

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
:
- - - - -X

A hearing in the above-entitled matter was held on
April 26, 2013, commencing at 9:35 a.m. in the Rita Davidson
Memorial Hearing Room, 100 Maryland Avenue, Rockville,
Maryland.

Martin L. Grossman

Hearing Examiner

A P P E A R A N C E S

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Erich Brann				
By Ms. Harris	64		184	--
By Ms. Rosenfeld:		122		188
By Mr. Silverman:		153		
By Mr. Charman:		180		
Dan Duke				
By Ms. Harris	193		--	--
By Ms. Rosenfeld:		230		--
By Mr. Silverman:		254		--

E X H I B I T S

Exhibit No.		Marked/Received
99	Ordinance No. 17-19 Zoning Text Amendment, 12-07	13
100	Order of Witnesses	27
101	Aerial photo of Costco	79
102	Aerial photo of Wheaton Plaza	146
103	Storm water management plan	219
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104(b)	Approved NRI/FSD plan blow-up	231
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P R O C E E D I N G S

1 MR. GROSSMAN: This is the first day of the public
2 hearing in the matter of Costco Wholesale Corporation, Board
3 of Appeals No. S-2863, OZAH No. 13-12. It's continued for a
4 special exception pursuant to Zoning Ordinance 59G 2.06 to
5 allow the petitioner to construct and operate an automobile
6 filling station which would include 16 pumps. The subject
7 site is located at 11160 Veirs Mill Road, Silver Spring,
8 Maryland. That's Lot N, 631 Wheaton Plaza, Parcel 10, also
9 known as Westfield Wheaton Mall, and is zoned C-2, which is
10 general commercial.
11

12 This hearing is conducted on behalf of the Board
13 of Appeals. My name is Martin Grossman. I will conduct the
14 hearing and write a report and recommendation to the Board
15 of Appeals which will make the final decision in the case.
16 Will the parties identify themselves please for the record?
17 I'll start with the left end.

18 MS. HARRIS: Good morning. Pat Harris with Lerch,
19 Early and Brewer here on behalf of the applicant. And with
20 me is my co-counsel and colleague, Mike Goecke.

21 MR. GROSSMAN: Okay. I'm sorry. Mike?

22 MR. GOECKE: Goecke. G as in George, O-E-C-K-E.

23 MR. GROSSMAN: All right. And who is to your
24 right?

25 MR. BRANN: I'm Erich Brann, Costco Wholesale

1 Corporation.

2 MR. GROSSMAN: Mr. Brann. Moving now to this end.

3 MS. ROSENFELD: Michele Rosenfeld, lead counsel
4 for Kensington Heights Civic Association.

5 MR. GROSSMAN: Ms. Rosenfeld. And who is to your
6 right?

7 MS. ROSENFELD: To my right is Karen Cordry, also
8 Kensington Heights Civic Association.

9 MR. GROSSMAN: Okay.

10 MS. ADELMAN: Abigail Adelman, chair, Stop Costco
11 Gas Coalition.

12 MR. GROSSMAN: Ms. Adelman.

13 MR. SHEVEIKO: Danila Sheveiko, president,
14 Kensington Heights Civic Association.

15 MR. GROSSMAN: And how do you spell your name,
16 sir?

17 MR. SHEVEIKO: S-H-E-V-E-I-K-O.

18 MR. GROSSMAN: Okay.

19 MS. SAVAGE: And Dawn Savage, the land use chair
20 for the Kensington Heights Civic Association.

21 MR. GROSSMAN: And, Mr. Sheveiko, you are, what
22 was your title again?

23 MR. SHEVEIKO: President, Kensington Heights Civic
24 Association.

25 MR. GROSSMAN: Okay. Do we have Kensington View

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1 Civic Association here? Would you come forward?
2 MS. DUCKETT: I'm the acting chair for the
3 Committee for Kensington View --
4 MR. GROSSMAN: You can have a chair over here
5 also. We have nobody else from Kensington, who announced on
6 behalf of Kensington View, right? And, Ms. Adelman, didn't
7 you in your filings indicate that Mr. Silverman would be
8 conducting, well, Mr. Silverman, why don't you come forward
9 too and have a seat.
10 MR. SILVERMAN: I'm Larry Silverman.
11 MR. GROSSMAN: All right, sir. Now I understand
12 that you are an attorney, but you're not representing the
13 Stop Costco Gas Coalition, you are just helping out to
14 conduct questioning and so on, is that correct?
15 MR. SILVERMAN: I'm also a professor of
16 environmental law.
17 MR. GROSSMAN: Okay. I've read various
18 submissions by you.
19 MR. SILVERMAN: Thank you.
20 MR. GROSSMAN: Okay. I think we have then all the
21 main actors at the table, is that correct? Did I leave out
22 anybody? Okay. First of all, I'd like to compliment you
23 all on the excellent submissions that you all filed with us
24 to help us better understand the case. It's an unusually
25 well-documented case. Let me explain a little bit about the

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1 nature of these proceedings and the nature of special
2 exceptions.
3 First of all, we are, this is a formal proceeding
4 in that everything is taken down by a court reporter. There
5 will be a transcript and we'll try to get the transcript
6 when it arrives. We'll try to post it on our website. All
7 witnesses are sworn in. They're all subject to cross-
8 examination. We proceed pretty much the way you see a
9 courtroom proceed, but we're a little bit less formal.
10 We do have rules of evidence. They're a little
11 bit more relaxed than an ordinary courtroom in that we can
12 accept certain types of hearsay, however, such as, for
13 example, a treatise would be kind of a hearsay that we would
14 accept as reliable and probative, but in general the hearsay
15 that we would accept has to be reliable and probative and
16 generally that means that we want to have somebody here
17 under oath and subject to cross-examination that aides
18 reliability. So that's always a balance in terms of what we
19 can accept in terms of our testimony here.
20 We have counsel sitting at the table here. We
21 want to give everybody a chance to have any questions they
22 want to have asked, but at the same time we have so many
23 participants in the hearing, I think the best way to proceed
24 here is to allow counsel to ask questions of the witnesses
25 when it's time for the opposition to cross-examine. We'll

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1 let each one of the attorneys that represents here go first
2 and then if there are other questions that other panel
3 members, that is the people at counsel table wish to ask,
4 we'll allow them to ask and we'll try for awhile at least
5 and see how it works and see if there are additional
6 questions from the audience that they want to pose through
7 counsel. We'll see if we can do that.
8 So if there's something that somebody was a party
9 in this case wants to pose and hasn't been touched on, you
10 can talk to counsel and ask them to ask the question. If
11 that does not become satisfactory, then we'll try to work
12 out something because we do want to make sure that the
13 questions from the community are answered in the course of
14 these proceedings.
15 We also, we have -- oh, also in terms of
16 scheduling and when you testify, we try to accommodate
17 people who have tight schedules. If you really can only be
18 here for a limited period of time and you want to be heard
19 in your case, we can take things out of order. I would ask
20 that you consult with counsel during the break and see if
21 something can be worked out. If not, then raise it as a
22 point and we'll see if we can fit your testimony in and make
23 sure that everybody gets heard.
24 We're scheduled for eight days of hearings here.
25 The next day of hearings will be here in this Council office

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1 building auditorium. We don't have to go eight days if we
2 can do it in less time, but we have set aside eight days for
3 hearings. And on, there may be occasions in which there are
4 fewer people and we may be able to move it up to our much
5 smaller hearing room upstairs, which, in which we usually
6 hold our hearings.
7 All right. Now we're here today for a special
8 exception application. And while I realize that all of the
9 panel members here, the people at counsel table have a
10 pretty good understanding of what that is and based on what
11 they have filed, I do want to explain to people in the
12 audience what a special exception is and what it is not.
13 A special exception is not a variance. It's not
14 an effort to vary from what the statute permits. A special
15 exception is what some jurisdictions call a conditional use
16 and, in fact, this jurisdiction may in the not too distant
17 future call it that based on a proposed zoning rewrite. And
18 that means that an applicant must show that the application
19 meets conditions that are set forth in the zoning ordinance.
20 And there are both general conditions that apply to almost
21 every special exception and, including this one, and there
22 are specific conditions set forth for auto filling stations
23 that must also be met.
24 But there are also other rules in the zoning
25 ordinance that apply to special exceptions and one of them

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1 specifies that a special exception may not be denied based
2 purely on inherent characteristics of the use. However, if
3 there are non-inherent characteristics of the use, either
4 based on those alone or based on some combination with
5 inherent characteristics, create adverse conditions for the
6 general neighborhood, then the special exception may be
7 denied.

8 You also should know that -- and so they
9 indicated -- the question before me is whether or not the
10 statutory provisions have been met in the context of this
11 question about inherent versus non-inherent characteristics.
12 I'm not permitted to count noses. This is not a referendum
13 of any sort. It's not a matter of whether or not more
14 people oppose it or are in favor of it. That's not part of
15 my jurisdiction to decide. My role is to take the evidence
16 and to write a report and recommendation applying the
17 statutory criteria.

18 Okay. I do want to emphasize also that while I
19 don't count noses, we do appreciate participation by the
20 community not only for opposition, but sometimes if a
21 special exception is granted, to suggest conditions that
22 will ameliorate any effects on the community. So I really
23 appreciate the very active participation here by members of
24 the community.

25 Finally, I should say that the way this works

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1 procedurally, after the record is closed, usually after the
2 last hearing we wait to get the last transcript, a period of
3 seven to 10 days, and then the record gets closed unless
4 there are other things to be filed by the parties, which is
5 sometimes the case in which case the record may remain open
6 for some additional period of time.

7 Once the record is closed, under the statute I
8 have 30 days in which to write a report and recommendation.
9 I almost unfailingly meet that period and this case might be
10 an exception since there is such a volume of material to go
11 through. I can extend my time by order, which I will do if
12 necessary. Once I write my report and recommendation, there
13 will be a 10-day period from the time I issue it, and we
14 will put it on our website and we will send a written notice
15 to all of the parties who participate in the hearing that it
16 has been issued. Once we issue it, you have 10 days to
17 request all argument. You decide, can request all argument
18 before the Board of Appeals. They do not expand the record.
19 They decide based on the record we put together here and,
20 but you can have a legal argument, an oral argument on it
21 and you are permitted to ask for that if the Board of
22 Appeals decides to grant it. It does not have to.

23 The Board of Appeals usually acts on a special
24 exception on a work session which is not formally noticed to
25 the parties, so you should definitely check with the Board

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1 of Appeals once you see my report and recommendations so
2 that you can determine whether or not you want to request
3 oral argument and determine when they're going to have their
4 work session. Following their work session, at which they
5 take a vote, they issue a resolution some period, usually a
6 few weeks thereafter, a formal resolution with an effective
7 date.

8 Okay. Let's turn to some preliminary matters.
9 First of all, Ms. Harris, have you submitted your affidavit
10 of posting? That's an affidavit in which the applicant
11 certifies that the notice sign has been posted for the
12 requisite period of time. Do you have an affidavit with
13 you?

14 MS. HARRIS: No, actually I do not. I can bring
15 it the next hearing date. My apologies.

16 MR. GROSSMAN: Let's make sure that --

17 MS. HARRIS: Yes.

18 MR. GROSSMAN: -- that does get --

19 MS. HARRIS: Okay.

20 MR. GROSSMAN: -- filed in the case. Second
21 thing, I would also like to make sure that if there are any
22 new exhibits filed or new plans in any way, that we get not
23 only the plans, exhibits, but we get copies, electronic
24 copies as you all have kindly submitted to me in Word format
25 if possible for text documents, that is Microsoft Word

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1 format for text documents and PDF's for plans and
2 photographs and the like. If for some reason you cannot
3 submit something, text documents in Microsoft Word format,
4 then at least a text readable PDF of it, which a number of
5 cases have been filed here.

6 Okay. I also want to, before we go any further, I
7 want to place a copy of zoning text amendment 12-07 in the
8 record here because I think that will be a useful thing to
9 have as its own exhibit and I'm sure I have a copy of it
10 handy. There we go. It's also known as Ordinance No. 17-
11 19. That's the -- that was effective August 13, 2012. It's
12 the zoning text amendment which modified the provisions of
13 this special exception. I have an extra copy of it here
14 too. There you go. And that will be Exhibit 99. It's
15 Ordinance No. 17-19, which is ZTA, Zoning Text Amendment,
16 12-07. Exhibit 99.

17 (Exhibit No. 99 was marked for
18 identification.)

19 MR. GROSSMAN: Okay. Now ordinarily in the
20 special exception cases, we wait until the end and then
21 routinely there's a motion to admit all the exhibits and
22 there's rarely a variation from that, objections to
23 particular exhibits. This case may be a little bit
24 different because we have a lot of exhibits and because a
25 number of them contain hearsay from people who are not going

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1 to be available to be cross-examined under oath and yet it's
2 substantive matters. So I'm going to ask all of you to go
3 through the exhibits by the next session we have and let us
4 know if there are particularly objectionable exhibits in
5 writing. You don't have to make a long submission, just
6 note that there's an objection and in a few words what the
7 objection is and give it to the other side so that we'd be
8 prepared the next session for people to address any
9 objections there are to the exhibits so we don't at the end
10 find out that there are some objections and people want to
11 argue about it, but they haven't been prepared to know what
12 their response is.

13 Okay. I have some additional questions, an
14 additional 20 questions, in fact, which I have printed out
15 and will get to in a minute. And I will read them because
16 there may be people in the audience who I don't have copies
17 for, but you don't have to take notes when I go through them
18 because I do have copies for you. Before I get to that, are
19 there any other preliminary matters? And we'll start out
20 with Ms. Harris.

21 MS. HARRIS: Yes. Thank you. I did have several
22 preliminary matters, some of which are more housekeeping in
23 nature and some are more substantive.

24 MR. GROSSMAN: Okay.

25 MS. HARRIS: In terms of the substantive

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1 preliminary matters, as you may be aware, the traffic report
2 that was submitted was based on traffic counts from November
3 of 2012. Since that time and, in fact, just two weeks ago,
4 the Costco warehouse had opened. We thought it would be
5 helpful for the traffic consultant to conduct additional
6 counts and would like to be able to have that opportunity to
7 do that and submit that information. It is, the scheduled
8 counts are planned for this weekend. Mr. Guckert, depending
9 on the timing of his testimony, he may have the results
10 prior to his testimony or it may be that we need to bring
11 him back up to introduce those counts. But we would like to
12 be able to enter that information.

13 MR. GROSSMAN: Okay. Various members of the
14 opposition, do you have any objection to that updating?

15 MS. ROSENFELD: I don't have --

16 MR. GROSSMAN: Ms. Rosenfeld?

17 MS. ROSENFELD: Michele Rosenfeld for Kensington
18 Heights. I don't have objections to the updating. I think
19 it would be helpful, though, if we could have Mr. Guckert
20 appear once to present all of his testimony. The updated
21 numbers may or may not make moot testimony he would present
22 in advance of his new submission that seems to me we could
23 avoid duplicative testimony or irrelevant testimony if we
24 have him address all of the traffic issues at once.

25 MR. GROSSMAN: Now that seems sensible. What

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1 about --

2 MS. HARRIS: It does seem sensible, except the
3 amount of time that we spend, as opposing counsel knows,
4 trying to coordinate the schedule with all the witnesses.
5 We will need to go back because we have witnesses that have
6 restrictions and limitations on their time. So that may be
7 difficult.

8 MR. GROSSMAN: All right. Well, try to work that
9 out and make sense, see if you can work that out among you.
10 Yes, sir?

11 MR. SILVERMAN: Mr. Grossman, a number of
12 opposition members have been, have been doing their own
13 traffic counts and they're preparing reports and it would be
14 helpful if they could submit them, not testify to them, but
15 I just wanted to let you know that they'll be coming in too.

16 MR. GROSSMAN: Okay. I think it would be helpful
17 given the number of people that if you identify yourself
18 before you --

19 MR. SILVERMAN: I'm sorry.

20 MR. GROSSMAN: -- speak each time.

21 MR. SILVERMAN: Larry Silverman.

22 MR. GROSSMAN: Yes, Mr. Silverman. Well, the only
23 problem with -- individuals have a right to come in and
24 testify. They don't have to give events, notice. They have
25 a right under the statute to testify. It would be helpful

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1 here if there's an opportunity for all sides to know of any
2 studies of that sort in advance so that there's an
3 opportunity to prepare. Above all what we're trying to do
4 is have a fair proceeding in which there are no surprises,
5 that all sides know in advance what's going to be presented.
6 So if you would let that be known because there may be some
7 rebuttal to whatever new thing is submitted and then experts
8 would have to come back, it's an additional time and
9 expense. So let's try to do that, all right? Anything else
10 on that issue about traffic counts? Yes, ma'am?

11 MS. ADELMAN: Oh, not about traffic counts. Beg
12 your pardon, Mr. Grossman. I neglected to say earlier that
13 Dr. Mark Adelman will be the person who will cross-examine
14 on traffic for the Coalition.

15 MR. GROSSMAN: Okay. And I notice we're being
16 filmed here and who is the gentleman who is filming us and
17 what is that about? Sir?

18 MR. ECHAVE: Sorry, I had my mic on that way.

19 MR. GROSSMAN: Yes.

20 MR. ECHAVE: Because you don't have a -- what did
21 you --

22 MR. GROSSMAN: And, I said I noticed we're being
23 filmed. I don't know who is filming this.

24 MR. ECHAVE: Oh. I work for a company called Blue
25 Lagoon Productions and I've been following this whole saga

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1 for like three or four years, however long these folks have
2 gotten to do this.
3 MR. GROSSMAN: Okay. So you're not connected with
4 any party?
5 MR. ECHAVE: No, I'm not.
6 MR. GROSSMAN: Okay. I don't have any objection
7 to it. Does anybody else have an objection to it? Ms.
8 Harris?
9 MS. HARRIS: Yes, in fact, we do have an objection
10 to that.
11 MR. GROSSMAN: All right.
12 MS. HARRIS: Mr. Goecke.
13 MR. GOECKE: Mr. Grossman, again, this is Mr.
14 Goecke. I just think that this is sort of unusual thing to
15 have in a proceeding and we've actually discussed this with
16 our client before the proceeding and Costco themselves have
17 nothing to hide. Ms. Harris and I, however, are a little
18 bit less comfortable with someone that we don't know filming
19 us for several days and then using our likeness however they
20 may want and I don't know anything about Blue Lagoon or this
21 gentleman. So we do have concerns about what's happening.
22 MR. GROSSMAN: All right. Let's also hear from
23 the opposition, anybody in the opposition have a concern
24 they want to raise about this matter being filmed?
25 MR. SILVERMAN: No.

