: Okay. Well, I don't think you'll
19 need it because I'm going to read the --
20 MR. GROSSMAN: Okay.
21 THE WITNESS: -- but in case you wanted to follow
22 along --
23 MR. GROSSMAN: All right.
24 THE WITNESS: -- I just wanted to ask. Okay. The
25 primary goal of the sector plan is to capitalize on

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1 Wheaton's significant transit infrastructure, which is
2 repeatedly touted throughout this plan as a major asset for
3 Wheaton. The sector plan is designed to make Wheaton a more
4 walkable community, to increase transit use, and to decrease
5 reliance on automobiles. And there are some specific
6 portions that I'll base those statements on, and I'm going
7 to read those to you because they're important.

8 On page 69, at the top, under Transit: Transit is
9 an integral component of Wheaton's mobility system, both
10 today and tomorrow. The plan's vision is built on
11 Metrorail, future bus rapid transit, and local bus service.
12 Wheaton's crossroads setting requires transit service
13 designed to accommodate trip origins, destinations, and
14 connections among types of service. As a result, the plan
15 supports development and actions that raise the visibility
16 of transit while also improving the area's already high
17 level of service.

18 Project planning should recognize the Metro
19 station as the focus of Wheaton's transportation
20 infrastructure. Providing easy and safe multimodal access
21 to and from the station and incorporating features that
22 reinforce the station area as a transit place are important
23 parts of the plan vision. So that's on page 69.

24 On page 71 --
25 MR. GROSSMAN: Well, how does the proposed gas

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1 station negative that language?
2 THE WITNESS: Well, I'll actually get to that, if
3 that's --
4 MR. GROSSMAN: Oh, all right. Go ahead.
5 THE WITNESS: -- if that's okay. I'm just, I'm,
6 what I'm going to do -- this part is I'm pointing out the
7 sections of the sector plan that have to do with the most
8 important parts of what I think the sector plan is built
9 around.

10 MR. GROSSMAN: Okay.
11 THE WITNESS: So on page 71: Transit use by
12 residents, journey-to-work data, as opposed to transit use
13 by employees working in Wheaton, is estimated at 52 percent,
14 nearly three times the countywide average. As Wheaton
15 becomes a more vibrant mixed-use center, one objective will
16 be to ensure that transit, bicycling, and walking remain
17 viable options for future residents who also choose to work
18 in Wheaton.

19 On page 72 there are two areas I'd like to read
20 quickly: Two of the plan area's characteristics contribute
21 to reducing single-occupant auto use. Wheaton is served by
22 a robust transit system including a Metro station and
23 several bus lines. Bus rapid transit is under consideration
24 on Veirs Mill Road and University Boulevard West within the
25 plan's horizon. A large portion of the planned growth in

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1 Wheaton will likely be residential, which typically has
2 lower trip generation rates than other types of development.
3 Further on page 72: Retain -- retain some
4 convenient parking for the Metro station but devote primary
5 efforts to increasing the percentage of Metrorail passengers
6 walking, using the bus, or riding bicycles to and from the
7 Metro station.

8 BY MS. CORDRY:
9 Q In addition to that set of passages, are there
10 other portions of the sector plan that you would point to as
11 being -- that you're going to suggest are not consistent
12 with the gas station?
13 A Okay. We'll start with page 9. Wheaton's Future
14 on page 9 says: This plan's task is to build on Wheaton's
15 strengths and encourage investment while maintaining its
16 special character. The plan's recommendations capitalize on
17 the role of Metro and Wheaton as a regional transit hub.
18 Another redevelopment goal should be to reduce energy
19 consumption and make Wheaton a more green and sustainable
20 place. For example, providing transportation alternatives
21 can reduce vehicle miles traveled and the community's carbon
22 footprint.

23 On page 10, the Map 1 that's on page 10 is, shows
24 the sector plan area, and it clearly shows the proposed
25 Costco gas location as being about one-third of a mile from

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1 the Metro station and clearly within the Wheaton Sector Plan
2 boundary. Maybe I can point those out on here, on the big
3 map. If I can reproduce that here, the circle for the
4 Wheaton Sector Plan is approximately -- let me see if I can
5 draw it here. I'm circling a round --
6 MR. GROSSMAN: Well --
7 THE WITNESS: That isn't helpful, is it?
8 MR. GROSSMAN: The Wheaton Sector Plan is --
9 THE WITNESS: Okay.
10 MR. GROSSMAN: -- the Wheaton sector is defined in
11 the Wheaton Sector Plan. So --
12 THE WITNESS: Yes, it is defined on that page.
13 You didn't --
14 MR. GROSSMAN: So --
15 THE WITNESS: -- have it in front of you. So I
16 was trying to --
17 MR. GROSSMAN: No, I know. I'm very familiar with
18 it.
19 THE WITNESS: Yeah. Okay.
20 MR. GROSSMAN: Thank you. Thank you.
21 THE WITNESS: Okay. Okay. Okay. Westfield
22 Wheaton, including the proposed gas station location, is
23 also within the Wheaton Urban District and Wheaton's
24 enterprise zone. And at this point, I'd ask Abigail to give
25 out the Section 2 packets to everybody, please. Karen, by

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1 the way, just, Karen already has hers, and I already checked
2 with Eleanor that she doesn't need a copy, which is good
3 because I wasted a lot of -- I killed a lot of trees for
4 this. So --
5 MS. ADELMAN: Oh.
6 THE WITNESS: It should be -- there should be four
7 packets clipped together.
8 MS. ADELMAN: Oh, okay.
9 THE WITNESS: There might be some internal other
10 clips, but there should be four clipped-together packages.
11 MR. GROSSMAN: If there's a problem, just blame it
12 on Dr. Adelman. He's not here to defend himself.
13 THE WITNESS: That's true. That works.
14 MS. ADELMAN: He's so cute.
15 MS. HARRIS: We'll tell him you said that.
16 MS. ADELMAN: I usually say, it's a good thing
17 you're cute. Oh, gosh. This is dreadful. Kathy, I --
18 MR. GROSSMAN: All right. Well, this is the --
19 THE WITNESS: Okay.
20 MR. GROSSMAN: -- this is Packet 1.
21 MS. ADELMAN: -- pulled this out.
22 THE WITNESS: So this is Packet 1 and this is all
23 related to what the Wheaton Sector Plan says about --
24 MR. GOECKE: Should we wait a second?
25 MS. ADELMAN: It's okay.

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1 MR. SILVERMAN: It's okay?
2 THE WITNESS: -- the wording and intent of the
3 Wheaton Sector Plan.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: In Pack 1, which, I don't know, you
6 can call --
7 MR. GROSSMAN: You have a Giant receipt here too.
8 THE WITNESS: Yeah. They're all, I'm going to --
9 MR. GROSSMAN: You're going to get to that.
10 THE WITNESS: -- they'll be (a), (b), (c), (d),
11 and (e) and --
12 MR. GROSSMAN: Okay.
13 THE WITNESS: -- (f) and (g) and (h) and (i).
14 MR. GROSSMAN: I see.
15 MS. HARRIS: And, Donna, I --
16 THE WITNESS: Yeah.
17 MS. HARRIS: -- some of this I recognize, but some
18 I don't.
19 THE WITNESS: Yeah. Okay.
20 MS. HARRIS: Was all of this provided previously?
21 THE WITNESS: Almost all with one or two
22 exceptions and I will point those out. I will point out
23 which ones were not.
24 MS. HARRIS: Well, for instance, I don't think
25 this was provided. The cover was not.

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1 MR. GOECKE: Right.
2 THE WITNESS: Oh, it wasn't?
3 MS. HARRIS: No.
4 MR. GOECKE: No.
5 THE WITNESS: Sure.
6 MR. GROSSMAN: Where was the cover from?
7 THE WITNESS: That's an excellent question.
8 Montgomery County -- well, it was, it was an online, I was
9 pretty sure it was one of those online things, that, that
10 long list of, but maybe not. It's Montgomery County -- it's
11 Park and Planning. See, down in the bottom right it says
12 where it's from: Map produced by Montgomery County Park and
13 Planning. So this is just their map of what, all of the
14 different ways in which Wheaton can be broken up. And so
15 that's the first, that's the (a) for this group of exhibits.
16 Does that, does that not work?
17 MR. GROSSMAN: When you say that's the (a) --
18 THE WITNESS: This, this map --
19 MR. GROSSMAN: Yes, is (a)?
20 THE WITNESS: -- this nice colorful map is the (a)
21 of this.
22 MR. GROSSMAN: All right. So you want me to mark
23 these as exhibits, is what you're saying?
24 MS. CORDRY: Yes. Yes, please.
25 THE WITNESS: Yes, please.

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1 MR. GROSSMAN: Okay. So this will be 460(a).
2 THE WITNESS: 460(a), okay.
3 MR. GOECKE: And we're referring to this page?
4 MS. CORDRY: Yes.
5 THE WITNESS: Correct.
6 MR. GROSSMAN: Yes, the cover page.
7 MS. ADELMAN: Oh, not the whole packet?
8 MS. CORDRY: 460 is the exhibit.
9 MR. GROSSMAN: Well, the whole packet --
10 THE WITNESS: 460 is the whole packet.
11 MR. GROSSMAN: Yes.
12 MS. ADELMAN: The whole packet.
13 THE WITNESS: And this is 460(a).
14 MR. GROSSMAN: And we'll say the packet is, in
15 general, 460 is --
16 THE WITNESS: Wording and intent of the sector
17 plan.
18 MR. GROSSMAN: Okay. Savage exhibits re wording
19 and intent of the sector plan. (A) in there is Planning --
20 THE WITNESS: Various -- yeah.
21 MR. GROSSMAN: -- Department map --
22 THE WITNESS: Of Wheaton's districts, I guess,
23 maybe. Does that, does that make sense? The various
24 districts of Wheaton or something like that.
25 MR. GROSSMAN: -- showing Wheaton districts and

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1 enterprise zone.
 2 (Exhibit Nos. 460 and
 3 460(a) were marked for
 4 identification.)
 5 THE WITNESS: Yeah.
 6 MR. GROSSMAN: Okay.
 7 THE WITNESS: So my only point of providing this
 8 map is to show that, that Westfield Wheaton, including the
 9 gas station, proposed gas station location, is within the
 10 Wheaton Urban District and also within Wheaton's enterprise
 11 zone as well as, we know, being part of the Wheaton Sector
 12 Plan. So it's part of -- it's already administratively part
 13 of several different districts in Wheaton.
 14 Okay. So on page 12 of the Wheaton Sector Plan --
 15 MS. HARRIS: I'm sorry. What page?
 16 THE WITNESS: Page 12. The second, the second
 17 bullet on page 12 talks about: Improving connectivity
 18 within and beyond the plan area with expanded pedestrian
 19 connections, a better street grid, and a bikeway network
 20 will allow Wheaton to maximize its potential as a downtown.
 21 They will link the plan's proposed network of flexible
 22 activity-generating-people-places created in the short term
 23 on publicly owned land and in the longer term through the
 24 development process. Better links will also connect the CBD
 25 with adjoining neighborhoods and the larger market area.

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1 And the fourth bullet, also on that page: The
 2 natural and built environments can be improved through
 3 development, through development that reduces energy
 4 consumption. And I will note that the picture on that page
 5 is a connection between Kensington Heights and the mall. I
 6 just want to point that out. There, there it is right
 7 there.
 8 MR. GROSSMAN: Okay.
 9 BY MS. CORDRY:
 10 Q Can you tell us which connection that is?
 11 A This is the connection at Torrance Drive, I
 12 believe, and that is right -- Karen walks this all the time.
 13 So I'm going to have to, but that is right -- Karen, I don't
 14 have that right.
 15 Q Just to the left of the school, is that correct?
 16 A Yes, right in there.
 17 MR. GROSSMAN: That's a pedestrian connection?
 18 MS. CORDRY: Right.
 19 THE WITNESS: It is a pedestrian connection.
 20 MR. GROSSMAN: Right.
 21 THE WITNESS: There are steps and handrails. It's
 22 a, it's an official connection between the neighborhood and
 23 the -- it's nice that they put it in the plan.
 24 Okay. So that was page 12. Page 15 under the
 25 background of the Wheaton community: Wheaton has a higher

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1 proportion of low-income residents than the county as a
 2 whole and a much higher proportion that use transit rather
 3 than driving. Again, pointing that out, Page 20 and 21
 4 shows the various district maps. These are kind of -- that
 5 front map that we talked about, which was 460(a), these are
 6 that maps, those maps spread out onto different maps. So
 7 it's kind of the same information, but as we said, Westfield
 8 property is part of the Urban District map, which is Map 2,
 9 and the enterprise zone, which is Map 5 on page 21, as well
 10 as being part of the Wheaton Sector Plan area we saw before
 11 on page 10.
 12 On page 25, fourth paragraph under County
 13 Redevelopment Program, one two, three, four, yes: New
 14 development resulting from public-private partnerships
 15 should be consistent with plan objectives and should
 16 contribute to the overall economic and environmental
 17 sustainability of Wheaton, provide better pedestrian
 18 connectivity, and support safe, secure, and appealing
 19 street-level activity, integrate and connect Westfield
 20 Wheaton Mall with the center of the CBD, create, excuse me,
 21 create opportunities to help retain and grow local small
 22 businesses, and employ smart growth principles and construct
 23 LEED-certified buildings.
 24 Page 28, which is Map 8 of -- it shows the urban
 25 design concept, shows local access to Wheaton's downtown

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1 core directly from Kensington Heights through the gas
 2 station's proposed location to downtown and the Metro
 3 station. So this is, this is what it looks like here.
 4 MR. GROSSMAN: I see it.
 5 THE WITNESS: Okay. Okay. Page 29 under
 6 Connectivity, which is about the middle of the page: The
 7 Westfield Wheaton Mall will be integrated with the CBD
 8 through pedestrian connections and street-oriented uses
 9 along its edges -- all its edges, it says there. Mr. Gang
 10 stated connectivity only referred to the main roads
 11 surrounding the mall, I believe, if I remember what he
 12 testified to, but that is not what this says and that is not
 13 what the diagram on the prior page says either. All edges
 14 are referred to here. All edges of the mall are referred to
 15 in this statement.
 16 MR. GROSSMAN: Well, read me that statement again.
 17 THE WITNESS: The Westfield Wheaton Mall will be
 18 integrated with the CBD through pedestrian connections and
 19 street-oriented uses along its edges.
 20 MR. GROSSMAN: The CBD.
 21 THE WITNESS: Right, will be connected, integrated
 22 with the CBD through those ways to connect --
 23 MR. GROSSMAN: Yes.
 24 THE WITNESS: -- along all of its edges. So
 25 that's, to me, that says we're going to be connecting the

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1 neighborhoods that are around, surrounding Westfield Wheaton
 2 to the CBD. Kensington --
 3 MR. GROSSMAN: All right.
 4 THE WITNESS: -- Heights is one of those
 5 neighborhoods.
 6 MR. GROSSMAN: Okay.
 7 THE WITNESS: Okay. Page 43.
 8 MR. GROSSMAN: Would you say that a pedestrian
 9 walkway along the southern ring road helps to meet that
 10 goal?
 11 THE WITNESS: Yes, it definitely does. Right now
 12 we don't have that. That would definitely help. Those
 13 people still have to somehow -- they don't have to but would
 14 probably want to -- somehow cross the ring road and that's,
 15 I think, where some of the problems are going to happen.
 16 They will want to walk all the way around, but they will
 17 also eventually want to cross it and that's, that's some of
 18 the problems, but yes, it does, it will help.
 19 MR. GROSSMAN: All right.
 20 THE WITNESS: So I'm glad that that's hopefully
 21 going to happen. What was the next one? Page 29 under
 22 Connectivity -- wrong. Page 43. We already did 29. Page
 23 43 under some text called The Districts: The Westfield
 24 District has the potential to evolve into a mixed-use
 25 district that enhances the mall as a retail destination, and

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1 I'll be talking about that later on, about the potentials
 2 there.
 3 Pages 67 to 68, which is the existing and proposed
 4 bikeways, Map 18, which is on page 67, shows existing and
 5 proposed bikeways within the Wheaton plan area. Note that
 6 Westfield's ring road is labeled as a proposed shared
 7 roadway for bicycles all the way around the ring road.
 8 Connections between the ring road and Kensington Heights
 9 include on that map something at SR -- it's labeled as
 10 SR-25, which is, that's the Torrance Court connection. It
 11 is in the southeast, kind of, corner section of the ring
 12 road and that connects directly, by going directly south,
 13 connects to McComas Avenue, which runs through Kensington
 14 Heights.
 15 BY MS. CORDRY:
 16 Q And is that the same Torrance Court connection
 17 showing --
 18 A That I showed before, yes.
 19 Q -- the sidewalk and the --
 20 A Yes.
 21 Q -- staircase and so forth?
 22 A That is correct. Okay. Okay. So that's the,
 23 that's one connection, just east -- and that is just east of
 24 the proposed gas station site. That connection that's shown
 25 on here as a bikeway path is just east of where the gas

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1 station is going to be. I can show it on here, if that's
 2 helpful. Oh, I showed that already. Never mind. You saw
 3 it already. Okay.
 4 MR. GROSSMAN: You're talking about the Torrance
 5 Court?
 6 THE WITNESS: The Torrance Court, yeah, sorry.
 7 And another connection is at LB-3, which is the Faulkner
 8 Place connection. That is basically on the west side of the
 9 ring road, right where the Valley View entrance comes into
 10 the mall, and that's the -- and that is north and west of
 11 the proposed gas station site. So that yet is another
 12 proposed bikeway connection.
 13 Now, much of this is proposed, but the sector plan
 14 provides the road map for what is expected to occur over the
 15 years to come to fulfill the plan's goal of improving
 16 non-auto connections within Wheaton and beyond. The
 17 proposals in the sector plan are exactly what the Planning
 18 Board and the Council, when it approved it, envisioned as
 19 the logical development of Wheaton.
 20 Further, on page 68 the plan says that the county
 21 should request that the state, quote, designate the plan
 22 area, which includes all of Westfield property, as a bicycle
 23 and pedestrian priority area. This designation will
 24 facilitate funding to bicycle, for bicycle and pedestrian
 25 improvements on state roads. This -- end quote -- this

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1 designation will assist in furthering the plan's goals
 2 overall, which include reducing dependence on automobiles
 3 and increasing transit use. The Westfield Wheaton property
 4 would be part of that bicycle and pedestrian priority area.
 5 Page 74 -- I've only got two more to go -- page 74
 6 and elsewhere, the plan emphasizes the desire and goal to
 7 reduce energy consumption, quote, through energy-efficient
 8 design and multimodal transportation options. Mixed-use
 9 areas reduce vehicle miles traveled by combining
 10 destinations in a walkable area. Carbon emissions are
 11 directly related to carbon-based energy production and
 12 consumption. Increased carbon emissions have been tied to
 13 the human contribution to climate change, thus increasing
 14 the importance of minimizing the use of non-renewable
 15 energy, unquote.
 16 And, finally, on page 77, page 77 talks about the
 17 opportunity to build healthful features into the community
 18 as Westfield -- as Wheaton redevelops. Quote --
 19 MR. GROSSMAN: What page is that?
 20 THE WITNESS: I'm sorry, page 77.
 21 MR. GROSSMAN: 77?
 22 THE WITNESS: Quote, to promote -- promote walking
 23 and cycling on safe and complete streets, unquote, is listed
 24 as one of the ways to do that.
 25 BY MS. CORDRY:

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1 Q Okay. So we have now stated a number of places
2 where the sector plan has discussed issues that we think are
3 relevant here. Can you start to begin very specifically
4 with where you think that this, building this gas station
5 would conflict with any one or all of those principles that
6 you just cited?
7 A Okay. I'm going to start with one very concrete
8 way as related to the last two points on page 74 and page
9 77. Page 74 of the sector plan talks about the desire to
10 reduce energy consumption, vehicle miles, and carbon
11 emissions. Although there would be real questions under
12 this provision about siting any additional gas station --
13 that's my opinion -- any additional gas station within the
14 Wheaton Sector Plan boundary in light of these provisions
15 and our current ample supply of gasoline, that quotation
16 from the sector plan on page 74 is particularly relevant to
17 this proposed gas station. This gas station would be
18 uniquely in conflict with the sector plan because of the
19 problem of idling, and I'm referring to the adverse effects
20 of that issue wholly apart from the health aspects. I'm not
21 testifying on the health aspects because others have
22 testified about that.
23 Costco and its experts concede that this proposed
24 gas station would operate with large numbers of idling cars
25 for virtually all of its 15-hour day. If you look at

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1 Mr. Sullivan's August 2013 report, which is Exhibit 255, on
2 pages 19 to 22, which will be your next -- should be in your
3 packet, I hope.
4 MR. GROSSMAN: It is.
5 THE WITNESS: Okay. I don't know if you want to
6 put an (a) or (b) on that or if -- it's already in the
7 record. So --
8 MR. GROSSMAN: It's in the record, but let's keep
9 your package as a packet. So we'll make that 460(b) --
10 THE WITNESS: Okay. 460(b), okay.
11 MR. GROSSMAN: And that's --
12 THE WITNESS: 460(b).
13 MR. GROSSMAN: -- excerpts from Sullivan --
14 THE WITNESS: Yes, from Sullivan --
15 MR. GROSSMAN: -- report of --
16 THE WITNESS: -- which is Exhibit 255.
17 MR. GROSSMAN: Excerpts --
18 THE WITNESS: Report of August 2013.
19 MR. GROSSMAN: -- from Sullivan report of 8/16/13.
20 So it's pages --
21 THE WITNESS: 19 to 22.
22 MR. GROSSMAN: -- 1 and 19 to 22.
23 (Exhibit No. 460(b) was marked
24 for identification.)
25 THE WITNESS: Oh, yeah, right. I put the 1 on

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1 there so you'd know what it was.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: Okay. On page 21, 21 shows the
4 idling patterns at the Sterling, Virginia, store on a
5 weekend day from 10:00 a.m. to 7:00 p.m. And you can see
6 that the, it's listed as Total Cars Queued Each Minute for,
7 I think that says, Eight Lanes in Sterling, Virginia. And
8 so the lines back up very quickly after the warehouse opens
9 at 9:30 and stay high until the warehouse closes at 6:00
10 p.m., because it's a weekend, and even take a while to clear
11 out the backlog until the gas station itself closes at 7:00
12 p.m. So it is very clear that idling is going to be an
13 issue where we are because there it is right in front of us.
14 MR. GROSSMAN: So you're arguing that the idling
15 is an energy use inconsistent with the goal on page 74?
16 THE WITNESS: That's correct.
17 MR. GROSSMAN: What if -- I'm not suggesting that
18 the evidence establishes this -- but what if the evidence
19 established that so many people drive a distance to go to a
20 Costco gas station, that there's a balance, that balances
21 out the amount of the effect of the idling in terms of
22 energy consumption if people can get to a Costco station
23 closer to them? Would that, would that --
24 THE WITNESS: I'm sorry. I don't really
25 understand the question.

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1 MR. GROSSMAN: My question is, your theory is that
2 there's more inefficient energy consumption because of
3 idling for this, at this gas station --
4 THE WITNESS: Right.
5 MR. GROSSMAN: -- but what if the evidence would
6 lead one to believe that people for whatever reason decide
7 they want to shop at a Costco gas station and they drive
8 from this, from the Wheaton area up to Costco gas stations
9 elsewhere that's thus using gas inefficiently, I guess you'd
10 say --
11 THE WITNESS: Okay. So, for instance -- okay.
12 MR. GROSSMAN: -- and so what if that would
13 balance out this effect?
14 THE WITNESS: Okay. So let me --
15 MR. GROSSMAN: And do we know whether it balances
16 out this effect?
17 THE WITNESS: So let me, let me give an example of
18 what I think you're asking. So say somebody lives in
19 Wheaton --
20 MR. GROSSMAN: Right.
21 THE WITNESS: -- and they want to shop at Costco
22 and they want to get gas at the same time.
23 MR. GROSSMAN: Right.
24 THE WITNESS: They would go to Beltsville --
25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- to get it instead of shopping at
2 the Wheaton --
3 MR. GROSSMAN: Precisely.
4 THE WITNESS: Okay. I guess I don't quite know
5 how to -- I don't know how, if anybody could ever figure
6 that out, whether it would balance out, and I also don't
7 really think that -- are there really people that would do
8 that? It doesn't seem to make --
9 MR. BRANN: Yes.
10 MR. GROSSMAN: There's some evidence about that,
11 but --
12 MS. CORDRY: Right.
13 THE WITNESS: Yeah.
14 MR. GROSSMAN: -- but, but the -- I'm just saying
15 that in trying to figure out how to factor in this --
16 THE WITNESS: Right.
17 MR. GROSSMAN: -- particular reference that you've
18 made, that has to be a factor, I suppose --
19 THE WITNESS: Well --
20 MR. GROSSMAN: -- that it's going to be some
21 impact.
22 THE WITNESS: -- what might balance that, balance
23 -- what might further unbalance everything is all the people
24 who say, supposedly, or they have posited that they would
25 come to Wheaton from very far away, they would come to

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1 Wheaton because it had a, the Wheaton Costco, because it had
2 a gas station.
3 MR. GROSSMAN: You think that might be a wash and
4 that --
5 THE WITNESS: That might wash the people, I mean,
6 that -- I don't know.
7 MR. GROSSMAN: That's possible. Okay.
8 THE WITNESS: That's -- or who are coming from a
9 great distance when in fact their next-door gas station is a
10 penny, a penny or two more but they for some reason want to
11 come to Costco, where it's two cents less. So there's a lot
12 of human behavior here that I think we can't really account
13 for.
14 MR. GROSSMAN: Right. Okay.
15 THE WITNESS: That's just my opinion. Yeah, so
16 every one of these -- assuming we have the idling, which I
17 think has sort of been assumed by everybody, that idling,
18 every one of those cars is producing carbon dioxide as a
19 greenhouse gas that contributes to climate change --
20 exactly, as you said, what page 74 of the sector plan talks
21 about reducing.
22 This proposed gas station would concentrate all of
23 those cars into a small space that does not have enough
24 pumps to handle the volume without backups, and it would
25 create significant amounts of carbon dioxide and other

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1 greenhouse gases. Right now those emissions don't exist,
2 certainly not in the space where we're proposing to put this
3 gas station. People are getting their gas at various places
4 out there, and they're not waiting in line or at least not
5 in my experience.
6 If we put this gas station here, we take all of
7 those people who are out there, getting their gas without
8 waiting in line, and we put a bunch of them right there in
9 this proposed location and they have to wait in line and
10 produce idling emissions that are not being produced
11 anywhere else in the county now and that is really contrary
12 to what the Wheaton Sector Plan is trying to do -- trying to
13 reduce gas mileage, reduce carbon emissions. We're going
14 completely against that. It would sort of be a new feature
15 of Wheaton, all that idling, that we don't have now. Okay.
16 MR. GROSSMAN: Let me ask you this: If that's
17 a --
18 THE WITNESS: Okay.
19 MR. GROSSMAN: -- that goal, that is, reducing
20 energy inefficiencies --
21 THE WITNESS: Okay.
22 MR. GROSSMAN: -- is essentially a county kind of
23 goal --
24 THE WITNESS: Yeah.
25 MR. GROSSMAN: -- as opposed to just a Wheaton

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1 Sector Plan goal --
2 THE WITNESS: Right.
3 MR. GROSSMAN: -- are you suggesting that there
4 cannot be any Costco gas station anywhere in the county
5 under your theory, because you have cars that are going to
6 be idling?
7 THE WITNESS: I don't know if I would suggest
8 that, but I would suggest that we'd certainly have to look
9 at the situation at any proposed Costco gas location if
10 there would be idling there. Maybe Costco can -- I don't
11 know how they could have a gas station without idling.
12 Maybe, I think it's just --
13 BY MS. CORDRY:
14 Q Ms. Savage, are you aware of other gas stations
15 that operate without idling?
16 A Without idling?
17 Q Yes.
18 A Pretty much every other gas station that exists --
19 Q Is there anything that --
20 A -- except for Costco gas stations.
21 Q Is there anything that you're aware of in Costco
22 gas stations that somehow inherently mean they have to have
23 idling, other than whether or not they design them to
24 satisfy the business that comes to them?
25 A Well, I don't think Costco purposely designs

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1 things such that there's backups and they're idling, but
2 again, this is a human-nature thing. People get so excited
3 about saving three or four cents a gallon on gas, they waste
4 that waiting in line, but they don't see that part of it.
5 And so because the gas is slightly cheaper, not always, but
6 usually, people are willing to wait in line and idle, and --
7 MR. GROSSMAN: See, what's disturbing me here, I'm
8 trying to figure out how to factor in this particular goal
9 of the Wheaton CBD Sector Plan.
10 THE WITNESS: Right.
11 MR. GROSSMAN: If it's something that's really
12 just a general goal, countywide, if not nationwide, to
13 reduce gas emissions, I'm not sure how I apply that to this
14 special exception application in terms of interpreting the
15 real, you know, the real goals of the Wheaton Sector Plan.
16 THE WITNESS: Well, I guess, in part --
17 MR. GROSSMAN: And what I'm saying is it's a goal
18 that's not exactly geographical in nature --
19 THE WITNESS: Yes.
20 MR. GROSSMAN: -- it doesn't really just pertain
21 to the Wheaton Sector Plan area, and I don't know exactly
22 how to apply that. I can understand, you know, applying
23 something about pedestrian access and all of that --
24 THE WITNESS: Uh-huh.
25 MR. GROSSMAN: -- where you're talking about

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1 specific geographical locations.
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: It's much more difficult to apply
4 to this kind of case something that's a, essentially, a
5 national goal --
6 THE WITNESS: Yeah.
7 MR. GROSSMAN: -- a world goal.
8 THE WITNESS: Yeah.
9 MR. GROSSMAN: So I just --
10 THE WITNESS: I guess --
11 MR. GROSSMAN: -- I don't know how to factor that
12 in.
13 BY MS. CORDRY:
14 Q Okay. Let me go back --
15 A Can I --
16 Q -- to some more questions here. Again --
17 A Okay.
18 MR. GROSSMAN: Do you want to let her answer that?
19 MS. CORDRY: Well, I didn't -- I'm sorry. I
20 thought that was, I thought that was a pontification. I'm
21 sorry. I'm sorry.
22 MR. GROSSMAN: Well, no, I was positing it as a,
23 as a question. Do I, can I really --
24 THE WITNESS: I guess --
25 MR. GROSSMAN: -- is there a way I can factor that

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1 in?
2 THE WITNESS: Well, I thought about that in
3 putting myself in your position. I guess the way I -- the
4 way I would answer that is that yes, it's a larger goal.
5 It's a goal for the state, it's a goal for the county, it's
6 a goal for the nation, but it specifically says that in this
7 plan, and people in Wheaton, in the Wheaton area, therefore,
8 expect that we will move in that direction, because it says
9 it here. This is a really important document for at least
10 the next 20 years.
11 MR. GROSSMAN: Yes, I agree it's an important
12 document, but when things are so general that they apply to
13 everywhere in the world --
14 THE WITNESS: Yeah.
15 MR. GROSSMAN: -- it's very difficult to apply
16 them as part of this kind of evaluation as opposed to
17 applying the things that are specific to the sector plan and
18 which there are --
19 THE WITNESS: Yeah.
20 MR. GROSSMAN: -- specific things that apply to
21 the sector plan.
22 MR. SILVERMAN: Mr. Grossman --
23 MS. CORDRY: Well, wait. No, my witness first.
24 THE WITNESS: Whoa.
25 MS. CORDRY: Okay.

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1 MR. GROSSMAN: No fighting, kids.
2 MS. CORDRY: Okay.
3 BY MS. CORDRY:
4 Q Ms. Savage, are you aware that the sector plan
5 refers to --
6 MR. GOECKE: Objection. Leading.
7 MR. GROSSMAN: Yes. I sustain that objection.
8 MS. CORDRY: Well, let me just -- I'm sorry. I'm
9 just asking --
10 MR. GROSSMAN: You're just asking a leading
11 question.
12 MS. CORDRY: I'm trying to just recite a portion
13 of the sector, the zoning -- the special exception
14 requirements and then ask her a question.
15 UNIDENTIFIED SPEAKER: Karen, just say, would you
16 agree.
17 MR. GROSSMAN: No, you can't really ask her
18 leading questions. It's --
19 MS. CORDRY: Well, okay, then I will just say, the
20 special exception requirements talk about inherent adverse
21 effects.
22 MR. GROSSMAN: Well, wait a minute. No, no, no.
23 You can't -- that's why they allow you to prepare witnesses
24 in advance, so you won't ask leading questions on direct. I
25 mean, you're not allowed to put words in her mouth on direct

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1 examination. That's just not fair --
2 MS. CORDRY: Okay. I don't think -- okay.
3 MR. GROSSMAN: -- but she's very well-versed --
4 MS. CORDRY: All right.
5 MR. GROSSMAN: -- in this whole area --
6 THE WITNESS: Well --
7 MS. CORDRY: Well --
8 MR. GROSSMAN: -- as you've established already
9 and as I know. So you don't have to lead her.
10 MS. CORDRY: Well, I --
11 THE WITNESS: Okay.
12 MR. GROSSMAN: Just ask her a question.
13 MS. CORDRY: Well, I -- okay.
14 THE WITNESS: Well, I think you've sort of got --
15 we've sort of been talking about that, why this gas station
16 and not other gas stations is different in this regard. I
17 mean, is that -- I shouldn't ask her because I'm leading her
18 then, but this gas station -- and I think maybe you talked
19 about this a little bit -- this is different than other --
20 Costco gas stations are different than other gas stations in
21 a bunch of ways. One of them is all of this idling that,
22 that we looked at in Mr. Sullivan's report, all of the
23 queues of cars. It just doesn't happen, at least around
24 here, it doesn't happen at other gas stations.
25 MR. GROSSMAN: I understand.

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1 THE WITNESS: That's, that's a uniqueness for the
2 Costco gas station --
3 MR. GROSSMAN: Right.
4 THE WITNESS: -- and that, I mean, I think that
5 makes a difference between if you were to put a Sunoco here
6 or if you were to put a Costco gas station here.
7 MR. GROSSMAN: Right.
8 THE WITNESS: Does that, I don't know if that
9 really answers --
10 MR. GROSSMAN: I think I understand. It's,
11 assertedly, a non-inherent characteristic --
12 THE WITNESS: Yeah.
13 MR. GROSSMAN: -- of this gas station.
14 THE WITNESS: Yeah.
15 MR. GROSSMAN: I understand.
16 THE WITNESS: Okay.
17 BY MS. CORDRY:
18 Q And I think there's a reference to whether this
19 was a state issue. I'm going to show you some pages that
20 are taken from an exhibit that was already put into
21 evidence, which was No. 336, the state's Greenhouse Gas
22 Reduction Plan.
23 A Okay.
24 Q I believe it was testified to some weeks ago.
25 MR. GOECKE: 336, you said?

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1 MS. CORDRY: I believe that's 336, yes. Yes, 336.
2 THE WITNESS: Oh, yeah, I think so, yeah.
3 BY MS. CORDRY:
4 Q And have you seen these pages before?
5 A Yes, actually.
6 Q And can you tell us, in discussing this, the --
7 what's the first page talk about there?
8 A It's talking about what greenhouse, greenhouse
9 gases are and talks about carbon dioxide and methane.
10 Q Okay. And under Carbon Dioxide, what's the
11 picture on the left-hand side?
12 A Well, that's a bunch of cars idling, it looks like
13 to me.
14 Q Okay. And on the second page --
15 MR. GROSSMAN: Where are you going with this? Why
16 are we belaboring the obvious? We know that there --
17 MS. CORDRY: Well, because I think it is, it's
18 extremely important that we actually do get into the record
19 that this idling is both against county policy, against a
20 state law, that the state law is trying to reduce these
21 gases.
22 MR. GROSSMAN: Well, you've introduced this
23 document. Why --
24 MS. CORDRY: That's right, and I'm going to --
25 MR. GROSSMAN: Already. So --

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1 MS. CORDRY: All right.
2 MR. GROSSMAN: -- so why are we belaboring it, is
3 all I'm asking. Why are you asking this witness to state
4 what's on the document that's in, that you've already
5 introduced, unless somebody has objected to this document?
6 MS. CORDRY: I'm just trying to take --
7 MR. GROSSMAN: I'm not trying to make it more
8 difficult for you. I'm just --
9 MS. CORDRY: Right. Okay.
10 MR. GROSSMAN: -- I'm just saying that we don't
11 need to go over things that are already --
12 MS. CORDRY: Okay.
13 MR. GROSSMAN: -- she doesn't have to read out
14 what's in the record.
15 MS. CORDRY: Right, but I want to emphasize what
16 are the portions and why, why these are important, why the
17 state is taking this position, why these are things that we
18 should not be going against when the county is trying to
19 decide --
20 MR. GROSSMAN: Well, that's a matter of argument.
21 You can argue why that, but in terms of the evidence, we
22 know that the county, the state, and the world opposes more
23 pollution.
24 MS. CORDRY: And --
25 MR. GROSSMAN: What else do you need to say about

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1 it?

2 MS. CORDRY: All right.

3 MR. GROSSMAN: I mean, this is an exhibit that you

4 said is already in. So --

5 MS. CORDRY: Okay. All right.

6 BY MS. CORDRY:

7 Q All right. Is the county doing other things --

8 A Yes.

9 Q -- recently that deal with this question of

10 greenhouse gases and idling and so forth?

11 A Yes. County Council Bill No. 6-14 has been

12 introduced by Council member Berliner and co-sponsored by

13 Council members Floreen, Riemer, Leventhal, Andrews, and

14 Navarro to create a new Office of Sustainability within the

15 county's Department of Environmental Protection that will

16 monitor and pursue the goals of guiding our county's

17 greenhouse gas reduction and implementation.

18 MR. GROSSMAN: Well, has that been passed by the

19 Council?

20 THE WITNESS: It has not. It is --

21 MR. GROSSMAN: Okay. I can't --

22 THE WITNESS: -- it is about to be voted on soon,

23 very soon.

24 MR. GOECKE: I would object to the relevance of

25 this testimony.

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1 THE WITNESS: Okay.

2 MS. CORDRY: Well --

3 MR. GROSSMAN: Yes. I mean, it's not --

4 MR. SILVERMAN: It's relevant.

5 MS. CORDRY: I understand it has not been passed

6 yet. It has six sponsors altogether out of a council of

7 nine.

8 THE WITNESS: It's probably going to pass, yeah.

9 MS. CORDRY: You know, it --

10 MR. GROSSMAN: I can't work on that probability --

11 THE WITNESS: No. Okay.

12 MR. GROSSMAN: -- nor does it --

13 THE WITNESS: Okay.

14 MR. GROSSMAN: -- nor does it matter in terms of

15 my understanding or anybody's understanding of county goals

16 in terms of --

17 THE WITNESS: Okay.

18 MR. GROSSMAN: -- pollution. I don't need to know

19 that some Council member or six Council members have

20 proposed a bill to establish an Office of Sustainability --

21 MS. CORDRY: Well, for one thing it would be

22 useful to also know what --

23 MR. GROSSMAN: -- one of my least favorite words,

24 by the way.

25 THE WITNESS: It's hard to say --

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1 MS. CORDRY: -- what the statement, stated purpose

2 of it was, which, among other things, is to make greenhouse

3 gas reduction policy a fundamental responsibility of county

4 government. If nothing else, we took into effect the two

5 state bills which are dealing with gas stations.

6 MR. GROSSMAN: It hasn't been passed yet.

7 MS. CORDRY: I --

8 MR. GROSSMAN: We will not go into --

9 THE WITNESS: Okay.

10 MR. GROSSMAN: -- things that have not been

11 passed.

12 MS. CORDRY: Okay.

13 THE WITNESS: Okay. Let's move on.

14 MR. GROSSMAN: Okay. I just don't see that as --

15 MS. CORDRY: I think it's as relevant as taking

16 into evidence, at the very least, the fact that state bills

17 have been introduced. So --

18 MR. GROSSMAN: I understand your point, but I

19 brought it -- I made the point at the very beginning that it

20 has no legal effect on me whatever but I was mentioning it

21 to everybody because, when something's been brought to my

22 attention outside of the record that may bear on the case or

23 bear on issues in the case, I like to be straightforward and

24 make sure that all the parties know that it's been brought

25 to my attention. That's why I brought it out --

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1 MS. CORDRY: Okay. Well --

2 MR. GROSSMAN: -- not that I think that it's, that

3 it's relevant in the sense that it'll bear on the case,

4 because a bill in front of the legislature that has not been

5 passed will not bear on my consideration whatever.

6 MS. CORDRY: I understand.

7 MR. GROSSMAN: Nor will this Bill 6-14 that's been

8 proposed to establish an Office of Sustainability bear on my

9 recommendation.

10 MS. CORDRY: Well, it depends on when or if it

11 passes in relationship to this hearing, which has gone on

12 long enough to let many things develop over time. So --

13 MR. GROSSMAN: Yes. Yes.

14 MS. CORDRY: -- in any case --

15 MR. GOECKE: So let's move on then.

16 THE WITNESS: Let's, yeah --

17 MS. CORDRY: All right. All right.

18 THE WITNESS: -- I would like to move on too,

19 actually.

20 BY MS. CORDRY:

21 Q All right. So --

22 A I just, I just want to sum up one thing -- and I

23 think you got this, but I just want to make sure -- that one

24 of the non-inherent things about a Costco gas station, this

25 Costco gas station, is that it will take, it will bring

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1 people who are getting gas everywhere else and not waiting
2 in lines and will bring a bunch of them to this spot in
3 Wheaton and it will make a whole bunch of them line up and
4 idle, and there's some health effects there that, you know,
5 in lots of ways go against what the Wheaton Sector Plan
6 says. And so that's sort of my sum of that. Does that --
7 MR. GROSSMAN: Okay. I understand.
8 THE WITNESS: -- make sense?
9 MR. GROSSMAN: Yes.
10 THE WITNESS: Okay.
11 BY MS. CORDRY:
12 Q And since the warehouse has been open now for
13 close to a year, have you observed any -- and people have
14 been coming to the warehouse, driving to it -- have you
15 observed any differences with respect to whether there's
16 more or less idling in stations around this area?
17 A I can't --
18 MR. GROSSMAN: I'm not sure I understand it. Have
19 you --
20 MS. CORDRY: Okay.
21 MR. GROSSMAN: -- has she observed whether there's
22 more idling around stations in the area? I don't understand
23 the question.
24 BY MS. CORDRY:
25 Q In other words, the warehouse has been open; it's

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1 been bringing traffic obviously to this area --
2 A Oh, so it's drawing people to it, yeah. Okay.
3 Q -- so have you noticed if there's any more idling
4 at stations in this area since the warehouse opened?
5 MR. GOECKE: I'm going to object as --
6 MR. GROSSMAN: Oh, non-Costco stations --
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: -- you mean?
9 MS. CORDRY: Yes.
10 MR. GROSSMAN: Okay.
11 MR. GOECKE: I'd like to object as an irrelevant
12 question.
13 MR. GROSSMAN: I'll overrule that objection. I'm
14 not sure how it's going to bear on anything here, but go
15 ahead and answer.
16 THE WITNESS: I'm not sure how it does either, but
17 okay. I haven't observed any. So I guess the question is,
18 all right, we're bringing all these extra people to shop at
19 Costco, would that create more people using the local gas
20 stations? I haven't noticed that. I haven't noticed any
21 lines, people lining up at local gas stations, no.
22 BY MS. CORDRY:
23 Q Okay. All right. So let's move along. Are there
24 other aspects of the proposed gas station that you believe
25 violate the sector plan and its goals?

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1 A Okay. Well, yes. I think it's going to bring
2 more vehicles to Wheaton and more driving around Wheaton --
3 again, something that is opposite of what the goals on the
4 sector plan talk about. This would be the largest gas
5 station in the county. We've discussed that. It will bring
6 more vehicles to Wheaton than are already coming to Wheaton
7 just for the Costco warehouse, and I think the Costco
8 witnesses estimated that, if I got this right, approximately
9 30 percent of the cars buying gas would come solely for that
10 purpose. I could be wrong, but I believe that's the
11 percentage. So that's 30 percent of the, 30 percent
12 additional cars. I think that I'm getting the math wrong on
13 this, but it's a significant increase in the number of cars
14 that would be coming to Wheaton just when we're trying to do
15 the opposite in the sector plan. It means more driving in
16 and around Wheaton within the plan area simply to buy
17 gasoline that's already available elsewhere. You look like
18 you're going to ask a question.
19 MR. GROSSMAN: I still have a problem with this
20 whole concept. It seems to me that there's a kind of
21 schizophrenic approach to this. You have a regional mall --
22 THE WITNESS: Right.
23 MR. GROSSMAN: -- the goal of which is presumably
24 to attract people, most of whom are going to come by car, is
25 that correct?

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1 THE WITNESS: At this point, I think that's most
2 of --
3 MR. GROSSMAN: Yes, and that's part of what's been
4 approved in the Wheaton Sector, CBD Sector Plan. I mean, it
5 is to retain that mall, which is a car-centric mall, and I
6 just, I just don't understand why a gas station per se is
7 any different from any other car-centric attraction in the
8 mall.
9 THE WITNESS: Well, I'm going to talk about that a
10 little later when I talk about Wheaton's, Westfield
11 Wheaton's future --
12 MR. GROSSMAN: Yes.
13 THE WITNESS: -- and what it could be and the new
14 zoning that's about to happen on the, on the rest of the --
15 on most of the mall, about two-thirds of the western side of
16 the mall, and what could be in the near future, near or far
17 future.
18 MR. GROSSMAN: The western side of the mall or the
19 eastern side of the mall?
20 THE WITNESS: Well, both actually, but more
21 relevantly to this gas station, the sort of western/southern
22 parts. So I am going to --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- I can talk about that now, if
25 you'd like, but I will --

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1 MR. GROSSMAN: Okay. No, no. I'll let you go
2 ahead. I'm just --
3 THE WITNESS: Okay.
4 MR. GROSSMAN: -- this is my overall concern with
5 the opposition's position and with the Planning Board's
6 position on interpreting the Wheaton CBD Sector Plan.
7 THE WITNESS: Uh-huh.
8 MR. GROSSMAN: If they had said in the Wheaton CBD
9 Sector Plan we're doing away with the mall, that would be
10 one thing, but if you say in the Wheaton CBD Sector Plan
11 we're keeping the mall a regional mall to attract, which
12 attracts cars by its very nature, I have a concern about
13 this whole, this argument. So, I mean --
14 THE WITNESS: Uh-huh.
15 MR. GROSSMAN: -- I'm laying it out there so you
16 can address it.
17 THE WITNESS: Okay. Okay. Okay.
18 MR. SILVERMAN: Mr. Grossman, is your concern with
19 the plan or with the testimony?
20 MR. GROSSMAN: No, my concern is with interpreting
21 the plan, a plan which approves the retention of a regional
22 mall and still saying that you can't have another kind of
23 venture here, a gas station, which is, which is going to
24 attract cars, just as Target is going to attract cars and
25 Costco warehouse is going to attract cars.

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1 I just don't quite understand the distinction in
2 terms of the sector plan of a gas station versus some of the
3 other merchants that would attract cars. I'm not sure that
4 -- so I'm saying that, that's my concern about this
5 particular aspect, and I'm saying it now so that your
6 witness on this particular point can address it.
7 THE WITNESS: Let me make one small point about
8 that, and then I will do more detail when I get to the
9 section about Westfield's future, okay? On page 43 of the
10 sector plan, when it talks about the various different
11 districts --
12 MR. GROSSMAN: Yes.
13 THE WITNESS: -- in Wheaton and one of them is the
14 Westfield District, and it does say the Westfield District
15 has the potential to evolve into a mixed-use district that
16 would enhance the mall as a retail destination. So
17 mixed-use is -- they're thinking ahead.
18 MR. GROSSMAN: It has the potential, but --
19 THE WITNESS: Yeah.
20 MR. GROSSMAN: -- they haven't said -- that's not
21 what they've recommended per se in the plan. The plan calls
22 for keeping Wheaton Plaza as it is.
23 THE WITNESS: Well, not entirely. I mean, the
24 eastern part has been, in the plan, has been rezoned to CR
25 and that can be --

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1 MR. GROSSMAN: I agree. I agree, the eastern
2 part.
3 THE WITNESS: -- redeveloped, right, and --
4 MR. GROSSMAN: But they left, they very
5 specifically left the commercial area the way --
6 THE WITNESS: Well, the most -- most of the
7 commercial area is, was left in the sector plan as C-2.
8 MR. GROSSMAN: Right.
9 THE WITNESS: C-2 -- you're going to hate this
10 because I know you hate future stuff this way -- but C-2 is
11 about to evolve into a GR zone. All of the C-2 land, with
12 the zoning rewrite, which is just about to be voted on by
13 the, in like two weeks --
14 MR. GROSSMAN: The rewrite, yes, the rewrite
15 itself, not the --
16 THE WITNESS: The rewrite, not the map.
17 MR. GROSSMAN: -- not the countywide --
18 THE WITNESS: Right, I understand. The map is a
19 few months hence.
20 MR. GROSSMAN: I know.
21 THE WITNESS: When that changes -- and it will
22 because there doesn't appear to be, at least for that --
23 MR. GROSSMAN: Well, I don't know if the --
24 there's a straw vote that's been taken already --
25 THE WITNESS: Yes, correct. Right.

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1 MR. GROSSMAN: -- for the zoning, the zoning
2 ordinance rewrite.
3 THE WITNESS: Right.
4 MR. GROSSMAN: So I think it's fair, that's fair
5 game to be considered. The map itself --
6 THE WITNESS: Uh-huh.
7 MR. GROSSMAN: -- is something else because there
8 hasn't been that vote.
9 BY MS. CORDRY: We will talk about that some more.
10 THE WITNESS: Okay. I will talk a little bit
11 about that, but I guess I just want to point out that the
12 GR, assuming -- and I know it's a big assumption -- but
13 assuming that GR, that the C-2, which is now on the
14 two-thirds, western two-thirds of the mall, does become GR,
15 that can be mixed use. That can be 30 percent residential.
16 There are lots of changes that could happen, and I'm going
17 to talk about some of the malls that are already doing that
18 locally. So I've got some information and background on
19 that as well. So --
20 MR. GROSSMAN: Well, I'm not going to restrict you
21 from testifying about it, but you're right that it is a
22 problem when something is, hasn't happened yet. There are
23 many a --
24 THE WITNESS: I know. Well --
25 MR. GROSSMAN: -- many a slip twixt the cup and

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1 the lip. I don't know what --
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: -- the Council is going to vote on
4 any particular thing except I do know they've taken a straw
5 vote to approve the zoning ordinance rewrite.
6 THE WITNESS: Yeah.
7 BY MS. CORDRY:
8 Q Ms. Savage, in terms of the point about the
9 regional mall, although many people do come by automobile,
10 is there anything that stops them from coming from other,
11 using other means of transportation to get there?
12 A No. I mean, we've got the Metro station right
13 there. You don't even really have to go outside too much.
14 We've got that crossover above Veirs Mill Road that gets you
15 right into the mall. It's certainly very shoppable by
16 Metro --
17 Q Is it --
18 A -- and Metrobus and Metrorail.
19 Q Is the sector plan encouraging other means of --
20 MR. GOECKE: Objection. Leading.
21 BY MS. CORDRY:
22 Q Is there anything in the sector plan that --
23 MR. GROSSMAN: No. Let's hear the question first.
24 Go ahead.
25 MS. CORDRY: Yes.

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1 BY MS. CORDRY:
2 Q Is there anything else in the sector plan that
3 talks about other means of transit use with the development
4 of Wheaton and the mall?
5 MR. GROSSMAN: I overrule the objection. I think
6 that's a legitimate question.
7 THE WITNESS: Okay. Yeah. I mean, they're
8 talking, we're talking about bike, bike paths and pedestrian
9 paths, and other ways are talked about throughout the plan
10 as other ways, other than automobiles, to get around and
11 that's -- the Wheaton plan is trying to push in that
12 direction: non-automobiles. They say that. They say there
13 are bikeways current and proposed, that pedestrians have to
14 be able to get around more, that transit should be focused
15 on because it's a real benefit of Wheaton. So there are a
16 whole variety of other ways to get around besides
17 automobiles, and it's pushing in that direction -- the whole
18 plan, it. The plan is pushing in that direction.
19 BY MS. CORDRY:
20 Q Is there anything in the sector plan that suggests
21 that it is proposing or encouraging, specifically,
22 auto-related development, i.e., a gas station or an auto
23 dealership or a service station? Is there anything in the
24 sector plan that proposes to put that sort of thing on the
25 mall?

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1 A Not at all. It's exactly the opposite of that,
2 and I think the expectation of the community is exactly the
3 opposite of that, and I, I -- in all of the millions,
4 millions of meetings and workshops we've had about the
5 sector plan and Wheaton's future redevelopment, no one says
6 we need more cars around or we need more services for cars.
7 That's just not there. That's not our expectation. That's
8 not what the plan says.
9 Q And if we put another restaurant, another retail
10 store, a movie theater, is there anything that requires
11 people to use an auto to come to those sorts of uses on the
12 mall?
13 A No, not required at all; in fact, gas stations or
14 similar service stations for autos are pretty much the only
15 use of that space that would, that proposed space, that
16 would require automobiles.
17 MR. GROSSMAN: Drive-through restaurants?
18 MR. SILVERMAN: You need a special exception.
19 MR. GROSSMAN: Yes, I know. I granted one of
20 those myself.
21 THE WITNESS: Okay. Drive-through, but
22 drive-throughs are also not only drive-throughs, right?
23 MR. GROSSMAN: I recommended, I should say.
24 THE WITNESS: Ah, okay.
25 MR. GROSSMAN: Yes.

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1 THE WITNESS: Are drive-throughs, maybe I don't go
2 to the right restaurants, but I mean, only drive-throughs,
3 or you can go in there and walk through; you can bike
4 through.
5 MR. GROSSMAN: No, the one I'm referring to is a
6 Wendy's --
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: -- that replaced a gas station --
9 THE WITNESS: Uh-huh.
10 MR. GROSSMAN: -- and --
11 MS. CORDRY: Right, on the edge of the mall.
12 THE WITNESS: Yeah.
13 MS. CORDRY: On Veirs Mill Road.
14 THE WITNESS: But you can walk into the Wendy's,
15 right?
16 MR. GROSSMAN: Yes, you can.
17 THE WITNESS: You can sit and eat there, yeah.
18 MR. GROSSMAN: Yes.
19 THE WITNESS: So you don't have, you don't have to
20 use a car to deal with Wendy's.
21 MR. GROSSMAN: That's true.
22 THE WITNESS: A gas station you got to have a car,
23 or maybe you have to have a lawn mower or a snow blower, but
24 in general, you have to have an internal combustion engine
25 in order to deal with a gas station.

1 BY MS. CORDRY:
 2 Q Okay.
 3 A So that's the, that's the differences. If they
 4 were to put other things in that same spot, fine.
 5 Q Now, going back to the question about where people
 6 might come from to go to this station --
 7 A Oh, yeah. Yeah. Okay. You wanted to talk about
 8 that.
 9 Q -- are you aware of any information that is in the
 10 record about where they might draw their customers from?
 11 A Well, I think Costco hasn't, that I'm aware of,
 12 hasn't provided information about where it expects, what
 13 it's catchment area would be, but one factor we might think
 14 about is the bunch of postcards -- I think, Ms. Harris, you
 15 had, like, boxes of postcards from people who were
 16 supporting the gas station -- and that many of them, those
 17 postcards came from way other ZIP codes than around us. And
 18 I think Ms. Cordry testified earlier, if you look at those
 19 ZIP codes, there are hundreds of cards from people who live
 20 closer to the Gaithersburg Costco, for example, who said
 21 that they are clamoring for a gas station here in Wheaton.
 22 And this gets somewhat to your, your, what you had said
 23 before, Mr. Grossman, about are people going to come here,
 24 or I said that, someone said that, are people going to come
 25 to Wheaton, if there's a gas station there, just for the gas

1 station, but it doesn't make sense because, in fact, if
 2 people who live closer to the Gaithersburg Costco, where
 3 there is not a gas station, would plan to drive past an
 4 existing Costco just to come to Wheaton to buy gas, passing
 5 on the way, by the way, numerous other gas stations -- we
 6 have 25 or 30 or whatever in the Wheaton area alone -- these
 7 buyers and the extra mileage they would drive would be
 8 contrary to the goals of the sector plan, as I think I
 9 mentioned to you before, which is to reduce vehicle miles
 10 and gasoline usage. So, again, they'd be coming -- we would
 11 be encouraging them to come to Wheaton. If we had a gas
 12 station, we'd be encouraging them to come to Wheaton and use
 13 extra miles and, again, go against what the sector plan is
 14 hoping for.
 15 MR. GROSSMAN: What percentage of the people who
 16 use a Wendy's do you think go, decide to go there by taking
 17 the subway as opposed to, you know, a car on a nearby
 18 roadway?
 19 THE WITNESS: Well, my sense is that there are
 20 enough Wendy's around that people could kind of stay in
 21 their neighborhood and go to a Wendy's or a Wendy's-like
 22 establishment --
 23 MR. GROSSMAN: No, I just raised this question
 24 because you said --
 25 THE WITNESS: -- but I don't know.