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1 MS. CORDRY: No.
2 MR. GROSSMAN: All right. I'd ask the gentleman
3 who is doing the filming from Blue Lagoon to -- do you have
4 a microphone that -- Madame Court Reporter, is there a
5 microphone that will pick him up?
6 COURT REPORTER: I can hear everybody.
7 MR. GROSSMAN: Okay. All right. Will you respond
8 to the objection that had been raised by the applicant's
9 counsel, Mr. Goecke, about the use of this film and their
10 images?
11 MR. ECHAVE: Well, I'm an independent filmmaker.
12 I worked for the Associated Press for many years. I worked
13 for U.S. News and World Report for over 6 1/2 years. And I
14 worked for National Geographic magazine for 20 1/2 years.
15 And after I returned, I opened a company called Blue Lagoon
16 Productions and we're independent documentary filmmakers.
17 We just had a film premiere at the Reykjavik International
18 Film Festival in Iceland in September. We had a documentary
19 premiere at the International AIDS Conference in Washington,
20 D.C., last summer and we have a number of other projects
21 that we're interested in. We work for NGO's and this
22 particular situation interested me from the beginning
23 because it probably would be a marvelous opportunity to be
24 able to capture from the very beginning a grass roots effort
25 in this United States that is well-known for having two or

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1 three people decide, gee, you know, I'm not sure I'm
2 comfortable with such and such. Let's look into this and
3 the whole movement has erupted where you have Costco --
4 MR. GROSSMAN: Well, let me cut you off. I don't
5 want you to describe -- and my only concern here is the
6 objection that's been raised by the applicant.
7 MR. ECHAVE: I, sir, I have been filming this for
8 three years, however long it started --
9 MR. GROSSMAN: Okay.
10 MR. ECHAVE: -- and no one has ever questioned it.
11 MR. GROSSMAN: Have you filmed the applicant
12 before, applicant's counsel before?
13 MR. ECHAVE: Oh, absolutely.
14 MR. GROSSMAN: Okay. I think the concern is that
15 their images may be used for some commercial purposes
16 without their consent and I take it that what you're saying,
17 Mr. Goecke, is that you do not consent and you want that on
18 the record to your image being used for commercial purposes?
19 MR. GOECKE: I may not consent, Your Honor. I
20 mean my concern is until I see what it is, it's difficult to
21 consent to something in advance. So I have concerns about
22 it.
23 MR. GROSSMAN: Right.
24 MR. GOECKE: I think at a minimum, you know, we
25 would like to see this video before it's used.

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1 MR. GROSSMAN: Mr. Silverman?
2 MR. SILVERMAN: Mr. Grossman, this is, this
3 controversy is of some importance, great importance to
4 Montgomery County and some importance to the nation. We're
5 not the only county where these things are happening. Mr.
6 Echave here, I don't think he mentioned his name, John
7 Echave, is a well-respected documentary filmmaker. I don't
8 think it's in the purview of this, the Hearing Examiner or
9 anybody else to tell a documentary filmmaker that he's got
10 to preview his work about people who are making public
11 statements. These are not private, this is not a private
12 event. This is a public event and it's a public event
13 invested with a tremendous amount of interest to us and to
14 the neighbors and to the County and to the state and to the
15 Country.
16 And I think Mr. Echave, as I say, is a respectable
17 documentary filmmaker of some note and we're very lucky that
18 he's here and I don't think there should be any objection
19 raised to his presence or his use of whatever he does. I
20 mean we were at the General Assembly. This matter was taken
21 up by the Economic Matters at the General Assembly and he
22 was there and he welcomed us and he was at the County
23 Council meetings. I think he was at the Planning Commission
24 meetings. We've never had any, any objections. We've had a
25 little discomfort, but that's just natural when the press

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1 intrudes in your public affairs.
2 MR. GROSSMAN: Well, it's certainly a matter of
3 public interest and this is a public session. I don't
4 believe that there is any regulation or rule that prohibits
5 the matter being filmed as long as it doesn't interfere with
6 the order of the process. And so I think that it's fair.
7 You said there's no, you replied there's no objection to it.
8 I think it's fair to have that right of objection in this
9 proceeding and the objection has been noted and the
10 reservation of these parties has been noted that they don't
11 want this proceeding, these films used of their images
12 without their consent.
13 I would let that dispute be resolved between the
14 filmmaker and the parties who object, which I think is the
15 appropriate way and it's appropriate for them to be able to
16 voice their objection here to that, that will allow the
17 filming to proceed because I don't have any regulation that
18 governs it. It is a matter of public interest, so that's my
19 ruling on that point. Any other preliminary matters?
20 MS. HARRIS: Yes. Second in terms of the hearing
21 schedule, opposing counsel and the applicant have agreed
22 that there are two days, May 6th and May 20th, which we have
23 effectually declared environmental and health free days,
24 just given the conflicts between the various witnesses. So
25 on those two days neither environment nor health issues will

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1 be presented.
2 MR. SILVERMAN: Which day was that?
3 MS. HARRIS: May 6th and May 20th. The third item
4 is more, again, of a housekeeping item and that is we had
5 indicated that at least one of our eyewitnesses will be
6 presenting testimony via, at least in part, a Powerpoint and
7 just so from a logistical standpoint, we recognize that
8 there's a screen immediately behind the Hearing Examiner --
9 MR. GROSSMAN: Yes.
10 MS. HARRIS: -- but I don't think that that's the,
11 that that's going to be appropriate in terms of --
12 MR. GROSSMAN: Right.
13 MS. HARRIS: So I'm asking --
14 MR. GROSSMAN: Let's bring a screen. If you want,
15 he'll set it up here and project from this side. We have a
16 little table.
17 MS. HARRIS: Okay.
18 MR. GROSSMAN: We'll set something up to
19 accommodate that need by either side.
20 MS. HARRIS: Thank you.
21 MR. GROSSMAN: Because we don't have, whatever --
22 you have to bring whatever equipment that you need --
23 MS. HARRIS: Right. Absolutely.
24 MR. GROSSMAN: -- to do this.
25 MS. HARRIS: Okay.

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1 MR. GROSSMAN: And as far as the environment on
2 health free days, if that's the agreement of counsel, that's
3 fine with me. Make sure you remind me if or object if a
4 witness is called that addresses those points on those days.
5 MS. HARRIS: Okay. And then our final preliminary
6 matter is as the Hearing Examiner may know on another recent
7 case, the Hearing Examiner had made a site visit and we
8 would request that the Hearing Examiner, in fact, make a
9 site visit in this case. We think it would be helpful and
10 very informative.
11 MR. GROSSMAN: I think it's very problematic given
12 the rules that govern site visits to conduct one in this
13 kind of a case where we have so many people who have
14 requested to be parties of record and could be present, so
15 it would become a sort of unruly situation to conduct a site
16 visit in this case. So I don't know that we're going to do
17 that. You know, I'll hear from the other side as well on
18 this point, but I think it would be difficult to conduct it
19 in this kind of a situation, in the middle of the mall.
20 Anybody want to respond to that point? Ms. Rosenfeld?
21 MS. ROSENFELD: Michele Rosenfeld with Kensington
22 Heights. In fact, we were going to also request a site
23 visit and so having heard the applicant is interested in
24 conducting one as well, there -- it really is a unique case.
25 There are many factors at issue here involving topography

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1 and geography and site layout and I think a site visit would
2 be very, very informative to the Hearing Examiner. I
3 appreciate that it might be cumbersome, but I think if we
4 give advanced notice to parties of record who could attend,
5 that they would have the opportunity to attend whether it's
6 two attendees or five dozen, communications are not allowed.
7 It really is just a site visit. So I'm not particularly
8 concerned that there would be a disruption in the sense of
9 disruption to the record. So I think with adequate notice,
10 it could be managed.
11 MR. GROSSMAN: All right. Well, since both sides
12 want it, we'll certainly consider it. Are you considering
13 that it would be held on one of the days specified for the
14 hearing? Is that your consideration about that?
15 MS. HARRIS: Well, either that or we would be
16 available to identify another date to conduct the site
17 visit.
18 MS. ROSENFELD: We would as well. And -- do you
19 mind if I object for this --
20 MS. HARRIS: No, that's --
21 MS. ROSENFELD: Okay. Mr. Hearing Examiner, may I
22 approach just momentarily? It's a long approach in this.
23 Thank you. I've just been handed a document from Ms.
24 Rosenfeld and we'll call it Exhibit 100.
25 MS. ROSENFELD: And before, in the days, and

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1 actually several weeks leading up this hearing, Ms. Harris,
2 myself and Ms. Adelman and Ms. Cordry had conversations to
3 try and structure among ourselves sort of a general road
4 map. As of this morning, they already had moved, certainly
5 changed. But just to give you a sense for how we thought
6 the witnesses would proceed because we have multiple
7 parties, the order that the parties would proceed and on the
8 schedule I also would note that on June 4th, that is the
9 only day that the applicant's lead witness is available and
10 so we could agree to have that witness testify that day,
11 with the caveat that our witness could -- we would conduct
12 cross-examination and rebuttal on that witness on June 4th
13 as well.

14 Looking at that schedule, I think it's at best an
15 open question whether or not we could schedule a site visit
16 during the eight days that have already been scheduled. An
17 additional day might be helpful. We would request a
18 Saturday.

19 MR. GROSSMAN: Okay.

20 MS. HARRIS: And actually the, I would request a
21 day other than a Saturday for a number of reasons, including
22 the non-conventional nature of holding a ZHE hearing on a
23 Saturday.

24 MR. GROSSMAN: Okay. So, essentially, Exhibit 100
25 suggests an order of witnesses over the period of the

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1 hearing and, Ms. Harris, you have a copy of Exhibit 100?
2 (Exhibit No. 100 was marked for
3 identification.)

4 MS. HARRIS: I do.

5 MR. GROSSMAN: All right. And you agree to this?

6 MS. HARRIS: I did, yes.

7 MR. GROSSMAN: Okay. All right. No problem.

8 MS. ROSENFELD: And we also confer you formally
9 with Mr. Duckett on this.

10 MR. GROSSMAN: Okay. Any other comments on the
11 order of the witnesses? All right. Ms. Harris, did you --

12 MS. HARRIS: That concludes my preliminary
13 matters.

14 MR. GROSSMAN: All right.

15 MS. HARRIS: Thank you.

16 MR. GROSSMAN: And are there any other, Ms.
17 Rosenfeld, any other preliminary matters that you wish to
18 take up?

19 MS. ROSENFELD: No, thank you. My preliminary
20 matters have been addressed.

21 MR. GROSSMAN: Okay. And Mr. Silverman, any that
22 you wish to take up or let's just say the Coalition?

23 MR. SILVERMAN: No, my only thought is that every
24 day there seems to be new health studies that we may be
25 trying to bring them in the record and we'll do that with

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1 adequate notice.

2 MR. GROSSMAN: Okay. But I'm not sure what you
3 consider adequate notice the other side may consider
4 adequate notice. Once again, I want to -- my emphasis here
5 is to be fair to both sides and give everybody an
6 opportunity to respond. So that is some concern here.

7 Anybody else in the opposition group that has preliminary
8 matters?

9 (No response.)

10 MR. GROSSMAN: Okay. All right. Then let me turn
11 to my 20 questions. I'm actually the one ferreting that
12 out. Some of my 20 questions have subparts. Once again,
13 you don't have to jot down long notes about them because I
14 did make a copy for everybody, which I will hand out when I
15 finish.

16 Okay. Number one, what volume of gas per year is
17 anticipated? Is it the 12 million gallon per year figure in
18 the Planning Board letter, Exhibit 89, is that correct,
19 applicant's land use report Exhibit 10, page 11, says 10
20 million gallons. So I'd like to have some clarity on that
21 point. Number two, the land use report, Exhibit 10, page
22 24, indicates that the gas station will be 122 feet from the
23 nearest residences to the west. This conflicts with the
24 statement in Mr. Cronyn's report, Exhibit 16, pages 5 and 6,
25 also known as Exhibit T.

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1 At the nearest residence to the west is 200 feet
2 away. The staff raised this point also. Technical staff
3 says, and that's Exhibit 70, page 24, that,
4 "The site is within 120 feet of the nearest
5 residential property to the south."
6 So I'd like to know which is it?

7 Number three, applicant should have witnesses
8 address Dr. Adelman's allegation, Exhibit 87(l), about the
9 number of access points to the mall. He says four, you say
10 five. He says they are only two off University Boulevard.
11 You say three.

12 Fourth question, the land use report, Exhibit 10,
13 pages 6 to 7, proposed to define the neighborhood's southern
14 and western boundaries as co-extensive with the mall's
15 boundaries. Technical staff differed in defining the
16 neighborhood to include the first ring of properties
17 adjacent to the south and west of the mall. That's Exhibit
18 70, pages 5 to 6. Does the applicant agree to staff's
19 definition of the general neighborhood? So I'll ask that
20 one for now. Ms. Harris, what about that? Do you agree to
21 staff's definition of the general neighborhood?

22 MS. HARRIS: No, we believe the general
23 neighborhood to be defined as the southern boundary of the
24 mall parcel.

25 MR. GROSSMAN: All right. So essentially your

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1 general neighborhood would only include the mall parcel?
2 MS. HARRIS: Yes, though you will hear through our
3 witnesses that irrespective of whether it is that southern
4 boundary or as staff has a defined it, we don't think it
5 changes the overall conclusions.
6 MR. GROSSMAN: Okay. No. 5 regarding traffic
7 analysis,
8 "Applicant should make sure its traffic
9 expert addresses the question of traffic's
10 nuisance,"
11 not just in the sense of adequate public facilities, the
12 APF, LADR and TAPR tests, but also in terms of compatibility
13 which is the sense in which Mr. Adelman's piece addresses in
14 Exhibit 93(a). Question 6,
15 "Applicant should have a witness address,"
16 the opposition's contention that the establishment of a gas
17 station would space for queuing cars where we move so many
18 parking spaces from the Wheaton Mall lot that it will no
19 longer meet the minimum number of parking spaces required.
20 No. 7,
21 "Applicant should have a witness address,"
22 Mr. Silverman's points about gas tank leakage and detectors
23 for that, as well as other points raised in Exhibit 87(k).
24 No. 8, quasi-new forest conservation exemption issue that
25 applies to the current application. No. 9(a),

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1 "Does the Council's action in adopting a ZTA
2 12-07,"
3 which is now an exhibit in the case, Exhibit 99,
4 "Does it establish a standard that the
5 adverse health impacts from any gas station
6 meeting the 300-foot setback requirement are
7 inherent in this use absent a showing that there
8 are operational or site differences which
9 distinguish it from other stations?"
10 I ask this because the ZTA is accompanied by a Council
11 opinion stating that it is based on an evaluation of health
12 concerns and expressly rejecting the larger setback that had
13 originally been proposed. I read Mr. Silverman's exoduses
14 on the point and it doesn't really directly address or
15 answer my question.
16 MS. ROSENFELD: Mr. Grossman, I apologize. I know
17 we'll get these in writing, but do you mind repeating that
18 question once more?
19 MR. GROSSMAN: Okay. 9(a) is does the Council's
20 action in adopting ZTA 12-07 establish a standard that the
21 adverse health impacts from any gas station meeting the 300-
22 foot setback requirement are inherent in this use absent a
23 showing that there are operational or site differences which
24 distinguish it from other gas stations?
25 MS. ROSENFELD: Thank you.

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1 MR. GROSSMAN: And Part B is, likewise, does the
2 Council decision not to increase the setbacks from the
3 residences in the same manner, leaving the protection of
4 Zoning Ordinance 59 2.06(b)(2), which only requires
5 screening from abutting residences, establish a lesser
6 standard for protection of residences which I am required to
7 follow?
8 Question 10, if I read the Council's opinion
9 regarding ZTA 12-07 correctly, 10 or 12 million gallons a
10 year would put the gas pumping volume of this station in the
11 very top echelon of gas stations, only volume-wise. Only 4
12 percent of the stations pump more than 2.4 million gallons
13 according to the Council's opinion and of those the annual
14 average pumped is 3.6 million gallons. So my Question A is
15 does the applicant dispute any of those figures? B,
16 wouldn't those figures make the health effects a non-
17 inherent characteristic of this particular site? C, and
18 this connection, what is the impact here of the proximity to
19 homes and how do the proposed green wall and intervening
20 trees affect that?
21 11(a), is there a separate Federal standard for
22 ultra-fine particles as distinguished from other particulate
23 matter, PM 2.5 for fine particles. B, if not, would it be
24 arbitrary or at least unfair for me to hold petitioner to a
25 standard based on the expert evidence presented by the

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1 opposition? C, would the gas station actually be a very
2 small part of the air quality problem as contended by
3 petitioner?
4 Question 12 on page 18 of the Sullivan rebuttal to
5 the staff report, that's Exhibit 73, the author states that,
6 quote,
7 "The relationship between total sales and
8 emissions it not a direct relationship as implied
9 by the staff report,"
10 because of stage 1 and state 2 controls, and the arid
11 permeator control system Costco will install. My question
12 is the relationship between the volume of gasoline sales and
13 emissions for the station because that is a key issue given
14 the very large volume that's planned.
15 Question 13, Dr. Cole states in his April 8, 2013
16 submission, that's Exhibit 90(a), pages 3 to 4, that the
17 Sullivan report uses an obsolete model, Mobile 6, to
18 calculate vehicle emissions rather than using EPA-
19 recommended M-O-V-E-S, MOVES simulator and it fails to
20 account for non-Costco emissions in the mall. I'd like
21 applicant to have a witness address these points.
22 14, Dr. Jison, is it Jison, Jison, how do you
23 pronounce that correctly?
24 MS. ADELMAN: Jison.
25 MS. CORDRY: Jison.