1 MR. GROSSMAN: -- this is going to encourage
 2 people to drive and so on, but I just wonder whether or not
 3 Wendy's, which you suggest people can walk into the
 4 restaurant, is it, do you think that any significant
 5 percentage of the customers at the Wendy's that exists
 6 now --
 7 THE WITNESS: Uh-huh.
 8 MR. GROSSMAN: -- at Wheaton Plaza is really from
 9 people just walking in there or taking the subway to get
 10 there as opposed to people who are driving in?
 11 THE WITNESS: No, but they may be people who are
 12 already driving to Penney's in the mall --
 13 MR. GROSSMAN: Yes.
 14 THE WITNESS: -- and Penney's is not too far from
 15 the Wendy's, and so they'll say, oh, Wendy's is over there,
 16 that's right, and so they leave their car where it's parked
 17 and they walk over to Wendy's and say let's get something to
 18 eat. So, I mean, that's a -- they're already in the mall.
 19 They're not, they're not driving any additional miles to get
 20 to Wendy's.
 21 MR. GROSSMAN: Right. I understand your point. I
 22 mean, that's true for a certain percentage of the people
 23 coming --
 24 THE WITNESS: Yeah.
 25 MR. GROSSMAN: -- to the mall who might use a gas

1 station also, but I understand your point.
 2 THE WITNESS: Well --
 3 BY MS. CORDRY:
 4 Q And, Ms. Savage, people --
 5 A Yeah.
 6 Q -- the Wendy's is between the Metro and a
 7 neighborhood. If someone's leaving the Metro and walking by
 8 the Wendy's to go home, is that a logical place they might
 9 stop to eat dinner?
 10 A Oh, well, if you like Wendy's, but yeah. I was
 11 also thinking that there's that, that sports --
 12 MR. GROSSMAN: You're asking her to speculate. I
 13 was asking her if she was aware of the percentage of the
 14 people --
 15 THE WITNESS: Yeah.
 16 MR. GROSSMAN: -- who use it. That was a
 17 different question.
 18 MS. CORDRY: Well, I was trying to avoid
 19 testifying. That is something I do myself on occasion from
 20 time to time.
 21 THE WITNESS: I was, well, I was --
 22 MR. GROSSMAN: But now you're testifying.
 23 MS. CORDRY: Yes.
 24 THE WITNESS: -- I was also thinking that, I mean,
 25 there's the sports, whatever that sports club is that's

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1 right there, sort of an unfortunate location of that sports
2 palace and the Wendy's next to each other, but --
3 MR. GROSSMAN: All of this talk about Wendy's is
4 making Mr. Silverman hungry.
5 MR. SILVERMAN: Yes, indeed.
6 THE WITNESS: Oh, it is kind of -- okay.
7 MR. GROSSMAN: So why don't we break for lunch
8 before they run out of everything.
9 MS. CORDRY: Okay. This would be a fine place.
10 THE WITNESS: Oh, okay. Okay. Cool.
11 MR. GROSSMAN: We'll come back at -- it's 1:15 --
12 we'll come back at 2 o'clock?
13 MR. SILVERMAN: Great.
14 MR. GOECKE: Great.
15 MR. GROSSMAN: Okay. Thank you all.
16 (Whereupon, at 1:13 p.m., a luncheon recess was
17 taken.)
18 MR. GROSSMAN: Back on the record. Ms. Savage.
19 BY MS. CORDRY:
20 Q All right. Ms. Savage --
21 MR. GROSSMAN: Ms. Cordry.
22 MS. CORDRY: Yes.
23 BY MS. CORDRY:
24 Q You've been discussing some of the adverse effects
25 you see from this, from this gas station. Some of the

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1 witnesses supporting the station, Costco and some of its
2 supporters, have identified certain benefits they see to the
3 station. Can you discuss some of that, those benefits, and
4 what your view is of those?
5 A Okay. I think some of the testimony that you gave
6 also indicated that there's actually relatively little gas
7 price difference. Gas price difference seems to me to be
8 one of the major things that people see as a benefit to
9 having a Costco gas station there, granted it's only for
10 members, but still -- but I have, as Exhibit, I guess this
11 would be 460(c), two pages, probably both sides of one page,
12 that show the Beltsville area gas prices on a particular
13 date that I picked, and you'll see why in a minute, but it
14 was October 30th. So that's the Beltsville area gas prices.
15 It showed Costco is the lowest but only by a couple cents,
16 and --
17 MR. GROSSMAN: Hold on one second. Let me just
18 write this down.
19 THE WITNESS: Oh, I'm sorry. Oh, I'm sorry.
20 MR. GROSSMAN: So 460(c) --
21 THE WITNESS: 460(c) I believe we're up to, right?
22 MR. GROSSMAN: Yes -- would be gas --
23 THE WITNESS: Beltsville --
24 MR. GROSSMAN: -- gas price comparisons?
25 THE WITNESS: Gas price comparisons on 10/30/13.

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1 MR. GROSSMAN: Okay.
2 (Exhibit No. 460(c) was marked
3 for identification.)
4 THE WITNESS: And there's two parts to that. One
5 is the Beltsville area prices, and the other is Maryland
6 Costco gas prices --
7 MR. GROSSMAN: Okay.
8 THE WITNESS: -- which shows a wide variety of --
9 even Costco gas doesn't cost the same, or it depends on
10 where you live.
11 MR. GROSSMAN: Right.
12 THE WITNESS: So the reason I brought that
13 particular date up was also -- is this also the same date?
14 Right around that date, not exactly the same date, but I
15 purchased, as an example, I purchased gas at the Shell
16 station in Kensington using my Giant gas points and I paid
17 only \$2.84 a gallon and that is, receipt for that is Exhibit
18 460(d) and that's actually three pages.
19 MR. GROSSMAN: Okay. So it's Giant supermarket --
20 THE WITNESS: It's Shell, Shell gas --
21 MR. GROSSMAN: -- receipt --
22 THE WITNESS: Oh, right, Giant receipts to show
23 that I can still save a lot of money on groceries.
24 MR. GROSSMAN: -- and Shell, Shell gas --
25 THE WITNESS: And then --

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1 BY MS. CORDRY:
2 Q Hold on just a moment.
3 A I'm sorry?
4 Q Let him --
5 MR. GROSSMAN: So it's Giant supermarket receipt
6 and Shell gas receipt.
7 (Exhibit No. 460(d) was marked
8 for identification.)
9 THE WITNESS: And Shell gas receipt, correct.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: Because I think one of the things
12 that was said during some of the community comments long,
13 long time ago was that not only is the gas cheaper but you
14 have to, you pay more for groceries to participate in some
15 of these grocery store programs. And, as you can see, even
16 my husband can shop pretty well: he saved 42 percent off
17 the regular prices, and I saved 39 percent off the regular
18 prices and still got credits towards gas and paid \$2.84 on
19 October 26th. And a few days later, which is when I got
20 around to doing it, the Beltsville prices were much more
21 than that and the Maryland Costco gas prices were much more
22 than that. So I guess my point is there's a lot of adverse
23 effects that I've talked about already and will talk about
24 again and there are other ways to offset gas prices that
25 don't affect -- don't have these adverse effects.

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1 My understanding, I haven't participated in this,
2 but I understand that Kmart hands out .30 per gallon
3 vouchers to its loyalty card members who purchase as little
4 as \$50. So that's another way that can be done. I don't
5 have an exhibit for that, but -- and there are other
6 incentives as well. Let's see.
7 MR. GROSSMAN: So, essentially, you're saying
8 these are alternatives to saving money at a Costco gas
9 station?
10 THE WITNESS: That's correct.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: And there's -- Exhibit 460(e) would
13 be just something that Citi card has. I happen to have a
14 Citi card MasterCard. So that's a program that they have
15 where they give you, I think you save five percent on gas.
16 So that would be 460(e), another alternative.
17 MR. GROSSMAN: Wait a minute. I see State Farm.
18 THE WITNESS: It's right before State Farm, should
19 be right before State Farm.
20 MR. GROSSMAN: Oh, give me a second. Oh, okay.
21 So -- I see, five percent, five percent back --
22 THE WITNESS: Sorry, it has my notes on there.
23 MR. GROSSMAN: -- through December 31, '13.
24 THE WITNESS: Yeah. It's a time-limited thing,
25 but --

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: Yeah, and so that's time-limited.
3 MR. GROSSMAN: So that's 460(e) --
4 THE WITNESS: 460(e), right. Okay. Thanks.
5 MR. GROSSMAN: -- is Citibank credit card, five
6 percent discount --
7 THE WITNESS: Discount, right.
8 MR. GROSSMAN: -- on gas.
9 (Exhibit No. 460(e) was marked
10 for identification.)
11 THE WITNESS: And then 460(f) is yet another way
12 to save on gas and that's the State Farm program which gives
13 you a discount on your insurance if you drive fewer miles.
14 So it's an incentive to drive fewer miles; thus, I guess,
15 you know, you'd have to say that that reduces your gas cost.
16 MR. GROSSMAN: I don't know if we can put that in
17 the same category as --
18 THE WITNESS: Okay. Well --
19 MR. GROSSMAN: -- as these other things that
20 are --
21 THE WITNESS: Right. It's not a direct --
22 MR. GROSSMAN: -- a little more direct
23 alternatives.
24 THE WITNESS: -- is not a -- is an indirect, I
25 would say.

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1 MR. GROSSMAN: State Farm incentive to drive less,
2 because that could be used by Costco customers too, couldn't
3 it be?
4 (Exhibit No. 460(f) was marked
5 for identification.)
6 THE WITNESS: Well, all of these could be used by
7 Costco customers.
8 MR. GROSSMAN: No, but I mean --
9 THE WITNESS: The Citi, I mean, the Citibank thing
10 and the Giant --
11 MR. GROSSMAN: No. The Citibank thing, you have
12 to use your Citibank card, whereas Costco, I think --
13 THE WITNESS: Oh, I see what you're saying, yeah.
14 MR. GROSSMAN: -- do you have to use your Costco
15 card to buy it, or do you use --
16 THE WITNESS: Yes. Yes. Yeah.
17 MR. BRANN: You have to be a Costco member.
18 THE WITNESS: You have to be a Costco member.
19 MR. GROSSMAN: Member, but can you charge it on,
20 if you're a Costco member, can you charge it on a Citibank
21 card --
22 MR. BRANN: You can use --
23 MR. GROSSMAN: -- or you have to charge it, have
24 to use only AmEx or something?
25 UNIDENTIFIED SPEAKER: They have American Express.

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1 MR. BRANN: Any debit card or American Express
2 card.
3 MR. GROSSMAN: Right. So what I'm saying is --
4 THE WITNESS: Oh, so American Express only. I
5 see, yeah.
6 MR. GROSSMAN: So for Citibank, that's an
7 alternative to --
8 THE WITNESS: Right.
9 MR. GROSSMAN: -- using the Costco thing --
10 THE WITNESS: Right.
11 MR. GROSSMAN: -- and the Giant thing is an
12 alternative because you're buying at a Shell station --
13 THE WITNESS: Right.
14 MR. GROSSMAN: -- and the Safeway thing, where you
15 buy, Exxon is an alternative --
16 THE WITNESS: Right. Right.
17 MR. GROSSMAN: -- but the State Farm is
18 something --
19 THE WITNESS: It's a different -- yeah.
20 MR. GROSSMAN: -- that any gas purchaser in any
21 store can use. It's --
22 THE WITNESS: Oh, I see what you're saying, right.
23 I see your point. I see your point.
24 MR. GROSSMAN: -- not an advantage as an
25 alternative.

1 THE WITNESS: Right. Okay. I guess, I guess --
2 you're right. That's exactly right, but I guess my point
3 also is that -- and these are just random things that I've
4 gotten, the last two are just random things I've gotten in
5 the mail from things that I already belong to -- there are
6 lots of programs out there on ways to reduce your gas cost,
7 and these are just examples of --

8 MR. GROSSMAN: Ped sheds, you mean?

9 THE WITNESS: No. No, no. We're going to be
10 getting to that.

11 MR. GROSSMAN: Oh, okay.

12 THE WITNESS: The last few, the State Farm and the
13 Citi card --

14 MR. GROSSMAN: Oh, okay, yes.

15 THE WITNESS: -- and the Giant and the Safeway and
16 the Kmart, and the, there's -- everyone is getting in on
17 that action, or a lot of, lot of companies are getting in on
18 that action to reduce driving costs.

19 MR. GROSSMAN: I understand you.

20 THE WITNESS: Okay. And you're right, they're
21 accessible -- they're accessible to everyone, I mean, if you
22 have a Citi card MasterCard or Visa. Generally, they don't
23 cost you anything to join. Costco does cost \$55 a year to
24 join. Giant costs nothing to join, and if you shop well,
25 you end up saving, as you see, some pretty good money. So

1 they're accessible, more or less accessible to everyone.
2 With the State Farm you have to be a State Farm insurance
3 person.

4 The Costco, one of the points is that Costco gas
5 is available only to Costco members -- again, you have to be
6 a member -- and Costco estimates that only 25 percent of the
7 population in Wheaton is currently a member and only a
8 portion of those members buy their gas at Costco. I don't
9 know what portion that is, but I would imagine -- it's
10 probably a pretty big portion of people in Wheaton, if there
11 were a Wheaton gas station, who would buy it in Wheaton, but
12 there could be people who commute to, I don't know,
13 someplace else and they are at the someplace else, their
14 work someplace else and they need gas and so they get it
15 there and don't get it at Costco. So it's not everybody
16 who's a local Costco member buys at the local Costco gas
17 station, but I imagine a good percentage do, but it's still
18 less than 25 percent of the population in Wheaton.

19 So if this gas station were permitted, the entire
20 community would face adverse effects from a gas station that
21 would provide only a limited benefit to a very small portion
22 of the community. And so that's my take on all of this, the
23 limited benefit being, all right, maybe a couple of cents
24 per gallon on gas, but then you got to wait in a line and
25 waste your gas to get that couple of cents, and it would be

1 a limited benefit and only a small portion of the community,
2 but the whole community would be impacted by the
3 non-inherent adverse effects. So that's, that's my
4 bottom-line point with that.

5 MR. GROSSMAN: Okay.

6 THE WITNESS: Okay.

7 BY MS. CORDRY:

8 Q And when you say the whole community, does that
9 include Costco members?

10 A Well, yeah. Yes. Everybody, 100 percent of the
11 community would be, of the local community, would be
12 affected.

13 Q All right. We talked about idling. We've talked
14 about additional traffic and driving and miles and so forth.
15 Is there other aspects of the station operations that you
16 view as inconsistent with the sector plan and its goals?

17 A Yes. This proposed gas station would make it more
18 difficult to walk and bike in and around the mall.
19 Walkability and pedestrian-friendly environment and bicycle
20 friendliness, these are all terms that are found
21 throughout the sector plan; these are all terms that have
22 been found throughout all of the many, many meetings and
23 workshops and planning sessions we've had to look at the, to
24 plan -- to plan for the Wheaton Sector Plan and plan for the
25 future of Wheaton. So this is an expectation of the

1 community.

2 In Kensington Heights we routinely walk to and
3 through the mall to shop there, to either arrive at the
4 Metro station to use Metrorail or bus to go to work or
5 museums or entertainment. That's, in fact, one of the many
6 benefits of living in Kensington Heights, is that we can do
7 that. And as the sector plan notes, approximately 52
8 percent of local residents use transit to go to work, just
9 three times the county average. So a lot of people are
10 using the Metro. It's a well-used Metro station.

11 In addition, Kenmont, the Kenmont Swim & Tennis
12 Club, there are 400 families, often walk from Kenmont to the
13 mall because they're right adjacent, in the -- well, I don't
14 need to point it out. You know where it is, right?

15 MR. GROSSMAN: Yes.

16 THE WITNESS: Okay. For shopping or to get
17 something to eat while they're spending the day at the pool,
18 and often those people who are walking from Kenmont are
19 children or teenagers, not just adults. Sometimes the
20 adults go with them and sometimes they don't. So we need to
21 be, we just need to be a little more cognizant of that
22 particular area, the traffic in that area, because we have,
23 definitely will have kids and teenagers walking there.

24 Many of the walkers and bikers who commute to work
25 by Metro, either rail or bus, from the residential area

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1 south of the mall, Kensington Heights primarily, do so
2 through the portion of the property where this gas station
3 is proposed. They're going to go right through that spot.
4 A half-mile radius is considered the ped shed or walkable
5 catchment distance that pedestrians are likely to walk to
6 and from public rail transportation. This is kind of common
7 knowledge, but I also provided a sheet from the Congress for
8 New -- a text sheet from the Congress for New Urbanism and
9 that is your next part of this exhibit. So that is --
10 MR. GROSSMAN: 460(g).
11 (Exhibit No. 460(g) was marked
12 for identification.)
13 THE WITNESS: -- 460(g). Right, yeah, that sounds
14 good. This is one piece that I did not provide ahead of
15 time, and I just didn't. I'm sorry. I slipped. So I
16 apologize for that. So this, this talks about that.
17 MR. GROSSMAN: So it's essentially a description
18 of ped sheds?
19 THE WITNESS: It's a description, yes, description
20 of ped sheds, and my summary of that is that a half a mile
21 is considered the distance that people are willing to walk
22 to rail, not bus, but rail transit --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- and it's a radius; it's measured
25 in radius. And this proposal we have in front of us will

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1 put the gas station at one-third of a mile from Metrorail
2 and slightly closer even to the Wheaton bus depot, and I've
3 got two shots that show -- aha. Okay. So the next, sorry,
4 the next one says Wheaton Metro Station Area Pedestrian
5 Safety Evaluation. This is just from that safety
6 evaluation. It's a page from that book.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: But that shows the -- the
9 quarter-mile is the small circle --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- and the larger area is the
12 half-mile circle --
13 MR. GROSSMAN: So, essentially --
14 THE WITNESS: -- and it shows that at the bottom.
15 MR. GROSSMAN: So 460(h) --
16 THE WITNESS: Okay.
17 MR. GROSSMAN: -- is intended as showing radiuses?
18 THE WITNESS: Yes.
19 MR. GROSSMAN: Radius to, with a center?
20 THE WITNESS: Centered on the Metro --
21 MR. GROSSMAN: On the Metro.
22 THE WITNESS: -- Metrorail station --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- wherever that M is, red M.
25 MR. GROSSMAN: Okay. So 460(h), radii from Metro

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1 station.
2 (Exhibit No. 460(h) was marked
3 for identification.)
4 THE WITNESS: And there you can see in what would
5 be the -- just outside of the southwest corner of the inner
6 circle is where the gas station would be located. And I
7 have a, somewhere else I have an actual, not here, sorry,
8 the actual distance, but you can see it's between a quarter
9 mile and a half a mile, and -- it's about a third of a mile.
10 So it's within that radius that people are known to be
11 willing to walk to Metrorail, I mean, to rail service,
12 transit.
13 MR. GROSSMAN: And you think that the gas station
14 would impede pedestrians even with the addition of the walk,
15 the pedestrian path that they plan to construct, if this is
16 approved, along the southern ring road?
17 THE WITNESS: I think there are actually two
18 aspects to that. One is that it would, it would impede it
19 by being in the way of a straight line to get, more or less
20 a straight line to get to the Metro. You'd have to walk --
21 if you didn't want to walk through the gas station, you'd
22 have to walk around the mall, which you could do but it
23 lengthens the walk; most people would rather not lengthen
24 their walk, but they might. And I think -- so that's one
25 part of it. Actually, there's three parts. One part is

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1 that it would be in the way of people walking directly to
2 Metro.
3 MR. GROSSMAN: For those who are just southwest of
4 the gas station, presumably --
5 THE WITNESS: Correct. Correct.
6 MR. GROSSMAN: -- but wouldn't it facilitate the
7 path of those who are not in that little particular corner,
8 those who are --
9 THE WITNESS: You don't mean the gas station; you
10 mean the sidewalk.
11 MR. GROSSMAN: Yes. I mean, wouldn't the --
12 THE WITNESS: Yes. Okay.
13 MR. GROSSMAN: -- well, but the gas station comes
14 with the sidewalk as part of their plan.
15 THE WITNESS: Well, it does, and yet my
16 understanding -- someone can correct me on this -- is that
17 we were going to get that sidewalk anyway and that was part
18 of the deal for the \$4 million that Westfield got as county
19 subsidy to build the Costco.
20 MR. GROSSMAN: You may. I have no idea. All --
21 THE WITNESS: Yeah.
22 MR. GROSSMAN: -- I can tell you is that it's
23 not --
24 THE WITNESS: I'm pretty sure that it was, yeah.
25 MR. GROSSMAN: -- that that's not within the

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1 control of the Board of Appeals --
2 THE WITNESS: Aha.
3 MR. GROSSMAN: -- but what is within the control
4 of the Board of Appeals, if they elect to grant the special
5 exception, is a condition that the parties have agreed to --
6 THE WITNESS: Right.
7 MR. GROSSMAN: -- which would include the
8 pedestrian path, which has been reviewed and approved by
9 technical staff.
10 THE WITNESS: Okay.
11 MR. GROSSMAN: So my question is --
12 THE WITNESS: Well, we would -- okay. But I'm
13 saying that that may not be such an exciting condition for
14 us because we're going to get it anyway.
15 MR. GROSSMAN: Maybe, I don't know.
16 THE WITNESS: Okay. But that's --
17 MR. GROSSMAN: I have no idea whether that in fact
18 will come to pass or not.
19 THE WITNESS: Okay. Well, we'll --
20 MR. GROSSMAN: It's just outside of --
21 THE WITNESS: -- we would make sure it did.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: So I guess that's why I'm not
24 focusing so much on that, because that is my understanding,
25 is that we're going to get that anyway. And it would be

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1 nice if it happened as part of this special exception
2 because maybe it'll happen sooner, but my understanding is
3 we're going to get it anyway. So --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- it'll be there, or I'll make sure
6 it will be there.
7 MR. GROSSMAN: Okay.
8 THE WITNESS: So there were three parts. I hate
9 when that happens.
10 MR. GROSSMAN: Happens to the best of us.
11 THE WITNESS: I know.
12 MR. GROSSMAN: That means it happens to me.
13 THE WITNESS: Oh, is that what -- that's the
14 definition of the best of us. Okay.
15 MR. GROSSMAN: That's it. That's it.
16 THE WITNESS: Okay. All right. Well, I'm sure
17 I'll get back to that.
18 BY MS. CORDRY:
19 Q In terms of people walking along the ring road and
20 so forth, is there --
21 A Oh, now I remember. Okay.
22 Q -- is there any difference that you would see
23 before and after a gas station was put there?
24 A That's right. I just remembered. I don't know if
25 this is what you're getting at, but I just remembered the

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1 third thing. The third thing is that the gas station -- the
2 sidewalk that would go with the gas station would go, as you
3 said, along the outside of the ring road, so the outer loop,
4 around the outside of the outer loop, so to speak, and it
5 would take away one of the drive lanes. Currently there are
6 two drive lanes on the outer beltway --
7 MR. GROSSMAN: Yes.
8 THE WITNESS: -- and it would take away the outer
9 drive lane for the sidewalk and then some parking. So we
10 would have a situation right around a very complicated
11 traffic situation where it would become more complicated
12 with that sidewalk built the way it's going to be built. It
13 would only be one drive lane going east, I guess that is,
14 and anyone who wanted to -- right?
15 MR. GROSSMAN: Well, I'm not sure I understand.
16 Are you saying that you don't like the proposed structure?
17 MR. SILVERMAN: She didn't say that.
18 MS. CORDRY: No.
19 THE WITNESS: No, I didn't say that.
20 MR. GROSSMAN: Oh.
21 THE WITNESS: I'm pointing out what is going to
22 happen if we get that proposed situation --
23 MR. GROSSMAN: Right, but I'm --
24 THE WITNESS: -- and the gas station, because the
25 gas station is associated with that proposal for a sidewalk.

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1 MR. GROSSMAN: Right, but is there another better
2 construction of that sidewalk, given the contours of the
3 mall now and the ring road, that --
4 THE WITNESS: I --
5 MR. GROSSMAN: -- that you're talking about?
6 THE WITNESS: -- could not answer that if you paid
7 me a lot of money. Well, maybe I could.
8 MR. GROSSMAN: I'm just, what I'm trying to --
9 THE WITNESS: I can't answer that.
10 MR. GROSSMAN: -- I'm trying to get at is, what
11 exactly is the point you're making is that, is that
12 pedestrian path that's been proposed, is that not an
13 improvement in the pedestrian situation?
14 THE WITNESS: It is an improvement, but again, as
15 -- you know, if people want to walk across, not around the
16 mall all the way that the sidewalk would go --
17 MR. GROSSMAN: I understand that. I'm not talking
18 about that. I'm talking about --
19 THE WITNESS: -- across is the problem.
20 MR. GROSSMAN: -- you were just making another
21 point about it narrowing the travel lanes for cars.
22 THE WITNESS: Which means, if people want to cross
23 it, as opposed to go around --
24 MR. GROSSMAN: Yes.
25 THE WITNESS: -- if people want to cross that, it

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1 will be even more difficult to cross because it's going to
2 bunch up lots of traffic, even more than --
3 MR. GROSSMAN: I don't know if I follow that
4 either because I'm not sure that when you narrow a traffic
5 lane, that makes it more difficult to cross. I wouldn't
6 assume that.
7 THE WITNESS: Okay. Well, you make it, you're
8 taking away a whole --
9 MR. GROSSMAN: It may make it easier. It may make
10 it easier to cross that.
11 THE WITNESS: Because no one will be moving. Ah.
12 Well, okay, I'll give you that.
13 MR. GROSSMAN: That's because it's more narrow,
14 but I don't know. I mean, I'd have to hear evidence on that
15 point, but I --
16 THE WITNESS: Yeah.
17 MR. GROSSMAN: -- I don't know that this is a
18 point that I can --
19 BY MS. CORDRY:
20 Q Ms. Savage --
21 MR. GROSSMAN: -- that I can reach any conclusions
22 on.
23 THE WITNESS: Okay. Yeah.
24 BY MS. CORDRY:
25 Q Ms. Savage, as between the two scenarios of a path

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1 along the outside of the ring road --
2 A A sidewalk, yeah.
3 Q Yes -- with gas station traffic and without gas
4 station traffic --
5 A Right.
6 Q -- which will be more accessible for pedestrians?
7 A Well, my sense, it'd be much more accessible
8 without the added gas station traffic because people would
9 be able to cross very easily, and I -- the traffic, traffic
10 would flow better, and I, and people would be able to cross
11 more easily and --
12 Q Is there anything about walking by a gas station
13 that you would view as having an effect on the walkability
14 in that area?
15 A Well, a gas station in general, probably not.
16 Q I should say, this gas station.
17 A This gas station, probably yes.
18 Q And what would that be?
19 A Some of those, I mean, I walk and some of -- I
20 would avoid that area for a variety of reasons having to do
21 with what I'm going to be breathing in as I walk by, because
22 this gas station, not other gas stations, this gas station
23 causes, will cause, would cause cars to line up and idle and
24 fill the air right around it with something I don't want to
25 -- with stuff I don't want to breathe. So in terms of

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1 health issues, if I'm walking for health, I'm not going to
2 walk for health around a Costco gas station. That just
3 doesn't make sense.
4 In terms of getting somewhere, to where I want to
5 go, if I want to get to the mall -- say I wanted to get to
6 Penney's, which is all the way around the other side of the
7 mall. I would want to go into the mall somewhere near
8 Costco; so I would want to cross the ring road right around
9 the point where the gas station was, cross the ring road,
10 get into the mall and go to Penney's. That's the most
11 direct way to get there. I could also walk all the way
12 around the sidewalk on the outside, but you can bet I'm
13 probably going to dodge traffic and probably want to go
14 straight. So there are, there are some specific to this gas
15 station, there are some specific issues that would make it
16 less walkable, I think.
17 MR. GROSSMAN: Okay.
18 BY MS. CORDRY:
19 Q Let me see if --
20 A What did I do here? All right.
21 Q Okay.
22 A So we have -- I'm not 100 percent sure why I have
23 a second satellite view with a half-mile radius, but I do
24 and there it is. This is just half-mile radius. This is a
25 different --

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1 MR. GROSSMAN: Yes. I included that as part of
2 (h) --
3 THE WITNESS: Oh, you did? Okay. Never mind.
4 MR. GROSSMAN: -- those two as part of 460(h).
5 THE WITNESS: Okay. All right. So --
6 BY MS. CORDRY:
7 Q Let me ask you one thing.
8 A Oh, okay.
9 Q As compared to if a station was placed along one
10 of the main roads --
11 A Uh-huh.
12 Q -- is there anything about placing it back here
13 that also affects the walkability of people coming from the
14 community?
15 A Compared to putting it on main roads. I'm not 100
16 percent sure how to answer that, sorry. Can you rephrase it
17 a little?
18 Q Let me ask a different question then --
19 A Okay.
20 Q -- forget that one. There's a suggestion that
21 people are coming to the Costco anyway --
22 A Right.
23 Q -- or to the mall anyway --
24 A Right.
25 Q -- and therefore there would be no effect. Is

1 there anything about where the placement of the station is
 2 that would create an effect apart from the fact they're
 3 already coming to the mall?
 4 A Well, I will try to answer that. If people are
 5 going to, again, say Penney's or some other part of the mall
 6 that's away from the Costco, if they're going then to the
 7 Costco gas station, they have to get back in their cars and
 8 drive around to that part of the mall. If they had just
 9 been coming to Penney's and not going, and there was no
 10 Costco station, they would not be coming back there at all.
 11 So there's increased traffic even if people --
 12 even of people already coming to the mall. Once they decide
 13 to go to the Costco gas station, there's more traffic made
 14 by this gas station just because it's there and people want
 15 to go to it. They're already at the mall. If that were
 16 another, instead of a gas station, if that were another
 17 retail, some sort of retail outlet, people could keep their
 18 car parked where it is, at Penney's or wherever, and walk to
 19 that other retail establishment. If it were a McDonald's --
 20 no, that wouldn't happen -- but they could walk to that. If
 21 it's some sort of restaurant, they could walk to that. If
 22 it's another retail establishment, they could walk. A gas
 23 station, doesn't make sense if you don't take your car.
 24 So there's a lot of extra -- there's going to be
 25 extra traffic there that I still think will somehow affect

1 the walkers, with the idling or the fact that there's extra
 2 traffic, that will be there even for people coming to the
 3 mall. If this gas station were out on the road, we wouldn't
 4 have that. That wouldn't happen.
 5 Q Okay.
 6 A Did that sort of answer your question?
 7 MR. GROSSMAN: Okay. Let's move along. We've
 8 been over --
 9 MS. CORDRY: Okay.
 10 MR. GROSSMAN: -- this kind of thing over and
 11 over. So --
 12 THE WITNESS: Okay.
 13 MS. CORDRY: Okay. All right.
 14 THE WITNESS: I do have to -- I want to talk
 15 about, a little bit more about walking. Recreational
 16 walkers are currently encouraged by the Wheaton
 17 Redevelopment Office to use two different walking paths that
 18 include the mall property, and I've included those.
 19 MR. GROSSMAN: All right. So I see --
 20 THE WITNESS: It's a two-sided page.
 21 MR. GROSSMAN: Right. That'll be 460(i).
 22 THE WITNESS: 460(i), okay. And these are two --
 23 MS. HARRIS: What does that one look like?
 24 MS. CORDRY: This one.
 25 THE WITNESS: I'm sorry?