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1 MR. GOECKE: Jison.
2 MR. GROSSMAN: Jison?
3 MS. ADELMAN: Jison.
4 MR. GROSSMAN: H, oh, it's -- okay. Dr. Jison
5 suggests, states in her March 29, 2013 letter to me, that's
6 Exhibit 96(d), last page, quote,
7 "While central site regional and local area
8 average ambient air pollution and particulate
9 matter levels may be within recommended EPA
10 limits, scientific studies have shown that
11 personal micro-environmental exposures to
12 pollutants are likely to be higher and can exceed
13 EPA limits due to special circumstances affecting
14 individuals and their specific local environments.
15 Such circumstances include personal exposures to
16 pollution, point sources such as standing traffic
17 while waiting for a bus, living near a regional
18 fuel depot, visiting your asthma doctor's office,
19 which is located near a regional fuel depot or
20 walking past a regional fuel depot during your
21 daily commute or shopping trip,"
22 unquote.
23 Similarly, Karen Cordry's fascinating piece
24 summarizing the travails of the EPA in formulating its
25 regulations in this area, that's Exhibit 96(b), concludes

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1 that there are no safe levels of some of these pollutants.
2 My question for the opposition, my questions for the
3 opposition are assuming that Dr. Jison and Ms. Cordry are
4 correct in their factual statements about the risk factors
5 for lung disorders from gas stations, roadway traffic, et
6 cetera, despite overall compliance with the EPA standards,
7 A, doesn't their analysis apply as well to all gas stations,
8 roadways and the like, making all gas stations inherently
9 health hazards and for that matter intersections? B, since
10 the Council has said I cannot eliminate gas stations in
11 general based on their inherent effects, what remedy can I
12 lawfully recommend?
13 C, will stage one and two controls applicant will
14 employ, plus the arid permeated control system, and the
15 intervening green wall and forest sufficiently minimize
16 these micro-environmental exposures in the residential
17 areas? And, D, what if, if all the other conditions are
18 met, what if I recommended a condition requiring testing by
19 the applicant in the adjacent southern and western
20 residential areas every six months or some other period to
21 ensure compliance with EPA standards on a more micro level?
22 The reports filed with the Board, the Board of
23 Appeals in the neighborhood and the Board became
24 jurisdiction to limit the levels of daily sales and number
25 of queuing cars as necessary to ensure compliance with EPA

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1 standards. Question 15(a), I would like Dr. Jison and Dr.,
2 is it Braysee -- how do you pronounce that?
3 MS. ADELMAN: Braysee.
4 MR. GROSSMAN: Braysee, okay, to compare the World
5 Health Organization, WHO standards, with the EPA standards
6 for me. 15(b), in this connection, what gives me the
7 authority to establish a standard different from the EPA
8 standards and different from what the Council established in
9 setting up its 300-foot setback from some uses, but not all.
10 16, the opposition should have a witness explain what the
11 evidence is that the proposed special exception will
12 adversely affect forest conservation and water quality given
13 technical staff's opinion that it will not.
14 17, applicant should have a witness respond to the
15 allegations in Karen Cordry's piece on need. That's Exhibit
16 88(h), page 8, that Costco stations are unique in that they,
17 quote, utilize extensive queuing and idling, unquote, as
18 part of their operations.
19 Question 18, on the question of neighborhood need,
20 Zoning Ordinance 59 G-1.24 requires a finding, quote, that a
21 need exists for the proposed use to serve the population in
22 the general neighborhood considering the present
23 availability of identical or similar uses to, it doesn't say
24 in, that neighborhood, unquote. I asked the applicant to
25 respond to these specific points. A, doesn't that language

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1 limit the demand to be studied to only those who are part of
2 the population in the neighborhood as we define it, either
3 as you define it as per essentially co-extensive with the
4 mall or as the technical staff defined it as the mall and a
5 little beyond to the south and west, not the market area
6 within a radius of seven miles.
7 And, B, if that is correct, isn't it also true
8 that the market area, e.g., the 7-mile radius, may be used
9 to determine supply, but not demand. Ms. Cordry raised this
10 point in her Planning Board testimony and other submissions,
11 Exhibits 88(i), (j) and (l), as did Ms. Rosenfeld in her
12 legal analysis, Exhibit 88(s). And Mr. Duckett, and Ms.
13 Duckett, I'm sorry, in Kensington Civic Association
14 submission, Exhibit 82.
15 C, how does the applicant justify going outside
16 the general neighborhood to determine demand given that
17 language? D, if the general neighborhood is not co-
18 extensive with the market supply area, how does applicant's
19 submission, Exhibit 14, allow me to determine that there is
20 a need in the general neighborhood? E, do you disagree with
21 the argument raised, and this is addressed to applicant
22 again, do you disagree with the argument raised by Ms.
23 Rosenfeld in Exhibit 88(s) that the legal standard was
24 changed by the Council's action in the 2002 Ordinance No.
25 14-47, Zoning Text Amendment No. 01-10, striking the words,

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1 quote, for the public convenience and service, unquote, from
2 the definition of neighborhood need, thereby making
3 applicable in her argument the decision in Brandywine
4 Enterprises, Inc. v. County Council for P.G. County, 117 Md.
5 App. 525, 700, A.2d, I'm sorry, it's 117 Md. App. 525, 700
6 A.2d 1216, 1997 decision.
7 That case held that, quote, public convenience
8 and, quote, usefulness, are not applicable standards in P.G.
9 because the term, quote, necessary, is used in the P.G.
10 County law, unlike the previous Montgomery County law which
11 described need in terms of public convenience. F, does the
12 legislative history of ZTA 01-10 support Ms. Rosenfeld's
13 argument that Montgomery County Council intended to
14 strengthen the need requirement for neighborhoods to
15 something approaching necessity.
16 No. 19, also on neighborhood need, I'd like the
17 applicant to address the question raised in Exhibit 88(h),
18 page 2, that applicant can't make a claim of need when 75
19 percent of the resident population won't have access to the
20 gas station since they are not Costco members. And,
21 Question 20, finally with regard to the 2012 Wheaton CBD and
22 vicinity Sector Plan, A, applicant should have a witness
23 address whether its proposal is consistent with the 2012
24 Wheaton CBD Sector Plan in light of the comments by the
25 Planning Board, Exhibit 89, Eleanor Duckett of Kensington

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1 View Civic Association, Exhibit 82, and Anna Savage of KHCA,
2 Exhibit 80(h). And, B, the opposition should address the
3 following question. Is the argument that the proposed gas
4 station is contrary to the transit orientation of the Sector
5 Plan as suggested by the Planning Board majority, Ms.
6 Duckett and Ms. Savage, undercut by the fact that the Sector
7 Plan approved the continued use of Wheaton Plaza, a regional
8 mall with a huge parking lot, obviously a beacon for cars.
9 All right. Those are my 20 questions. And I'll
10 hand them out. I made 10 copies so that -- they're pretty
11 much, hand them out to people at counsel table. Thank you,
12 sir.
13 MR. SILVERMAN: Mr. Grossman, Larry Silverman.
14 You've clearly done your homework. Will this, is this
15 available electronically so we can get it to Dr. Caldwell
16 (phonetic sp.)?
17 MR. GROSSMAN: I can. Well, it's not available
18 yet electronically, but I can certainly email a copy to the,
19 to the people at counsel table.
20 MR. SILVERMAN: That would be very helpful. Thank
21 you.
22 MR. GROSSMAN: Okay. You can email me, remind me,
23 Mr. Silverman. Now I do this, I usually do try to give
24 people some advance notice of the things that concern me or
25 questions that pop up as I go through materials so that you,

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1 once again, there's no surprise, everybody knows that the
2 questions that popped into my mind as I was reviewing the
3 file and you can for the most part, these will be addressed
4 through witnesses that the parties call. Okay.
5 MS. ADELMAN: Mr. Grossman --
6 MR. GROSSMAN: Yes.
7 MS. ADELMAN: -- excuse me, Abigail Adelman from
8 the Stop Costco Gas Coalition.
9 MR. GROSSMAN: Yes.
10 MS. ADELMAN: Would you have an objection if we
11 posted your questions to our website?
12 MR. GROSSMAN: They are public information and I
13 announced them at the public hearing.
14 MS. ADELMAN: Thank you.
15 MR. GROSSMAN: Not at all.
16 MS. HARRIS: And, Mr. Grossman, to the extent that
17 any of our witnesses today are, need to address some of
18 this, that may be just a little bit difficult. We had not
19 necessarily anticipated.
20 MR. GROSSMAN: Right.
21 MS. HARRIS: So we may need to follow-up on the
22 subsequent day --
23 MR. GROSSMAN: We'll certainly make allowances for
24 that.
25 MS. HARRIS: Thank you.

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1 MR. GROSSMAN: Okay. All right. Any other
2 preliminary matters?
3 (No response.)
4 MR. GROSSMAN: All right. Then shall we move
5 ahead with the applicant's opening statement?
6 MS. HARRIS: Certainly. Thank you. Again, good
7 morning, Pat Harris with Lerch, Early and Brewer here on
8 behalf of Costco Wholesale, the applicant in this case.
9 With me is my colleague and co-counsel, Mike Goecke. Thank
10 you for this opportunity.
11 Mr. Grossman, this case is about fact versus
12 emotion. In the course of the next eight hearing days, you
13 will be hearing a lot of facts presented by Costco and you
14 will also be hearing a lot of emotion presented by the
15 opponent. On the one hand, you have a very extensive record
16 replete with in-depth, quantitative studies performed by the
17 applicant evidencing Costco's compliance with the special
18 exception standards.
19 On the other hand, you have a vocal minority of
20 opponents who from day one, before even seeing the first
21 study produced by Costco, have decided that they do not like
22 this gas station. This position has not changed despite the
23 overwhelming evidence in the record. Unfortunately,
24 positions driven by emotion are not influenced by facts.
25 Throughout this hearing, the applicant will demonstrate that

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1 the traffic issues. David Sullivan will address the
2 environmental concerns and issues. Mark Willart will then
3 present testimony regarding the landscaping. Mr. Jim
4 Agliata, the Westfield representative, will follow. Then the
5 architect, Gina Brapichelli (phonetic sp.) and then Mr. Joe
6 Cronin (phonetic sp.) on the, he'll address property
7 valuation. And then if need be, Mr. Sullivan just again
8 because of the timing issue, we may need to bring him back
9 if he hasn't concluded his testimony, followed by Dr. Ken
10 Chase and then Mr. Steve Gang, our land planner, will
11 conclude. Thank you. That concludes our opening statement.
12 MR. GROSSMAN: All right. Ms. Rosenfeld.
13 MS. HARRIS: Thank you.
14 MR. GROSSMAN: Do you wish to make an opening
15 statement?
16 MS. ROSENFELD: I do, but I'd like to defer to Ms.
17 Adelman.
18 MS. ADELMAN: Thank you.
19 MR. GROSSMAN: Ms. Adelman.
20 MS. ROSENFELD: Who I also know would like to make
21 an opening statement. And then I'll follow her.
22 MR. GROSSMAN: All right.
23 MS. ADELMAN: Good morning, Mr. Grossman.
24 MR. GROSSMAN: Good morning.
25 MS. ADELMAN: Thank you for this opportunity. I

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1 am Abigail Adelman, chair of the Stop Costco Gas Coalition.
2 The Coalition was formed in October of 2012 with members
3 drawn from both local communities and communities throughout
4 the United States, all supporting our goal of protecting
5 public health by advocating appropriate conditions for the
6 location of mega gas stations.
7 MR. GROSSMAN: Let me stop you for one second, Ms.
8 Adelman. Since you are not counsel here, if you want your,
9 this statement you're making now to actually be part of the
10 evidence as opposed to just your opening statement, I can
11 swear you in now.
12 MS. ADELMAN: Okay.
13 MR. GROSSMAN: Would that be appropriate? All
14 right. Would raise your right hand --
15 MS. ADELMAN: That would be fine.
16 MR. GROSSMAN: -- please?
17 MS. ADELMAN: Yes.
18 (Witness sworn.)
19 MR. GROSSMAN: All right. You may proceed.
20 MS. ADELMAN: Thank you.
21 MR. GROSSMAN: And this statement that you begun
22 is also under oath, the part you've already read?
23 MS. ADELMAN: Yes.
24 MR. GROSSMAN: All right. Go ahead.
25 MS. ADELMAN: Where are we? We have members drawn

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1 from both local communities and communities throughout the
2 United States all supporting our goal for protecting public
3 health by advocating appropriate conditions for the location
4 of mega gas stations. These new stations are the business
5 model of the future. Their size creates concern about air
6 pollution, hence, the need to establish adequate buffers
7 between these installations and people who live, work and
8 play nearby. The Stop Costco Gas Coalition has not retained
9 counsel, thus, we will be appearing before you pro se. As
10 chair, I will introduce our witnesses.
11 Mr. Larry Sullivan, Esquire, or Dr. Sullivan, did
12 I say Sullivan? Dr. Mark Adelman will cross-examine the
13 applicant's witnesses and Mr. Silverman will deliver the
14 Coalition's closing statement. Mr. Silverman will begin our
15 presentation with an analysis of the Clean Air Act,
16 including the various ways in which the applicant has
17 misrepresented the CAA as it applies to the air quality or
18 facilities such as this proposed mega gas station.
19 Also, Mr. Silverman will discuss the, Mr.
20 Silverman will discuss the applicant's engineering report.
21 In particular, he will review the lack of information on how
22 Costco plans to construct and monitor the operation of the
23 underground gasoline holding tanks and the lack of
24 information on plans to monitor and contain events that
25 might lead to cross-contamination of these tanks with the

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1 holding tanks that are part of Costco's storm water
2 management system.
3 Our filing on water resources in conjunction with
4 our filing on the applicant's engineering report explains
5 why this application should be rejected on the grounds that
6 its mode of operation is likely to subject the water
7 resources of our region to additional risk of pollution.
8 Danila Sheveiko, a Coalition member, and Diane Cameron of
9 the Audubon Naturalist Society, will show that this
10 application is not in compliance with the Wheaton Sector
11 Plan as it fails to assure preservation of the existing
12 green buffer area.
13 We continue to assert that the process by which
14 the applicant was exempted from the requirement to file a
15 pre-forest conversation plan is invalid. We will discuss
16 the consequences of allowing the applicant to proceed under
17 these contested conditions.
18 Ms. Patricia Mulready, master of science and
19 master of philosophy, will discuss a lack of filing by the
20 applicant on emergency and disaster planning. The applicant
21 must satisfy adequate public facilities requirements. The
22 absence of a plan prevents those supervising first
23 responders from conducting a careful review of the potential
24 impacts on public facilities from the proposed mega gas
25 station.

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1 The Planning Board recommended denial of S-2863
2 based on non-compliance with the Wheaton Sector Plan and we
3 concur. Dr. Mark Adelman will discuss parts of our rebuttal
4 of the applicant's land use report, including failure to
5 conform with the Sector Plan, inherent conflicts between
6 Costco's landscaping plans, their lack of a forest
7 conservation plan and several factual errors as to
8 conformity of the application with elements of the zoning
9 code.

10 Switching topics, Dr. Adelman will discuss the
11 applicant's traffic impact analysis focusing on issues that
12 were not addressed in the applicant's filing. Of primary
13 concern is the failure of the applicant to consider traffic
14 impacts within the mall from the siting configuration and
15 mode of operation of the proposed gas station. These
16 impacts will result in increased congestion in the parking
17 lot and on the ring road around the gas station's proposed
18 location. Our presentation will include adverse impacts on
19 air quality and public safety in the vicinity of the
20 station.

21 We will also discuss how the proposed gas station
22 will create a traffic nuisance adversely affecting residents
23 of the Kensington Heights neighborhood. Ms. Abigail
24 Adelman, that's me, chair of the Coalition, will show that
25 the applicant has not met the burden of proof for zoning

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1 code Section 59G 1.21, general conditions A8, that the
2 proposed 16-nozzle, mega gas station, quote, will not
3 adversely affect the health, safety, security, morals or
4 general welfare of residents, visitors or workers in the
5 area at the subject site irrespective of any adverse effects
6 the use might have if established elsewhere in the zone, end
7 quote.

8 There is danger to public health from the proximal
9 exposure to the evaporation fumes of fueling and the toxic
10 pollutants, including particulate matter from vehicle
11 tailpipe emissions, danger to those using the parking lots
12 surrounding this mega gas station, to the health of nearby
13 residents and to the medically fragile students at Steven
14 Knolls School. Our concern and emphasis is on public health
15 risks which in our opinion would be sufficient reason to
16 deny S-2863.

17 Finally, Dr. Henry Cole, our expert on atmospheric
18 sciences and air quality, will discuss in considerable
19 detail air quality issues, including the types and
20 concentrations of airborne pollutants associated with
21 Costco's proposed mega gas station and their potential
22 impact on people who live or frequently use the areas
23 adjoining the proposed facility. Dr. Cole will also offer
24 his expert opinion on the scope, accuracy and methodology
25 provided in the applicant's reports on emissions, air

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1 quality and dispersion modeling, as well as the
2 applicability to this case of EPA standards, regulations,
3 guidance and policies on assessments of air pollution
4 sources. The Sullivan reports referenced above do not prove
5 that the gas station can operate without an adverse effect
6 on the health of nearby residents, visitors and workers.

7 Dr. Cole's testimony will show that Mr. Sullivan's
8 attempts to discount these deficiencies are without merit.
9 We ask that after hearing the testimony in this case, you
10 recommend denial of special exception application S-2863.
11 Thank you.

12 MR. GROSSMAN: You're welcome. Ms. Harris, you
13 would technically be entitled to cross-examine, but since
14 Ms. Adelman is also going to testify later, I would ask you
15 to reserve that until --

16 MS. HARRIS: Absolutely.

17 MR. GROSSMAN: -- she testifies formally as a
18 witness. Ms. Rosenfeld, did you have an opening statement
19 in addition?

20 MS. ROSENFELD: I do. Thank you very much, Mr.
21 Grossman. I do agree with Ms. Harris on one point and that
22 is that the special exception process is the appropriate
23 place for this case to be considered. Just for historical
24 completeness, I'd like to remind the Hearing Examiner that
25 in 2010 there had been a zoning text amendment introduced

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1 that would allow the gas station to proceed by right and
2 that text amendment was not adopted. So we are here at the
3 special exception proceedings.