1 MS. HARRIS: I don't think we have that in our
 2 packet.
 3 MR. GROSSMAN: It's this little, it's a --
 4 THE WITNESS: It's after the -- you don't have it?
 5 Okay.
 6 MS. HARRIS: That was the last page I had.
 7 MS. CORDRY: Yes. Yes. There it is right there.
 8 THE WITNESS: He's got it.
 9 MS. HARRIS: Oh, this packet doesn't have it.
 10 THE WITNESS: Sorry.
 11 MS. HARRIS: That's okay.
 12 MS. CORDRY: I'm not certain about which package
 13 it was in. It's that one right there.
 14 MS. HARRIS: Excuse me.
 15 THE WITNESS: Hid the rest of the packet somewhere
 16 else maybe, I'm sorry. You have at least one copy, right?
 17 MS. HARRIS: I'm sorry.
 18 MR. GOECKE: We do. We have one copy.
 19 THE WITNESS: Okay, good.
 20 MR. GROSSMAN: Okay.
 21 THE WITNESS: That's all right. That's all right.
 22 So you go online and you look at the wheatonmd.org, and
 23 there are two walking paths that are considered on the mall
 24 property. One is called the Valley View Summit walking
 25 path, and you can see that outlined there, and the other one

1 is called Marathon at the Mall and that's basically all
 2 around the ring road. And this is just to show you that
 3 walking is definitely being encouraged by the folks in
 4 Wheaton and that the mall is part of -- there are other
 5 paths, other circles, too, that are recommended on that
 6 website, but these are the two that encompass the mall. So
 7 that's just to point that out.
 8 MR. GROSSMAN: Okay. So 460(i) are walking
 9 paths --
 10 THE WITNESS: Yes.
 11 MR. GROSSMAN: -- on the mall?
 12 THE WITNESS: Yep.
 13 MR. GROSSMAN: Okay.
 14 (Exhibit No. 460(i) was marked
 15 for identification.)
 16 THE WITNESS: Okay. All right. Just one second.
 17 Okay. There are a couple of -- and final thing about
 18 walking, there are a couple of spots in the sector plan that
 19 specifically talk about encouraging that, and I read some of
 20 those --
 21 MR. GROSSMAN: Right.
 22 THE WITNESS: -- but -- yes, I've already read
 23 some of those, page 29, page 59. I don't know if I read
 24 that one. Let's see. Yeah, on page 59 and page 66 and page
 25 67 and 68, yeah, these are all -- I've already mentioned

1 these.

2 MR. GROSSMAN: And 71.

3 THE WITNESS: And -- thank you.

4 MR. GROSSMAN: All right.

5 BY MS. CORDRY:

6 Q So can you just summarize for the -- in your view,

7 dealing with the station and the traffic coming into and

8 going through the station and the effect on walking, how do

9 you see those two things interacting? Can you just

10 summarize what you see the problem there?

11 MR. GROSSMAN: Why does she have to summarize it?

12 She's already --

13 THE WITNESS: I --

14 MR. GROSSMAN: -- testified at length about it in

15 every which way. She doesn't have to summarize what she's

16 already said. She's testified at length about it.

17 MS. CORDRY: Okay, fine.

18 THE WITNESS: Okay.

19 BY MS. CORDRY:

20 Q All right. Can you move on to any other conflicts

21 you would note with the sector plan?

22 A Okay. Yes. Mount McComas -- we call it Mount

23 McComas because there's a big hill on this property that was

24 the fill from when Hecht's was built in the 1970s -- is a

25 1.76-acre property that is currently undeveloped, one of the

1 very few last spots in Kensington Heights, but is a major

2 connection between the mall and the residential neighborhood

3 to the south, and I'll point that out on the big map here.

4 You can see this right here, this blank area, and you can

5 almost, if you look really carefully, you can almost see a

6 path along the top there that we've all worn down as we

7 walked to the mall.

8 MR. GROSSMAN: All right. So this is an area just

9 south of the subject site --

10 THE WITNESS: That's correct, pretty much directly

11 south.

12 MR. GROSSMAN: -- and south of the ring road?

13 THE WITNESS: Yes, correct.

14 MR. GROSSMAN: Okay.

15 THE WITNESS: Correct, just south. Actually, it

16 looks like it's just south, also, of the loading dock area.

17 MR. GROSSMAN: Right, between the loading dock and

18 the subject site.

19 THE WITNESS: Right, and the subject sight, right.

20 Right. Okay. And I don't think Mr. Gang mentioned this

21 connection in his original report, but he agreed on

22 cross-examination that it does exist, that it is used by

23 pedestrians. It is pretty much directly opposite, as you

24 said, the special exception area, and even now, with only a

25 grass path and a steep hill to access it and a lot of wet

1 spots after a rain, it provides a frequently used access

2 point to the mall for the entire community.

3 The development plan for that parcel -- and, yes,

4 there is one -- which currently is moving through the

5 planning process, shows a connecting path between the

6 development and the mall. They're going to put up 14

7 residences on that 1.76 acres, and the developer has agreed

8 to put in a path that will connect up to the mall property.

9 And the path was inserted into that plan at the request of

10 current residents, and planning staff also wanted it there,

11 which would make that connection even more inviting. Right

12 now it's just, you know, mud and dirt.

13 The county also is going to be adding a sidewalk

14 on the eastern half of McComas Avenue this spring. And so

15 right now -- I have to put my glasses on again -- right now

16 we have, we have sidewalks -- there's McComas Avenue; it's

17 down, it's down here. Okay. That's McComas, yes, that's

18 McComas Avenue --

19 BY MS. CORDRY:

20 Q That's -- yes.

21 A -- here.

22 MR. GROSSMAN: Essentially, along the red line at

23 the southern border --

24 THE WITNESS: Yes, at the southern border.

25 MR. GROSSMAN: -- of the defined neighborhood.

1 THE WITNESS: Right, and then it keeps going this

2 way. The county put in a sidewalk on one side of McComas

3 several years ago on this end, on the western end, and --

4 but there is no sidewalk here now. And so this spring,

5 after a lot of lobbying from many of us for a couple years,

6 this spring we're getting a sidewalk, yea, along McComas

7 Avenue.

8 So that's going to even make it easier for us to

9 get through the Mount McComas development once it develops

10 and even now to get through it, because it won't be

11 developed by the time this sidewalk is put in, and it will

12 also help with the access to the mall on Torrance Court.

13 And so it's -- the walkability is going to increase

14 significantly, is my point. But if a proposed gas station

15 were permitted, those connections would drop everyone right

16 in front of the gas station, which is not really a great

17 place to be dropped after trying to walk someplace with a

18 nice sidewalk and a nice connection through a nice new Mount

19 McComas development. I would say that that situation hardly

20 counts as encouraging additional pedestrian usage. You'd

21 bring them through nice new areas and you drop them at a

22 mega gas station? I just, that doesn't do it for me.

23 Anyway, I think that's, I think that's it for --

24 BY MS. CORDRY:

25 Q Okay.

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1 A -- walking.
2 Q During the course of the sector plan process, and
3 I think you had indicated that there had been previous
4 occasions where --
5 MR. GROSSMAN: Before you go on with that
6 question --
7 MS. CORDRY: Okay, sorry.
8 MR. GROSSMAN: -- there were a couple of more
9 pages on your Exhibit 460. So I just want --
10 THE WITNESS: Yes.
11 MR. GROSSMAN: -- if you wanted to identify those.
12 MS. CORDRY: They're coming.
13 THE WITNESS: They're -- it's coming up.
14 MS. CORDRY: Yes.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: Yeah, momentarily.
17 BY MS. CORDRY:
18 Q Okay. So you had mentioned that there had been
19 previous occasions where we had dealt, Kensington Heights
20 had dealt with zoning issues, and can you discuss that and
21 how that relates to the current sector plan?
22 A Okay. So I shouldn't have taken my glasses off
23 because one of them is called Outlot B, and this is when you
24 and I were in the same room together --
25 MR. GROSSMAN: Truly.

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1 THE WITNESS: -- many years, a bunch of years ago.
2 Outlot B is in this area right here. It is currently, more or
3 less, unbuilt.
4 MR. GROSSMAN: All right. That's to the west --
5 THE WITNESS: Right. I was, sorry, I was getting
6 to that.
7 MR. GROSSMAN: -- of the site.
8 THE WITNESS: Yes. It is to the west, and it is
9 bordered on the north by University and on the east-ish,
10 northeast, I guess, by the Valley View entrance to the mall.
11 And this -- it's in the northeast corner of Kensington
12 Heights. That's about three acres, a little more than three
13 acres.
14 BY MS. CORDRY:
15 Q I'm sorry. You said northeast. Did you mean
16 northwest?
17 A No. It's in the northeast of Kensington Heights.
18 It's in the northwest of --
19 MR. GROSSMAN: Of the mall.
20 THE WITNESS: -- of the mall. This is west over
21 here. That's east over there. Kensington Heights is here.
22 MS. ALPERT: Where's University Boulevard?
23 THE WITNESS: Right there.
24 MS. ALPERT: That's what I thought.
25 THE WITNESS: That's it.

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1 MS. ALPERT: Okay. I got it.
2 THE WITNESS: So it's sort of, it's the north and
3 east of Kensington Heights. So, anyway, that was originally
4 zoned at R-60 or RT-6, but the developer requested to have
5 this property up-zoned to allow for additional density. The
6 developer was Sterling Mehring, and in talking with him, the
7 planning staff and the Planning Board, we in the community
8 were told from the start that, because one corner of that
9 development -- the southeast corner, more or less, which is
10 right in here, I guess, or that's the east corner, I guess
11 -- was within a half-mile radius of the Metro, just that
12 little segment, we would have to accept up-zoning from the
13 then current sector plan's R-60 or RT-6 designation. And so
14 I have here --
15 MR. GROSSMAN: You used the expression you were
16 told. What does that mean? Who told you?
17 THE WITNESS: Well, I'm sorry, I thought -- the
18 planning staff, various planning staff members we met with,
19 members of the Planning Board when we came before the
20 Planning Board, and in this article, which is next, which
21 says, Neighbors Protest Town House, blah, blah, blah.
22 MR. GROSSMAN: So that's 460(j).
23 (Exhibit No. 460(j) was marked
24 for identification.)
25 THE WITNESS: It's 460(j). The developer was also

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1 encouraged by the planning staff to request higher density
2 because of the proximity to Metro. So, for instance, on the
3 third column of that, I'll just read a quick section:
4 Developer Sterling Mehring said that the rezone would put
5 the site closer to the county goal of dense housing near
6 Metro stations, a principle currently being worked out in
7 the new Wheaton Sector Plan, and this is from -- did I put a
8 date on this?
9 MR. GROSSMAN: There is a date.
10 BY MS. CORDRY:
11 Q November 12th, 2008 --
12 A Thank you. I --
13 Q -- top corner.
14 A -- didn't have, not on my copy. Okay.
15 MR. GROSSMAN: It's on the right, upper right-hand
16 corner.
17 THE WITNESS: Yeah, I made your -- yours much
18 better than mine.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: The site, which is partly open and
21 partly wooded, is within walking distance to the Wheaton
22 Metro. The county policy in the past has been that they
23 prefer to do intense development close to Metro, Mehring
24 said. They see that it makes good planning sense.
25 So he, he was told that he should go ahead and try

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1 and up-zone this a little to make it more dense. We were
2 told we had to -- that we should expect to have to accept
3 denser development than what the current, the then current
4 sector plan said all because a little section of it was
5 within half a mile of the Wheaton Metro station.
6 So you'll recall back on our little diagrams,
7 which were 460(h), I think, right, those radiuses, that the
8 proposed gas station site is going to be only one-third of a
9 -- one-third of a mile from the Wheaton Metro. It seems
10 inconsistent, at best, to tell the same community that we
11 need to up-zone a parcel and make it more dense and that
12 we're going to have to accept it because it's, part of it is
13 half a mile from Metro and then say but it's okay to put an
14 auto, a completely auto-centric development within a third
15 of a mile from Metro. Those two just --
16 MR. GROSSMAN: Well, they're in different zones.
17 I mean, one is --
18 THE WITNESS: They are in different zones.
19 MR. GROSSMAN: -- one is in the commercial zone.
20 THE WITNESS: They are in different zones, but the
21 -- it just doesn't, I mean, it doesn't pass the sniff test
22 to me that, that you tell a community that the development
23 is, that it's important that it's within a half a mile of
24 Metro and that makes a difference in how you develop the
25 parcel.

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1 MR. GROSSMAN: In fairness, Ms. Savage, I can't
2 reach any conclusions from that --
3 THE WITNESS: Okay.
4 MR. GROSSMAN: -- distinction, but -- because
5 they're entirely different zones. So --
6 THE WITNESS: I guess it goes more to what the
7 community expects, which is a fuzzier aspect.
8 MR. GROSSMAN: I don't know --
9 THE WITNESS: I understand.
10 MR. GROSSMAN: -- you can't speak for the
11 community, in any event, and --
12 THE WITNESS: Oh, okay.
13 MR. GROSSMAN: -- the people who speak for the
14 community are all the people who've come and testified here
15 before me. So --
16 THE WITNESS: Right. Okay. Okay. Well --
17 BY MS. CORDRY:
18 Q Well, have we had community meetings of KHCA to
19 take votes and positions on this position?
20 A Certainly the community known as Kensington
21 Heights could -- I think I represent. I'm representing the
22 thoughts about the community that's called Kensington
23 Heights; the larger community, no. You're right. You're
24 right.
25 MR. GROSSMAN: Fair enough.

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1 THE WITNESS: Okay.
2 BY MS. CORDRY:
3 Q Did we eventually agree to that rezoning,
4 Kensington Heights?
5 A We, we fought it. The original rezoning was much
6 -- we won at the Planning Board the first time when they
7 wanted to do, was it RT-10, I think, and we eventually
8 worked it out such that it would be built to RT-8 instead,
9 with fewer numbers and a few more, not just townhomes, a few
10 single-family homes, and I might add, that still hasn't been
11 built, so just FYI.
12 MR. GROSSMAN: Yes.
13 THE WITNESS: So, yeah, we came up with an
14 agreement with the developer that in addition to reducing
15 the number of residences, we also got some community
16 amenities as a result of our agreeing. So we thought we got
17 a reasonable deal.
18 BY MS. CORDRY:
19 Q Okay. Starting with the position of the Planning
20 Board and the planning staff?
21 A Yeah. They were, we thought -- that was part of
22 the reason we made the deal, is everyone, the Planning Board
23 and the planning staff were telling us, you know, there's a
24 new sector plan, we're currently working on it, you could
25 get a worse deal, things could be rezoned, I don't know,

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1 something, you could get an RT-10 zoning for that spot by
2 right, we just, we haven't gotten that far on the sector
3 plan. So we thought, well, let's make a deal that is okay
4 for us, not ideal, but okay, and then it sets it at that;
5 that property is then set at that agreement. So we thought
6 we were doing the best we could.
7 Q Okay. Now, you've asserted that in your view the
8 proposed gas station is inconsistent with the sector plan.
9 How does that comport with the Planning Board's position?
10 A Well, I won't read the Planning Board's decision,
11 but I will read --
12 MR. GROSSMAN: Well, the Planning Board's decision
13 is in the record in a letter.
14 THE WITNESS: Right. I was going to read the news
15 release that they put out. No, don't bother?
16 MR. GROSSMAN: I wouldn't --
17 THE WITNESS: Okay.
18 MR. GROSSMAN: Yes. I mean, it is --
19 THE WITNESS: All right. Can we put it --
20 MS. CORDRY: Can we --
21 MR. GROSSMAN: -- it is a marked -- we'll mark it
22 as --
23 THE WITNESS: Okay. Can you mark it, and then I
24 won't --
25 MR. GROSSMAN: -- (j), (k), it'll be 460(k).

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1 (Exhibit No. 460(k) was marked
2 for identification.)
3 MS. CORDRY: (K).
4 THE WITNESS: Okay. And then I won't bother
5 reading it. Okay.
6 MR. GROSSMAN: But the practical -- I don't think
7 it's inaccurate, but what really speaks for what the
8 Planning Board said is their actual letter --
9 THE WITNESS: Okay.
10 MR. GROSSMAN: -- which is in the record.
11 THE WITNESS: Which is already in the record,
12 yeah. That's why I didn't bring that. Okay.
13 MR. GROSSMAN: So that's what I take as
14 interpreting what the Planning Board said.
15 THE WITNESS: That's cool. Okay. That's fine.
16 Thanks.
17 BY MS. CORDRY:
18 Q Okay. So I'll finish this segment, that first
19 segment of exhibits.
20 A Oh, yes. So, Larry --
21 MR. SILVERMAN: Yes, just waiting.
22 THE WITNESS: -- attached -- oh, you already have
23 it in your hand. Okay. So this will, this will be, I
24 guess, if we're doing it the same way, 461 --
25 MR. GROSSMAN: Okay.

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1 (Exhibit No. 461 was marked
2 for identification.)
3 THE WITNESS: -- a packet of 461.
4 MS. HARRIS: Larry, do you have an extra?
5 MR. SILVERMAN: That's all I have, but --
6 THE WITNESS: There should have been four.
7 MS. CORDRY: You can give them that one. I don't
8 need one.
9 MR. SILVERMAN: Okay. You have one?
10 MS. CORDRY: Yes.
11 MR. SILVERMAN: Okay. All right.
12 MS. HARRIS: Thank you.
13 MR. SILVERMAN: Okay.
14 THE WITNESS: Oh, Karen doesn't need it, yeah.
15 MR. SILVERMAN: Abigail needs one.
16 BY MS. CORDRY:
17 Q Okay. So let's turn to some of the other aspects
18 of the county's goal for development and whether the
19 proposed gas station would fit within those parameters. Are
20 there concerns that you see there with respect to the
21 station?
22 A Yes. The county is clearly interested in
23 channeling additional development and density, both
24 residential and business, into areas near existing transit
25 facilities in order to meet the goals of increasing transit

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1 use and decreasing our reliance on automobiles. That's
2 clear from the sector plan.
3 Land that is within easy walking distance of the
4 Wheaton Metro and that can still be developed is a very
5 scarce resource, indeed. The properties around the Metro
6 station are completely built out, unlike some other areas of
7 the county, such as Glenmont, and the ownership of those
8 parcels is fragmented -- in some of those parcels is
9 fragmented, making it difficult to assemble parcels for
10 larger development projects. So it's been a little slower
11 in Wheaton as a result of that.
12 Q In fact, can you look at page 17 in your sector
13 plan?
14 A 17. Page 17. Okay.
15 Q And the second bullet there at the top in the
16 first set of bullets?
17 A Oh, it says: Even in periods of regional economic
18 growth, Wheaton has been stagnant; property ownership
19 patterns discourage assemblage.
20 Q Right. So is that the point you're making about
21 the fragmented ownership?
22 A Yes. This has been brought up many times, that
23 there are -- it's sort of a good part and a bad part of
24 Wheaton in that Wheaton has all these wonderful small
25 businesses that are celebrated and we're trying to hold on

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1 to them and that part's wonderful, but the not-so-wonderful
2 part is that, as a result, there's a lot of different small
3 owners and some owners want to, would like to sell to a
4 larger company for redevelopment and some would not and some
5 hold out for more money and it makes it much more
6 complicated for redevelopment to occur in Wheaton. So
7 that's what they're talking about here.
8 Q Recent new developments, how have they occurred
9 recently?
10 A Well, they've been centered around the Wheaton
11 Metro because that, that land has been, is the most valuable
12 and that's where it has mostly happened, is -- happened by
13 tearing down what occupies existing space and then
14 rebuilding more densely on that space.
15 MR. GROSSMAN: How does this all bear on what I
16 have to recommend?
17 MS. CORDRY: That what we're talking about is,
18 which we will get to in about 10 seconds, is, what is one of
19 the -- we're talking about the logical development of the
20 area, and one of the points about logical development is,
21 where do you have a large space of undeveloped, unbuilt-upon
22 land? The mall. The most logical development in the sector
23 plan going forward is that they're going to be coming,
24 looking at the mall and what can be done there.
25 MR. GROSSMAN: I just think that's so far and so

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1 tangential to what I would consider. You want me to look at
2 possibilities for development of the mall which the sector
3 plan has said can continue to exist?
4 MS. CORDRY: But we're not saying that the mall
5 would go away. That's the problem. There's a suggestion
6 that somehow the mall is either exactly the way it is or it
7 somehow disappears. And what is clear that the sector plan
8 and what Ms. Savage is going to talk about some more is that
9 there are many things that happen and this gas station is
10 not compatible with many of the things that can happen at
11 this mall, that have been happening at other malls, that are
12 happening in Wheaton.
13 I mean, logical development is a future-oriented
14 statement. This is a sector plan that's going to go on for
15 20 years. We're looking at things that not just are going
16 to happen in the next six weeks but five years, six years,
17 15 years, 20 years down the road and is this station --
18 would this station affect, does it retard the logical
19 development. So I think we have an ability and a right to
20 talk about what are the logical developments in this area.
21 MR. GROSSMAN: I'm going to let you talk about it,
22 but I'm going to say that you ought to consider whether or
23 not it's really something, given the other issues in this
24 case --
25 MS. CORDRY: Well --

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1 MR. GROSSMAN: -- that's going to have an
2 influence on any decision in this case --
3 MS. CORDRY: Well, I'm not sure, because every
4 issue we bring up, it goes --
5 MR. GROSSMAN: -- but I'm going to let you talk
6 about it if you want to, if you want to do it.
7 MS. CORDRY: Okay. We move each one of these ones
8 along, and you know, I don't know which of the issues is
9 going to catch your attention.
10 MR. GROSSMAN: Well, I can tell you, as you move
11 further and further into the tangential area that the Board
12 of Appeals has no real direct control over -- the only thing
13 the Board of Appeals can consider is what's before it in
14 terms of an application for a special exception, and there
15 are lots of issues about whether or not this special
16 exception is a good idea, which the opposition has well
17 presented. Whether or not --
18 MS. CORDRY: Well --
19 MR. GROSSMAN: -- something as --
20 MS. CORDRY: -- just --
21 MR. GROSSMAN: -- as tentative --
22 MS. CORDRY: Yes.
23 MR. GROSSMAN: -- as this sort of planning goal in
24 the sense that you're talking about it, it's really -- so I
25 would --

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1 MS. CORDRY: Well, we --
2 MR. GROSSMAN: -- I'm going to let you do it,
3 but --
4 MS. CORDRY: We're not going to spend too long on
5 it, but --
6 MR. GROSSMAN: -- let's try to move it along and
7 not waste too much time on this, okay?
8 MS. CORDRY: -- but I would note that they are
9 also talking about what they are thinking about developing
10 the mall.
11 BY MS. CORDRY:
12 Q So, anyway, go ahead, Ms. Savage, quickly, if you
13 would, please.
14 A Where am I on this?
15 Q I'm sorry. We were just at the point where you
16 were suggesting that -- you were talking about where the
17 logical next development is going to be in the Wheaton area.
18 A Aha, I was talking about that. Okay. Well,
19 certainly the largest, as you said, the largest parcel is
20 the mall. There aren't any drawn-up, about-to-be voted-on
21 plans to do that, agreed, but that is one of the places
22 where it could happen. The mall is already very close to
23 the Metro. It's very exciting for developers when they see
24 big pieces of land that are close to Metro, and I'm not
25 saying that someone's going to buy out Westfield and build

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1 condos, but someone might help Westfield build some other
2 things on the mall, as many other malls are doing.
3 We talked a lot about -- the county talks a lot
4 about smart growth and transit-oriented development, and
5 certainly the mall, because of its location in relation to
6 Metrorail and Metrobus and soon to be the bus rapid transit,
7 Westfield is well situated for all kinds of things that,
8 sorry, could happen, on that space because of its location.
9 So I want to talk just a, just --
10 MR. GROSSMAN: Well, lots of things could happen.
11 THE WITNESS: Well, I know that.
12 MR. GROSSMAN: We could be struck by an asteroid.
13 I mean, it's not, it's not --
14 THE WITNESS: Oh, God, I hope not.
15 MR. GROSSMAN: -- you know, things that could
16 happen are so speculative here. You know, you have to, it's
17 like the definition of proximate cause in negligence
18 cases --
19 THE WITNESS: Uh-huh.
20 MR. GROSSMAN: -- where even though things, you
21 can have a causative chain, there is an element of
22 reasonable foreseeability that, that has to be installed in
23 the analysis of it. That's part of what it is here. You're
24 too far down the chain for it to be a practical
25 consideration in terms of this special exception analysis.

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1 There's lots of other stuff --
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: -- that, you know, you've discussed
4 and that has been discussed in this case that are issues to
5 be addressed here --
6 THE WITNESS: Well --
7 MR. GROSSMAN: -- but I can't reach any, I
8 can't --
9 THE WITNESS: Yeah.
10 MR. GROSSMAN: -- possibly reach any conclusions
11 on this evidentiary base that are going to go to future
12 development on Wheaton Westfield Plaza, nor do I know that
13 if it were proposed, that the gas station would block it, I
14 mean, it's -- if it's owned by Westfield. So I --
15 THE WITNESS: So that's, so that's --
16 MR. GROSSMAN: -- I just don't --
17 THE WITNESS: Okay. So that's a two-part thing
18 that -- I'd like to respond to the first part of what you
19 said, that Westfield is not looking at, you know, they're
20 not looking at anything. Well, that's actually not true
21 because one of my --
22 MR. GROSSMAN: I don't know if they are or they
23 aren't. That's not the point. That's --
24 THE WITNESS: They are.
25 MR. GROSSMAN: -- not before me.

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1 THE WITNESS: Yeah. Okay.
2 MR. GROSSMAN: I mean, they could be.
3 THE WITNESS: Yeah.
4 MR. GROSSMAN: It's just not before me. There's
5 no evidentiary base for me to reach any conclusions from
6 that of really what's going to happen on the mall in terms
7 of that kind of development. That's why this is a
8 non-productive area. I'm trying to tell you --
9 MS. CORDRY: Okay.
10 MR. GROSSMAN: -- it's not a productive area.
11 MS. CORDRY: Okay. We will move along quickly,
12 but we do want to -- your point of reasonable foreseeability
13 is absolutely correct -- what we did want to do was discuss
14 briefly that it is reasonably foreseeable these things will
15 happen, that these are logical developments, that they are
16 the way the sector plan is pointing to, and that they are
17 what is happening all over this region. So that to suggest
18 that it's not foreseeable to see these happening is, in our
19 view --
20 MR. GROSSMAN: It's foreseeable as a possibility,
21 but the problem is that it may not be reasonable to reach
22 any conclusions on it at this stage. I tried to use that as
23 an analogy of how your analysis has to be confined in some
24 ways. It's not that things can't happen as part of a
25 causative chain; it's that at some point in analyzing it,

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1 you have to say well, that's too tentative for it to be,
2 really be considered here, especially on this -- I don't
3 know that you're going to be able to introduce any evidence
4 here that this is really about to come about, are you?
5 MS. CORDRY: Well --
6 MR. GROSSMAN: All you can say is that this is a
7 possibility.
8 THE WITNESS: Well, I do have --
9 MS. CORDRY: Wait a minute. What is the -- wait.
10 Well, that's the point --
11 MR. GROSSMAN: That there's about to be some
12 development on the mall other than the mall itself.
13 THE WITNESS: Depends on your --
14 MS. CORDRY: Well, in the first place, the
15 question of what is the mall itself, I think you're taking a
16 too-limited view. One of the points we are coming to, as we
17 develop through this logically, is the zoning is opening up
18 the mall to greater mixed kinds of use that --
19 MR. GROSSMAN: It hasn't been rezoned to a mixed
20 use.
21 MS. CORDRY: Well, you know, I can't --
22 MR. GROSSMAN: You can't do it. The reason why
23 you can't convince me is because it hasn't happened.
24 MS. CORDRY: I understand that, but I also --
25 THE WITNESS: Yet.

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1 MR. GROSSMAN: Ms. Savage, you want to, you want
2 to go --
3 MS. CORDRY: Okay.
4 MR. GROSSMAN: -- not Ms. Savage. I'm sorry.
5 MS. CORDRY: Okay.
6 THE WITNESS: I'm Ms. Savage.
7 MR. GROSSMAN: Yes. Yes, indeed.
8 MS. CORDRY: Okay. Yes. I understand exactly
9 what you're saying, it has not passed yet, but you're
10 talking about --
11 MR. GROSSMAN: Ms. Cordry --
12 MS. CORDRY: -- are things foreseeable, are they
13 logical. One of the points is to discuss if something has
14 gone to a certain point, if everyone who is, would have a
15 reason to object to that is supporting it, is it likely that
16 it's going to be changed.
17 MR. GROSSMAN: Doesn't matter. I'm not going to
18 -- and to tell you the truth, you think about it for a
19 second, would you want the Board of Appeals, if they decided
20 to deny this special exception, would you want them to base
21 it in part upon this speculation that you're engaged in
22 now --
23 MS. CORDRY: Well, what -- okay.
24 MR. GROSSMAN: -- in terms of it being an
25 enforceable decision by the Board of Appeals? Would you

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1 really want them to base it on the kind of speculation that
2 you're suggesting here?
3 MS. CORDRY: Well, one of the things I would just
4 point out is that Mr. Gang and Mr. Agliata in their
5 testimony testified about things that might happen. They
6 both also spent a great deal of time suggesting that the
7 sector plan intended to have certain things happen about the
8 mall and that it was intended to keep it a particular way,
9 and one of the things we were trying to do is get into the
10 process here and show that there is nothing, that that is
11 completely inconsistent with what the sector plan actually
12 says and was intended to do.
13 MR. GROSSMAN: Well, that's fine. I --
14 MS. CORDRY: Okay.
15 MR. GROSSMAN: -- I did not stop you in terms of
16 what the sector plan was intended.
17 MR. SILVERMAN: Right.
18 MR. GROSSMAN: I stopped you in terms of this,
19 this other peripheral suggestion as to development on the
20 mall. I didn't -- actually, I haven't stopped you. I've
21 said --
22 MS. CORDRY: Okay.
23 MR. GROSSMAN: -- you're really in a speculative
24 area that's not going to be productive, but I've said this a
25 number of times now. Now I'm going to let you go ahead and

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1 put on what you want to put on.
2 THE WITNESS: So can I ask a question of you?
3 MR. GROSSMAN: Sure, go ahead. Go ahead.
4 THE WITNESS: Or may I ask a question?
5 MR. GROSSMAN: Go ahead, Ms. Savage.
6 THE WITNESS: So reviewing quickly, the tenets of
7 smart growth and transit-oriented development --
8 MR. GROSSMAN: Yes.
9 THE WITNESS: -- are not of interest to you in
10 this case? I mean, would they be -- should I waste, spend
11 my time, not waste my time, spend my time just going over a
12 few of those and showing how Wheaton is a, already been
13 designated as a transit-oriented development area and --
14 MR. GROSSMAN: No, I mean, there's been testimony
15 to that effect already. It's not that --
16 THE WITNESS: Yes. Yeah.
17 MR. GROSSMAN: -- it's not that that's a surprise
18 to me, no. I'm talking about this area of deciding what
19 portions of the mall that are currently zoned
20 commercially --
21 THE WITNESS: Right.
22 MR. GROSSMAN: -- may be rezoned to and, if they
23 are, what sort of development might take place on that
24 rezoned property that hasn't been rezoned yet. That's what
25 I consider speculative.