4 Ms. Harris suggested that the issues raised by the
5 community organizations has morphed over the years, that
6 they have raised one issue, abandoned another, abandoned it,
7 moved on to another. But, instead, the reality is that as
8 time has passed and there has been more time to evaluate and
9 study the special exception application, in fact, those
10 arguments and concerns have been cumulative. We do have the
11 issue of health. We do have the issue of traffic. We do
12 have the issue of Sector Plan conformance. We have not
13 abandoned any of those arguments. They are cumulative and
14 we think that they each independently, in fact, would
15 justify denial of this case.

16 The zoning text amendment did establish a 300-foot
17 setback from recreational uses for this particular
18 application. As you know, setbacks are a minimum
19 determination of compatibility, but they are in now way
20 absolute numbers. We're confident that as you review this
21 application you will come to realize that the proposed 300-
22 foot setback is inadequate to ensure compatibility and to
23 avoid nuisance issues between the proposed gas station and
24 the neighborhood. In addition to that, we expect to
25 demonstrate that more than a 300-foot setback would be

1 required to ensure the health of adjoining residents, the
2 students at the Stephen Knolls School, many with
3 significant, long-term medical conditions, including
4 respiratory conditions, and at the Kenmont Pool.

5 An automobile filling station must prove that
6 there's a local need for the facility. As in Costco's first
7 submission, the applicant mis-states the legal standard
8 governing how need is measured. The applicant's statement
9 in support of its application erroneously quotes the zoning
10 ordinance as follows:

11 "That a need exists for the proposed use to
12 serve the population in the general neighborhood
13 considering the present availability of identical
14 or similar uses in the neighborhood."

15 However, the correct legal standard is whether the
16 proposed use is available to the neighborhood. We submit
17 that the needs analysis provided by the applicant, in fact,
18 evaluates need under the standard mistakenly quoted by the
19 applicant and not under the correct rubric and has not met
20 its burden of proof with respect to this standard. In
21 addition to showing that this use is available to the
22 neighborhood by virtue of the nearby Beltsville Costco gas
23 station, we intend to show that there is no absolute need
24 for the automobile filling station, specifically, that there
25 is an ample supply of cheap gasoline in the neighborhood and

1 that the proposed use does not serve any unmet need.

2 As explained by Park and Planning staff who
3 concluded that the proposed automobile filling station
4 prevents significant, non-inherent adverse effects caused by
5 the negatation, including, but not limited to extensive
6 vehicular queuing and idling at the site. We intend to show
7 the adverse impacts on the neighborhood that result from
8 these non-inherent, adverse effects, in addition to justify
9 denial of this application.

10 Furthermore, KHCA agrees with and will provide
11 supplemental testimony in support of the Planning Board's
12 determination that the proposed use violates the Wheaton
13 Sector Plan recommendations. As you well know, pursuant to
14 59G 1.21(a)(3) of the general conditions, given the Board's
15 Master Plan findings, any decision to grant the special
16 exception must include specific findings as to Master Plan
17 consistency. We submit that the applicant cannot meet its
18 burden of proof with respect to this element of the general
19 conditions. We also intend to show that the proposed use
20 will not be in harmony with the general character of the
21 neighborhood, will be detrimental to the use, peaceful
22 enjoyment and economic value of the surrounding properties,
23 resulting from such impacts as traffic and parking
24 conditions and the physical activity and intensity of use at
25 this site.

1 Finally, the applicant must prove by preponderance
2 of the evidence that the proposed use will not adversely
3 affect the health of residents, visitors or workers in the
4 area of the general site. The applicant has argued that it
5 meets Federal EPA Clean Air Act standards and, thus, ipso
6 facto, it has satisfied the standard of the County zoning
7 ordinance with respect to this condition. First, KHCA
8 intends to show that the applicant has not demonstrated that
9 it has used the proper modeling to accurately show the
10 impact of the station on air quality. Moreover, if the
11 approval threshold were EPA standards, then that standard
12 would be set forth in the zoning code by analogy, noise and
13 light standards are specifically and numerically established
14 in the special exception standards of the code.

15 This case turns on whether the specific views at
16 this location will have an adverse effect on residents or
17 workers in the area of the subject property not by virtue of
18 EPA standards, by whether or not you can establish that
19 there would be an adverse effect on health. We intend to
20 show that the applicant has failed to prove that the
21 proposed use will not have an adverse effect on the
22 residents who live within a stone's throw of the subject
23 property, some in areas with unique topographical features
24 that exacerbate the effect of the air pollution that the
25 proposed use will generate.

1 Those adversely affected residents who live
2 immediately next door to the proposed gas station include
3 infants and young children. Elderly people and people of
4 all ages with chronic respiratory and/or coronary disease
5 and are particularly susceptible to the adverse health
6 effects of pollutants that will be generated by this use.
7 Many of these people do not work outside of their homes and
8 would be exposed on a long-term, daily basis to the
9 pollutants that the proposed mega gas station will generate.

10 Those adversely affected visitors to the area of
11 the subject site include the students at the Stephen Knolls
12 School who also frequent Wheaton Mall on school outings.
13 Many of these students are dependent on oxygen and/or suffer
14 from severe respiratory medical conditions and are
15 particularly susceptible to the adverse health effects of
16 pollutants that will be generated by this use. The
17 applicant must take the residents, visitors and workers in
18 the area as they are and not as an extrapolation of the
19 general population.

20 Costco also mentioned other large stations in
21 other jurisdictions, evidently hoping to rely on those with
22 some sort of precedential value in this case. They are
23 absolutely irrelevant to this case. They were proved in
24 just different jurisdictions under different laws and those
25 standards may or may not be germane in any way in this case,

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1 but there is certainly no way to use them precedentially
2 here absent any kind of verification that they meet the
3 standards that are being presented before you in this case.
4 In summary, KHCA expects to prove on multiple
5 legal and factual grounds that the applicant has failed to
6 meet its burden of proof in this case and we will ask that
7 you recommend denial of the special exception. Thank you.
8 MR. GROSSMAN: All right. Thank you, Ms.
9 Rosenfeld. Does Kensington View Civic Association have an
10 opening statement?
11 MS. DUCKETT: No, sir.
12 MR. GROSSMAN: All right. I guess that handles
13 all our opening statements and I'd ask Ms. Harris, do you
14 want to call your first witness?
15 MS. HARRIS: Thank you. Yes. Mr. Erich Brann
16 from Costco.
17 MR. GROSSMAN: Madame Court Reporter, do we set up
18 this table as the witness stand or is that why you put --
19 how did you set that up?
20 COURT REPORTER: That way so I'll catch everybody.
21 MR. GROSSMAN: All right.
22 MS. HARRIS: Mr. Grossman, to the extent that we
23 have witnesses that are going to be relying upon exhibits,
24 it may be helpful if they sit there and Mr. Brann at least
25 initially will not be referring to specific exhibits.

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1 MR. GROSSMAN: All right. If it's easier for
2 everybody to have the witness stay at counsel table, that's
3 fine with me. Does everybody agree to that process in
4 general?
5 MS. ROSENFELD: I would prefer if he sat -- if the
6 witnesses sat at the table. It's very difficult for me to
7 see.
8 MR. GROSSMAN: Okay.
9 MS. HARRIS: But I also think it's difficult as
10 counsel not to be able to see my witness.
11 MR. GROSSMAN: What if we moved that table a
12 little bit so that the witness could be seen by everybody,
13 or put the witness up on this bench. What does everybody,
14 what's the sense of that? Would that make sense? Would it
15 take long to arrange a microphone up here?
16 COURT REPORTER: I can get anybody in this room,
17 the way I'm set up.
18 MR. GROSSMAN: Okay. So --
19 MS. HARRIS: Well, the --
20 MR. GROSSMAN: Yes?
21 MS. HARRIS: Well, the one issue there is to the
22 extent and, again, not necessarily Mr. Brand, but other
23 witnesses are going to be trusseling through various
24 exhibits. So that's going to be even more awkward.
25 MR. GROSSMAN: Okay. Well, for those who are

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1 using exhibits down here, they'll be able to step down into
2 the well and do it. But let's have Mr. Brann come on up
3 here. Mr. Brann, would you raise your right hand please?
4 (Witness sworn.)
5 MR. GROSSMAN: All right. You may proceed, ma'am.
6 MS. HARRIS: Thank you.
7 DIRECT EXAMINATION
8 BY MS. HARRIS:
9 Q Please state your name, position at Costco and
10 address for the record.
11 A I'm Erich Brann. I'm the director of real estate
12 development for Costco Wholesale. My address is 45940
13 Horseshoe Drive, Suite 150, Sterling, Virginia 20166.
14 Q Thank you. Can you please provide a description
15 of Costco in a story-telling approach?
16 A Costco is a wholesale club. We are at this point
17 the third largest retailer in the world. Costco warehouses
18 are designed, or were originally designed and set up to help
19 small, medium-sized businesses buy and resell products. We
20 now accept memberships from all people, for -- anyone can
21 join Costco basically. We are a corporation that has proven
22 you can pay your employees well, take good care of them and
23 provide good medical benefits and be a profitable company.
24 Our philosophy as a corporation is to buy and resell the
25 highest quality goods on the market and resell them at the

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1 best available prices we can.
2 As far as gas stations go, we are a bit of an
3 anomaly in the gas business. We do do, we do have very busy
4 gas stations. Our prices are lower typically and we bring
5 down prices in the market because we are, we shop all gas
6 suppliers and enable us to provide gas at the lowest
7 possible price.
8 Q Can you please explain in just a little bit more
9 detail when you said you shop all suppliers, can you explain
10 that?
11 A The state of Maryland has, I believe, it's 16
12 total gas suppliers that we purchase from. We will ask for
13 pricing from all 16 suppliers and whoever has the best price
14 that week is who we're buying our gas from.
15 Q Thank you. Can you also please explain Costco's
16 community involvement?
17 A Costco does a tremendous amount of community
18 involvement. We encourage our employees to participate in
19 all of these. As a corporation, we contribute 1 percent of
20 our pre-tax profits that is designated for our annual
21 charities. We participate in an Adopt-a-School reading
22 programs and we encourage employees to be part of these
23 programs and mentor students. We are very big in the
24 Children's Hospital campaigns. One of our largest charities
25 is the Children's Medical Network. We participate in the

1 United Way campaign.
 2 We participate and coordinate the Fresh Start
 3 Backpack Programs for various schools in the areas. In
 4 fact, since 1993 when we started we've contributed about 4.3
 5 million backpacks for school supplies to the students. We
 6 participate in a program called Communities in Schools which
 7 is a nationwide non-profit that partners with family schools
 8 and community leaders. And we offer the public the Costco
 9 scholarship fund which we have contributed and distributed
 10 over 1,100 scholarships to qualified students.
 11 Q Thank you. Can you please state for the record
 12 how many Costco station, excuse me, how many Costco
 13 warehouses there are in the state of Maryland?
 14 A The state of Maryland, counting Wheaton, we have
 15 10 Costco warehouses in the state of Maryland.
 16 Q And how many of those have gas stations?
 17 A We have eight gas stations out of the 10
 18 warehouses, hopefully nine soon.
 19 Q And so what is the one station that does not have
 20 gas?
 21 A The Gaithersburg, Maryland location, which was
 22 originally a, it was a Price Club, Price Club warehouse and
 23 the real estate that we own in that area we just don't have
 24 enough room to put gas stations in. We've tried multiple
 25 times. We even talked to the adjacent land owner about

1 purchasing property from him, but at this time we don't have
 2 a gas station.
 3 Q So there's a physical limitation for a gas station
 4 on that site?
 5 A Right, there is.
 6 Q And how many households in the state of Maryland
 7 are Costco members?
 8 A At this time we have a little over 463,000
 9 households, Costco members in the state of Maryland. That
 10 counts up to about 872,000 Maryland residents who have a
 11 membership card in their wallet. We have approximately
 12 138,000 memberships just in Montgomery County alone and
 13 there are no barriers to membership. Anyone can join
 14 Costco.
 15 Q So if I wanted to become, if I weren't a Costco
 16 member and I wanted to become a Costco member, what would I
 17 need to do?
 18 A You would go to the Costco warehouse or go to
 19 Costco.com. You can apply for a membership online and the
 20 membership fee, we have two basic memberships. One is \$55
 21 and an executive membership for \$110.
 22 Q So is it fair to say that really there's no
 23 barriers of entry if you have \$55?
 24 A There is no barrier.
 25 Q And is the membership any different than what --

1 MR. GROSSMAN: Well, she asked you there's no
 2 barrier if you have \$55?
 3 THE WITNESS: If you have the \$55, there's not a
 4 barrier.
 5 BY MS. HARRIS:
 6 Q So is becoming a member of Costco any more
 7 difficult than becoming a member of say a community pool?
 8 A We don't have a waiting list so, no, it's much
 9 easier actually.
 10 MR. GROSSMAN: But I take it you have to be a
 11 member in order to use the services of Costco?
 12 THE WITNESS: With the exception of our pharmacy
 13 and our food court, that is correct. Any person can use the
 14 Costco pharmacy. You do not have to be a member. You do
 15 have to be a member to utilize the gas station.
 16 MR. GROSSMAN: Okay.
 17 BY MS. HARRIS:
 18 Q I'm now going to ask you a few questions relating
 19 to the Costco warehouse operations. On average, how many
 20 warehouse customers will be visiting the Wheaton store?
 21 A The Wheaton store on a weekly basis will see about
 22 27,000 transactions occur.
 23 Q And in general not necessarily specific to the
 24 Wheaton store, but in general what's the average in this
 25 question, I'm, what I'd like to do is sort of relate in

1 terms of physical mass. What's the average amount of goods
 2 that are bought at a Costco warehouse on a given, by a given
 3 member?
 4 A The average is skewed slightly by when you have
 5 members who come in and use a somewhat, like a 7-Eleven,
 6 will come in and buy a gallon of milk or some strawberries
 7 they needed for dinner that night. The average basket count
 8 at Costco is about \$148. The products are large enough and
 9 most of the packaging is large enough that the majority of
 10 our members will come in and stock up.
 11 Q And does Costco have oversized carts in order to
 12 accommodate the amount of goods that --
 13 A We do. Our carts are 1 1/2 times the size
 14 typically of grocery cart.
 15 Q And just by your mere observation, when you say
 16 that in general most of those are well-filled at the
 17 checkout line?
 18 A They are, yes.
 19 MR. GROSSMAN: How exactly is that relevant to the
 20 gas station?
 21 MS. HARRIS: It has -- I'm getting to that. It
 22 has to do with the amount of -- how people come to Costco,
 23 they come by car and when they come by car, then that goes
 24 to the fact that it's located in a auto centric area and
 25 that when they come by car, they can at the same time

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1 combine a trip and go to the gas station, which is sort of
2 woven throughout a number of points that we'll be making,
3 hence my next question.
4 BY MS. HARRIS:
5 Q By what means do most Costco, excuse me, most
6 Costco members come to the store?
7 A The majority of our members arrive in their car.
8 Q Were you involved in meetings that Westfield,
9 which is the owner of the mall site, had with Council
10 members when Costco was first considering coming to
11 Montgomery County?
12 A Yes, we were.
13 Q And during those meetings, which had to do with
14 potential funding for the Westfield site, did the Council
15 members know that the additional funding would facilitate
16 the Costco store?
17 A Yes, they did.
18 MR. GROSSMAN: I'm going to stop you here. I'm
19 not sure, once again, I think you're trying to instruct some
20 idea of Council intention, something they maybe did not do.
21 And I'm not, uncomfortable with assumptions of what was not
22 done as delivering Council intent.
23 MS. HARRIS: Then let me just ask the witness.
24 BY MS. HARRIS:
25 Q Was it made clear to Council members that the gas

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1 stations in each part of the Costco operation --
2 MR. GROSSMAN: Was this a meeting that was on the
3 record, a public meeting?
4 MS. HARRIS: No, it was not a public meeting.
5 There were individual meetings and I, individual meetings,
6 Westfield representatives and Costco representatives with
7 individual Council members.
8 MS. ROSENFELD: Mr. Grossman --
9 MR. GROSSMAN: Yes?
10 MS. ROSENFELD: I would like to object and,
11 frankly, this whole line of questioning. If Ms. Harris is
12 to proceed, I'd like to hear how the questions go to any of
13 the special exception standards that are at issue in this
14 case right now.
15 MR. GROSSMAN: All right. Ms. Harris.
16 MS. HARRIS: They go back to the intent that it
17 was clear from, it was clear to the Costco member, I'm
18 sorry, it was clear to the Council that a gas station was
19 interval and that, and as I stated in my opening remarks,
20 there's been no affirmative action taken by the Council to
21 preclude this gas station from the time it was originally
22 suggested that Costco may come to the County until now.
23 MS. ROSENFELD: Mr. Hearing Examiner --
24 MR. GROSSMAN: You can make an argument based on
25 what the Council did or did not do based on things that were

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1 presented to the Council at a public record, but we're
2 really not going to consider a back door conversation with
3 individual Council members as being part of the legislative
4 history. So it is irrelevant. I'll sustain the objection.
5 MS. HARRIS: Okay. Okay. We will move on to a
6 question that is relevant because it was part of your 20
7 questions which has to do with parking facilities.
8 BY MS. HARRIS:
9 Q Can you please explain the parking facilities that
10 are available to the Costco warehouse?
11 A Yes. The Costco warehouse is on the west side of
12 the building. We have 389 surface spaces that are marked
13 for Costco and those would be standard Costco, 10-foot by
14 18-foot spaces.
15 MR. GROSSMAN: I'm sorry, what was that number
16 again?
17 THE WITNESS: 389 surface, spaces on the surface
18 that go to the building.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: And then to the east of the building
21 in the 3-story parking structure, the second floor of the
22 parking deck was 349 spaces and as part of our construction,
23 we built a ramp that goes directly from the Costco warehouse
24 to the second floor, so you can push your shopping cart
25 directly across. The parking deck also contains a third

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1 floor that is under-utilized completely and elevators were
2 installed that will accept up to three Costco shopping carts
3 and customers to go up to the 3rd floor and people can park
4 there also.
5 MR. GROSSMAN: So are you saying that the, in
6 addition to the 389 surface spaces --
7 THE WITNESS: Uh-huh.
8 MR. GROSSMAN: -- to the west, are they restricted
9 to Costco users?
10 MR. GROSSMAN: No, it's a mall parking lot, so
11 they are open to anyone who utilizes the mall, but that's --
12 any kind of lease that's put together on a project like
13 this, we have certain parking spaces that are considered
14 ours as Target has spaces they consider theirs and there are
15 389 spaces that were marked up as Costco spaces.
16 MR. GROSSMAN: Generally allocated to the Costco
17 users?
18 THE WITNESS: Correct.
19 MR. GROSSMAN: And the 349 spaces on the second
20 floor of the garage, are they also, are they open to any
21 user of the mall?
22 THE WITNESS: Any user of the mall can use those
23 parking spaces, correct.
24 MR. GROSSMAN: All right. Were they generally
25 considered also allocated to Costco as part of this process?

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1 THE WITNESS: They are what is considered part of
2 our parking at the mall, yes.
3 MR. GROSSMAN: All right. And the third floor
4 spaces that are largely unused, are they also considered
5 allocated to use?
6 THE WITNESS: They are not considered as part of
7 our parking for the mall, no.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: They are just general parking
10 spaces.
11 MR. GROSSMAN: All right. You also mentioned
12 earlier that the majority of people who use your Costco
13 warehouse come by car.
14 THE WITNESS: Correct.
15 MR. GROSSMAN: On what do you base that statistic?
16 THE WITNESS: Just on past sales experience. I
17 mean it is, our items are very large, typically large
18 quantities. They require -- it's difficult to take them
19 home on the Metro. We do have, our Pentagon location,
20 people do utilize Metro occasionally, but typically people
21 arrive by car, most of our people.
22 MR. GROSSMAN: You don't have a percentage by any
23 study that tells you that?
24 THE WITNESS: No, I don't, but it's a very large
25 percentage.

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1 MR. GROSSMAN: Okay. All right. Ms. Harris.
2 BY MS. HARRIS:
3 Q And I would note that our traffic consultant will
4 be getting into more parking issues as well. Okay. The
5 warehouse has only been open less than a month now, but can
6 you please describe what parking situation has been since
7 its opening on April 10th?
8 A The parking has been -- the surface lot has been
9 full pretty much every day. I was at the warehouse opening
10 day. The members are starting to learn about the parking
11 deck and are more utilizing the parking deck. It was
12 approximately a little over half full the other day when it
13 was counted. And it's just a matter of education getting
14 people to understand that that parking is available and it's
15 easy access to the warehouse.
16 Q You noted that the western surface parking area is
17 completely full. Is that entire western area open to
18 parking or is there a portion of it that's not available for
19 parking?
20 A No, there's a portion of it that was the original
21 gas station site was never paved over, so that when we do
22 build a gas station, there will not be a loss of parking.
23 Q So the parking spaces that currently exist will be
24 the same if and when the special exception is approved and
25 the gas station is constructed? Thank you.

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1 MR. GROSSMAN: I just don't understand the
2 question, will be the same --
3 MS. HARRIS: Number.
4 MR. GROSSMAN: Right, but will be the same number
5 as the mall used to have or the same number as it used to
6 have before you covered over some portion of it for the
7 previous location, what is it you're saying?
8 THE WITNESS: It will be the same as it is today.
9 The mall has a certain number of parking spaces today and
10 the existing gas station location was never paved over.
11 We're utilizing the same area for the new gas station
12 location, so the parking will be the same as it is today.
13 A And prior to the picking out of the site that used
14 to be considered for a gas station, were there more parking
15 spaces for the mall?
16 THE WITNESS: I don't remember what the net. It
17 was a small net loss of parking spaces to the mall that the
18 part of the gas station is on.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: I don't know that exact number off
21 the top of my head.
22 MR. GROSSMAN: All right. Thank you.
23 MS. HARRIS: We can have our traffic consultant
24 address that issue.
25 MR. GROSSMAN: All right.

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1 BY MS. HARRIS:
2 Q How many -- I believe you noted it before, but how
3 many Costco members are in Montgomery County?
4 A Montgomery County, there is a little over 130,000
5 Costco members.
6 Q And do you have any knowledge of how many of these
7 Costco members buy gas from Costco?
8 A Approximately, just a few more than 38,000 members
9 buy gas from Costco.
10 Q And how many of these 38,000 currently go outside
11 the County to purchase their gas?
12 A All of them. We have no gas stations in the
13 County.
14 Q And to which facilities do they go?
15 A They, they utilize our Beltsville facility or
16 Frederick, Maryland; Columbia, Maryland; and our Woodmoore
17 Towne Center facility.
18 Q And if the subject gas station is approved, do you
19 have reason to believe that these members will be doing
20 their shopping and purchasing their gasoline from the
21 Wheaton site as opposed to going to these out-of-County
22 locations?
23 A Absolutely. We've had tremendous response from
24 our mail-outs that are very helpful that we get a gas
25 station.

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1 Q And, conversely, if you don't get your gas
 2 station, do you have reason to believe that at least a
 3 portion of these 38,000 will continue to go outside the
 4 County to make their, both their warehouse purchases as well
 5 as their gas purchases?
 6 A We have already received letters from members
 7 stating that they will continue to shop at Beltsville or
 8 Frederick in order to buy their gas.
 9

10 Q Thank you. Can you please generally describe the
 11 Wheaton store? And if it would be helpful to the Hearing
 12 Examiner, we can put up an exhibit or --
 13 MR. GROSSMAN: I'll leave that up to you.
 14 THE WITNESS: Sure. The current exhibit shows the
 15 new Costco warehouse --
 16 MR. GROSSMAN: Hold on a second. I'm not sure
 17 that people --
 18 THE WITNESS: Oh, yes.
 19 MR. GROSSMAN: -- in the audience can see that, so
 20 why don't we set this up, perhaps even putting it right
 21 behind the ramp over there so everybody in the audience --
 22 that would be fine up there, I think. Maybe angle it a
 23 little bit to me so I can see it too. All right.
 24 MS. HARRIS: And I would note that this exhibit,
 25 which is an aerial photo, is not in the record. We can
 enter it into the record.

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1 MR. GROSSMAN: All right. If you're going to
 2 refer to it, yes, you'd have to do that and this would
 3 Exhibit 101, I think. That's -- yes.
 4 THE WITNESS: This exhibit shows the Costco
 5 warehouse which is the southernmost end of the Wheaton mall.
 6 MR. GROSSMAN: All right. So this is an aerial
 7 photograph of --
 8 THE WITNESS: Of the Costco building.
 9 MR. GROSSMAN: Costco building at Wheaton Mall.
 10 (Exhibit No. 101 was marked for
 11 identification.)
 12 MS. ROSENFELD: And, Mr. Grossman, I am going to
 13 ask that we get a hard copy of that exhibit.
 14 MR. GROSSMAN: Okay.
 15 MS. HARRIS: Certainly.
 16 MR. GROSSMAN: All right, counsel. So would you
 17 mind, sir, writing on there just so we don't lose track the
 18 number 101?
 19 THE WITNESS: Okay. The Costco warehouse is
 20 located where the former Hechts building was, the mall was
 21 set, the building and built a platform directly on the
 22 second floor. You enter the, through the mall, through the
 23 Westfield Mall. The grass area right here is the
 24 existing -- that was the original location we picked out for
 25 the gas station. The Zoning Text Amendment was made, so we

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1 had to move the new location just --
 2 MR. GROSSMAN: All right. So just for the record,
 3 so we know what you're pointing out --
 4 THE WITNESS: Oh, I --
 5 MR. GROSSMAN: -- first of all, what's north on
 6 this?
 7 THE WITNESS: North is up.
 8 MR. GROSSMAN: All right. North is the top, so --
 9 THE WITNESS: North is the top.
 10 MR. GROSSMAN: -- the location that you pointed
 11 to, the grassy area --
 12 THE WITNESS: Is the far western --
 13 MR. GROSSMAN: -- would be --
 14 THE WITNESS: -- it's the far western corner, just
 15 inside the right --
 16 MR. GROSSMAN: South?
 17 THE WITNESS: Southwestern corner.
 18 MR. GROSSMAN: Southeastern or southwestern
 19 corner?
 20 THE WITNESS: Southwestern corner.
 21 MR. GROSSMAN: Southwestern corner?
 22 THE WITNESS: Correct. And the building itself is
 23 approximately just a little over 151,000 square feet. We do
 24 have a -- we have a 20-year lease with options to extend it
 25 40 years. We tend to stay in buildings a very long time.

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1 We've been at our Gaithersburg building for over 20 years.
 2 MR. GROSSMAN: Could you point to the building
 3 that you're talking about?
 4 THE WITNESS: The building itself is right here.
 5 MR. GROSSMAN: Okay.
 6 THE WITNESS: It's this, the white, the silverish
 7 roof with the skylights to daylight the building.
 8 MR. GROSSMAN: So that's, that's the southeastern
 9 portion of probably the photograph?
 10 THE WITNESS: Correct, the southeastern portion of
 11 the photograph.
 12 MR. GROSSMAN: Okay.
 13 BY MS. HARRIS:
 14 Q Could you indicate the square, I'm sorry, did you
 15 indicate the square footage?
 16 A Yeah, the building is a little over 151,000 square
 17 feet and contains, all the isolated departments to Costco
 18 are ice and tire centers, pharmacy, food court, meat
 19 departments and, in fact, this one has a kosher bakery,
 20 so --
 21 Q Can you please explain the importance of the
 22 gasoline station as part of the overall Costco operation?
 23 A Gasoline is another, what we consider one of our
 24 ancillary businesses. It is a, the ancillary product that
 25 we offer to our members. It's become very successful. Our

1 members like it a lot. And it's, it is another way for us
 2 to get members to join the warehouse. It's another
 3 convenience for the member.
 4 Q And can you please explain or is there a general
 5 pattern in terms of people's behaviors that go to both the
 6 warehouse and the gas station in terms of what occurs?
 7 A Yes, well, typically members will come in and get
 8 gas and then go into the warehouse. You know, it works both
 9 ways. Some people come out or afterwards they'll go through
 10 the gas station.
 11 Q Can you please describe other Costco stations
 12 throughout the country that are similar to this station and
 13 why don't you first focus on Maryland?
 14 A Well, in Maryland we have stations at our Woodmore
 15 Towne Center, which is a station that would be identical to
 16 this one.
 17 Q And, well, this is Exhibit No. 86(a) in the
 18 record.
 19 A And the Woodmore Towne Center facility, again, I
 20 just mark this up, right, again?
 21 MR. GROSSMAN: Correct.
 22 THE WITNESS: Okay. We're looking at the top of
 23 the page, be a gas station for the Woodmore facility is in
 24 the, it's really the southern portion of the photograph here
 25 in blue. The gas station is located just a little bit east

1 of that and what's shown on this, this is a multi-use
 2 facility that was designed to, for retain business. There's
 3 an area slated for office space in the tree area up here.
 4 And then you see the large residential portion that was
 5 designed as part of the project and as part of the
 6 permitting process for the project. So the residential
 7 portion was just purchased by E. R. Horton. It costs \$26
 8 million to develop the residential portion of the site.
 9 So, and the Costco gas station was within 400 feet
 10 as measured from the center of the gas station. There
 11 are -- it, the corner, the radius encompasses a number of
 12 the homes to the northeast of the project.
 13 MR. GROSSMAN: You say it encompasses -- what's
 14 the distance from the gas station to the nearest residence?
 15 THE WITNESS: It's less than, it's 280, about 280
 16 feet from the gas station to the nearest residence.
 17 MR. GROSSMAN: And what's the location of this?
 18 THE WITNESS: This is Woodmoore Towne Center.
 19 It's in Lanham, Maryland. And we also operate gas stations
 20 in our Columbia, Maryland location; Arundel Mills;
 21 Beltsville; Frederick, Maryland; Glen Burnie; Whitmarsh and
 22 Brandywine.
 23 BY MS. HARRIS:
 24 Q And then are there other examples throughout the
 25 country of Costco gas stations that are approximate location

1 to residential uses?
 2 A We do have other locations that are close to
 3 residential locations, one of which you mentioned in
 4 California is about 60 feet away from a residential
 5 property. And we don't have a lot of them. It's not a
 6 norm, just occasionally the, the way the property lays out,
 7 that's what happens.
 8 Q And how many Costco-based -- excuse me. How many
 9 Costco gas stations are there throughout the United States?
 10 A The United States, we operate 368 gas stations.
 11 Approximately 82 percent of our warehouses in the U.S. have
 12 gas stations.
 13 Q So it is correct to say that in some of those
 14 jurisdictions do you need to go through some special type of
 15 approval whether it be a special exception or site plan
 16 approval --
 17 A Yes.
 18 Q -- or something to that effect?
 19 A Yes.
 20 Q And to your knowledge, has any of these proposed
 21 U.S. stations ever been denied because of health effects?
 22 A Never been denied because of health effects.
 23 Q What's the attraction of a Costco gas station to
 24 its members, Costco members?
 25 A Well, the members are very loyal. They like

1 Costco to know that we're going to provide them with the
 2 highest quality product at the lowest possible price. They,
 3 any member that's shopped with us for a while knows that,
 4 when they come in, they know they're getting a good quality
 5 product and they know we're going to give them the best
 6 possible price. So gasoline is no different. It's a
 7 commodity that people need. Our stations are convenient.
 8 They're clean. And, again, they get a trusted value.
 9 Q Can you distinguish a Costco gas station from
 10 other gas stations?
 11 A Costco's gas stations are unique that in all
 12 transactions are done at the pump. There are no cash
 13 transactions. We don't sell anything but gasoline and
 14 people come in, they swipe their Costco cards, swipe their
 15 payment card. It's either done through the Costco American
 16 Express card, a debit card or a Costco gift card. There
 17 are, again, no cash transactions, so the process is very
 18 convenient and it's really quick.
 19 Q And does Costco have safety and environmental
 20 standards that are different than the other, than many other
 21 stations?
 22 A We do, in fact, we meet and exceed all of the
 23 Maryland state requirements. All of our gas stations are
 24 designed to the same standards, so we built the same gas
 25 station here as we do in seismic areas in California. So

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1 it's a little bit overkill in some spots. And then the one
2 thing we do that is not common is provide the arid permeator
3 on our tank vents and that, as David Sullivan will testify
4 to later, that means that the air coming out of our tank
5 vents is 98 percent pure.
6 Q And how does that compare to other stations?
7 A Well, most stations have what the state requires
8 as phase I and phase II venting, which state I is at the
9 tanker truck, when the tanker truck pulls up and fills up.
10 And stage II is at the pump nozzle where you're putting it
11 into your car. The stage II pumps a lot of air into our
12 underground tanks and those are allowed, or vent at any time
13 with no restrictions. Ours, we put the air permeator on it
14 which keeps the hydrocarbons from going out with the vented
15 air. So all the venting out of our tanks is air.
16 Q Mr. Grossman had asked and you briefly mentioned
17 some safety and environmental standards that Costco
18 employees, but I think it may be helpful to go into a little
19 bit more detail with respect to these and I would reference
20 Exhibit 86(e), which was submitted which is the operation
21 safety training manual. So I'm going to ask you several
22 questions, perhaps starting with the operation safety
23 training with respect to your attendants.
24 A Okay.
25 Q Can you please describe how, what experience they

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1 have, how they're qualified, what that means to Costco as a
2 gas station.
3 A All right. We are one of the few stations that
4 has attendants at the pumps. They are not behind the
5 counter accepting payments. They assist the members. In
6 fact, the attendant responsibilities are to assure member
7 safety, educate members the use of the equipment, assist
8 members and answer their questions, direct traffic, keep the
9 station very clean as it is mentioned in the manual and to
10 perform general maintenance.
11 Q Thank you. And then can you get into some detail
12 regarding the petroleum system design features and let me
13 first ask -- I believe you have some basic knowledge of this
14 system, is that correct?
15 A I have some basic knowledge of the system, that's
16 correct. We comply with, again, we comply with all the
17 state laws and the national laws for that matter as far as
18 all the tanks are double-walled tanks. The interstitial
19 space in between the tanks is filled in with a saline
20 solution. There are modders in the interstitial space on
21 the outside of the tank and on the inside of the tank. If a
22 leak occurs, we are notified and an alarm goes off if a 1/10
23 of a gallon leaks from our underground tank. And I believe
24 the safety department is 10 gallons, so we're far and above
25 the requirement as stated.

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1 The other side is part of our business model in
2 that, I'm sorry, the piping, all the piping to the tanks is
3 double-walled. The sumps are double-walled. The sumps are
4 also equipped with ancillary fire suppression systems in
5 case of an emergency. And then the hoses that we provide
6 are actual long hoses so we can fill a car from either side.
7 Q You mentioned the number of double-line pumps and
8 tanks.
9 A Uh-huh.
10 Q Do you have any knowledge on how that compares to
11 other gas stations?
12 A I don't, I do not, no.
13 Q Okay. That's, I know that's, I believe that is a
14 state requirement --
15 Q Okay.
16 A -- for the double-wall pipes and valves.
17 Q Do you have knowledge of Costco's leak detention
18 monitor system?
19 A I have very basic knowledge of it. I know it is a
20 linked system that is monitored. We do not have a
21 monitoring roof in this area. It is both monitored by, it
22 is, I'm sorry, it is monitored for inventory safety, but
23 it's also monitored, leak monitors are, will set off an
24 alarm and they will shut down the entire system if an alarm
25 goes off and the system cannot be turned back on until the

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1 leak or the monitor is resolved.
2 Q So this station would have that type of mechanism?
3 A Yes, it would.
4 Q Are there any special surface order management --
5 A The station is designed so that the drainage in the
6 station area drains toward one inlet over in the corner of
7 the station. That inlet is, goes into a oil/water
8 separator, which we do have the ability to shut that inlet
9 off from the rest of the system in case of a spill. There
10 are also rubber mats to cover the inlets. The gas station
11 area holds in excess of a tanker truck if there was to be
12 such a catastrophic accident so that it can be cleaned up as
13 a surface spill rather than getting into the drainage
14 system.
15 Q And then you -- is there anything else that you
16 would like to add about Costco's vapor recovery systems?
17 A Just what I stated earlier. The vapor recovery
18 system basically consists -- the most important part is the
19 air permeator. It's done for two reasons. One is a, it's
20 release, it helps release pure air. The other is it puts
21 the hydrocarbons back in the gas tanks where they belong and
22 it basically returns an equivalent of a tanker truck and
23 fuel per year to our gas underground tanks.
24 Q And this is a system that most other gas stations
25 do not have, is that right?