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1 MS. CORDRY: All right.
2 THE WITNESS: Okay. So the --
3 MR. GROSSMAN: Okay?
4 THE WITNESS: -- so the, I have a subsidiary --
5 BY MS. CORDRY:
6 Q Let me ask you to go ahead and mark the
7 transit-oriented development pages as the next exhibit.
8 A Not the smart growth?
9 Q Well, not -- no. That's already, I believe --
10 MR. GROSSMAN: Once again, I'm not stopping you.
11 I don't want to--
12 MS. CORDRY: I understand.
13 THE WITNESS: No, I know, but we want to do
14 what's, you know, relevant to you.
15 MR. GROSSMAN: I'm just trying to be, I'm just
16 trying to, you to be sensible about it given --
17 THE WITNESS: Sensible of that.
18 MR. GROSSMAN: -- a volume of other issues that
19 are in this case.
20 MR. SILVERMAN: Mr. Grossman, isn't the issue,
21 will this gas station prevent the plan from being carried
22 out? Isn't that the relevant issue?
23 THE WITNESS: Retard the logical development, I
24 think, yeah.
25 MR. SILVERMAN: Retard the logical development,

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1 according to the plan.
2 MR. GROSSMAN: Yes, I guess they could say that's
3 an issue, yes, and --
4 MR. SILVERMAN: I think that's what she's trying
5 to talk about.
6 MR. GROSSMAN: Well, if she talks about that,
7 that's fine, but that's different from saying that's going
8 to be rezoned when it hasn't been rezoned.
9 MR. SILVERMAN: Right.
10 MS. CORDRY: Okay. Okay. We understand there's
11 certainly a difference, but there is, I hope you would
12 realize, somewhat of a connection between a rezoning process
13 that is 95 percent down the road and the concept of a
14 logical development. Those two things do have somewhat of a
15 linkage there, but we'll move on for the moment.
16 MR. GROSSMAN: Once again, Ms. Cordry, you put on
17 the evidence you want. I'm trying to give you a window --
18 MS. CORDRY: Right.
19 MR. GROSSMAN: -- on my thinking --
20 MS. CORDRY: All right. I understand.
21 MR. GROSSMAN: -- about what evidence really is
22 going to bear on any recommendation I make and what I think
23 will bear on the Board of Appeals. The Board of Appeals
24 could have a completely different opinion about it than I do
25 and think your evidence is the cat's whiskers, as they like

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1 to say, but you know -- so I'm saying to you, I'm not
2 excluding it but you can proceed as you wish.
3 MS. CORDRY: I understand.
4 BY MS. CORDRY:
5 Q So if we'd mark the pages about transit-oriented
6 development as 461, I guess (b) that would be.
7 A Smart growth and transit-oriented --
8 Q No, just --
9 A Just the --
10 Q Yes. The --
11 A -- TOD section? Okay.
12 Q Yes. The Sierra Club has already been mentioned
13 in their letter.
14 A Okay.
15 MR. GROSSMAN: So where are we now? That's 461 --
16 I have the package in front of me, the front pages.
17 THE WITNESS: Yeah. We have -- the front pages
18 were 461(a), those two pages.
19 MR. GROSSMAN: Okay. And those are? What are
20 they? They're distance?
21 THE WITNESS: Yes. Those are both distance to --
22 MR. GROSSMAN: The Metro platform.
23 THE WITNESS: -- Metro platform --
24 MR. GROSSMAN: All right.
25 THE WITNESS: -- and this section, by the way,

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1 461, is entitled The County's General Goals --
2 MR. GROSSMAN: Right.
3 THE WITNESS: -- or something like that.
4 MR. GROSSMAN: Yes. I said, Savage exhibits re
5 county's general goals.
6 THE WITNESS: Oh, okay. All right. Yeah, that's
7 fine. So --
8 MR. GROSSMAN: 61(a) are?
9 THE WITNESS: Is distance to Wheaton Metro
10 platform and Wheaton Metro -- Wheaton bus base.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: So that's (a).
13 MR. GROSSMAN: Okay.
14 (Exhibit No. 461(a) was marked
15 for identification.)
16 THE WITNESS: So 461(b) is six pages of
17 information about transit-oriented development.
18 MR. GOECKE: Can you show us the first page?
19 THE WITNESS: It looks like this, has Maryland's
20 -- that looks good.
21 MR. GOECKE: Thank you.
22 MR. GROSSMAN: Wait a second. That's not my first
23 page.
24 THE WITNESS: It has the Maryland state logo on
25 the --

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1 MR. GROSSMAN: Hold up your first page. No,
2 that's not what mine looks like.
3 THE WITNESS: Oh, did I get it out of order?
4 MR. GROSSMAN: I have a picture of, What is Smart
5 Growth?
6 THE WITNESS: No, forget that. We're not putting
7 that in there.
8 MR. GROSSMAN: Oh, you're not putting that in?
9 THE WITNESS: Yeah.
10 MR. GROSSMAN: All right. So --
11 THE WITNESS: The Sierra Club, I think, talked
12 about that, and so we're not going to waste your time
13 with --
14 MR. GROSSMAN: Okay. So that's no smart growth.
15 THE WITNESS: Okay.
16 MR. GROSSMAN: All right. So this is then 461(b).
17 THE WITNESS: 461(b). That's one, double-sided,
18 one, two, three, four, five --
19 MR. GROSSMAN: And this --
20 THE WITNESS: -- six pages that have something on
21 them.
22 MR. GROSSMAN: And this is regarding TOD?
23 THE WITNESS: It's regarding TOD --
24 MR. GROSSMAN: Okay.
25 THE WITNESS: -- transit-oriented development.

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1 MR. GROSSMAN: Okay.
2 (Exhibit No. 461(b) was marked
3 for identification.)
4 THE WITNESS: Okay.
5 MR. GROSSMAN: All right.
6 THE WITNESS: And so I want to, unless -- did you
7 ask me a question, or should I just go ahead? I'm sorry.
8 I've kind of lost where we are. No, you didn't ask me a
9 question --
10 BY MS. CORDRY:
11 Q Let's see. No, I have not yet.
12 A -- but that's okay. I can just go.
13 MS. HARRIS: This is new as well, right?
14 THE WITNESS: I didn't think so.
15 MS. HARRIS: Was this provided before?
16 THE WITNESS: I thought so, should have been. No?
17 Well, at least I didn't make a note that it had not been
18 provided.
19 MR. GROSSMAN: So a TOD is a dense, mixed-use,
20 deliberately-planned development within a half mile of
21 transit --
22 THE WITNESS: Transit stations.
23 MR. GROSSMAN: -- stations that is designed to
24 increase transit ridership, according to this, is that
25 correct?

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1 THE WITNESS: Yes, that is correct, and then on
2 the page, the following page to that, it talks a little bit
3 about some specifics related to that: supports the use of
4 transportation alternatives by including transit
5 accessibility by bicycles and pedestrians. So it talks
6 about alternatives to cars and transit, increased transit
7 ridership. That's on page 2 of 2.
8 MR. GROSSMAN: Okay. So your point here is that
9 since the proposed gas station would be about a third of a
10 mile from Metro and the bus station and TOD is a goal of the
11 sector plan --
12 THE WITNESS: Uh-huh.
13 MR. GROSSMAN: -- that the proposed gas station is
14 not transit-oriented and would violate that goal?
15 THE WITNESS: It's sort of opposite of
16 transit-oriented, actually.
17 MR. GROSSMAN: Okay.
18 BY MS. CORDRY:
19 Q And this, I think, would be -- you had this as a
20 separate one, the June 28th, 2010, page?
21 A Yes.
22 Q Okay.
23 A There's also a map of the various transit-,
24 designated transit-, TOD locations. Wheaton is right on
25 there, along with the rest of them. And right, the final,

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1 the final piece of that is a June 28th, 2010, Maryland
2 Extends Transit-Oriented Development Incentives to More
3 Stations. And so this is part of this same packet of TOD
4 stuff, and in the one, two, three, four, five, sixth,
5 seventh paragraph down, it talks about Montgomery County
6 targeting the Wheaton Metro station for TOD development.
7 MR. GROSSMAN: Which page are you on there?
8 THE WITNESS: I'm sorry. It's the one that looks
9 like this, starts with June 28th, 2010. It should be the
10 last --
11 MR. GROSSMAN: Okay. And which paragraph now?
12 THE WITNESS: And that is the seventh paragraph
13 or, more easily, possibly the third.
14 MR. GROSSMAN: All right. Montgomery County
15 targets, okay.
16 THE WITNESS: Yes. So just to prove, that's all
17 this is proving, is that Wheaton is a TOD area. The
18 Westfield Wheaton Mall is within the half-mile radius from
19 Metro, which is considered a TOD area, and because of the
20 focus in the Wheaton Sector Plan of transit-oriented
21 development, this kind of auto-centric proposal is really in
22 violation of not only the sector plan but what the county is
23 trying to do with transit-oriented development.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: So that's my point.

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1 BY MS. CORDRY:
2 Q And the next one, which is labeled Maryland's
3 Consolidated Transportation Program?
4 A Okay. Hang on one second. Let me get everything
5 here. Going faster than I had anticipated.
6 MR. GROSSMAN: There's a miracle right there,
7 right?
8 THE WITNESS: I know. That's wonderful. This,
9 Maryland's Consolidated Transportation Program, was recently
10 passed by the Planning Board, I believe, yes, on January --
11 and sent to the County Council -- on January 9th for their
12 review. This is a forward-looking document, as it says, FY
13 2014 to 2019, and on -- this is, I'm sorry, this is excerpts
14 from that, excerpts from that document.
15 MR. GROSSMAN: All right. So we're going to make
16 this 461(c).
17 BY MS. CORDRY:
18 Q No, I think (d), or was this still part of (b), or
19 did you make this a separate one?
20 A Oh, yes, that was part of the previous one, yeah.
21 Q Okay.
22 MR. GROSSMAN: That was part of (b), or are you
23 saying that's part of --
24 MS. CORDRY: That's part of (b) then. Okay.
25 THE WITNESS: I don't care. You can make it

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1 separate if you want.
2 MR. GROSSMAN: Let's make it separate since
3 it's --
4 MS. CORDRY: Okay.
5 THE WITNESS: Okay. Sure. Why not?
6 MR. GROSSMAN: Just for the fun of it, because I
7 have lots of space on this page.
8 MS. CORDRY: Right. Okay.
9 THE WITNESS: Oh, okay. So that's 461 what now?
10 BY MS. CORDRY:
11 Q 461(d).
12 MR. GROSSMAN: (C).
13 THE WITNESS: (C).
14 MS. CORDRY: (C). Okay.
15 MR. GROSSMAN: And that --
16 THE WITNESS: (C) is the June 28th thing. Okay.
17 MR. GROSSMAN: (C) is the Maryland Consolidated
18 Transportation Program.
19 (Exhibit No. 461(c) was marked
20 for identification.)
21 THE WITNESS: Oh. So --
22 MR. GROSSMAN: Where are you?
23 THE WITNESS: So you wanted to make this one a
24 separate document?
25 BY MS. CORDRY:

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1 Q (C), yes. That one is (c), yes.
 2 MR. GROSSMAN: No. That was --
 3 THE WITNESS: No.
 4 MR. GROSSMAN: No. That was part of your packet.
 5 THE WITNESS: Okay. All right.
 6 MR. GROSSMAN: I thought you were talking about
 7 this one that you just talked about and that's --
 8 MS. CORDRY: Yes. Yes.
 9 THE WITNESS: I think -- okay. I'm -- sorry, I
 10 was confused.
 11 MR. GROSSMAN: -- that's 461(c). No, we're all
 12 confused.
 13 THE WITNESS: 461(c), okay.
 14 MR. GROSSMAN: Is the Maryland Consolidated --
 15 THE WITNESS: Gotcha. Okay. So this is excerpts
 16 from that document.
 17 MR. GROSSMAN: All right. So Maryland FY 2014 to
 18 2019, Consolidated --
 19 THE WITNESS: And I just want to note a few -- oh,
 20 I'm sorry. You're still writing, sorry.
 21 MR. GROSSMAN: -- Transportation Program. Okay.
 22 THE WITNESS: Okay. So I'm going to just point
 23 out a few parts here.
 24 MR. GOECKE: And I'm sorry.
 25 THE WITNESS: Yeah.

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1 MR. GOECKE: Was this one that you provided
 2 before?
 3 THE WITNESS: Oh, I think so, yeah. You don't --
 4 MR. GOECKE: You think you provided this one as
 5 well? Okay.
 6 THE WITNESS: -- find it?
 7 MR. GOECKE: No.
 8 THE WITNESS: Well, yeah, there are only a few
 9 here that I didn't. I did kind of give you a long list,
 10 didn't I?
 11 MR. GOECKE: I don't think we have any objection,
 12 but just to note --
 13 MR. GROSSMAN: Okay.
 14 MR. GOECKE: -- for the record that we haven't
 15 received this before.
 16 THE WITNESS: Okay.
 17 MR. GROSSMAN: They want corresponding mercy from
 18 you guys --
 19 MR. SILVERMAN: Right. Right.
 20 MS. CORDRY: Right.
 21 MR. GROSSMAN: -- for things that they may have
 22 forgotten.
 23 THE WITNESS: They're keeping track of all of
 24 those. Okay.
 25 MR. GROSSMAN: They get some chits in their --

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1 THE WITNESS: Okay.
 2 MR. SILVERMAN: We're keeping score. We're
 3 keeping score.
 4 MR. GROSSMAN: -- favor on the production basis.
 5 All right.
 6 THE WITNESS: Okay. So on what is page 3, which
 7 the numbers are in the bottom right --
 8 MR. GROSSMAN: Okay.
 9 THE WITNESS: -- under Priority: TOD, I'm just
 10 going to read a couple sentences here: TOD is a key
 11 component of Maryland's efforts to ensure efficient use of
 12 our transportation system and promote sustainable, smart
 13 growth development for the state. Transit can be most
 14 efficient and effective when it serves to connect relatively
 15 dense clusters of houses, jobs, and destinations. A
 16 development that is transit-oriented typically comprises a
 17 mixture of land uses configured and oriented to maximize
 18 visibility and access to the transit station.
 19 Okay. And remembering that the, all of Westfield
 20 Wheaton is within that, the TOD area, on page 4 under
 21 Priority: Bicycle & Pedestrian Travel: Providing safe
 22 infrastructure so that people can choose to walk or bike to
 23 meet their daily needs can result in fewer cars on the road,
 24 fewer emissions in the air, and a healthier Maryland.
 25 Supporting walking and bicycling is an essential element of

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1 Maryland's Smart Green and Growing and Cycle Maryland
 2 initiatives. A little bit further down in that paragraph:
 3 With household budgets stressed, walking and bicycling are
 4 affordable travel options that also support health and the
 5 environment.
 6 On page 5, at the top, on the left --
 7 MR. GROSSMAN: I don't think you have to read any
 8 further. I --
 9 THE WITNESS: Okay.
 10 MR. GROSSMAN: -- understand your point here.
 11 THE WITNESS: Okay. Okay.
 12 BY MS. CORDRY:
 13 Q If you'd just tell him where. On page 5, the top
 14 of that paragraph there also has --
 15 A Okay. Yes, the top, the first two sentences on
 16 the top of page 5 --
 17 MR. GROSSMAN: Okay.
 18 THE WITNESS: -- on the left. Okay. So this is,
 19 this is -- this, as I said, was just passed by the Planning
 20 Board and is, I'm sorry, I have not followed where it is
 21 with the Council, but it was sent to the Council on January
 22 9th. This is Maryland's transportation program, and I don't
 23 pretend to understand what the, how the county fits into all
 24 of this, but apparently this is something that each year
 25 Maryland puts out as their consolidated program, and the

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1 county has, I'm sorry, I -- the county has a part in this,
2 and I don't know what it is, but it's important and this
3 guides the county transportation process, as well, because
4 this is the state transportation process.
5 MR. GROSSMAN: Right.
6 THE WITNESS: So that's, I'm sorry, that's all I
7 can tell you about that.
8 MR. GROSSMAN: I mean, the first sentence on page
9 5 of energy consumption issues regarding this are subsumed
10 in that, what we talked about before --
11 THE WITNESS: Yes. Yes. Correct.
12 MS. CORDRY: Right.
13 MR. GROSSMAN: -- on that, but the rest of it on
14 TOD, in terms of whether or not this gas station would
15 further hinder or not have any substantial effect on the TOD
16 goals, is another question --
17 THE WITNESS: Yes.
18 MR. GROSSMAN: -- legitimate question. Okay.
19 THE WITNESS: Yes. Okay. Okay, thanks. All
20 right. Where are we here? I guess I just would sum up
21 that, this, this particular segment --
22 MR. GROSSMAN: Yes.
23 THE WITNESS: -- of my presentation, by saying
24 that it seems to me wholly inconsistent with the tenets of
25 smart growth and TOD to allow a mega gas station to be built

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1 within that crucial ped shed radius. Permitting the special
2 exception a mere one-third mile from the Wheaton Metro
3 station makes no logical sense, will adversely affect and
4 retard the local development of the general neighborhood and
5 adversely affect the transit-oriented smart growth
6 development of Wheaton by decreasing the walkability of the
7 community and making it more difficult to site and develop
8 the multiuse diversity the sector plan envisions and, three,
9 does not comport with the expectations of the Wheaton area
10 community, the county, or the state. So that's just sort of
11 a summary of where I think a lot of this stuff is going.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: All right.
14 MR. GROSSMAN: Thank you. I have one --
15 THE WITNESS: Oh, yeah. Where did that come from?
16 Look at that.
17 MR. GROSSMAN: -- thing, End of Driving Boom --
18 THE WITNESS: Yeah.
19 MR. GROSSMAN: -- article.
20 THE WITNESS: This, this follows some of the
21 testimony that I think Ms. Cordry had put in at some prior
22 time. These are three articles that talk about how there's
23 much less need -- that miles driven is decreasing, are
24 decreasing; the driving boom is over; the younger generation
25 is just not driving as much for a variety of reasons.

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1 And --
2 MR. GROSSMAN: So we don't have to worry about big
3 queues at the gas station anymore because there'll be fewer
4 drivers?
5 THE WITNESS: Ooh.
6 MS. CORDRY: Well, we may not need the gas station
7 anymore.
8 THE WITNESS: That's very interesting. Well, the
9 point, this is -- this sort of talks to the need, the lack
10 of need for yet another gas station in Wheaton, but it's the
11 other side of the adverse effects. So you have all of these
12 adverse effects. If you had a high need, that would be, you
13 know, maybe you could reconcile this, yeah.
14 MR. GROSSMAN: I've always thought this evidence,
15 as I think I brought out when Ms. Cordry testified, it's a
16 double-edged sword on that point. That is --
17 THE WITNESS: Yeah.
18 MR. GROSSMAN: -- it tends to favor her evidence
19 about whether there's a need and it tends to cut against the
20 opposition position about the potential harm from too much
21 queuing because, if you believe that ultimately nobody's
22 going to be driving a gas car, there's not going to be much
23 queuing. So --
24 THE WITNESS: Then why build it?
25 MS. CORDRY: Well, they may still queue at this

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1 station, even if they're not driving anywhere else or
2 queuing anywhere else.
3 MR. GROSSMAN: They may, but I mean, it --
4 THE WITNESS: All the other stations --
5 MR. GROSSMAN: -- tends to cut against. I'm
6 saying they're not going --
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: -- to. I'm just saying that --
9 THE WITNESS: Yeah.
10 MR. GROSSMAN: -- it cuts in that direction. So
11 it's a double-edged sword.
12 THE WITNESS: It is a double-edged sword, but
13 just, these were, I found these interesting articles that,
14 you know, talked about --
15 MR. GROSSMAN: So --
16 THE WITNESS: -- especially -- actually, if I can
17 make one point about this. This talks about the younger --
18 Transportation in the New Generation is the second article
19 -- why young people are driving less and what it means for
20 transportation policy. And the reason I bring that up is
21 that many of the developers in Wheaton with whom we've
22 talked, some of the smaller ones and some of the bigger
23 ones, are talking about trying to draw in the millennials
24 and the other 20- and 30-something or 20-somethings in their
25 residential developments, and those are the people they're

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1 trying to attract, and those are the people who don't
2 necessarily have cars, who want to be near transit, and
3 those -- that's who they're attracting.
4 With all of this building that's going on in
5 Wheaton -- and I'll be showing you some of pictures of all
6 the different buildings that have come up --
7 MR. GROSSMAN: Okay. So 461(d) are articles
8 indicating reduction in driving?
9 THE WITNESS: Yeah.
10 MR. GROSSMAN: Okay.
11 (Exhibit No. 461(d) was marked
12 for identification.)
13 BY MS. CORDRY:
14 Q All right.
15 A 461(d). Okay. Thanks.
16 Q You mentioned the expectation of the community and
17 the county and the state. Can you just briefly tell us what
18 you mean by that?
19 A Oh, okay. I think we're in a new section.
20 Q Yes.
21 MR. GROSSMAN: Yes.
22 THE WITNESS: So we need a new pass-around of
23 exhibits, please, Mr. Silverman.
24 MR. SILVERMAN: Yes.
25 THE WITNESS: Thank you.

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1 MR. GROSSMAN: Thank you, Mr. Silverman.
2 THE WITNESS: And these would be 462. So these
3 would be 462, right?
4 MR. GROSSMAN: Right.
5 THE WITNESS: Okay.
6 MR. GROSSMAN: These are Savage exhibits --
7 THE WITNESS: On, I don't know, expectations of
8 the community or something like that.
9 MR. GROSSMAN: Okay, on expectations of the
10 community.
11 (Exhibit No. 462 was marked
12 for identification.)
13 THE WITNESS: Expectations or something like that.
14 BY MS. CORDRY:
15 Q Please tell us what this first document is here?
16 A Okay. Okay. So what we have here is, on actually
17 page 2 and 3 of this document, is the time line for the
18 sector plan meetings, and I'm -- to show how many there have
19 been, and the oldest one is on page 3, April 30th, 2008 --
20 and I provide this just to show you that we have met ad
21 infinitum number of meetings.
22 MR. GROSSMAN: We have met an ad infinitum number
23 of meetings here.
24 THE WITNESS: Yes. Well, that's true. You're
25 right, and if I add them up, it probably looks like about a

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1 one for one. But there has been a lot of community
2 involvement in the development of the Wheaton Sector Plan
3 and that's my main point of showing this, is that over all
4 these years of meetings and workshops and envisionings and
5 whatever, the community has some expectations based on what
6 we've met about and --
7 MR. GROSSMAN: I have a problem with this section
8 of your presentation in that --
9 THE WITNESS: Okay.
10 MR. GROSSMAN: -- you're apparently trying to tell
11 me what the community's expectations are from the sector
12 plan. Don't I just have to look at the sector plan and --
13 to interpret it? Can I really interpret it by your
14 suggestion of what expectations are?
15 THE WITNESS: Well, I'm only going to suggest
16 based on documents that exist. I mean, I'm not going to
17 just tell you what they are because I wouldn't presume to do
18 that.
19 MR. GROSSMAN: All right. Well, let's go ahead
20 then.
21 THE WITNESS: Well, I might presume to do that,
22 but I'm not going to do that.
23 MR. GROSSMAN: Ms. Cordry might presume to do
24 that.
25 THE WITNESS: She might. She might.

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1 MS. CORDRY: I wouldn't presume to do that. I
2 would only tell you from evidence as well.
3 MR. GROSSMAN: All right.
4 THE WITNESS: So that first one is 462(a), right?
5 MR. GROSSMAN: Yes.
6 THE WITNESS: That's -- okay. So that's the
7 Wheaton Sector Plan, I don't know if you want to call it
8 time line or list of meetings or something like that.
9 MR. GROSSMAN: Time line and review of Wheaton CBD
10 Sector Plan. Okay.
11 (Exhibit No. 462(a) was marked
12 for identification.)
13 THE WITNESS: Okay.
14 MR. GROSSMAN: (B)?
15 THE WITNESS: So for those of us who worked and
16 all, who attended all of those amazing number of meetings,
17 we really actively helped to shape that plan, and (b) of
18 this section is the redevelopment goals. That's just -- I
19 just provided the front page on the website just to show you
20 it was the front page. The second page of that is a listing
21 of the redevelopment goals as --
22 MR. GROSSMAN: So what page are you saying is --
23 THE WITNESS: I'm sorry. The front, the front of
24 it looks like this.
25 MR. GROSSMAN: Right.

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1 THE WITNESS: And then on the back of that should
2 be this, which is goals.
3 MR. GROSSMAN: Past sector plan meetings?
4 MS. CORDRY: No, no. We're on the second --
5 THE WITNESS: No, no. No, the next one after
6 that.
7 MR. GROSSMAN: Oh, okay.
8 THE WITNESS: Sorry.
9 MR. GROSSMAN: This?
10 THE WITNESS: That.
11 MR. GROSSMAN: Okay. So this is --
12 THE WITNESS: And on the back of that should be
13 the goals of the -- redevelopment goals.
14 MR. GROSSMAN: All right. And these are --
15 THE WITNESS: Okay. So this is (b).
16 MR. GROSSMAN: -- whose redevelopment goals?
17 THE WITNESS: This is from
18 montgomerycountymd.govwheaton. This is the redevelopment
19 goals as stated by the Wheaton Redevelopment Program.
20 MR. GROSSMAN: Who is the Wheaton --
21 MS. CORDRY: The county.
22 THE WITNESS: It's the county. It's --
23 MR. GROSSMAN: You're saying --
24 THE WITNESS: -- the county program in Wheaton for
25 Wheaton's redevelopment. It's the program relating --

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1 MR. GROSSMAN: So this is put out by planning
2 staff; is that what you're saying?
3 THE WITNESS: No.
4 MR. GROSSMAN: Who puts this out exactly? That's
5 my question.
6 THE WITNESS: That is a good --
7 MS. DUCKETT: Probably Leggett's office because
8 Wheaton --
9 THE WITNESS: It says Department of General
10 Services here. So --
11 MS. DUCKETT: -- redevelopment according to
12 Leggett.
13 THE WITNESS: Yeah. It's somehow eventually in
14 the executive's office.
15 MR. GROSSMAN: All right. So --
16 THE WITNESS: And it's under the Department of
17 General Services.
18 MR. GROSSMAN: -- 462(b), as in boy, is Department
19 of General Services' --
20 MS. CORDRY: Yes. Actually, it says at the top,
21 Department of General Services.
22 THE WITNESS: Yeah.
23 MR. GROSSMAN: Right.
24 THE WITNESS: They supervise the Wheaton
25 Redevelopment Program.

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1 MR. GROSSMAN: Statement of goals of Wheaton
2 redevelopment.
3 (Exhibit No. 462(b) was marked
4 for identification.)
5 THE WITNESS: Okay. And I'd just like to, once
6 again, just point out --
7 MR. GROSSMAN: Yes.
8 THE WITNESS: -- three or four on the second page
9 of this where it says, Redevelopment Goals: the second one,
10 create TOD, a walkable, mixed-use community which reduces
11 auto dependency and enhances and promotes the use of public
12 mass transit services.
13 MR. GROSSMAN: Right.
14 THE WITNESS: The one right below that, utilize
15 mixed-use development; several below that, the one that
16 starts with support land assemblage but ends with create
17 accessible, pedestrian-friendly, smart growth opportunities;
18 two below that, promote complementary development that
19 enhances connectivity and greater integration between
20 Westfield Wheaton Shopping Mall and the Wheaton core, with
21 an emphasis on transit accessibility, pedestrian activity,
22 and bicycle access.
23 MR. GROSSMAN: In your mind, does every, every
24 development on the mall or anywhere else have to meet every
25 goal?