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1 A Most do not because it's an added cost and it's
2 not required by law.
3 MR. GROSSMAN: When you say most, most Costco
4 stations or most stations --
5 THE WITNESS: Most stations.
6 MR. GROSSMAN: -- in the country or most in
7 Maryland? What's the most --
8 THE WITNESS: The most, it is an added cost
9 decision. It's not required, so it's not a typical piece of
10 equipment on gas stations in the area. We have it on this
11 one. We've installed them on all the latest stations that
12 were built, so Lanham, Maryland on this one and then we're
13 going back and retrofitting stations as we see fit.
14 MR. GROSSMAN: Okay. Once again, when you say
15 that area, are you talking about Montgomery County,
16 Maryland?
17 THE WITNESS: My apologies, in Maryland.
18 MR. GROSSMAN: All right. Thank you.
19 BY MS. HARRIS:
20 Q Can you, I know you touched on this, but I want to
21 go back to the leak protection moderating system. I recall
22 when we were at a meeting at, one of the leak meetings that
23 we had gone to and you went into a fair amount of detail
24 about how that would work. I think it may be helpful given
25 the line of 20 questions that I keep referring to in your

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1 midst is that, to go into a bit more detail if you have that
2 knowledge. If not, we can refer to a different witness.
3 A I can go into a certain amount of detail, but we
4 can bring another witness in later on to --
5 Q Okay.
6 A -- go over it in more detail if you need. The
7 first line of defense, obviously, is where the gas goes into
8 the ground and is in the tanks. The tanks are double-
9 walled, non-corrosive tanks. In between the wall of the
10 interspatial space is filled with saline solution and that's
11 done for two reasons. One, is it helps us to detect, detect
12 to the gallon if there's a breach in the inner tank wall and
13 also if it leaves, if it exits the tank, we know that there
14 is a breach in the outer tank wall. So it enables us to get
15 into that. The tank space, the tank excavation is always
16 backfilled with pea gravel so that we have the option, if
17 need be, we can access that area rather quickly. Then all
18 the tank, the wall, the wall pipes leading from the tanks
19 are similar in nature. They have the same interspatial
20 space filled with saline solution for the same reason. And
21 then it goes into our double-walled sumps and from that
22 point it goes up to the pumps themselves.
23 Q And the leak detention, you noted that there's a
24 monitoring system. What is actually the activity -- from
25 where is it monitored?

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1 A It has -- the monitor -- it has a monitored alarm
2 system through a company that we use that will help, that
3 notifies us if there's an issue. Now the first thing that
4 happens, though, if one of these alarms goes off is it shuts
5 down the entire station.
6 Q It was noted that Costco, a gallon of gas at
7 Costco is a cleaner, safer gallon and you, is there anything
8 else you want to add with respect to that statement, as to
9 what differentiates Costco from other gas stations that
10 would make someone make that conclusion?
11 A The biggest differences that we have are trained
12 attendants on the site and those are our first line of
13 defense. They help make sure that people shut their engines
14 off, that people aren't smoking at the gas station and that
15 people are paying attention to what's going on. They're
16 also -- they're there to assist people if they need
17 assistance with the pumps. But they are absolutely our
18 first line of defense.
19 Q And is it correct then, in fact, some of the
20 opponents have come up to you at various community meetings
21 and then said, admittedly, Costco is the safest, cleanest
22 gas station I've seen?
23 A We've had that --
24 MR. SILVERMAN: I'd object.
25 MR. GROSSMAN: I hear an objection?

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1 MS. HARRIS: Yes.
2 MR. SILVERMAN: Yes.
3 MR. GROSSMAN: What's the basis for using that
4 piece of hearsay to --
5 MS. HARRIS: Just to reaffirm the --
6 MR. GROSSMAN: -- that you're introducing it to
7 prove the truth of what people supposedly said to the
8 witness, what's the basis for doing it?
9 MS. HARRIS: It was just an attempt to reaffirm
10 the factual statements that the witness had already made,
11 but --
12 MR. GROSSMAN: I will --
13 MS. HARRIS: Okay.
14 MR. GROSSMAN: -- sustain that objection.
15 BY MS. HARRIS:
16 Q Can you please describe the actual day-to-day
17 operations of the gas station?
18 A The first thing that happens is the trained
19 attendants get to the site and they check all the pumps. We
20 view, because of the world we live in today, they run almost
21 daily check to make sure that the card readers have not been
22 messed with, that anybody has placed something over the card
23 reader. They come in and make sure everything is clean,
24 make sure it's ready to go. They check inventories. And
25 then they start to open the gas station. It opens

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1 approximately 6:00 a.m. and the gas station typically runs
2 for about an hour after the warehouse closes, so all updates
3 that would be around 9:30, on weekends it would be about
4 7:00 p.m.

5 Q Does it open at 6:00 a.m. seven days a week?
6 A Open 6:00 a.m. seven days a week.

7 Q Please describe the deliveries.
8 A Deliveries are handled by both the truck driver
9 that comes in and the attendant. The deliveries cannot be
10 made unless there is a trained attendant on site. In fact,
11 the attendant has to unlock the tank. You can only do so
12 after checking the manifest on the deliveries.

13 And they do a couple of things. First, they make
14 sure that the tanks will accept the amount of delivery
15 that's being brought in and that it is the right type of
16 fuel going into the right tank. Deliveries take about 45
17 minutes. The truck comes in, pulls up. We have a special
18 area next to the tanks where he pulls up. He is not on the
19 line with the human traffic. The truck is offloaded and
20 then the truck goes away. It takes about 45 minutes to
21 offload the fuel. And during that time the truck is shut
22 down.

23 Q Are there certain days of the week that a delivery
24 would, that the deliveries occur?
25 A We pretty much have deliveries six days a week,

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1 Monday through Saturday. Occasionally we will have
2 deliveries on Sundays also. If we had really good sales on
3 Saturday or if there's an inclement weather event happening,
4 we will make sure the tanks are full.

5 Q And approximately how many, based on the
6 anticipated volume of this station, what are the anticipated
7 number of deliveries a day?
8 A It will be anywhere from one to five deliveries a
9 day.

10 Q Can you please explain from a member's standpoint
11 when the, when they pull into a station, the directional
12 traffic and how, how going through a Costco, the Costco gas
13 station will be, how a member would actually access the
14 station and work their way through to obtain the gas and
15 then exit the gas station?
16 A Well --
17 MR. GROSSMAN: Well, he answered that. About how
18 much longer do you anticipate your direct of this witness,
19 because I've been accused before of challenging the bladders
20 of participants and not given enough breaks for, in the
21 hearing, so --
22 MS. HARRIS: Well, if that's an issue, we may want
23 to take a break because it will -- how long have we been
24 going?
25 MR. GROSSMAN: It's 11:00, almost --

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1 MS. HARRIS: Probably another --
2 MR. GROSSMAN: -- 11:40, so --
3 MS. HARRIS: -- hour, 45 minutes --
4 MR. GROSSMAN: All right.
5 MS. HARRIS: -- or an hour.
6 MR. GROSSMAN: So let us, before you answer that,
7 let us take a mid-morning break and come back at 11:45.
8 That doesn't give you much time. That clock is a little
9 slow. Let's make it 11:50.
10 MS. HARRIS: Okay. Thank you.
11 (Recess)
12 MR. GROSSMAN: Mr. Brann, resume the stand please.
13 MR. BRANN: Can you see this?
14 MR. GROSSMAN: Yes, if you slant it a little bit
15 more? Thank you. All right. We're back on the record
16 again and, Ms. Harris, if you wouldn't mind repeating your
17 last question?
18 BY MS. HARRIS:
19 Q The question had to do -- the question is can you
20 please explain how a customer coming into the Costco gas
21 station, how, what their experience would be in terms of the
22 approach, where they would go, what the experience is
23 purchasing the gas and then exiting the station? And if you
24 need to refer to a diagram --
25 A The process would start, obviously --

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1 MR. GROSSMAN: We have our first malfunction.
2 THE WITNESS: Actually, that was my fault. The
3 process would start with the customer, with the member
4 entering from the main road on the south end of the site and
5 turning north into the gas station area. Dan, can we have
6 the one with the gas station plan on it please?
7 MR. DUKE: Do you want the overall or the --
8 THE WITNESS: That one is fine.
9 MR. GROSSMAN: I'd ask all the witnesses to make
10 sure they keep their voice up because the acoustics are not
11 great in here.
12 THE WITNESS: Okay. Is one of the marked exhibits
13 already?
14 MS. HARRIS: It is in the, it is an exhibit and if
15 you'll bear with me one moment, I'll tell you the number.
16 THE WITNESS: It's part of the civil engineer's
17 package. What is it?
18 MR. GROSSMAN: 14.
19 MS. HARRIS: But it was amended, so it's, I think
20 it's 56. Hold on. Bear with me. Or -- 54? I'm sorry. It
21 is, excuse me, it's 54 and what's the title of that one?
22 THE WITNESS: It says proposed special exception
23 plan.
24 BY MS. HARRIS:
25 Q Right. So it's 54(f) when you follow these --

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1 MR. GROSSMAN: F as in Frank?
2 MS. HARRIS: Yes.
3 THE WITNESS: So basically the member would enter
4 from the main road, from the southern edge of the main road,
5 they would enter either, they would enter, head to the
6 north. The traffic in a Costco gas station is one-way
7 traffic only.
8 MS. HARRIS: Okay.
9 THE WITNESS: Multiple people coming in from
10 multiple directions. So then enter at one spot at the
11 bottom, which is the southern end. They come up, pick the
12 line they want to get into, pull up to the pump. They swipe
13 their Costco card. They swipe their bank card and pump
14 their gas and I think, or Wes will testify to later, it
15 takes 2 1/2, 3 minutes from the purchase. And then they
16 pull up to the north and exit the gas station area and
17 either find a parking spot and go into Costco and shop or
18 they leave the mall site and go on wherever they may.
19 BY MS. HARRIS:
20 Q Thank you. I want to return for a moment to the
21 delivery. You mentioned that the deliveries occur six days
22 a week and can you please describe the fleet of trucks that
23 make these deliveries?
24 A The fleet of trucks that are utilized are all
25 clean diesel certified vehicles. The come in. We have not

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1 yet established a route that they would take, but they do
2 come in, pull up next to the gas station on the far western
3 side in the aisle way out here, outside the stacking area,
4 offload their fuel and they depart by heading to the north
5 and coming out of the parking area that way.
6 Q And for those, the, of use that are not in the
7 field, can you please explain what clean diesel means?
8 A Clean diesel means that the exhaust is to a point
9 that in a congested area the air coming out of the tailpipe
10 is cleaner than the air going into the intake.
11 Q And all of the deliveries made to the Costco gas
12 station are by trucks and have a -- are they certified clean
13 diesel or how --
14 A It is a --
15 Q -- what's the regulation?
16 A It is a, it is a -- it's actually a certification
17 you'll see on the side of the truck. It is a stamp that is,
18 certifies the truck is clean diesel, clean diesel certified.
19 Q So this is --
20 MR. GROSSMAN: Did I understand you correctly to
21 say that clean diesel certified means that the air coming
22 out of the exhaust is cleaner in a congested area than the
23 air going in?
24 THE WITNESS: That's what I've been told, yes,
25 sir.

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1 MS. SILVERMAN: I would object. The witness
2 indicated he doesn't know this of his own knowledge, so he
3 heard it from someone else.
4 MR. GROSSMAN: Well, to some extent we all gain
5 our knowledge from what somebody else tells us or we read or
6 that sort of thing, but so you said you were told that. Who
7 told you that?
8 THE WITNESS: Dr. Ken Chase from the Washington
9 Occupational Health --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- Association. He's our medical
12 expert.
13 MR. GROSSMAN: All right. I'll allow the
14 testimony subject to it being confirmed by Dr. Chase.
15 BY MS. HARRIS:
16 Q In your mind, is the fact that all deliveries are
17 made from the clean vehicle truck, is that part of Costco's
18 state-of-the-art approach to their gas stations?
19 A It is.
20 Q And a little -- immediately before the break you
21 testified, and I want to go back to this again because I
22 realize some of us have been living and breathing this for
23 three years, but others haven't been, you mentioned stage I
24 and stage II. Can you describe in a little bit more detail
25 what that, in fact, means?

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1 A Sure. The state of Maryland requires both stage I
2 and stage II venting requirements. Stage I is at the
3 delivery truck. That is when the truck dumps the fuel into
4 the tanks. The air that is in the tank is actually
5 displaced back into the tanker truck. Stage II is the
6 venting that occurs at the handle of the pump where you put
7 your gas in your car. That is actually taking air from that
8 area or some air back into the underground tank.
9 MR. GROSSMAN: That's that annoying little rubber
10 band --
11 THE WITNESS: That's the annoying little rubber
12 band, yes. Now newer cars, this is becoming less and less
13 important. In fact, some states no longer require stage II,
14 but because of this we suck a lot of air into the
15 underground gas tank and that's where our air permeator
16 comes in. It is, it's like a little refrigeration unit. It
17 basically cools the air to the point that the hydrocarbon is
18 recondensed and they flow back into the gas tank and then
19 clean air is taken out. And the air permeator is just what
20 you can see at the gas station.
21 BY MS. HARRIS:
22 Q So if I walked around Wheaton, for instance, I
23 would be able to see which gas stations have air permeators
24 and which did not?
25 A Yes. It is a surface use equipment.

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1 Q Thank you. One of the conditions of approval that
2 was recommended by staff was that one employee should be
3 directing traffic if the queuing of the vehicles were to
4 block the entrance from the ring road into the queuing area.
5 So can you please explain how from an operational standpoint
6 this would look?
7 A We would -- we typically have one associate or one
8 employee at the gas station in the morning and then as
9 volumes increase throughout the day, we'll have a second
10 employee out there. We would bring a third employee from
11 the warehouse and all of our gas station attendants carry
12 both a radio and a cordless phone so that they can be in
13 touch with the warehouse if at any given moment they would
14 call an employee out, come help direct traffic at the ring
15 road.
16 Q So that even, assuming that all of the queue lines
17 are within the special exception area, could it be possible
18 that you may have two attendants assisting as well?
19 A Correct.
20 Q Mr. Grossman had asked and I wanted to make sure
21 everyone, make sure you clarify this, what is the
22 anticipated, the actual anticipated gasoline consumption
23 annually for this site?
24 A Actual anticipated sales from our operations
25 department for return on investment calculations are 10

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1 million gallons a year. We utilize 12 million gallons a
2 year for our studies because the highest gas sales on the
3 east coast in our Sterling, Virginia, location were at 12
4 million gallons and that -- so we decided to do worse case
5 scenario when performing all of our environmental testing
6 studies. We wanted to have the absolute worse case that
7 could happen out here.
8 Q So in terms of internally at Costco for financial
9 purposes, it's assumed that this station will do 10 million
10 gallons?
11 A It's assumed we'll do 10 and as, you know, the
12 Beltsville station did 9 million last year. Columbia did 9
13 1/2 million. We expect this one will be around 10 million
14 gallons a year.
15 Q Thank you. Has Costco met with the community with
16 respect to this application?
17 A Many, many times, yes, we have. We have --
18 Q Thank you. It may be helpful to --
19 A Okay.
20 Q -- explain those meetings fairly generally since
21 there were numerous meetings?
22 A Okay. We met numerous times in conjunction with
23 the prior special exception application, the subject
24 application and a majority of the information relevant to
25 both applications. The only thing that changed on the new

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1 application was the location. Everything else stayed
2 identical to the existing. We met with the Latino Urban
3 Development Advisory Committee. We met with the Mid-County
4 Advisory Board, the Wheaton Urban District Advisory
5 Committee, the Wheaton Chamber of Commerce. We've met with
6 Kensington Heights Civic Association, the Stephen Knolls
7 School, at the Kenmont Swim Club in three separate meetings
8 and then we also met --
9 Q And just to clarify, those were all meetings with
10 Kensington Heights Civic Association?
11 A The Kensington Heights Civic Association.
12 Q That was just the venue where those meetings
13 occurred?
14 A I'm sorry?
15 Q That was just the -- those were just the venues?
16 A Those were the venues where the meetings occurred.
17 Q Okay.
18 A We met with Green Wheaton. We met with the
19 Wheaton Redevelopment Advisory Committee. We participated
20 in the Taste of Wheaton last year. We have met with the
21 Stephen Knolls school director. We've met with the Kemp
22 Mill Civic Association. We had two open house meetings
23 where we had all of our consultants, they used to be at
24 different tables, they were dubbed the science fair meetings
25 because it was set up similar to an 8th grade science fair.

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1 It enabled people to come in and meet one on one with our
2 consultants and discuss various topics with the consultants
3 and we found great success with that over a group meeting
4 where only a few people get to ask questions.
5 We had two of those meetings. We had a separate
6 meeting with Mr. Sullivan, our environmental expert, and Dr.
7 Cole where they sat down and discussed the parameters of the
8 studies and what should we use as an all in criteria. Mr.
9 Sullivan, as he will testify to later, has been on both
10 sides of the equation many times and has found great success
11 with that where if he meets with the opposition of the other
12 side's scientists and the scientists agree on a methodology,
13 it makes it much easier to come to a conclusion that both
14 parties can --
15 MS. ROSENFELD: Excuse me. I'm not sure I see the
16 relevance in this line of questioning.
17 MR. GROSSMAN: Ms. Harris, what's the relevance?
18 By this line of questioning, you mean questions that go to
19 who they met with?
20 MS. ROSENFELD: In part, who they met with, but
21 more particularly about Mr. Sullivan's success. I don't
22 know in what context or why it's germane to any of the
23 standards that are being discussed in this proceeding.
24 MS. HARRIS: It shows the -- I understand the
25 objection. It had to do with the comment made of the

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1 success of meeting with the opposition?
2 MS. ROSENFELD: I'm happy to stipulate that Mr.
3 Sullivan and Dr. Cole met with representatives of Kensington
4 Heights Civic Association, but unless there's some
5 relevancy, the outcome of those discussions to this
6 proceeding, I'm not sure we need to characterize any
7 further.
8 MS. HARRIS: We anticipate, in fact, we heard
9 during opening statement that there was some suggestion that
10 there was improper methodology that was used. So, in fact,
11 I think it's very relevant that Mr. Brann can explain those
12 meetings that occurred early on to establish that very
13 thing, the methodology by which the air quality would be
14 analyzed.
15 MS. ROSENFELD: Well, I think the methodology in
16 Mr. Sullivan's report speaks for itself and he can testify
17 as to what it is and how he arrived at those methodologies.
18 MR. GROSSMAN: I think it's a valid objection.
19 I'm going to give you some leeway because the nature of this
20 hearing, but it is true that the methodology itself is,
21 would be an issue which would be testified by an expert and
22 the outreach, I think, is a good thing in general for
23 applicants, but it's not technically something that I have
24 to opine on or make a finding on. So I'll give you some
25 leeway, but bear that in mind. We don't want to --

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1 MS. HARRIS: Certainly.
2 MR. GROSSMAN: -- this hearing to go on
3 indefinitely.
4 MS. HARRIS: No, you're -- I think we will all
5 agree on that statement.
6 BY MS. HARRIS:
7 Q Okay. The moving on. With respect to Park and
8 Planning Technical staff, did Costco meet with Park and
9 Planning technical staff?
10 A Yes, we met with them on several occasions,
11 usually at their request, to clarify information and/or
12 supplement information that they had in order for them to
13 make their decisions.
14 Q And the responses that were submitted to Park and
15 Planning staff, were they also the submissions made into the
16 record, into the record at the ZHE?
17 A Yes, they were.
18 Q Did you, did Costco consider other sites on the
19 Westfield Mall parcel when considering where to locate the
20 subject gas station?
21 A Well, the original site was in the southwest
22 corner of the ring road. The zoning text amendment that was
23 passed by the Council precluded us from using that because
24 we were within 300 feet of the swimming pool. The --
25 MR. GROSSMAN: What's the name of the swimming

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1 pool just for --
2 THE WITNESS: I'm sorry. I apologize. The
3 Kenmont Swim Club. The rest of the site is very limited
4 just by the nature of how malls work and the retail nature
5 of other know planning of the spaces and planning of parking
6 areas. And --
7 BY MS. HARRIS:
8 Q And by that, I think earlier you referenced that
9 associated with at least anchor leases, there's area
10 delineated on leases?
11 A There are areas of control. They call them areas
12 of control on this particular lease where that particular
13 tenant has absolute control over that area and what happens
14 to that area. Obviously, they don't control who parks
15 there, but they do have control over what happens in that
16 areas. And then the subsequent, the Sector Plan actually
17 took the areas of the mall outside the ring road along Veirs
18 Mill Road and changed that zone to a CR zone which would
19 make it much more difficult to build a gas station. In
20 addition, there is a park on Reedie Drive that the 300-foot
21 touches that property line over there which the only other
22 site over there was the Ourisman Chevrolet, the old Ourisman
23 building, that we would not be able to use that because of
24 that setback.
25 Q And is the proximity to the warehouse itself

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1 important in terms of the gas station operation?
2 A Absolutely and that goes back to the earlier
3 question of what would happen if we needed to get somebody
4 out there to help. The closer we are to the gas station,
5 the better that way if you need help with a gas station,
6 they can get an employee out there.
7 Q Thank you. When did the warehouse open?
8 A The warehouse opened April 10, 2013.
9 Q And is there, from your -- actually we didn't
10 establish this early on, but I assume you're involved in the
11 Costco gas, excuse me, Costco warehouses in terms of the
12 openings of the various stores throughout the east coast, is
13 that correct?
14 A That's typically the end of my job at Costco.
15 Once the warehouse opens, I'm off to another -- actually off
16 to another project long before that, but that's the last
17 event, that's correct.
18 Q So you have knowledge of the occurrences
19 associated with opening of the store?
20 A Correct.
21 Q In your experience, is there a surge of customers
22 that typically are experienced in connection with the store
23 opening?
24 A Yes, we'll experience a surge and in the very
25 beginning because we're new and everybody is happy to come

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1 visit and come see the new store. The surge will typically
2 dissipate by the end of the 90 days. We're pretty much at
3 our, what we consider our steady pace. The operations will
4 level off after about 90 days.

5 Q So do you believe if Mr. Guckert goes out and
6 performs traffic counts this coming weekend, is that going
7 to be reflective of the situation in 90 days?

8 A It will be close, but it will be a little bit
9 high. The counts will be a little bit high.

10 Q I want to take a moment if we could to review the
11 proposed conditions of the staff report. This was exhibit,
12 was submitted by planning staff as Exhibit 70 in the record.
13 And I'll, we'll go through these item-by-item. The first
14 one, number one, was no more than 12 million gallons per
15 year of gas can, may be sold. Is that acceptable to Costco?

16 A We'd prefer to not have limits, but we would live
17 with that.

18 MR. GROSSMAN: This is from page 3 of Exhibit 70?

19 MS. HARRIS: Yes.

20 BY MS. HARRIS:

21 Q And is it correct that you previously testified
22 that you anticipate 10 million gallons of gas to be sold at
23 this --

24 MR. GROSSMAN: Let me interrupt a second on that
25 in terms of volume of gas. You mentioned the 12 million

Page 111

1 gallons of gas sold per year was the largest amount in any
2 of your stations. What's the smallest amount in any of your
3 stations?

4 THE WITNESS: That's not something we care to keep
5 track of. Honestly, I don't know off the top of my head. I
6 know we typically do the numbers, I hear anywhere from 6 to
7 12 to we have stations on the west coast that do almost 20
8 million gallons a year.

9 MR. GROSSMAN: Okay. And what's the smallest
10 amount of gallons of gasoline sold per year that would be a
11 viable station for Costco for this location?

12 THE WITNESS: I'm not really sure I'm qualified to
13 answer that question. That would be something that the
14 operations guys would have to answer. It would be somewhere
15 in the 6 million gallon range I would assume. The gas
16 station does more than just sell gas. It also is, has an
17 additional service. It helps attract business for the
18 warehouse, so I'm not sure what the correct answer to that,
19 to the lowest number is.

20 MR. GROSSMAN: Okay. Thank you.

21 BY MS. HARRIS:

22 Q Actually I want to follow-up on something you just
23 said. So is it correct that if you had two identical
24 warehouses, one with a station, assume for a moment the
25 demographics and location were exactly the same, one with a

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1 station and one without a station, what would the impact be
2 and I don't expect you to give a quantifiable number, but
3 just generally describe.

4 A The general description I've received is for every
5 dollar spent at a gas station, there's an additional 30
6 cents spent in the warehouse. So it's, it is something that
7 does bring sales up in the warehouse itself.

8 Q Okay. Condition No. 2 was nothing other than
9 regular and premium, unleaded gasoline may be sold?

10 A That's fine. That's all we sell.

11 Q The proposed gas station is limited to 16 fueling
12 stations consisting of four islands and four gas dispenser
13 hoses each?

14 A We're okay with that one.

15 Q Hours of operation, 6:00 a.m. to 9:30, Monday
16 through Friday, and 6:00 a.m. to 7:00 on Saturday and
17 Sunday?

18 A That's okay.

19 MR. GROSSMAN: Can you keep your voice up
20 because --

21 THE WITNESS: I apologize. Yes, that's okay.

22 BY MS. HARRIS:

23 Q The number of onsite employees is limited to two
24 per shift?

25 A We didn't really understand that one because it, I

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1 think that may have been a misprint by the planning staff
2 that they wanted it to have a minimum of two, but we would
3 not like that because we want to be able to have somebody
4 out there to help direct the traffic if needed as they go.

5 Q And, in fact, is it correct that the Planning
6 Board noted that discrepancy and suggested that that number
7 being increased to three to provide that flexibility?

8 A Yes, it is.

9 Q The lights will be turned off no later than 9:30
10 p.m., Monday through Friday, and 7:00 p.m., Saturday and
11 Sunday, is that acceptable?

12 A It's acceptable.

13 Q So just to clarify that, it says with the
14 exception of low-level security lighting?

15 A That's correct.

16 Q Okay. No more than five fuel deliveries will
17 occur per day, Monday through Friday, to coincide with the
18 retail store operations. Delivery vehicles must not idle
19 and must be turned off during the offloading of fuel.

20 A We have no problem with --

21 Q That's a multi-part question.

22 A -- the vehicles being turned off. That is
23 mandatory. That is part of our policy. But as far as
24 limiting the number of deliveries a day, that, I don't
25 really understand why they would want to do that. We also

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1 don't think it's a fair restriction because -- and certain
2 times we may have more than five one day or in the event of
3 a weather event such as Hurricane Sandy that came up the
4 east coast, we made sure the tanks were full and FEMA
5 actually utilized Costco as a center for getting their fuel
6 and the water and other things that they needed. So we try
7 to make sure the tanks are full. And we don't want to be
8 limited on number of deliveries a day because of things like
9 that.

10 Q What is it that's different about a Costco station
11 that would make it attractive during a Sandy, hurricane
12 event versus other stations?

13 A All the stations are designed -- I can't speak to
14 other stations. I can say that Costco, all of our stations
15 are designed to have generator plug-ins so that all we have
16 to do is pull a generator up next to the station, plug it in
17 and turn it on and we're good to go. And during Hurricane
18 Sandy, that was, we were some of the few stations that were
19 open in the area and had the capacity to handle what was
20 needed.

21 Q Thank you.

22 MR. GROSSMAN: If you did have a limit on the
23 number of deliveries, what would be a fair limit in your
24 mind?

25 MR. GROSSMAN: A fair limit in my mind would

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1 probably be seven deliveries a day.

2 BY MS. HARRIS:

3 Q And are, in general, you noted that Sunday
4 deliveries do not occur outside in an unusual way, is that
5 correct?

6 A That's correct.

7 Q But Saturday deliveries?

8 A Saturday deliveries do occur. Saturday is our
9 peak sales day, so we will have deliveries on Saturdays.

10 Q Actually I want to go back to something which I
11 failed to ask and I know the other witnesses will get this
12 in more detail, but just generally can you explain when
13 Costco would anticipate the peak hours for use of the gas
14 station to occur?

15 A Peak gas station hours are usually late afternoon
16 or early evening. Our highest sales day by far is Saturday,
17 but the peak generally occurs sometime between 3:00 and 6:00
18 p.m.

19 Q Which coincides with peak hour rush hour?

20 A Peak --

21 Q Is that what's happening?

22 A Peak, that's correct.

23 Q The applicant must provide no idling signs
24 adjacent to the area where the delivery trucks unload fuel.

25 A That's fine, acceptable.

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1 Q The applicant must provide pedestrian access to
2 the planned walking area on the adjacent property, 2609
3 McComas Avenue, which is being developed by the preliminary
4 plan No. 120110170, Kensington Heights?

5 A That is an issue for Westfield. We don't control
6 that property and we will work with Westfield. I believe we
7 don't control that and have no say over what happens on that
8 piece of property.

9 Q Before this special exception takes effect, the
10 applicant must submit a landscape plan with planting
11 installation details to planning department staff for
12 approval and entry into the record?

13 A Okay.

14 Q Before this special exception takes effect, the
15 applicant must submit detailed installation and construction
16 plans for the proposed green wall to Planning Board staff
17 for approval and entry into the record?

18 A Okay.

19 Q The applicant must provide a raised pedestrian
20 crosswalk from the southern edge of the mall ring road near
21 Mount McComas towards the loading docks of the Costco
22 warehouse?

23 A We're okay with that but, again, that's a
24 Westfield issue that we would be willing to work with them
25 on that.

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1 Q The applicant must provide for the record an
2 updated Exhibit T, quote, impact on nearby property values,
3 quote, to correctly state the distances between the nearest
4 houses and the special exception area and remove the
5 reference to the site being, quote, located approximately
6 same, end quote, as the Montgomery Ward automobile service
7 station?

8 A We would take care of that and that was also one
9 of Mr. Grossman's questions, I believe, is the exact
10 distance. It's -- we will take care of that.

11 Q The applicant must provide adequate traffic
12 control measures in cooperation with the mall that include,
13 but are not limited to, directional arrows and signage to
14 provide safe passage to and through the special exceptions
15 site?

16 A Absolutely.

17 Q And then the final recommended condition was the
18 applicant must have at least one employee directing traffic
19 if the queuing vehicles start to block the entrance from the
20 ring road into the queuing area?

21 A We've agreed to that.

22 MR. GROSSMAN: Let me ask you this. If the
23 queuing were to extend into the ring road, would you
24 employee then waive people off and say they could not jump
25 into the queue?

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1 THE WITNESS: Well, Mr. Guckert will testify to
2 that, or track in here to that in much more detail. The
3 studies we've done that would occur very rarely, if at all.
4 But in that case they would just try to help people queue in
5 a more orderly fashion so that we can get more cars in the
6 queue area.
7 MR. GROSSMAN: Well, what specifically is the --
8 THE WITNESS: If it --
9 MR. GROSSMAN: -- answer to my question?
10 THE WITNESS: Oh, I'm sorry. I apologize. Yes,
11 they would try to waive them off and ask them to come back
12 later.
13 MR. GROSSMAN: All right.
14 BY MS. HARRIS:
15 Q Does Costco -- that completes the list of
16 conditions. Just a few remaining questions. One is does
17 Costco ever operate a gas station without a warehouse?
18 A No.
19 Q So it's fair to say that the Costco station will
20 only exist if the warehouse exists?
21 A That's correct. And, in fact, we've relocated
22 five stations with relocated warehouses.
23 Q Thank you. Just one moment. Do you have anything
24 else to add with respect to your testimony?
25 MR. GROSSMAN: Not my favorite type of question,

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1 but we'll let you get away with it.
2 MS. HARRIS: It's a little open-ended?
3 THE WITNESS: I mean this has been a fairly
4 exhaustive process. I mean we have eight, seven more days
5 to go. Of the 368 gas stations that Costco has constructed,
6 this one has been the most thoroughly studied of any of
7 them. I've shared a great deal of information with my
8 colleagues as far as the information that we've collected.
9 Costco has been completely transparent through this whole
10 process. We shared every piece of data that we collected,
11 every study, every report with the opposition and we
12 recognize that this is a very emotionally charged case. The
13 facts are clear, but looking -- and we're looking forward to
14 presenting all the facts on this proceeding.
15 Q Thank you.
16 MS. HARRIS: No further questions.
17 MR. GROSSMAN: All right. We'll start cross-
18 examination with Ms. Rosenfeld, unless you, the opposition
19 has worked out a different process that you would prefer to
20 proceed on this?
21 MS. ROSENFELD: No. Thank you. We're --
22 MR. GROSSMAN: All right.
23 MS. ROSENFELD: -- happy to -- Mr. Hearing
24 Examiner, do you mind if we take a lunch break before we
25 start our cross-examination? Is it about that time?

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1 MR. GROSSMAN: I guess we could do that. You
2 know, it occurs to me also that I did not poll the audience
3 as I ordinarily do, I was so intent on asking my 20
4 questions, as to whether or not there were people in the
5 audience who wished to, in addition to the people who have
6 already identified themselves as part of the opposition,
7 whether people in the audience who are not to be called by
8 any of the parties who have identified themselves, the
9 organized parties, the applicant and the organizations, who
10 wish to be heard, number one, in favor of the station and
11 wish to be put on the list? I see no hands here.
12 And also to ask if there are any other people in
13 the audience who are not to be called by the parties who
14 have been identified who wish to be heard in opposition?
15 Ms. Sheard? Okay.
16 MS. SHEARD: Hearing Examiner Grossman, my name is
17 Virginia Sheard and I had registered with the office as a
18 person of interest and to be considered by the -- I see my
19 name is not on the list, unless I'm mis-reading something.
20 MR. GROSSMAN: Let me make sure that -- and if we
21 forget you because we have so much paper floating around
22 here, I'm sure you won't be bashful and you will speak up?
23 MS. SHEARD: No, I would like an opportunity at
24 the appropriate time to make a statement as an individual.
25 MR. GROSSMAN: Okay. Let me make a note of that.

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1 And did I see another hand too? Yes, sir?
2 MR. CHARMAN: Thank you, Mr. Grossman. My name is
3 Clifford Sharman and I have not entered any kind of notice
4 of appearance or made any statements in writing. I would
5 like to ask some questions and I would like to state in
6 opposition to the gas station.
7 MR. GROSSMAN: All right. Mr. Sharman, how do you
8 spell your last name?
9 MR. CHARMAN: S-H-A-R-M-A-N.
10 MR. GROSSMAN: Okay. And you said you want to ask
11 this witness some questions?
12 MR. SHARMAN: Uh-huh.
13 MR. GROSSMAN: Okay. I'd ask you to follow the
14 procedure, I don't know if you were here at the very
15 beginning. That is, talk to counsel during the break for
16 the opposition and see if -- just because we have so many
17 people for cross-examination purposes -- ask if any of your
18 questions can be handled through counsel's questions. If
19 that becomes a big problem, then since you're the only who
20 has asked, we'll let you do that.
21 MR. SHARMAN: Thank you.
22 MR. GROSSMAN: Okay. And do you also want to be
23 heard as a witness did you say?
24 MR. SHARMAN: No, just --
25 MR. GROSSMAN: No? Okay.

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1 MR. SHARMAN: -- just questions.

2 MR. GROSSMAN: Okay. Yes, make sure you -- you

3 know, raise your hand if for some reason the cross-

4 examination finishes and your issue has not been handled.

5 Okay. All right. I think that handles that. I guess if

6 there's no objection, then we can break for lunch. Let's

7 see, it's 12:27 and ordinarily I break later, but you're

8 going to have trouble perhaps with that cafeteria and them

9 running out of food, so I'll give you all a break and we'll

10 say, we'll come back at 1:15, does that sound good, all

11 right, for cross-examination.