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1 THE WITNESS: Have to meet every goal of --
2 MR. GROSSMAN: Yes. Let's say you have a --
3 THE WITNESS: -- Wheaton redevelopment? Like, all
4 of these?
5 MR. GROSSMAN: Let's say you have a goal of
6 transit-oriented development.
7 THE WITNESS: Okay.
8 MR. GROSSMAN: Can you have something on the mall,
9 perhaps a drive-in restaurant --
10 THE WITNESS: Uh-huh.
11 MR. GROSSMAN: -- that is not transit-oriented?
12 Or does -- I guess my point is, does everything that you do
13 on the mall have to meet every goal in the, in the sector
14 plan or are they just a series of goals and you try to
15 strive towards that but there may be some things that meet
16 it more or less?
17 THE WITNESS: Well, I guess I wouldn't say -- no,
18 you certainly don't have to meet every single goal, not that
19 I'm a person who would say that, but you're asking me, so
20 I'm answering.
21 MR. GROSSMAN: Yes.
22 THE WITNESS: I would say that you probably should
23 not be developing in something that is the polar opposite of
24 what the development goals are.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: So that, that -- and, of course,
2 that's, you know, up to you, I guess, or someone to
3 determine what's a polar opposite, but I'm saying --
4 MR. GROSSMAN: Ultimately the Board of Appeals.
5 THE WITNESS: And the Board of Appeals, but to me,
6 this gas station is that polar opposite of a lot of these
7 goals.
8 MR. GROSSMAN: Would you rather have a polar
9 opposite or a polar vortex?
10 THE WITNESS: Oh, man. I don't know, a polar
11 vortex. I can always put on more sweaters.
12 MR. GROSSMAN: All right.
13 THE WITNESS: And there was only one other one:
14 create opportunities to help retain and grow viable local
15 small businesses, because I'll be talking about the small
16 businesses in a bit. That's third bullet from the bottom.
17 MR. GROSSMAN: Yes, I see that.
18 THE WITNESS: So I just wanted to point those out.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: And these are goals that were finely
21 tuned over many years of all those meetings that I talked
22 about.
23 MR. GROSSMAN: Okay.
24 BY MS. CORDRY:
25 Q Could I ask you again, at any of those meetings,

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1 do you recall anyone asking the sector plan to recommend in
2 favor of more gas stations?
3 A I would laugh as a response, but I won't. I will
4 say honestly that no, no one thought we -- it never came up.
5 No one wanted a big -- no one talked about big gas stations,
6 small gas stations, any gas station, wasn't in the cards,
7 wasn't in the talk.
8 Q Thank you. Go ahead. The next exhibit there that
9 you have?
10 A Okay. This is, again, this is to show some
11 expectations of the community. This, these are the notes
12 from, let's see, this is from a September 2009 community
13 meeting, one of the first on a Wheaton Sector Plan, and
14 these were put together by a Ms. Sandra Tallant, who was the
15 planning staffer working on the Wheaton Sector Plan up until
16 right before it passed but then she retired, so sadly for
17 us. But, anyway, these are, these were the notes that she
18 took on what everybody said at that community meeting, and
19 I'd like, again, to just point out a couple of items.
20 Under Vision, the very first one: a mixed-use,
21 transit-oriented, walkable residential and retail community
22 with a variety of new and infill developments in low-,
23 medium-, and high-density buildings. Again, that mixed-use,
24 transit-oriented, walkable, those words are being used
25 again. And the last bullet in that Vision section: ethnic

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1 food, music, and small businesses -- again, talking about
2 the importance of small businesses -- will be a defining
3 feature that give Wheaton its unique identity.
4 Under Land Use and Building Form, No. 3: Rezone
5 some portions of -- some or portions of existing commercial
6 properties outside of the existing central business district
7 to mixed-use zoning.
8 MR. GROSSMAN: Actually, it says, the central
9 (phonetic sp.) --
10 THE WITNESS: I know, but I --
11 MR. GROSSMAN: -- business district.
12 THE WITNESS: She didn't use spell check, I guess.
13 No. 7: Establish a variety of building heights in the
14 Westfield -- on the Westfield property that range from 45
15 feet adjacent to the existing neighborhood to 143 feet along
16 Veirs Mill Road. Well, that's actually even been increased
17 a bit along Veirs Mill Road in the current sector plan, but
18 people were already thinking along the lines of higher
19 heights on the Westfield property.
20 Next page, No. 15: Provide Metro-accessible
21 community facilities in the CBD area through a combination
22 of public and private efforts as the need for new facilities
23 arises with new residential development in the core -- just
24 pointing out the centrality of Metro accessibility, which we
25 all know already. And No. 25 down at the bottom: Designate

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1 the sector plan area, which includes all of Westfield
2 Wheaton, as a Bicycle and Pedestrian Priority Area.
3 Next page, No. 26: Locating a bike station at the
4 Wheaton Metrorail station with secure bike parking and other
5 associated bicycle amenities, blah, blah, blah, and a bike
6 rental station in concert with the development of countywide
7 or regional bicycle networks. So they're really trying to
8 push bicycle. And, finally, No. 31 under Sustainability:
9 Reduce the consumption of energy, and then they give some
10 ways in which to do that. So those, these, even from 2009
11 -- and it was three years before the sector plan was even
12 going to be approved -- at the very first community meeting,
13 those, those goals were enunciated by the various people who
14 were there.
15 MR. GROSSMAN: You haven't given this a number
16 yet.
17 THE WITNESS: Oh.
18 MR. GROSSMAN: So this will be the Wheaton Sector
19 Plan Amendment, Preliminary Recommendations, Community
20 Meeting. I guess that's what you're talking about.
21 THE WITNESS: Well, this is the, yeah,
22 community --
23 MR. GROSSMAN: So this is --
24 THE WITNESS: -- it's really the notes from the
25 community meeting, or it says, Preliminary Recommendations,

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1 Community Meeting, right. You got it.
2 MR. GROSSMAN: So it's 462(c) --
3 THE WITNESS: 462(c).
4 MS. CORDRY: I think it's 463. 62, I'm sorry.
5 I'm sorry.
6 THE WITNESS: Yeah. Okay.
7 MR. GROSSMAN: And that's preliminary
8 recommendations from, I'll say, re sector plan, from
9 community meeting 9/21/09.
10 (Exhibit No. 462(c) was marked
11 for identification.)
12 THE WITNESS: Okay. All right.
13 MR. GROSSMAN: I'm not sure I can really use
14 preliminary recommendations from a community meeting in 2009
15 to help me interpret the language in the sector plan.
16 THE WITNESS: Well, I --
17 MR. SILVERMAN: Can I comment on that?
18 MR. GROSSMAN: Sure.
19 MR. SILVERMAN: I've been thinking about this as
20 we were talking. It seems to me it's in the arena of
21 legislative history, and of course, it's a little bit
22 different because it's -- you're not dealing with, you know,
23 a strict legislative process. You have a very public, open
24 process, and the sources of insight and decision making are
25 very diverse and that's the intent of planning. And just as

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1 you might take a little bit of a softer view on
2 admissibility of evidence when you're in a hearing of this
3 sort, I think you might take a broader view of what the
4 legislative history is in looking at a plan. I mean, the
5 plans --
6 MR. GROSSMAN: But we're talking here about a
7 preliminary recommendation of a community meeting taking
8 place in 2009 --
9 MS. CORDRY: Yes.
10 MR. SILVERMAN: Which was --
11 MR. GROSSMAN: -- and why not, why, how do I know
12 that these recommendations -- some of these recommendations
13 may or may not have been voted approvingly by the, when they
14 adopted the sector plan. And if they were, wouldn't I be
15 looking to those, the ones that the sector plan actually
16 passed, and if they were not, I shouldn't consider this at
17 all because the sector plan decided not to adopt them. So
18 why would I look to this?
19 THE WITNESS: May I answer that?
20 MR. SILVERMAN: Ms. Savage wants to --
21 MR. GROSSMAN: Yes, and Ms. Duckett wants to jump
22 in too, but go ahead.
23 THE WITNESS: You want to jump --
24 MS. DUCKETT: I raised my hand first.
25 THE WITNESS: All right.

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1 MR. GROSSMAN: Well, you're not on the witness
2 stand, but go ahead.
3 MS. DUCKETT: I was going to say that earlier you
4 had questioned Ms. Savage on the community expectations. I
5 think that that document might actually show the beginning
6 and that's the community involvement and the expectations
7 that the community have --
8 MR. GROSSMAN: I know, but here's my --
9 MS. DUCKETT: -- not necessarily --
10 MR. GROSSMAN: No, but my point is a matter of
11 legal interpretation of a legal document -- that is, the
12 sector plan -- what do I consider in determining that? So
13 here's being presented to me --
14 MS. DUCKETT: It is evidence of community
15 involvement.
16 MR. GROSSMAN: -- here's, what's being presented
17 to me is a preliminary recommendation of a community
18 meeting. Now, how do I really factor that in when -- if the
19 goals or the recommendations here were adopted, what I'd
20 look at is the adopted --
21 MS. DUCKETT: Right.
22 MR. GROSSMAN: -- determination, not these goals,
23 and if they weren't adopted, then I don't want to consider
24 these because it means that the Council and/or the Planning
25 Board decided not to adopt them.

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1 So that's why this is very problematic --
2 MS. CORDRY: Right.
3 MR. GROSSMAN: -- and legislative history, in
4 general, is a problematic area. There's lots of law, I
5 wouldn't say lots, but there's law that says you have to be
6 careful about what you consider. Even individual members of
7 Congress, you're not supposed to take that as legislative
8 history; you look at committee reports and that sort of
9 thing. But that's why this is a very, this is dicey area,
10 and I think this is really far removed from the actual
11 decision on what the sector plan would be, dangerous for me
12 to --
13 THE WITNESS: Okay.
14 MR. GROSSMAN: -- factor this in as part of --
15 MS. CORDRY: I think what --
16 MR. GROSSMAN: -- my interpretation of the sector
17 plan.
18 MS. CORDRY: -- what we would merely say is that
19 this just shows a continuity of development --
20 MR. SILVERMAN: Continuity, right.
21 MS. CORDRY: -- and I think if you look at the
22 sector plan, you will see that it is completely contiguous
23 with this and -- other than perhaps the height of buildings
24 on the --
25 MR. GROSSMAN: So what difference does it make?

1 Why do I need to think about it if it's, if it's just
 2 continuity -- if the sector plan says this, why put it out
 3 -- why put this in? That's what I don't understand. What's
 4 the --
 5 THE WITNESS: I'm just --
 6 MS. CORDRY: To show how important this has been
 7 to the community for how long, that this is, that this is
 8 not a matter that is of some minor passing.
 9 MR. GROSSMAN: I know it's important to the
 10 community, and I pay a lot of attention to what the
 11 community has testified to, but I, ultimately I have to
 12 decide this based on the zoning ordinance and the sector
 13 plan --
 14 MS. CORDRY: I understand.
 15 MR. GROSSMAN: -- not on the concerns that they
 16 expressed --
 17 THE WITNESS: Gotcha. Let's move on.
 18 MR. GROSSMAN: -- preliminarily back in 2009.
 19 That's my point.
 20 THE WITNESS: Okay.
 21 MR. GROSSMAN: Okay.
 22 THE WITNESS: Let's move on.
 23 MR. GROSSMAN: Okay.
 24 BY MS. CORDRY:
 25 Q All right. You've been talking about development

1 near Metro. Is there anything that you would point to that
 2 would indicate that there was an economic value to that
 3 proximity?
 4 A Yes, actually. One second, let me check something
 5 here. Yes. There have been many articles -- and I'm
 6 providing one here -- about how valuable the land right,
 7 right next to Metro is. Now, I know you're going to say
 8 that this gas station is not right next to Metro, I mean,
 9 the proposed, and I know it is not, but that's where it all
 10 starts. That's where the development near Metro and within
 11 that half-mile radius, it starts right on top of the Metro
 12 and then radiates out from that. And Wheaton is just
 13 beginning that redevelopment process, well, last few years,
 14 and I'll show you some pictures shortly of some of the
 15 developments that have happened in the last couple years.
 16 So it's just beginning there, and it's, and it's going to
 17 start moving out to that, first that quarter-mile ring and
 18 then that half-mile ring.
 19 MR. GROSSMAN: That's another one of those things
 20 that's --
 21 THE WITNESS: I knew you were going to say that.
 22 MR. GROSSMAN: -- so tangential, you really don't
 23 want me to factor it in.
 24 THE WITNESS: Really?
 25 MR. GROSSMAN: That's my opinion.

1 THE WITNESS: Okay.
 2 MR. GROSSMAN: You can present it, as you are.
 3 MS. CORDRY: Okay. Right. I'm not sure why we
 4 wouldn't want you to factor it in.
 5 BY MS. CORDRY:
 6 Q But, in any case, if you want to move along --
 7 well, and so this is, do you want to just have this one
 8 marked as 462(d)?
 9 A Yeah, just, just this one article --
 10 MR. GROSSMAN: Which one is that?
 11 MS. CORDRY: This is the article that --
 12 THE WITNESS: -- says: Every foot matters when it
 13 comes to real estate near Metro.
 14 MR. GROSSMAN: Okay, 461(d) --
 15 MS. CORDRY: 2.
 16 THE WITNESS: 462.
 17 MR. GROSSMAN: -- 462 rather, 462(d).
 18 THE WITNESS: And I just would point out that on
 19 the second side, the second paragraph says: People don't
 20 like to walk more than 10 minutes. Well, at three miles an
 21 hour, which is what they say earlier in the article that
 22 people generally walk, 10 minutes is half a mile. So
 23 they're still saying that that half-mile radius means
 24 something. It means -- economically it means something, and
 25 how far people are willing to walk means something. Again,

1 this probably goes with the TOD stuff. In your head, it
 2 probably goes with the TOD stuff, but that's, or I hope it
 3 would.
 4 MR. GROSSMAN: Well, there are a lot of things
 5 running around in there; so who knows?
 6 THE WITNESS: Okay.
 7 MR. GROSSMAN: Okay.
 8 MR. SILVERMAN: Echoing.
 9 MR. GROSSMAN: All right. 462(d) --
 10 THE WITNESS: Okay.
 11 MR. GROSSMAN: -- I just wrote it as article on
 12 land values near Metro.
 13 (Exhibit No. 462(d) was marked
 14 for identification.)
 15 THE WITNESS: Okay, that's good. Thanks.
 16 BY MS. CORDRY:
 17 Q And the next one?
 18 A Okay. So this, Wheaton Redevelopment Projects map
 19 -- I guess you'd call this a map --
 20 Q Right.
 21 A -- is showing some of the development that is
 22 finally starting to take shape. Now, one of the things I
 23 just wanted to -- this is part of community expectations, I
 24 guess -- for many years, a bunch of years people in Wheaton
 25 were saying things like, when are we going to get a chance,

1 when's it going to happen, when's redevelopment going to
 2 happen in our community, Bethesda gets it, Silver Spring
 3 gets it, Wheaton isn't getting any attention in the
 4 redevelopment, and finally it's starting to happen. We were
 5 feeling like the poor cousin of the major Metro areas in
 6 Montgomery County, and finally it's beginning to happen.
 7 So this is some idea of where some of the, as of
 8 May 2013 -- sorry, it's a little old; that's the latest one
 9 I could find -- but you can see that there's the Metro right
 10 in the middle there, well, sort of the middle, and the
 11 development is around Metro, and there sits Westfield
 12 Wheaton right there, right next to where much of this
 13 development is happening.
 14 MR. GROSSMAN: All right. So 462(e) is Wheaton
 15 Redevelopment Projects.
 16 (Exhibit No. 462(e) was marked
 17 for identification.)
 18 THE WITNESS: Projects, right.
 19 BY MS. CORDRY:
 20 Q I'd like you to just point out a couple of things
 21 on the map as I go through here and ask you to note those
 22 and where they are in relationship to the mall as we go
 23 around: the Washington Properties, which was built on the
 24 First Baptist site?
 25 A Right, is down, sort of down at the bottom. See

1 the last one on the bottom? It says, Washington Properties.
 2 I've got some pictures of that, actually. Why don't I
 3 coordinate --
 4 MR. GROSSMAN: How does that bear on this?
 5 MS. CORDRY: Well, I just want to show where
 6 development is going around the mall and what is the logical
 7 place that -- when you surround something, what's the
 8 logical place that goes next.
 9 THE WITNESS: Okay. So the, yeah, so the
 10 Washington, Washington Properties, I actually have a picture
 11 of that in the three pages. Is it three pages? Yes. Three
 12 pages following that, the three color pages, the third
 13 page --
 14 MR. GROSSMAN: All right. So 462(f)?
 15 THE WITNESS: Yeah. So I can show you an actual
 16 picture of that Washington Properties.
 17 MR. GROSSMAN: Photos of development projects?
 18 THE WITNESS: Yes.
 19 (Exhibit No. 462(f) was marked
 20 for identification.)
 21 BY MS. CORDRY:
 22 Q And I believe you had indicated that was one where
 23 they had to tear down a building?
 24 A Yes. You'll see the third page of that, called
 25 the Solaire, Solaire -- I don't know how they pronounce it

1 -- Wheaton, you can see a picture that I took in the upper
 2 left which is when they had torn down what was there, which
 3 was a church, and that was just starting to build it up
 4 right there. And then the picture of the finished building
 5 -- it's actually a rendition; it's not a picture -- but is
 6 there. So that's what's going right in that little corner
 7 that's right in the, I guess, south, touching the southeast
 8 corner of the mall.
 9 Q Okay. And the Lowe Enterprises, can you just
 10 describe that briefly, what's happening there?
 11 A Oh, I could, although I don't think I have a
 12 picture of that, I'm sorry to say. Okay. So Lowe
 13 Enterprises, you'll see the text for that is on the, what
 14 would be the east side of the map, but it points to that
 15 thin little, sort of light-colored building that's in there,
 16 and that is, it's commonly known as the computer building.
 17 I don't know the genesis of that name, but it was a
 18 five-story office building, and they're putting, I think
 19 they're leaving the building there and putting nine more
 20 stories on top of it, and so that's going to be an apartment
 21 building, a 14-story apartment building.
 22 Q And then the Safeway site?
 23 A The Safeway site we have a nice picture of, and
 24 these pictures are provided because we did not do a site
 25 visit. So I'm providing you with actual pictures. All

1 right. So the second set of pictures --
 2 MR. GROSSMAN: We being the parties couldn't agree
 3 on a route --
 4 THE WITNESS: Well, whatever it was. We, that's a
 5 big we; that's a collective we.
 6 MR. GROSSMAN: All right.
 7 THE WITNESS: Called The Exchange and that -- you
 8 see a picture that I took on the left of the Safeway
 9 building being constructed, and there is a rendition of the
 10 final building because I didn't get out to take a picture
 11 yet. That building, I forget what was even there before,
 12 but that --
 13 BY MS. CORDRY:
 14 Q That was the Safeway.
 15 MR. BRANN: That was the Safeway there.
 16 MS. DUCKETT: Safeway.
 17 THE WITNESS: The Safeway was there?
 18 MR. BRANN: Yeah.
 19 MS. DUCKETT: Yeah.
 20 BY MS. CORDRY:
 21 Q Yes. Remember they had to tear it down?
 22 A Yeah, I know they had to tear it -- oh, thank God.
 23 It's so different that --
 24 MR. GROSSMAN: We really shouldn't have any
 25 crosstalk during testimony.

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1 THE WITNESS: Oh, sorry. I'm sorry. I'm sorry.
2 That was my fault. So, yes, they tore the Safeway down and
3 built a whole new Safeway on the first floor, which I
4 haven't been to yet but I understand is wonderful, and 20
5 stories, 18 stories, something, above that, residential.
6 And if you -- to the, to the right of that building, I guess
7 in both of those little pictures, there's a street there,
8 and Metro is right across that street.
9 BY MS. CORDRY:
10 Q And then to the left --
11 MR. GROSSMAN: But no bearing whatever on what I
12 can recommend here.
13 THE WITNESS: Well, I'm just, I'm just trying to
14 orient you to --
15 MR. GROSSMAN: Okay.
16 THE WITNESS: -- where everything is. That's all.
17 BY MS. CORDRY:
18 Q And then to the left of that Metro M, do you know
19 what's being proposed there?
20 A To the left of that -- the Mid-County Government
21 Center?
22 Q Right, those sections there.
23 A Well, I -- sort of. I mean, it's kind of in flux
24 right now, is my understanding, but they're trying to put
25 together a town, sort of a town square. And where the star

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1 is, which is -- is that Parking Lot 13?
2 Q Yes.
3 A Yes, Triangle Lane. The new Park and Planning
4 building is going to be there with some residential
5 building, and a parking garage is going to be there --
6 again, nice and close to the Metro. So it's just discussing
7 all of what's going on around Metro.
8 Q And then the BB&T Bank development on the far left
9 side?
10 A Where is that? Oh. I'm sorry. That's the Avalon
11 Bay?
12 Q No, in the far left side, on University Boulevard,
13 across from the Target.
14 A Oh, there? Do we care about that? Okay. There's
15 -- Eleanor does.
16 MR. GOECKE: Can I answer that?
17 MR. GROSSMAN: I'm going to resist answering that
18 because I told you, this is all irrelevant to anything I can
19 recommend.
20 THE WITNESS: Okay. That, I don't think we care
21 about that much. I mean, it's a bank.
22 BY MS. CORDRY:
23 Q Well, but --
24 A It's a new bank. There used to be three horrible
25 old falling-down buildings there and now there's a bank.

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1 MR. GROSSMAN: Right. I handled that case too.
2 THE WITNESS: Yeah.
3 BY MS. CORDRY:
4 Q The point being that you have development circling
5 the mall, yes. Okay.
6 A Okay.
7 Q All right.
8 A Oh, and I, the other --
9 MR. GROSSMAN: Well, I don't know that it circles
10 the mall. It's --
11 MS. CORDRY: Well, it circles it until you get to
12 the residential area.
13 MR. GROSSMAN: It's the -- yes.
14 MS. CORDRY: You have now development on every
15 side of the mall, all the way around until you hit the
16 residential development.
17 MR. GROSSMAN: Well, you've got it on the north,
18 the east --
19 MS. CORDRY: And coming around on the south side,
20 and --
21 MR. GROSSMAN: -- and a little bit to the south
22 there.
23 THE WITNESS: A little to the south, yeah.
24 MR. GROSSMAN: But --
25 MS. CORDRY: -- Washington Properties abuts the

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1 school and then you abut Kensington Heights.
2 MR. GROSSMAN: And you think that that should be a
3 factor in deciding on this special exception application?
4 MS. CORDRY: Well, I think when you see the amount
5 of development that is going on in Wheaton and you look at
6 the one big open space that is there, what is the logical
7 development of where additional development goes?
8 MR. GROSSMAN: You --
9 MR. SILVERMAN: Well, the question --
10 MS. CORDRY: You asked me why --
11 MR. GROSSMAN: It's not going to, I'm just telling
12 you --
13 MS. CORDRY: Okay.
14 THE WITNESS: Okay.
15 MS. CORDRY: Okay.
16 MR. GROSSMAN: -- it is not going to be a factor
17 in anything I recommend.
18 THE WITNESS: We're moving on from that. Can I
19 just also point out that the other beautiful picture,
20 because I took all four of the pictures; so I want to point
21 this out. The one that says Recently Completed Residential
22 Projects-Wheaton, Archstone, MetroPointe, and Leesborough
23 and Brownstones, these are all also on this map, and --
24 MR. GROSSMAN: You took all of these pictures?
25 THE WITNESS: I took every one. Pretty good, huh?

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1 MR. GROSSMAN: You did a damn good job.
2 THE WITNESS: I know. So I just wanted to show,
3 you know, what's being built near, near Metro, although
4 Leesborough is a whole half mile away. You can see it on
5 the map here. It's way up on top up here, the north side.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: So it's not just right next to
8 Metro. So those are my -- that's our tour of Wheaton.
9 BY MS. CORDRY:
10 Q Moving on to your segment about Wheaton as a
11 transit hub --
12 MR. GROSSMAN: Why don't we move on to a break --
13 MS. CORDRY: Okay.
14 MR. SILVERMAN: That's a good idea.
15 MR. GROSSMAN: -- since it's been a long time
16 since she started.
17 THE WITNESS: Oh, my God, look at that.
18 MR. GROSSMAN: How much longer is this testimony?
19 MR. SILVERMAN: Two more packets.
20 MS. CORDRY: Not a whole lot. I think we can go
21 through some of this fairly fast. I think we've hit some of
22 what was here. So I will use the break to --
23 MR. GROSSMAN: Okay.
24 MR. SILVERMAN: Can I ask you just a quick
25 question?

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1 MR. GROSSMAN: Yes, sir.
2 MR. SILVERMAN: It was sort of a legal question,
3 and I'm really, I know less about the zoning process than
4 anybody in this room, I expect, because I don't really work
5 in this area, but there's a principle of administrative law
6 that you give deference to the administrative agency
7 interpreting the rules --
8 MR. GROSSMAN: There is.
9 MR. SILVERMAN: -- in its area of expertise.
10 MR. GROSSMAN: Yes.
11 MR. SILVERMAN: Does the same principle apply to
12 the Planning Commission in interpreting plans?
13 MR. GROSSMAN: Absolutely --
14 MR. SILVERMAN: And would --
15 MR. GROSSMAN: -- and I give, I would give
16 deference, that is, to the opinion of the Planning Board in
17 this case. That doesn't mean I have to agree with it and
18 follow it, but I certainly would give it considerable weight
19 in interpreting.
20 MR. SILVERMAN: Would you give deference in
21 interpreting -- give them more deference in interpreting the
22 plan than for perhaps finding it health or traffic or other
23 areas, that while it relates to what they do, is not their
24 central mission?
25 MR. GROSSMAN: Yes, I think that's fair to say.

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1 MR. SILVERMAN: And when you say deference, in
2 administrative law I think what they mean by deference, if I
3 can recall the words, it's to uphold the -- you'll defer to
4 their opinion unless it's clearly unreasonable. Is that
5 what you mean by deference?
6 MR. GROSSMAN: No. I think that most --
7 frequently you'll see that in the case law on deference,
8 you'll see it cited as, just before they say, but even so.
9 So, yes, I would certainly -- the Planning Board opinion on
10 the master plan or sector plan that it has been the main
11 component in deriving --
12 MR. SILVERMAN: Right.
13 MR. GROSSMAN: -- is entitled to considerable
14 weight. There's no doubt about it, but that doesn't mean --
15 ultimately I have to make my own legal interpretation of
16 what I think the plan ultimately means, because it's not
17 just adopted by the Planning Board; it's actually enacted or
18 approved by the Council --
19 MR. SILVERMAN: Of course.
20 MR. GROSSMAN: -- and so I have to, you know,
21 interpret it that way. So, yes, they certainly -- I will
22 certainly consider and give great weight to what the
23 Planning Board suggests --
24 MR. SILVERMAN: Thank you very much.
25 MR. GROSSMAN: -- but, you know, we've had opinion

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1 from experts here, Mr. Gang who disagrees with the Planning
2 Board, and I have to consider his evidence as to what the
3 appropriate interpretation of a sector plan is as well.
4 So --
5 MR. SILVERMAN: Okay. Thank you.
6 MR. GROSSMAN: Okay. All right. We'll return at
7 4 o'clock.
8 (Whereupon, a brief recess was taken.)
9 THE COURT: Okay. Back on the record.
10 MS. CORDRY: I think I may have my stuff there.
11 THE WITNESS: Oh, is this yours?
12 MS. CORDRY: Yes.
13 THE WITNESS: Yeah, it looks like yours. There
14 you go.
15 BY MS. CORDRY:
16 Q Okay. The next set were Set 5, Wheaton as a
17 transit hub, and I think in the interest of time, if you'd
18 just go through and identify all of these and then --
19 MR. GROSSMAN: That's Set 4.
20 MS. CORDRY: I'm sorry?
21 MR. GROSSMAN: You said Set 5, didn't you?
22 MR. GOECKE: Right.
23 THE WITNESS: It is, I think, isn't it?
24 MR. GROSSMAN: No. Wheaton as a transit hub was
25 4.

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1 MS. CORDRY: Okay. That's fine. It may just be
2 that I have a different label or something on mine, but --
3 MR. GROSSMAN: Number 5 was Wheaton is defined by
4 its small businesses.
5 THE WITNESS: Okay.
6 MS. CORDRY: Okay. So my numbering is off. Okay.
7 THE WITNESS: Oh, yes, he, right, he doesn't have
8 the one, right. Yeah, that's correct.
9 MR. GROSSMAN: All right. So we'll call this 463.
10 (Exhibit No. 463 was marked
11 for identification.)
12 BY MS. CORDRY:
13 Q All right. As I said, in the interest of time, if
14 you'd just go through and briefly identify each one of these
15 and then we can talk about them collectively, quickly.
16 A Okay. Okay. So 463, I guess it's going to be
17 (a), is some information about the Metrorail station and the
18 Metrobus stations. We have two pictures -- again, my great
19 photography. One is of --
20 MR. GROSSMAN: Yes.
21 THE WITNESS: I'm sorry?
22 MR. GROSSMAN: I said, yes. I mean --
23 THE WITNESS: Okay.
24 MR. GROSSMAN: -- I do think you're a very good
25 photographer, and this --

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1 THE WITNESS: Well, I --
2 MR. GROSSMAN: -- has an ethereal sense to it. Is
3 that really a --
4 THE WITNESS: That is a picture. I stood up above
5 on Georgia Avenue and took that picture.
6 MR. GROSSMAN: What did you use to take this
7 picture?
8 THE WITNESS: A camera.
9 MR. GROSSMAN: I know, but what specific camera?
10 THE WITNESS: I don't even remember. It wasn't a
11 cell phone camera. It was a real camera.
12 MR. GROSSMAN: All right.
13 BY MS. CORDRY:
14 Q Okay. And the next one?
15 A Okay. And the next one is a Metrobus station.
16 Okay. And then, they're going to yell at me, but not
17 pre-submitted were these next three pages. One is the
18 Metrorail passenger survey of average weekday passenger
19 boardings. Wheaton is near the bottom because it's
20 alphabetical.
21 MR. GROSSMAN: Hold on one second before we --
22 THE WITNESS: I'm sorry.
23 MR. GROSSMAN: -- go too far afield here.
24 THE WITNESS: Okay.
25 MR. GROSSMAN: So 463(a) --

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1 THE WITNESS: I was going to --
2 MR. GROSSMAN: -- are photos --
3 THE WITNESS: I was going to put the photos and
4 the ridership all in one, but do you want to separate them?
5 MR. GROSSMAN: Oh, okay. No, that's all right.
6 Photos and ridership?
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: All right. So 463(a), photos of
9 Metro station and Metrobus, photos of Metrorail and bus and
10 ridership figures.
11 (Exhibit No. 463(a) was marked
12 for identification.)
13 THE WITNESS: Yep. The ridership figures and the
14 information there are from the WMATA website.
15 MR. GROSSMAN: Okay. All right. So that's --
16 THE WITNESS: And you'll notice on the, they have
17 -- the figures are there for Wheaton on the Metrorail
18 Average Weekday Passenger Boardings. You'll also notice on
19 what's called Table 3, Annual Growth by Metrorail Station,
20 that Wheaton for this period -- and this is the latest
21 figures that they had on their website -- for 2002 to 2007,
22 the average growth for Wheaton was eight percent, which is
23 quite a bit near the top, among the top stations; and, most
24 importantly, from Table 9, from my perspective, is that
25 WMATA measures all of these, all of these items that they're

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1 measuring, within one-half mile radius. It's that same ped
2 shed half-mile radius that everyone seems to be using and
3 that all of Westfield Wheaton, including the proposed gas
4 station site, is within.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: Do you want me to do all of these,
7 Karen?
8 BY MS. CORDRY:
9 Q Yes.
10 A Okay. So then this would be, this next thing
11 would be (b). Where are we? 460, what did you say, 3?
12 MR. GROSSMAN: Countywide Bus Rapid Transit Study?
13 THE WITNESS: Yeah, bus rapid, and this is all bus
14 rapid -- this is all material related to bus rapid transit.
15 MR. GROSSMAN: And is there something that ties
16 that in, in particular, with Wheaton Plaza?
17 THE WITNESS: Well, it, it's again, this is --
18 this section is about Wheaton being as a transit hub, and
19 this, this is going to show how much of a hub -- it's going
20 to be even more of a hub once BRT is put together. So it's
21 proposed. Again, these are proposed things. Who knows if
22 they will happen, but it is strongly proposed. The Wheaton
23 Metrorail station is, is a vital part of the network.
24 You'll see the second --
25 MR. GROSSMAN: All right. So (b) is Countywide

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1 BRT Study.
2 (Exhibit No. 463(b) was marked
3 for identification.)
4 THE WITNESS: Right.
5 MR. GROSSMAN: All right.
6 THE WITNESS: And you'll notice on page ES-8
7 Wheaton is noted in Route No. 3, No. 4a, No. 4b, and No. 18
8 as being either a From or To station.
9 MR. GROSSMAN: Okay. And then 463 --
10 THE WITNESS: And on the map -- oh, okay. I'm
11 sorry. Go ahead.
12 MR. GROSSMAN: So are you finished with that one?
13 THE WITNESS: I guess there's a map that's
14 attached to that, I think, maybe, I hope you have, that just
15 shows the various networks, and it -- you can't even see
16 Wheaton, but it's there. Never mind. We don't have to do
17 that.
18 MS. CORDRY: There are better maps in other parts.
19 THE WITNESS: There are better maps elsewhere,
20 yes. So --
21 MR. GROSSMAN: Okay. All right.
22 THE WITNESS: And then there are two other pieces
23 of that, just a public workshop announcement, which is two
24 pages, for the Veirs Mill Road section of the BRT, which is
25 going to be one of the first ones put together, and that

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1 will terminate at the Wheaton Metrorail station.
2 MR. GROSSMAN: Oh, I see. So this is part of
3 that?
4 THE WITNESS: This is part, yes.
5 MR. GROSSMAN: Okay. Well, I just said Countywide
6 BRT Study.
7 THE WITNESS: Oh. Well, that is, that was a
8 public workshop being held in service of that BRT --
9 MR. GROSSMAN: Yes. I think it's all under that
10 label.
11 THE WITNESS: Yeah, it's all related.
12 MR. GROSSMAN: All right. So now 463(c)?
13 THE WITNESS: Okay.
14 MR. GROSSMAN: Countywide Transit Corridors
15 Functional Master Plan?
16 (Exhibit No. 463(c) was marked
17 for identification.)
18 THE WITNESS: Yes, and I'll just go through a few
19 quick segments of that. The maps for the recommended
20 transit networks are in here. These are, this is excerpts
21 from that document and just the excerpts related to Wheaton.
22 I guess I probably don't have to -- I probably don't have to
23 read most of this to you all because it's here, but on page,
24 I'll do it anyway, page 17: Why Bus Rapid Transit? The
25 second bullet: provide a fast, convenient, reliable

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1 alternative to the single-occupant vehicle and increasingly
2 congested roads -- again, tying into what it says in the
3 Wheaton Sector Plan. That first paragraph under, on the
4 same page, under Fitting BRT into the County's
5 Transportation Network, again talks about how important
6 Metrorail is and what it has done to replace the need for
7 approximately a thousand-lane miles of roadway and thousands
8 of parking spaces. We all know that.
9 MR. GROSSMAN: Let me ask you this: Is any gas
10 station somehow inconsistent with the goal of TOD?
11 THE WITNESS: Any gas station? Well, I think that
12 would depend on where we're talking about. I mean, if we
13 had a transit station near which there were, oh, say, within
14 a mile or two of which there were no gas stations, I would
15 say, well, sure, some people are going to drive to that
16 transit station and will need gas, but it ties in with the
17 need issue. Wheaton doesn't have that problem. Wheaton has
18 the opposite problem. We've got 25 or 30 gas stations
19 within a couple of miles of the Wheaton Metro station. So I
20 think that it's my --
21 MR. GROSSMAN: I'm just wondering in terms of how
22 to evaluate the impact of the TOD goal on the proposal for a
23 gas station --
24 THE WITNESS: Uh-huh.
25 MR. GROSSMAN: -- you know, do you, how much does

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1 that factor in when clearly we're going to have -- we have a
2 need for gas stations --
3 THE WITNESS: Right.
4 MR. GROSSMAN: -- overall.
5 THE WITNESS: Uh-huh.
6 MR. GROSSMAN: So aside from the question of the
7 needs analysis, which is something that is independent of
8 the TOD --
9 THE WITNESS: Right.
10 MR. GROSSMAN: -- how really does the TOD part of
11 it factor in, because we have to do the needs analysis
12 anyway. So -- see, I think the TOD is a factor in terms of
13 your suggestion about it interfering with the pedestrian
14 pathway to the Metro --
15 THE WITNESS: Uh-huh.
16 MR. GROSSMAN: -- and it's within a half mile and
17 so on. That, I can understand that argument to be made. I
18 just, the whole idea of showing me transit corridors in a
19 functional, in a countywide functional master plan, just
20 don't see how that all ties together, and clearly there's a,
21 there's going to be a need for gas stations. There's going
22 to be -- whether you have a TOD goal or not or whether
23 you're going to have transit corridors and you're going to
24 have bus rapid transit you're still going to have gas
25 stations.

1 MS. CORDRY: Well --
 2 THE WITNESS: Well, I guess -- this is probably
 3 not going to totally answer your question -- but in my
 4 opinion, if you have a central Metrorail station, which is
 5 about to get even more central because of all of this BRT
 6 stuff that's going to happen eventually, that TOD is, number
 7 one, a goal --
 8 MR. GROSSMAN: Right.
 9 THE WITNESS: -- not a -- it's not a requirement;
 10 it's a goal, and so that we should always try to be working
 11 in that direction. And I believe, also, the state has funds
 12 available for development that is designated as TOD. So
 13 that's a way to -- I don't know --
 14 MR. GROSSMAN: Right, but I'm not sure that --
 15 that still doesn't answer my --
 16 THE WITNESS: Yeah, I'm sorry.
 17 MR. GROSSMAN: -- concern about how to factor
 18 in --
 19 THE WITNESS: Yeah.
 20 MR. GROSSMAN: -- TOD for an application for a
 21 special exception for a gas station because, you know, I
 22 know we have to think about need and I know we have to think
 23 about whether or not it obstructs something and --
 24 THE WITNESS: Uh-huh.
 25 MR. GROSSMAN: -- where it's going to be and I

1 know we have to consider traffic and health and
 2 compatibility and all those other things, just not sure that
 3 the, the fact that there's a bus rapid transit system, I'm
 4 not sure that an existence of a gas station somewhere is
 5 somehow, inhibits a bus rapid transit system. I just, I
 6 think that's really --
 7 THE WITNESS: No, look at it the other way around.
 8 MR. GROSSMAN: -- once again, attenuating
 9 connection.
 10 THE WITNESS: But look at it the other way around.
 11 If we're going to have a bus rapid transit system and the
 12 other systems that are already there at that transit
 13 station, that should inhibit humongo gas stations, sorry,
 14 large gas stations from being built in that immediate area.
 15 MS. CORDRY: And --
 16 MR. GROSSMAN: Why should it inhibit it if a
 17 market is there for it -- now, that's the need analysis --
 18 MS. CORDRY: Okay.
 19 MR. GROSSMAN: -- but if a market is there for it?
 20 THE WITNESS: But that's a huge, but that's a huge
 21 part of, I think -- that's why you can't take needs separate
 22 from, from some of this stuff, I don't think. They go
 23 together.
 24 MR. GROSSMAN: Well, but that goes under the needs
 25 analysis.

1 THE WITNESS: Yeah.
 2 MR. GROSSMAN: I'm just saying, you've given me a
 3 lot of analysis about bus rapid transit. I just don't see
 4 how that really is going to bear on the question. You can
 5 have bus rapid transit, and you can have gas stations.
 6 They're not mutually exclusive in any way.
 7 BY MS. CORDRY:
 8 Q Ms. Savage -- I'm sorry.
 9 MR. GROSSMAN: There's a different question as to
 10 whether or not you can have a gas station that somehow, as
 11 you've suggested, inhibits the use of the Metro. That's a
 12 different issue, and I --
 13 THE WITNESS: Uh-huh.
 14 MR. GROSSMAN: -- and I recognize that as an
 15 issue, but --
 16 THE WITNESS: Okay.
 17 BY MS. CORDRY:
 18 Q Well, let me ask you a question then. To the
 19 extent that this station brings additional traffic into this
 20 area, does that have an effect on the viability of bus rapid
 21 transit?
 22 A Well, that certainly, even right now I think there
 23 are some issues with trying to get express -- enough lane
 24 space for express buses to be express, and the bus rapid
 25 transit is going to, at least in most places, take over some

1 laneage. It may be the center of the road, but some of the
 2 roads don't have enough center of the roads so that they'll
 3 do that.
 4 So more traffic -- and there will be some coming
 5 just for the gas station; so that's more traffic -- will
 6 definitely have some effect on setting up BRT and other
 7 express buses that might want to get through. I don't see
 8 how -- it's going to be a negative effect. The additional,
 9 significant additional traffic -- and it will be significant
 10 -- would tend to slow everybody down, including the BRT,
 11 wouldn't be quite so R.
 12 MR. GROSSMAN: I don't know that you can
 13 characterize the amount of traffic that's going to be on the
 14 road system overall --
 15 THE WITNESS: Uh-huh.
 16 MR. GROSSMAN: -- from this gas station as being
 17 significant. I mean, it may be that it's significant in the
 18 area right inside the mall and the ring road --
 19 THE WITNESS: Uh-huh.
 20 MR. GROSSMAN: -- one could argue about that, I
 21 suppose, but I don't know that you can argue, given the
 22 traffic study, that it's a significant amount of traffic on
 23 the road system overall so as to --
 24 THE WITNESS: I mean, additional significance.
 25 MR. GROSSMAN: Yes.

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1 THE WITNESS: Yeah.
2 MR. GROSSMAN: So as to interfere with a project
3 such as BRT, which hasn't been enacted yet in any event.
4 THE WITNESS: Yeah. Yeah.
5 MR. GROSSMAN: Once again, it's another one of
6 those really --
7 THE WITNESS: Oh, I knew you were going to --
8 MR. GROSSMAN: -- attenuated effects --
9 THE WITNESS: Yeah.
10 MR. GROSSMAN: -- if it exists at all. Okay.
11 MS. CORDRY: I mean, look at how everything is
12 attenuated.
13 MR. GROSSMAN: Pardon me?
14 MR. SILVERMAN: Are you understanding that TOD as
15 preventing negative things, or do you see any positive
16 instruction? When the plan says we should encourage
17 transit-oriented development, is it giving -- is it just
18 saying don't interfere with the transit or is it also saying
19 do something positive in the direction of transit?
20 MR. GROSSMAN: I'll add to that question for you:
21 Is it saying that you can never do anything on a mall that's
22 not TOD?
23 MR. SILVERMAN: Well, I must say, I have
24 difficulty in talking about speculative cases. You know, if
25 you ask the question, can you have a Costco station

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1 anywhere, well, that's an interesting question. The
2 legislature will take it up, but --
3 MR. GROSSMAN: I'm just saying, your -- the
4 implication of your question is that it has to be,
5 everything you do has to be TOD because TOD is desirable as
6 a goal, and that gets back to my original question: Does
7 everything you do in an area, let's say the mall, have to
8 meet every goal of a master plan --
9 THE WITNESS: No.
10 MR. GROSSMAN: -- which is a recommendation in any
11 event, but --
12 MS. CORDRY: Right, and I guess, of course, our
13 position is, again, as Ms. Savage said, maybe not every one
14 but there are certain goals that are extremely central to it
15 and you shouldn't be doing things that are -- you know,
16 being neutral is one thing because, I mean, there's a real
17 difference between not supporting a goal versus interfering
18 with a goal --
19 MR. GROSSMAN: I understand. There's a --
20 MS. CORDRY: -- and this is not a peripheral goal.
21 MR. GROSSMAN: -- there's a legitimate argument
22 here about TOD. I'm not saying that that's not a legitimate
23 issue here. I'm just saying that you've carried it way
24 beyond the straight TOD issue to give me things that, such
25 as bus rapid transit, that doesn't exist yet. So that --

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1 MS. CORDRY: Well --
2 MR. GROSSMAN: -- to suggest that I should
3 recommend denial of a special exception application for
4 something that hasn't been enacted yet --
5 MS. CORDRY: Well, we understand.
6 MR. GROSSMAN: -- because it might have the barest
7 of influences on it, I just --
8 MS. CORDRY: Wait. Wait. Okay. We understand.
9 MR. GROSSMAN: -- fine. Once again, you know, I
10 haven't stopped you from putting it in, but you got to
11 recognize that it's a really attenuated impact, if it exists
12 at all. Yes.
13 THE WITNESS: Could I just add to that --
14 MR. GROSSMAN: Yes, Ms. Savage.
15 THE WITNESS: -- that part of, maybe a big part,
16 of talking about BRT in this -- I realize it's not here yet
17 -- but is to point out in various different ways how Wheaton
18 is a transit hub. It is viewed that way by those of us who
19 live there. It is in fact a transit hub -- and transit hub,
20 not car hub, but transit hub -- and that, again, back to
21 the, you know, one-third of a mile from --
22 MR. GROSSMAN: Right.
23 THE WITNESS: -- the transit hub, it doesn't make
24 sense to put a car-centric thing like a -- like the largest
25 gas station in the county.

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1 MR. GROSSMAN: How long have they been talking
2 about BRT in the county?
3 MS. CORDRY: I'd say two years.
4 THE WITNESS: A couple years? Yeah, I was going
5 to say a couple years.
6 MR. GROSSMAN: Oh, it's --
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: -- considerably longer than that.
9 MS. HARRIS: Yes.
10 THE WITNESS: Well, publicly.
11 MS. CORDRY: Well, certainly not -- it hasn't
12 percolated up to the public attention before the last --
13 MS. HARRIS: It started with the White Flint
14 Sector Plan. It's been being discussed for at least four
15 years.
16 MS. CORDRY: Okay.
17 THE WITNESS: Yeah, but --
18 MR. GROSSMAN: I think actually even longer than
19 that.
20 THE WITNESS: But serious, serious plans and stuff
21 I think is probably last couple years, couple, three years.
22 MS. CORDRY: Well, it's a major undertaking. It
23 does take a while --
24 MR. GROSSMAN: Right.
25 MS. CORDRY: -- to put into effect, no question.

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1 I mean --
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: I'm not rushing them. I'm just
4 saying that that --
5 THE WITNESS: Yes, you should rush them, actually.
6 MR. GROSSMAN: -- I'm just saying that there's no
7 guarantee that that --
8 THE WITNESS: That's correct.
9 MR. GROSSMAN: -- comes to pass or that this gas
10 station would influence it in any way, but in any event --
11 MS. CORDRY: Okay.
12 MR. GROSSMAN: Okay. So 463(c) is the Countywide
13 Transit Corridors Functional Master Plan. Anything about
14 that?
15 THE WITNESS: Just, there are, yeah, I'm just
16 going to -- you can look through it yourself -- there are
17 some very nice color pictures. Again, this is just --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- excerpts, but all the ones I've
20 included include Wheaton on the various routes --
21 MR. GROSSMAN: Okay.
22 THE WITNESS: -- just to show, again, to make the
23 point that Wheaton is a transit hub. We all know that, but
24 it would be even more of a transit hub if even any of these
25 were, any of these routes was implemented. So that's my --

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: -- that's my point.
3 BY MS. CORDRY:
4 Q Okay. The next one, Wheaton is defined by its
5 small businesses?
6 A We don't actually have a handout for that --
7 Q Okay. Then --
8 A -- really.
9 MR. GROSSMAN: No handout?
10 THE WITNESS: Well, I had one but it's so minor.
11 MS. CORDRY: I don't think it's that --
12 MR. GROSSMAN: Okay.
13 BY MS. CORDRY:
14 Q Okay. So if you'd just tell us --
15 A Yeah.
16 Q -- what the concern is there with respect to, as
17 far as the sector plan goes and the small business
18 community.
19 A Okay. Well, Wheaton is renowned for its
20 diversity, and as a neighborhood where many small businesses
21 have thrived for years -- and gas stations are small
22 businesses with the exception of Costco -- Costco gas would
23 put at least some of these family small businesses out of
24 business. And Mr. Spade from the Sunoco station and
25 Ms. Shen, I think her name was, who was the representative

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1 from the Freestate station, I was not here for their
2 testimony, but --
3 MR. GROSSMAN: I was.
4 THE WITNESS: I know you were -- both of these gas
5 stations are relatively small operations, certainly compared
6 to Costco, and -- well, compared to Costco, it's still small
7 -- which is the world's, Costco being the world's sixth
8 largest retailer. I don't know about gas station, but --
9 Mr. Spade has a single facility; Freestate has a relative
10 handful of gas stations, and both have been in existence for
11 decades, and both owners and representatives believe their
12 small businesses are unlikely to serve a Costco -- to
13 survive, sorry, a Costco mega station. And this kind of
14 development, a Costco large gas station that is likely to
15 put small businesses out of, some small businesses out of
16 business, is exactly the kind of thing that area residents
17 in Wheaton have been loudly expressing concern about for
18 years, not specifically about gas stations, but small
19 businesses have said redevelopment is going to kick us out
20 of the way, it's going to increase the rent so much, it's
21 going to put us out of business in various different ways.
22 For years that's been the fear. You can almost see people
23 shaking, business owners, shaking from that fear.
24 So this is exactly the kind of thing that we've
25 been told by Wheaton Redevelopment Office and various other

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1 county officials that they're going to try really hard not
2 to have happen, but it's going to happen.
3 MR. GROSSMAN: I have to tell you, once again,
4 this touches on an area of whether or not you're interfering
5 with the market in a way that is potentially
6 unconstitutional but is problematic at the very least.
7 THE WITNESS: Uh-huh.
8 MR. GROSSMAN: So it's a concern to factor that
9 in. The issue comes up in need studies and whether or not
10 and to what extent you can consider putting another station
11 out of business --
12 THE WITNESS: Uh-huh.
13 MR. GROSSMAN: -- and so on. But they have found
14 that it's legitimate, at least the local court system found
15 it's legitimate for the county to consider need --
16 THE WITNESS: Uh-huh.
17 MR. GROSSMAN: -- but I have to be very careful
18 about worries about putting other stations out of business
19 by economic competition.
20 THE WITNESS: Uh-huh. Another, another way
21 possibly to look at that -- it's a little bit more than just
22 economic competition -- if you think, if you, if one agrees
23 with the fact that we are in an era of declining gas usage,
24 whether from people driving less or cars becoming more
25 efficient or whatever the reason, that pie is getting

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1 smaller and that pie in the Wheaton area, a good portion of
2 that pie is going to be eaten by Costco and there'll be much
3 less for the other 25 or 30 or whatever it is gas stations,
4 many of which, almost all of which are small businesses.
5 MR. GROSSMAN: Well, I'm going to consider that
6 factor in the context that Ms. Cordry had laid out; that is
7 that other gas stations have other services that they
8 provide --
9 THE WITNESS: Right.
10 MR. GROSSMAN: -- that might be useful to the
11 community --
12 THE WITNESS: Right. Uh-huh.
13 MR. GROSSMAN: -- and, if they're put out of
14 business, some services may be, the community may be
15 deprived. So there is a -- it factors into the need
16 analysis, but once again, I'm leery about considering it in
17 the context of the fact that competition has an adverse
18 effect on the fact that some small businesses may be driven
19 out. I --
20 THE WITNESS: Does it make a difference as to how
21 a business is run? So, for instance, my understanding of
22 reading the Costco annual figures, sales figures --
23 MR. GROSSMAN: Yes.
24 THE WITNESS: -- and other figures is that Costco
25 basically does not -- and I think, Erich, you might have

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1 even said this to us one time four years ago, or somebody
2 from Costco did -- that Costco doesn't really make a profit
3 on gas. They don't sell it for below their cost, because
4 they're not allowed to do that, but they don't really make a
5 profit on their gas and that the point, the major point of
6 having a Costco gas station is to encourage people to join
7 as members and that, in fact, if you look at their annual
8 figures, Costco overall for the country makes their
9 profit --
10 MR. GROSSMAN: I'm not going to --
11 THE WITNESS: Okay.
12 MR. GROSSMAN: -- I'm not going there.
13 THE WITNESS: Okay, but this is a different --
14 okay. It's a different model.
15 MR. GROSSMAN: You want me to do --
16 THE WITNESS: It's a different model, yeah.
17 MR. GROSSMAN: And I'm not analyzing business
18 models.
19 THE WITNESS: Okay. Okay.
20 MR. GROSSMAN: That would be beyond --
21 THE WITNESS: Okay.
22 MR. GROSSMAN: -- what would be appropriate for
23 me, nor is that --
24 THE WITNESS: Okay.
25 MR. GROSSMAN: -- an aspect of evidence that's

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1 been --
2 THE WITNESS: Okay.
3 MS. CORDRY: Well, I think it just does go to the
4 question about competition, but in any case, your having --
5 THE WITNESS: Yeah, it's different. It's not
6 really straight competition.
7 MS. CORDRY: -- you do appear to be well aware of,
8 which I was going to ask her, was, were there other benefits
9 from these other stations that we would lose if they were
10 driven out of business, and you seem to have --
11 MR. GROSSMAN: Right.
12 THE WITNESS: Right. He got that.
13 MR. GROSSMAN: I heard you.
14 MS. CORDRY: -- accommodated that one. So we will
15 move on, again, just moving right along.
16 MR. GROSSMAN: I try to be attentive to what you
17 all say.
18 MS. CORDRY: I understand that, but I -- I do hear
19 that. I do hear that.
20 THE WITNESS: You have. Amazingly --
21 MR. GROSSMAN: I've been here, listening very
22 attentively for a long time.
23 THE WITNESS: Yeah, but that you can recall all of
24 this is amazing. It's amazing.
25 BY MS. CORDRY:

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1 Q Okay. Moving to pretty much our last segment
2 here --
3 A Yep.
4 Q -- talking about Westfield options for the mall.
5 A And this we do have a bit of handout for. Unless
6 I've been skipping one, this is 564 -- 464.
7 MR. GROSSMAN: You saved the fattest handout for
8 last.
9 THE WITNESS: Did indeed.
10 MR. GROSSMAN: All right. Exhibit 464.
11 THE WITNESS: This is 464, right.
12 MS. CORDRY: And we are not going to go through
13 page by page the fat part of this handout. So --
14 THE WITNESS: Yeah.
15 MR. GROSSMAN: Thank you.
16 THE WITNESS: And Westfield Wheaton's future, I
17 guess we could call this, or something like that.
18 MR. GROSSMAN: Right, Savage exhibits on Westfield
19 Wheaton's future.
20 (Exhibit No. 464 was marked
21 for identification.)
22 MR. SILVERMAN: What number is this?
23 MS. CORDRY: This would be 4 --
24 MR. GOECKE: 464.
25 THE WITNESS: This is 464.

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1 MR. GROSSMAN: Okay. So what do you have to say
2 about Westfield Wheaton's future.
3 THE WITNESS: Okay. Should I just go -- I'll just
4 go through and --
5 BY MS. CORDRY:
6 Q Yes, just say what --
7 A Okay.
8 Q -- what the first one is and what the point is of
9 putting that one in.
10 A Okay. So 464, which I guess would be (a) --
11 MR. GROSSMAN: Yes.
12 (Exhibit No. 464(a) was marked
13 for identification.)
14 THE WITNESS: -- is a letter from Mr. Leggett to
15 the Planning Board regarding the Wheaton Sector Plan, and
16 there are a few items I wanted to point out on here that
17 talk about the future of malls. And so on page 1 down at
18 the bottom, about midway through the last paragraph:
19 Suburban malls, once the bellwether of commercial projects,
20 are giving way around the country to town centers and more
21 integrated mixed-use developments. And then skip a
22 sentence. As contemporary planning moves away from
23 auto-oriented suburban shopping malls, and then he goes on
24 there.
25 The following paragraph: I recognize the mall is

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1 not likely to redevelop in the near term; however, given the
2 long-range view of our master plans, I question whether the
3 plan provides adequate incentives for the Wheaton Mall
4 parcel to redevelop in the long term. The future of the
5 mall plays a significant role in the future of Wheaton. We
6 need a strategy of vibrant tenanting in the present and a
7 long-range vision for redevelopment of the mall. Such
8 redevelopment would provide opportunities for greatly
9 enhanced connectivity with the rest of Wheaton. I propose
10 that rather than approving the plan with its current C-2
11 zoning, that technical issues be resolved now and
12 high-density, mixed-use zoning be applied to the entire
13 Westfield Wheaton site with appropriate transition controls
14 on the edges to protect adjacent neighborhoods.
15 MR. GROSSMAN: But isn't the salient point that
16 the Council decided not to do that?
17 BY MS. CORDRY:
18 Q Well, can you turn to page 53 of the sector plan?
19 A Yes. I was getting there, but okay, Page 53.
20 MR. GROSSMAN: Didn't want to let her answer my
21 question?
22 MS. CORDRY: Well, and I think that will answer
23 your question.
24 THE WITNESS: Oh, I'm sorry. Yes.
25 MR. GROSSMAN: Isn't the salient point that the

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1 Council decided not to do what you're suggesting Mr. Leggett
2 recommended here?
3 THE WITNESS: He recommended for the entire mall,
4 that's correct. So they did it for a part of the mall --
5 MR. GROSSMAN: Right.
6 THE WITNESS: -- in the sector plan and then, I'm
7 going to bring it up again, the possible GR, the possible
8 changing of the -- the rest of the mall that's C-2, changing
9 that to GR, which would allow mixed-use --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- and that --
12 BY MS. CORDRY:
13 Q Yes. At this point --
14 A Okay.
15 Q -- yes, could you look at page 53 in the sector
16 plan?
17 A Okay. Yes. On page 53, under the last sentence
18 under Westfield District: The main mall portion of the
19 property could be rezoned for mixed-use -- and that's
20 talking about the C-2 part -- could be rezoned for mixed-use
21 development as part of the comprehensive rewrite of the
22 county's zoning ordinance underway at the time of plan
23 adoption, and you can see on the facing page the zoning, the
24 two zoning maps: the existing zoning, which is on the left,
25 and the zoning that the sector plan proposes, which is CR,

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1 various CRs on the northeast --
2 MR. GROSSMAN: Correct.
3 THE WITNESS: -- east portions and the rest in
4 C-2. So they were already, they knew that a zoning rewrite
5 was underway, and they were already -- they, the people who
6 wrote the sector plan -- were already thinking along those
7 lines and said it could be rezoned for that. So they're
8 thinking ahead here about that. I just wanted to point that
9 out.
10 MR. GROSSMAN: And to continue with your
11 speculation about this, what if it is rezoned? What would
12 be the impact of the rezoning, proposed countywide rezoning,
13 if they rezone that?
14 THE WITNESS: Well, it would give Westfield a lot
15 more flexibility of what to do on that space. The GR zone
16 allows up to 30 percent residential and the FAR is 2.5. So
17 they could make things higher, they could -- I mean, I'm not
18 a, that's not my expertise; so I can't tell any more --
19 MR. GROSSMAN: Right, but isn't Westfield --
20 THE WITNESS: -- but there is a lot more
21 flexibility.
22 MR. GROSSMAN: But it gives Westfield the
23 option --
24 THE WITNESS: Yes.
25 MR. GROSSMAN: -- of additional things.

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1 THE WITNESS: Yes.
2 MR. GROSSMAN: It wouldn't bar a gas station.
3 THE WITNESS: Would it bar a gas station?
4 Technically it wouldn't bar one, but you know, if you were
5 going to build a, say, residential on top of retail, part of
6 the GR, would you want to have the balcony of your condo
7 looking out over idling cars?
8 MR. GROSSMAN: Isn't that Westfield's decision as
9 to whether or not -- Westfield has gone along --
10 THE WITNESS: Yes.
11 MR. GROSSMAN: -- with this proposal for this gas
12 station. So why does the -- if you continue with your
13 speculation that the rezoning takes place, if it just gives
14 Westfield additional options but it's Westfield's decision
15 right now to go along with this application for this special
16 exception, why would the rezoning have any impact?
17 THE WITNESS: I -- all right, this is, this is
18 going to be a radical statement, so I'm just warning you --
19 but I'm going to say that I don't think we, any of us,
20 should draw any conclusions from the fact that Westfield is
21 not opposing this gas station.
22 MR. GROSSMAN: Well, they did more than not oppose
23 it; they supported it.
24 MR. SILVERMAN: I don't think so.
25 THE WITNESS: They have -- okay. Even if you say

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1 they supported it, I think there are lots of reasons for
2 them to have supported it other than that they like the
3 idea.
4 MR. GROSSMAN: Well, I can't psychoanalyze it.
5 All I can tell you is --
6 THE WITNESS: No, I can't either. I'm just saying
7 it's possible. You hate that, I know.
8 MR. GROSSMAN: Anything's possible. But I'm just,
9 since you want so much to speculate on what, that there'll
10 be a rezoning, I'm just carrying that speculation out
11 further and --
12 THE WITNESS: Okay.
13 MR. GROSSMAN: -- seeing what real impact a
14 rezoning would have on that C-2 zone, and from what you're
15 telling me, it just gives Westfield additional options --
16 THE WITNESS: Yeah.
17 MR. GROSSMAN: -- but it's Westfield's decision.
18 So I just don't see how that technically influences what I
19 should be recommending --
20 THE WITNESS: Well, I'm going to show --
21 MR. GROSSMAN: -- because I have to go by what the
22 plan is before me.
23 THE WITNESS: Right.
24 MR. GROSSMAN: I just don't see how this, even if
25 you carry this speculation further out, that the countywide

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1 rezoning goes forward and that this parcel is rezoned --
2 THE WITNESS: Uh-huh.
3 MR. GROSSMAN: -- if all it does is give Westfield
4 more options, I just don't see how that changes.
5 THE WITNESS: Well, I want to show you what's --
6 MR. GROSSMAN: Westfield can make its own
7 decisions as to what it wants to do on its property --
8 THE WITNESS: Yeah.
9 MR. GROSSMAN: -- subject to the existing zoning
10 laws.
11 BY MS. CORDRY:
12 Q Well, again, are there, are you aware of other
13 malls in the area that have made major changes in recent
14 years?
15 A Exactly, and I have a couple of articles about
16 them just because I know you would love to read about it.
17 MR. GROSSMAN: I give you, once again, a so
18 what --
19 MS. CORDRY: So --
20 MR. GROSSMAN: -- I mean, and would --
21 THE WITNESS: This is a trend. This is --
22 MR. GROSSMAN: The politest way possible --
23 THE WITNESS: Yeah.
24 MR. GROSSMAN: -- so what if other malls have made
25 a change?

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1 MS. CORDRY: Because I think the question is, is
2 there a trend; is there a logical development?
3 MR. GROSSMAN: That's not the question. I'm not
4 supposed to speculate on a trend.
5 MS. CORDRY: You're supposed to look at logical
6 development, and if in fact regional malls, all malls are
7 finding themselves with lessening business and having to
8 consider redevelopment, which Ms. Savage will point out that
9 Westfield itself is considering that fact, there are many
10 ways that this mall can go and many ways that, even if
11 they're not planning on doing it today, I think you will
12 hear in just a moment, when she talks about this PowerPoint,
13 that there's a lot of thoughts about where it can go.
14 Placing something like this, which would make it
15 much less desirable to put residential housing on the mall,
16 to put all kinds of kinds of development, hotels and so
17 forth, that would be near there that would be having these
18 fumes 24 hours a day that, as of now, the health effects
19 say, oh, no, there can't ever be anything, you know, but an
20 hour on the mall, what we're trying to say is that there's a
21 lot -- there's a lot of speculation going on on the science
22 side that says, oh, you know, this mall is going to stay the
23 way it is forever and therefore we can put the station on
24 there forever, and our point is it's not necessarily to
25 assume that it will never have residential housing on the

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1 mall, that there will never be people there 24 hours a day
 2 and so forth. I mean, five years ago that Safeway, I will
 3 tell you, I will testify this for a moment from being --
 4 MR. GROSSMAN: Don't get into it.
 5 MS. CORDRY: All right.
 6 MR. GROSSMAN: I understand your point. I hope
 7 you understand my point --
 8 MS. CORDRY: I understand.
 9 MR. GROSSMAN: -- here. You -- I'm not here to
 10 make policy. I'm not here to make plans. I'm not here to
 11 legislate. I'm here to conduct a quasi-judicial function,
 12 and I, as part of that, I should not engage in the kind of
 13 speculation that you want me to engage in. That's the
 14 problem. I think you want me to do something that I should
 15 not be doing as part of my quasi-judicial function here.
 16 MS. CORDRY: And I --
 17 MR. GROSSMAN: That's the problem.
 18 MS. CORDRY: And I hear you saying, and you know
 19 our view as to the difference between logical development
 20 versus speculation.
 21 MR. GROSSMAN: Right.
 22 BY MS. CORDRY:
 23 Q But let me, let me just ask you to, Ms. Savage, to
 24 just, and if there's certain points of the PowerPoint
 25 discussion that you want to comment on --

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1 A Okay.
 2 Q -- we could identify that next.
 3 A Okay. So this PowerPoint presentation is about 20
 4 pages, and I'm sorry, it's not double-sided copied but
 5 that's the way it is.
 6 MR. GROSSMAN: Let's see, Developer -- what I have
 7 moved to here?
 8 THE WITNESS: Yes, you've moved to the color --
 9 Westfield Wheaton Mall --
 10 MR. GROSSMAN: All right.
 11 THE WITNESS: -- should be stapled together, I
 12 think.
 13 MR. GROSSMAN: Okay. All right. So this is going
 14 to be (b)?
 15 THE WITNESS: Yes.
 16 MR. GROSSMAN: Okay.
 17 MR. SILVERMAN: This is (d)?
 18 MR. GROSSMAN: It's 464(b), as in boy?
 19 MR. GOECKE: Yes.
 20 THE WITNESS: 464(b). Okay.
 21 MR. GROSSMAN: And this is PowerPoint on the, on
 22 the sector plan or --
 23 THE WITNESS: No. This is on long-range, I don't
 24 know if it's plans, is the right word, but long-range plans
 25 for Westfield Wheaton by Westfield.

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1 MR. GROSSMAN: I see. So this is a --
 2 THE WITNESS: This is Westfield's presentation.
 3 MR. GROSSMAN: -- PowerPoint by Westfield --
 4 THE WITNESS: See, there are little logos in the
 5 bottom right there.
 6 MR. GROSSMAN: -- of --
 7 BY MS. CORDRY:
 8 Q And who was this presented to?
 9 A This was presented -- well, I'm waiting until he's
 10 finished writing.
 11 MR. GROSSMAN: -- long-term plans. Okay.
 12 (Exhibit No. 464(b) was marked
 13 for identification.)
 14 THE WITNESS: So this was presented to the
 15 Planning Board on December 9th, 2010, but it was also, prior
 16 to that or around that date, was presented to several groups
 17 in Wheaton, WUDAC and WRAC probably too, the Wheaton
 18 Redevelopment Advisory Committee, and some Wheaton
 19 residences, residents, and a group of Kensington Heights
 20 residents as well.
 21 MR. GROSSMAN: All right.
 22 THE WITNESS: So Westfield was shopping this --
 23 not shopping. Westfield was showing this to a bunch of
 24 different groups, including the Planning Board, as long-term
 25 possibilities for the mall.

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1 MR. GROSSMAN: Okay.
 2 THE WITNESS: So you have the whole thing, and I'm
 3 not going to go through the whole thing, but I'd --
 4 MR. GROSSMAN: Is there something specific you
 5 want to point my attention to?
 6 THE WITNESS: There are four pages that I wanted
 7 to point out.
 8 MR. GROSSMAN: Okay.
 9 THE WITNESS: The pages, sadly, are not numbered.
 10 MR. GROSSMAN: Of course.
 11 THE WITNESS: So this is the eighth page, and it's
 12 called The Residences at Wheaton. I don't think anything
 13 else is called that, no.
 14 MR. GROSSMAN: Okay, The Residences at Wheaton.
 15 THE WITNESS: The Residences at Wheaton, okay.
 16 MR. GROSSMAN: Okay.
 17 THE WITNESS: And this shows an idea for a
 18 residential development in the, I guess that's the directly
 19 east corner of Westfield Wheaton, and some pictures next to
 20 that of other ones that they've done, so the way things look
 21 there. What you're looking at in that top picture of the
 22 two, both actually, is malls that Westfield said they --
 23 they are redoing their malls to turn them inside out. So
 24 instead of, what that means is, instead of having all the
 25 mall stuffed in the center --

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1 MR. GROSSMAN: Yes.

2 THE WITNESS: -- and all the public space on the

3 outside, you do the other thing: you have the mall

4 buildings on the outside, and then in the middle you have a

5 common space and greenery and places to gather and that kind

6 of thing.

7 MR. GROSSMAN: Right.

8 THE WITNESS: So that's their new -- they've done

9 several of those, and several of those are actually in here.

10 I won't go through that now, but there are two pictures of

11 malls that have done that. I don't know for sure if those

12 are Westfield malls that have done that. So I can't tell

13 you that for sure, but I would hope they would put their own

14 malls in there, but I don't know for sure.

15 MR. GROSSMAN: So I'm not sure what -- what is

16 this showing me on this page, The Residences --

17 THE WITNESS: This is showing a proposed

18 residential development on mall property.

19 MR. GROSSMAN: Okay. So the --

20 THE WITNESS: That circle, that red-circled thing.

21 MR. GROSSMAN: The red-circled thing on the far

22 eastern end?

23 THE WITNESS: Correct.

24 MR. GROSSMAN: Okay.

25 THE WITNESS: Okay.

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1 MR. GROSSMAN: And what other pages did you want

2 to show me?

3 THE WITNESS: The other pages are three pages

4 later, which is the 11th page, which is called The Plan

5 Explained, L-2 Level.

6 MR. GROSSMAN: Right.

7 THE WITNESS: And that just shows some more about,

8 a little bit more detail about the residences and what, how

9 they might look out onto the neighborhood and the green

10 buffer along the ring road there --

11 MR. GROSSMAN: Right.

12 THE WITNESS: -- and a couple of other signature

13 office towers and a few other aspects of -- this is all,

14 again, that eastern portion of the mall that as of the

15 sector plan has been rezoned for various CR levels.

16 MR. GROSSMAN: Right.

17 THE WITNESS: Okay. And so on page 13, two pages

18 later, the plan explained L-3 Level, again, just some more

19 -- this talks a little bit more about in the north end of

20 the mall, north corner, I guess, where Veirs Mill and

21 University come together, of ideas for twin office buildings

22 and a multiplex and another residential building that would

23 be kind of in the middle there.

24 MR. GROSSMAN: Are all of these things that

25 they're proposing in part of the area that's been rezoned to

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1 CR?

2 THE WITNESS: Yes, this is all in that area. And

3 the final page is seven pages later, or I guess that's the

4 last page. Yes, that's the last page of this PowerPoint

5 presentation. It's called Facts and that's just to give you

6 some idea of the square footage of the various things that

7 they're proposing -- South Residential, 720,000 square feet

8 -- and various other facts of some of the square footage of

9 what they're thinking about for that area that's CR-zoned.

10 MR. GROSSMAN: Okay.

11 THE WITNESS: So that's -- it's also just

12 interesting to look at the rest of it, I think -- but those

13 are the four pages that I wanted to point out to you on

14 that, and I think there should be a page after that that

15 says, Planning Board Video of Work Session No. 4. I hope

16 it's right after that. And so that is just a reference to

17 where, if you wanted to listen to the discussion of all of

18 this, because I know you have nothing else to do with your

19 time, you're welcome to do that at that -- Planning Board

20 discussion of this presentation is at that location.

21 MR. GROSSMAN: So I'm not seeing where that is.

22 This is --

23 THE WITNESS: I'm sorry. It should be either --

24 MR. GROSSMAN: -- I got (a). I got (b). Let me

25 see.

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1 THE WITNESS: -- either attached to that or not.

2 MR. GROSSMAN: Hold it up. Okay.

3 MS. CORDRY: I have an extra one if need be.

4 MR. GROSSMAN: Here it is, I think. Planned Board

5 video?

6 THE WITNESS: Yes.

7 MR. GROSSMAN: Of Work Session No. 4 --

8 THE WITNESS: Yeah.

9 MR. GROSSMAN: -- on the Wheaton Sector Plan.

10 THE WITNESS: That's it. So that just, it kind of

11 goes with the PowerPoint because that's where the PowerPoint

12 was explained and discussed to the Planning Board.

13 MR. GROSSMAN: Okay. You want me to make this --

14 THE WITNESS: You can do whatever you want with

15 it.

16 MR. GROSSMAN: Well, I'm not as much of a free

17 agent as you might think.

18 THE WITNESS: Okay.

19 MR. GROSSMAN: I have to follow the law.

20 THE WITNESS: Okay.

21 MR. GROSSMAN: All right. Exhibit 464(c) is

22 description of Planning Board video of Work Session No. 4 on

23 the Wheaton Sector Plan.

24 (Exhibit No. 464(c) was marked

25 for identification.)

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1 THE WITNESS: Okay.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: So --
4 MR. GROSSMAN: By the way, it's problematic for me
5 to look at videos of work sessions --
6 THE WITNESS: Oh, okay. I didn't know that.
7 MR. GROSSMAN: -- because people aren't testifying
8 under oath, they're not subject to cross-examination. So
9 unless there's an agreement by both sides, I try to avoid
10 that.
11 THE WITNESS: Oh, okay. I didn't know that.
12 MS. CORDRY: Well, as I say, it was simply being
13 put on as Westfield presenting its views and intentions and
14 not necessarily leaving the mall as it was for 20 years. It
15 was its plan, presentation to the Planning Board and things
16 that it wanted to see put into the zoning, the sector plan,
17 to accommodate, including higher density and so forth, all
18 of which --
19 MR. GROSSMAN: Right, but I think you've --
20 THE WITNESS: Yeah.
21 MR. GROSSMAN: -- you've pretty much got that in
22 your PowerPoint, don't you?
23 THE WITNESS: Yes. I mean, this PowerPoint, I
24 think, can stand pretty much on its own, I mean, because you
25 were saying before, well, Westfield isn't planning anything.

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1 Well, for part of the mall, they're thinking about it.
2 MR. GROSSMAN: No, I didn't say Westfield wasn't
3 planning anything. I said that that's up to them --
4 THE WITNESS: Right. Of course it is.
5 MR. GROSSMAN: -- as to what they plan. I was
6 just trying to see --
7 THE WITNESS: Yeah.
8 MR. GROSSMAN: -- if you were suggesting that the
9 rezoning would make it improper for them to have a gas
10 station there. You're not saying that.
11 THE WITNESS: No.
12 MR. GROSSMAN: You're saying that it would just
13 give them more options, and that's up to them --
14 THE WITNESS: It gives them more options, and
15 they're thinking about some of those options already in the
16 eastern part, and other malls are doing --
17 MR. GROSSMAN: They could have said to Costco --
18 THE WITNESS: Yeah.
19 MR. GROSSMAN: -- at any time, sorry, we're not
20 renting this property on the mall to you for purposes of a
21 gas station. That's up to them.
22 MS. CORDRY: Well, I would point out that Costco
23 told this county that it wasn't -- you know, we spent a lot
24 of time just getting past the point of whether Costco would
25 come here at all without the gas station. So, again, we're

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1 not going to speculate what the discussion was between
2 Costco and Westfield, but I don't know that it would be so
3 easy to just say, for Westfield to just say to Costco, bring
4 the store but we're going to fight you on the gas station.
5 MR. GROSSMAN: Well, then they've made up their
6 mind and they've legally bound themselves or whatever. I'm
7 just saying that the fact that there might be a rezoning
8 doesn't ipso facto mean that that would change Westfield's
9 position on the gas station. It doesn't --
10 MS. CORDRY: We're not saying it does, but --
11 MR. GROSSMAN: Okay. But you want me to speculate
12 on the rezoning that wouldn't have, potentially, any effect
13 anyway. Mr. Silverman.
14 MR. SILVERMAN: I don't understand why you say
15 Westfield supports this. I think what we can say is, is
16 Westfield signed a lease. That's what we know, but they
17 don't have a representative here, and --
18 MR. GROSSMAN: They did have a representative who
19 testified, Mr. Agliata.
20 MR. SILVERMAN: Did he say, he -- I didn't get the
21 sense that he --
22 MR. GROSSMAN: And they produced a document saying
23 that they would, they would allow their land to be used for
24 a pedestrian path in order to facilitate the Costco
25 application. So I take that as meaning their support, but

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1 they haven't -- if you have something to the contrary, you
2 can tell me. Ms. Duckett.
3 MS. DUCKETT: I have a question on the -- you know
4 how you're saying that Westfield is giving them the right to
5 use that land, you know, that one section where the special
6 exception is and for a rezoning for that use, does that also
7 include the access to that gas station? Is there -- you
8 know, right now you have one, two, three, four entrances --
9 is it then up to Westfield to always have at least that much
10 access, or could they in, sometime in the future reduce some
11 of those, the access to it?
12 MR. GROSSMAN: I don't know. I --
13 MS. DUCKETT: You know, I don't know whether a
14 lease, whether a lease like that includes access to the
15 parcel. Usually the gas station is on a main road. That's
16 what my question is --
17 MR. GROSSMAN: Yes.
18 MS. DUCKETT: -- the access.
19 MR. GROSSMAN: I don't know that I can answer that
20 question --
21 MS. DUCKETT: Okay.
22 MR. GROSSMAN: -- without giving you a legal
23 opinion, and I don't want to do that.
24 MS. DUCKETT: I mean, that might be something that
25 a condition might be, but it's just a question I had. I

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1 don't know whether that is part of the lease or whether it
2 is just that one space that they give the actual use to.
3 MR. GROSSMAN: Let's try that question on somebody
4 else on another day because I can't answer that for you.
5 MS. DUCKETT: Okay.
6 MR. GROSSMAN: Okay.
7 MS. DUCKETT: All right. Thank you.
8 MS. CORDRY: I think we'd like to have her just
9 put in these last two exhibits here --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: Three, actually.
12 MS. CORDRY: -- and then I think we will be
13 wrapping up.
14 MR. GROSSMAN: All right. So which ones?
15 MS. CORDRY: These two.
16 MR. GROSSMAN: All right. So this one is,
17 Developer Federal Realty Plotting Second Phase of Pike and
18 Rose Development in Rockville?
19 MS. CORDRY: Right.
20 THE WITNESS: Yes.
21 MR. GROSSMAN: Okay. That's 464(d) --
22 THE WITNESS: D as in Donna.
23 MR. GROSSMAN: -- as in dog.
24 (Exhibit No. 464(d) was marked
25 for identification.)

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1 THE WITNESS: No. D as in Donna.
2 MR. GROSSMAN: Okay. So --
3 THE WITNESS: That's actually three articles about
4 what's going on with Mid-Pike Plaza and its redevelopment.
5 MR. GROSSMAN: Articles related to redevelopment
6 of Mid-Pike Plaza -- on Rockville Pike?
7 THE WITNESS: Yes.
8 MR. GROSSMAN: And how does that bear on anything?
9 THE WITNESS: I'm showing a, I'm trying to show
10 how some malls have already started re-imagining themselves
11 and rebuilding themselves, because that's the coming wave of
12 malls. Maybe you can conclude from that article, those
13 articles, and maybe not, and I have one on White Flint as
14 well.
15 MR. GROSSMAN: Okay. That's 464(e).
16 THE WITNESS: And that is a one-page article and
17 several pages from the sketch plan for White Flint Mall
18 redevelopment.
19 MR. GROSSMAN: All right, items related to White
20 Flint Mall redevelopment. Okay.
21 (Exhibit No. 464(e) was marked
22 for identification.)
23 MS. CORDRY: All right. And, actually, let me
24 just put this one last page in here and that would be it.
25 THE WITNESS: Do this other one, yeah. Sorry.

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1 MS. CORDRY: The one that says: Wave of Store
2 Closings.
3 THE WITNESS: Wave of Store Closing Expected to
4 Hit Retail.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: It's a CNBC article, and again --
7 MR. GROSSMAN: Exhibit 464(f), CNBC article on
8 expected wave of store closings where?
9 THE WITNESS: Throughout the country.
10 MR. GROSSMAN: Nationwide.
11 (Exhibit No. 464(f) was marked
12 for identification.)
13 THE WITNESS: Nationwide, talking about Chicago
14 and a few other places here.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: And I just would point out -- I
17 don't have articles for this -- but malls in Laurel,
18 Maryland, and Springfield, Virginia, are also doing this.
19 They're doing a turning-the-malls-inside-out thing and
20 putting town centers in the middle and redeveloping along
21 the outside. So it's not just something that, you know, we
22 thought up. This is actually happening to a lot of malls.
23 I know. I know.
24 MR. GROSSMAN: I don't doubt it's happening.
25 THE WITNESS: Yeah. Okay.

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1 MR. GROSSMAN: That's not -- it can happen --
2 THE WITNESS: Okay.
3 MR. GROSSMAN: -- it can not happen. I can't say.
4 THE WITNESS: Okay.
5 MR. SILVERMAN: The issue is whether or not this
6 gas station is a poison pill to prevent it from happening.
7 MR. GROSSMAN: No, that's not really the issue.
8 THE WITNESS: And I also, I have a fact sheet on
9 the GR zone. I don't know --
10 BY MS. CORDRY:
11 Q Actually, that's all right. That's all right.
12 A -- if you even care to see that, but --
13 MR. GROSSMAN: Oh, hold on one second?
14 THE WITNESS: No? No? Okay. Never mind.
15 MR. GROSSMAN: Let me deal with your poison pill
16 question. Do you have any evidence that a gas station here
17 can't be removed?
18 MR. SILVERMAN: Well, there's a lease.
19 MS. CORDRY: Well, no. I mean, I think your
20 question is more on the question of the environmental,
21 additional environmental --
22 MR. SILVERMAN: No. I --
23 MS. CORDRY: -- issues that come with cleaning up
24 gas stations as opposed to other kinds of retail facilities.
25 MR. GROSSMAN: Well, they can be cleaned up like

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1 anything else, right?
2 MR. SILVERMAN: Well, that's for sure, yes. I
3 wasn't suggesting otherwise. It was a question of money.
4 No, I'm just saying that there may be some basic
5 incapability between a development plan as referenced in the
6 sector plan and this gas station. That's all.
7 MR. GROSSMAN: Well, that's a different question,
8 but your -- the suggestion here, the tenor of the last part
9 of this testimony is other malls are developing in certain
10 ways; therefore, we shouldn't approve the gas station in
11 this mall, which has not decided to redevelop this in that
12 different way in this particular area. That's the tenor of
13 that testimony, and I don't think that's tenable because I
14 don't think there's evidence to support that, that part of
15 that conclusion.
16 THE WITNESS: Okay.
17 MR. GROSSMAN: You want me to go further than
18 somebody reviewing a special application, a special
19 exception application should do.
20 THE WITNESS: Okay.
21 MR. GROSSMAN: Okay.
22 MS. CORDRY: Okay.
23 THE WITNESS: Okay.
24 BY MS. CORDRY:
25 Q So if you would like to give your two-minute,

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1 one-minute, 30-second sum-up, do your conclusion.
2 A But something has to be handed out. Larry has to
3 do one last job -- under No. 8 or 7 or something, I don't
4 know what it is. It's a one-page thing that -- should be
5 four of them there.
6 MR. SILVERMAN: Wheaton Herrington (phonetic sp.)
7 Village?
8 THE WITNESS: I'm sorry?
9 MS. CORDRY: No. This.
10 THE WITNESS: No. It's called the MNCP -- Park
11 and Planning --
12 MR. SILVERMAN: Oh.
13 THE WITNESS: -- Interdepartmental Labor Sheet.
14 MR. SILVERMAN: Okay. All right.
15 MR. GROSSMAN: Thank you.
16 THE WITNESS: But Karen has that already.
17 MR. GOECKE: Thank you.
18 THE WITNESS: Okay. So what we have here is all
19 of the personnel and all of the time spent on the Wheaton
20 Sector Plan.
21 MR. GROSSMAN: This is individual names of
22 individual planners, and I'm not going to put this in the
23 record. I don't see how it has any bearing on anything, and
24 I think it would be inappropriate to list all their names in
25 the record here.

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1 THE WITNESS: Okay. Well, then I will just
2 summarize.
3 MR. GROSSMAN: And they have privacy concerns
4 here.
5 THE WITNESS: Really? Oh, okay. I mean, I asked
6 if --
7 MR. GROSSMAN: I mean, they are government
8 officials, but I don't see --
9 THE WITNESS: Okay. Okay.
10 MR. GROSSMAN: -- it seems that it's so
11 superfluous to anything --
12 THE WITNESS: Okay.
13 MR. GROSSMAN: -- what possible --
14 THE WITNESS: Well, my --
15 MR. GROSSMAN: -- reason could there be to list
16 their names out?
17 THE WITNESS: Okay. No, there is no -- the reason
18 is only for the total. There was 9.89 --
19 MR. GROSSMAN: So you --
20 THE WITNESS: -- work years put into the Wheaton
21 Sector Plan.
22 MR. GROSSMAN: Okay. Well, you just testified to
23 that.
24 THE WITNESS: So we can put that, yeah.
25 MR. GROSSMAN: Okay.

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1 MS. CORDRY: And that's fine. That's really
2 what --
3 MR. GROSSMAN: Nine point eight nine.
4 THE WITNESS: Yeah. I got permission to take
5 this, by the way. I don't want you to think I stole it.
6 MR. GROSSMAN: No, but I just don't, you know --
7 MR. SILVERMAN: Yes.
8 MS. CORDRY: Right.
9 THE WITNESS: Okay.
10 MS. CORDRY: Well, we'll just take the --
11 MR. GROSSMAN: -- I think putting a list of
12 people's names in that --
13 THE WITNESS: That's fine.
14 MR. GROSSMAN: -- doesn't bear on anything --
15 THE WITNESS: Okay.
16 MS. CORDRY: So having seen this, we --
17 MR. GROSSMAN: -- it would not be appropriate.
18 MS. CORDRY: Having seen this, you can now accept
19 the representation that there were 20,570 hours at --
20 THE WITNESS: Spent.
21 MS. CORDRY: -- 2,080 hours a year --
22 THE WITNESS: Right.
23 MS. CORDRY: -- equals 9.89 work years.
24 THE WITNESS: Work years, yeah. I was shocked
25 when I saw that. I didn't realize they spent so much time

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1 on this, and I guess, my point is --
2 MR. GROSSMAN: It doesn't change anything that I
3 -- I mean, I still have to look at the plan. If they took
4 two hours --
5 THE WITNESS: I know that.
6 MR. GROSSMAN: -- to do it, I'd still have to look
7 at the plan.
8 THE WITNESS: No, I know. I know, but this is
9 just sort of background for my conclusion on all of this.
10 So --
11 MR. GROSSMAN: Okay. So let's -- I will return
12 this to you.
13 THE WITNESS: Unexhibitize this.
14 MR. GROSSMAN: Right.
15 THE WITNESS: Okay. All right. So you add that
16 9.89 work years, and there's all the time and effort spent
17 by the Planning Board and the many businesses and many
18 residents and all of whom helped shape the plan. It's a
19 monumental process, and I know you know that, but what I'm
20 saying is that the county, in the form of the Board of
21 Appeals, should not let all this taxpayer-funded and public
22 effort go to waste by dismissing the transit-oriented
23 development assumption undergirding the Wheaton Sector Plan;
24 the county should not shatter 14 years of thoughtfully
25 crafted expectations by Wheaton area residents about the

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1 development of our neighborhood; the county should not
2 compromise its and residents' and business owners' vision of
3 how Wheaton's transit hub development should proceed; the
4 county should not authorize a facility that inherently will
5 create idling fumes and greenhouse gases that run directly
6 contrary to the health and climate benefits the county is
7 trying to create from its smart growth land use policies;
8 and the county, as represented by the Board of Appeals,
9 should deny Costco's request for a special exception gas
10 station at this location for all I've talked about for the
11 last however many --
12 MR. GROSSMAN: Day.
13 THE WITNESS: -- hours I've been up here. So
14 that's all I have to say.
15 MR. GROSSMAN: All right. Thank you very much,
16 Ms. Savage. Ms. Duckett, you have no cross-examination
17 questions?
18 MS. DUCKETT: No.
19 MR. GROSSMAN: Larry, you have no
20 cross-examination questions?
21 MR. SILVERMAN: None, no. We're happy.
22 MR. GROSSMAN: All right. It's your witness. So
23 I doubt you can fit your cross-examination in the next 30
24 seconds.
25 MR. GOECKE: I agree.

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1 MR. GROSSMAN: Is that fair to say?
2 MR. GOECKE: That's fair.
3 MR. GROSSMAN: So tomorrow --
4 THE WITNESS: We're not willing to keep going
5 until this is over?
6 MR. GROSSMAN: Well --
7 THE WITNESS: Oh, please say yes.
8 MR. GOECKE: I can't tonight.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: Oh, you can't. Oh, okay. All
11 right.
12 MR. GROSSMAN: So tomorrow --
13 THE WITNESS: Right.
14 MR. GROSSMAN: -- we have Dr. Jison and then
15 cross-examination of you. I can't recall, was Dr. Jison --
16 MS. CORDRY: She had not finished --
17 MR. GROSSMAN: -- did she complete her direct? I
18 can't --
19 MS. CORDRY: No, she had not finished yet.
20 MR. GOECKE: She's still on direct.
21 THE WITNESS: No. She's still on direct.
22 MR. GROSSMAN: She's still on direct. Okay.
23 MS. CORDRY: So it may be simplest just to finish
24 Donna up and then finish the direct and her cross for
25 Dr. Jison, unless you want to do it the other way.

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1 MR. GROSSMAN: I think we want to make sure that
2 we finish Dr. Jison because --
3 MS. CORDRY: Okay.
4 MR. GROSSMAN: -- her schedule was tougher to --
5 MS. CORDRY: Okay. Sure.
6 MR. SILVERMAN: Right.
7 MS. HARRIS: And --
8 MR. GROSSMAN: -- to take care of.
9 MS. CORDRY: Yes.
10 MR. GOECKE: I think that makes sense.
11 THE WITNESS: Okay.
12 MR. GROSSMAN: So let's take her first and then --
13 THE WITNESS: Okay.
14 MR. GROSSMAN: Okay? Thank you.
15 THE WITNESS: So wanted to be done today. Okay.
16 MR. GROSSMAN: All right. As we said, our next
17 session is tomorrow. Hope you all get a good night sleep.
18 THE WITNESS: And it doesn't snow.
19 MS. CORDRY: No, that's not delightful.
20 MR. GROSSMAN: Visions of sector plans jumping
21 through your heads.
22 THE WITNESS: Nightmares, whatever.
23 (Whereupon, at 5:03 p.m., the hearing was
24 adjourned.)
25

C E R T I F I C A T E

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

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

By:

Wendy Campos, Transcriber

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