12 MS. HARRIS: Thank you.

13 MR. GROSSMAN: We're recessed until 1:15.

14 (Recess)

15 MR. GROSSMAN: Cross-examination of Mr. Brann.

16 Ms. Rosenfeld, are you ready to proceed?

17 MS. ROSENFELD: Yes, sir, thank you.

18 MR. GROSSMAN: You're welcome.

19 MS. ROSENFELD: Maybe I spoke too soon.

20 CROSS-EXAMINATION

21 BY MS. ROSENFELD:

22 Q Mr. Brann, in your testimony you discussed another

23 station that had been approved, I believe you said, in

24 Woodmont?

25 A Woodmore Towne Center. That's in Lanham,

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1 Maryland.

2 Q In Lanham, Maryland? And do you know if that gas

3 station went through any kind of special exception or due

4 process as part of its approval?

5 A It did not. That gas station was by right per the

6 zoning of that shopping center.

7 Q And so how do you consider that approval to be at

8 all relevant to today's proceeding?

9 A It is an example of another community that has

10 approved gas in an area that has residential and that's, in

11 fact, a mixed use project. There are several buildings that

12 have not been built yet that are slated for mixed use as

13 part of retail, residential and business.

14 Q And are the zoning standards that govern that

15 approval process the same as the zoning standards that are

16 under review here for this application?

17 A Not running the zoning standard anywhere, I have

18 not run into for this application.

19 Q So notwithstanding the fact that that station has

20 been approved, it was approved under different standards, is

21 that correct?

22 A That's correct. By right of zoning, as I said.

23 Q Okay. So you testified earlier that there were

24 specific number of spaces in the surface parking lot that

25 are allocated to Costco, is that correct?

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1 A That's correct.

2 Q And can you tell me again what that number is?

3 A I believe a couple things that I'm talking about,

4 there's 389 spaces.

5 Q 389? And if you don't mind, if you could go to

6 Exhibit, I believe it's 109, 100? The aerial photograph.

7 A Correct.

8 Q Can you --

9 MR. GROSSMAN: It's 101.

10 BY MS. ROSENFELD:

11 Q Exhibit No. 101. Would you --

12 A Yes.

13 Q -- please show me where on that graphing those 389

14 spaces are located?

15 A Those spaces are, basically they're, they are the

16 eastern side of this north-south line. The walkway here,

17 the south walkway that comes east of that and then

18 everything south of the east-west roadway here, everything

19 south of that is considered part of those 389 spaces.

20 Q And can you show me where the gas station would be

21 located, where it would be superimposed over those existing

22 spaces?

23 A It would be in this area right here. It would be

24 the southern central section of the photograph right here.

25 Q And exactly how many spaces will be dislocated as

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1 a result of the gas station?

2 A Off the top of my head, the station, the pieces

3 would be relocated to this area to the western half, I

4 believe, and it's around 80 spaces. I don't have the number

5 off the top of my head, but it's approximately 80 parking

6 spaces.

7 Q And do you know if any of your witnesses have that

8 exact number?

9 A Wes Guckert will have that number for you.

10 Q Okay. And on the flipside, how, where will the

11 new spaces be located?

12 A The new spaces will be located here in the

13 southwestern quadrant where this grass area is.

14 Q And --

15 A That will be paved over and it will be striped out

16 as parking.

17 Q Okay. And how many replacement spaces will be

18 provided?

19 A Approximately equivalent number of spaces. It

20 would be -- it's approximate equivalent number of spaces.

21 Q Okay. And will Mr. Guckert have that number?

22 A Either Mr. Guckert or my civil engineer, Dan Duke,

23 will have the number, yes, that's correct.

24 Q Also on that graphic while you're standing there,

25 in the green, grassy area where you said the new parking

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1 will be shown, would be located, there appears to be some
2 sort of obstruction in the middle.
3 A There is a, there is an existing landscape
4 island --
5 Q Uh-huh.
6 A -- that runs north and south along the eastern
7 edge of the grassed area. That was part of the original gas
8 station design. That will be removed and that will be the,
9 striped out as regular parking as well as the islands that
10 are in the southern ends of these parking lanes on the
11 western side. Those islands will be removed and it will be
12 very similar to the parking lot striping you'll see on this
13 middle, the middle line right here.
14 Q Okay. And if you look sort of in the center of
15 the grassy area, it looks like there is some sort of a
16 plastic or other kind of structured vertical coming out of
17 the ground --
18 A This piece?
19 Q -- no, go left.
20 A Oh, here?
21 Q No, inside the middle. Right in the middle of the
22 green area.
23 A Okay.
24 Q Sort of where the ground area is.
25 A Oh, there's a vertical pipe right there that is a

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1 connection to a storm sewer park. That will be capped off
2 as part of the construction.
3 Q And is there anything else constructed underground
4 at that location?
5 A No, the underground retention system is built in
6 the northern part of this parking lot right here, so there's
7 nothing underground in this area right here.
8 MR. GROSSMAN: In the northern part of the parking
9 lot?
10 THE WITNESS: I'm sorry, just --
11 MR. GROSSMAN: Under the --
12 THE WITNESS: Just under that east-west, that's
13 okay.
14 MR. GROSSMAN: That divides the parking lot?
15 THE WITNESS: Yes, correct. And while we're at
16 it, where is the entrance to the warehouse, the Costco
17 warehouse?
18 THE WITNESS: The entrance to the warehouse is
19 actually inside the mall. It's inside the mall, so --
20 MR. GROSSMAN: There's no outside entrance?
21 THE WITNESS: There is no outside entrance.
22 MR. GROSSMAN: Okay. While Ms. Rosenfeld is
23 looking for her next question, where is the garage that you
24 were referring to that the second floor has used?
25 THE WITNESS: It's on the far eastern side of the

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1 photo over there and you'd see two connections to that
2 garage. There's one on the northern piece and then a much
3 wider one just a little bit south of that.
4 MR. GROSSMAN: Am I pointing to it or --
5 THE WITNESS: Right here.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: That's --
8 MR. GROSSMAN: That's the entrance to it?
9 THE WITNESS: And that's a ramp that goes directly
10 from our floor into the second level apartment building.
11 MR. GROSSMAN: Okay. So only a portion of that
12 garage is depicted on this?
13 THE WITNESS: That's correct, a very small portion
14 of the garage is there.
15 MR. GROSSMAN: Okay. And it's the extreme eastern
16 side --
17 THE WITNESS: Yeah.
18 MR. GROSSMAN: -- of the --
19 THE WITNESS: We do have an overall aerial
20 photograph that shows the whole thing if you'd like me to
21 put that up.
22 MR. GROSSMAN: Okay. Well, we can't because right
23 now --
24 THE WITNESS: Okay.
25 MR. GROSSMAN: -- we'll let Ms. Rosenfeld continue

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1 her cross-examination.
2 BY MS. ROSENFELD:
3 Q You had testified that the proposed station is 280
4 feet from the nearest structure?
5 A I'm sorry, 280 feet?
6 Q I believe -- my, okay. I'll just ask a question.
7 How close is the nearest structure to the proposed gas
8 station?
9 A The nearest structure to the proposed gas station
10 will be the Costco warehouse, approximately 140 feet from
11 the edge of the gas station, the line of the special
12 exception area.
13 Q Okay. And to the nearest residential?
14 A The nearest residential would be directly to the
15 south. I believe that distance is around 135 to 140 feet to
16 the property line, but we're going to verify that distance
17 as part of Mr. Grossman's questions.
18 Q And do you know the distance from the loading dock
19 to the nearest station?
20 A To the gas station?
21 Q To, I'm sorry, to the nearest home?
22 A Off the top of my head, from the outside edge of
23 the wall, which is this southern piece you see right here,
24 the ring road is approximately 80 feet wide and then the
25 forested area at this point is about 50 feet wide, so about

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1 130 feet, 140 feet to the property line. That's not the
2 nearest structure, that's to the property line.
3 MR. GROSSMAN: And the point you're at the
4 southwestern corner?
5 THE WITNESS: The southwestern corner of the
6 Costco building.
7 MR. GROSSMAN: Right. I'm just trying to describe
8 it so that the record --
9 THE WITNESS: I understand.
10 MR. GROSSMAN: -- reflects what you've testified.
11 MS. ROSENFELD:
12 Q You had testified that there, gas deliveries would
13 occur Monday through Friday primarily and gas deliveries on
14 Saturday? And you said there were unusual circumstances,
15 there would be deliveries on Sunday?
16 A Right.
17 Q Can you describe what an unusual circumstance
18 would be?
19 A An unusual circumstance would be, as I said
20 earlier, an inclement weather event that was approaching
21 where we would, that we had some reason to believe we
22 wouldn't be able to make deliveries on a following Monday or
23 if there was a holiday preceding on the following Monday, we
24 would probably make deliveries on that Sunday.
25 Q And would have deliveries just because you ran out

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1 of gas on Sunday?
2 A If we were getting to that point, yes, we try to
3 keep the tanks at our pumps so that does not occur.
4 Q So running out of gas alone would justify
5 delivery?
6 A Keeping gas there, yes, that's correct.
7 Q And do you have a sense for how frequently that
8 would happen?
9 A No, I do not.
10 Q Do you have deliveries on Sundays at other gas
11 stations?
12 A Yes, we do.
13 Q And how often does that happen?
14 A It depends on the station and the volume and the
15 events that are drawing. We typically do not deliver on
16 Sundays, but it does happen.
17 MR. GROSSMAN: Presumably, if the recommendation
18 of the technical staff were followed as far as conditions,
19 it wouldn't happen at all in this station?
20 THE WITNESS: That's correct.
21 MR. GROSSMAN: They said Monday through Friday.
22 Okay.
23 BY MS. ROSENFELD:
24 Q When, so was it your testimony earlier that the
25 staff condition that prohibits deliveries on Sundays or does

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1 not allow for deliveries on Sundays is acceptable to you?
2 A It's not preferred, but it's one we could probably
3 live with.
4 MR. GROSSMAN: It also does not permit deliveries
5 on Saturday according to that.
6 MS. ROSENFELD: That's the one.
7 THE WITNESS: And that one we do not agree with at
8 all.
9 BY MS. ROSENFELD:
10 Q I'm not sure your testimony earlier was clear on
11 that point.
12 MR. GROSSMAN: But, presumably, you would live
13 with it if you had to, is that correct?
14 THE WITNESS: If we had to, we would live with it,
15 we would prefer not to as a standard.
16 MR. GROSSMAN: Right.
17 BY MS. ROSENFELD:
18 Q Would you please describe again how the flow of
19 traffic entering the gas station and how they would flow
20 through the property?
21 A Okay.
22 Q And if you would, yes --
23 A I'm going to use this exhibit that actually has
24 the gas station drawn on it.
25 MR. GROSSMAN: What was the number of that exhibit

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1 again?
2 THE WITNESS: It's -- 57(e)?
3 MR. GROSSMAN: What's the number of that exhibit?
4 MS. HARRIS: 54(f). It was F, 54(f).
5 MR. SILVERMAN: 54(f).
6 THE WITNESS: Okay.
7 MS. HARRIS: Can you write --
8 THE WITNESS: Yes.
9 MS. HARRIS: Thanks.
10 THE WITNESS: Exhibit 54(f). Okay. Cars would
11 approach from the ring road. They will turn north to go
12 into the gas station. The gas station has a one-way access.
13 They're allowed one way in and one way out. They will
14 travel north to the gas pumps. They will get their gas and
15 they will proceed north out of the station. They can turn
16 left or right and come back down to the ring road or they
17 can proceed straight ahead into the parking area.
18 BY MS. ROSENFELD:
19 Q And if there's queuing beyond the perimeter of the
20 gas station itself onto the ring road, where would that
21 traffic queue?
22 A On the ring road.
23 Q On the ring road?
24 A Correct.
25 Q And what provisions do you have for queuing

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1 outside of the gas station?
2 A The provision that the planning staff asked us to
3 abide by was to have an employee out there to help direct
4 traffic to keep the queuing, to keep traffic from stacking
5 up on the roadway. They would prefer that we wave members
6 on. We studied it exhaustively through our traffic
7 consultant and we feel that if this occurs, it would only be
8 once or twice a day there would be peak periods at all.
9 Q And where would you wave them off to?
10 A Well, they would be asked to just proceed into the
11 parking area and get gas at a later time.
12 Q And do, what percentage of your members come to
13 buy gas only and not gas and groceries, other products?
14 A Members tend to visit, just as an operational
15 aspect, members visit to buy gas in order to shop the
16 warehouse. They'll visit every seven days to buy gas and
17 every approximately 10 to 14 days to shop the warehouse.
18 Approximately 19 percent of our members buy gas from us.
19 Q So they would make, approximately 19 percent of
20 your members would come to the station to buy only gas?
21 A Just to buy gas, correct.
22 Q And you would have them divert and park elsewhere
23 until room opened --
24 A If that were necessary.
25 Q -- in queue.

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1 A Correct.
2 Q Do you have a particular location allocated to
3 where they would --
4 A We don't. We have the surface parking area and at
5 worse the studies that we did, this would occur for one to
6 two minutes at a time. So it would not be a large number of
7 cars. And with the four island station, we fully anticipate
8 the queue to move smoothly and we don't anticipate the back-
9 ups.
10 Q Could you show me the route that the fuel trucks
11 would take?
12 A Sure.
13 MR. GROSSMAN: Before we get to that one, one
14 second. If you do waive somebody off on the ring road and
15 they decide to go into the parking lot, would they then have
16 to go back out onto the ring road to access the gas station?
17 THE WITNESS: That's correct. The only access is
18 from the ring road.
19 MR. GROSSMAN: Okay. Thank you.
20 BY MS. ROSENFELD:
21 Q Just to follow up on that. They, could they take
22 the ring road in either direction to --
23 A They could take the ring road in either direction,
24 correct. Correct. And then the gas truck comes from the
25 ring road and turns north on the west, far west side of the

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1 station outside of the queuing area and parks right in this
2 area right here where the gas tanks will be, shuts down his
3 vehicle, offloads the fuel and then when he's done, he pulls
4 straight north and he will come out to the west and then he
5 has the option to turn either left or right and head north
6 or south of the ring road.
7 Q I see that the western boundary of the special
8 exception site is not exactly perpendicular. It's a little
9 bit skewed or it appears that way to me. Let me ask the
10 question instead.
11 A Okay.
12 Q Does the western boundary of the special exception
13 run exactly parallel to the drive aisle or the parking lot?
14 A It --
15 Q The parking lot?
16 A You're correct. It is slightly skewed as it comes
17 down in this direction to include tank enclosure and then it
18 veers off to the west as you get towards the southern end
19 because it has to include the drainage structures that are
20 required for the gas station drainage.
21 Q So when a fuel tanker is fueling, are they parked
22 within some or all of the drive aisle?
23 A They are parked actually, they will be able to
24 pull off here where, so that they can be outside. They will
25 be partially within the drive aisle, yes, to answer your

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1 question.
2 Q And how do you manage traffic during the time that
3 the fueling occurs within that drive aisle?
4 A We don't try to manage the traffic in that area.
5 It's, the truck is a static, stationary object, so we expect
6 people to be able to get around the truck. There's plenty
7 of room in the drive aisle to be able navigate the truck.
8 MS. HARRIS: I want to object to this line of
9 questioning. It's beyond the scope of what the witness
10 testified to on direct and, in fact, the civil engineer is
11 going to be handling those questions.
12 MR. GROSSMAN: It's a bit beyond the scope, but by
13 the same token I'll give her leeway to ask, but it might
14 make sense to ask the expert they have that can testify
15 directly about these kinds of specifics. So we'll leave
16 that to you, Ms. Rosenfeld, but that might be more sensible.
17 BY MS. ROSENFELD:
18 Q With respect to operational, the operational
19 impact of this, then it's your testimony then the tanker
20 will park where it parks and people will deal with it?
21 MS. HARRIS: Objection.
22 MR. GROSSMAN: I think that's actually a fair
23 characterization of his testimony, but he can answer if it's
24 not.
25 THE WITNESS: People will be affected to see the

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1 truck and to drive around the truck. It will be partially
2 in the drive aisle.
3 BY MS. ROSENFELD:
4 Q And when the driver exits the vehicle to actually
5 conduct the fueling, I assume he exits from the driver
6 side --
7 A Correct.
8 Q -- of the truck?
9 A And the fuel drop is on the passenger side, on the
10 inside. That would be on the passenger side of the truck.
11 Q And it was your testimony that there were, it
12 would take approximately 45 minutes?
13 A 40 to 45 minutes to offload the fuel, that's
14 correct.
15 Q And you could have as many as seven trucks in a
16 day?
17 A We could. The testimony was one to five, and Mr.
18 Grossman asked about a maximum, so --
19 Q In terms of time, how much overall time in the day
20 would that be?
21 A It depends on the number of trucks. If it's one,
22 it's 45 minutes. If it's five, it's five times that.
23 Q Do you want to do the math?
24 A Not in my head, no.
25 Q You can take your time. I'd like to know how many

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1 hours a day that will be, assuming five trucks.
2 A It's going to be just under, it's going to be just
3 under four hours.
4 Q Okay. You testified about the fact that the
5 assistants who work at the fueling station are trained in
6 safety measures.
7 A That's correct.
8 Q Could you please describe to me what kind of
9 training that involves, education, classes required?
10 A We will have a gas expert that can testify to
11 that, but I can tell you the state of Maryland has certain
12 requirements they have to adhere to that we more than pass
13 that and Costco has its own training procedures that we put
14 our employees through. We require that there be a trained
15 gas attendant at the gas station at all times and they are
16 trained in all aspects of the operation of the equipment,
17 how to help the members with their payments, and how to take
18 care of emergencies if they occur and what the procedures on
19 those emergencies are.
20 Q And are you the one who would talk about what
21 Costco's own training procedures are or would that be
22 somebody else?
23 A We'll have an expert here that will talk about
24 that.
25 Q And just so I know, which expert would it be?

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1 A We're going to bring, his name is Tim Hurlocker
2 and he is with Costco gas operations.
3 Q Now, Mr., Mr. Grossman, if I may, I'm not sure I
4 recognize that name.
5 MR. GROSSMAN: He's not on the witness list.
6 MS. ROSENFELD: Ms. Harris's list --
7 MS. HARRIS: No, he didn't -- it's not on the
8 witness list and as our prehearing statement indicated, we
9 reserve the right to call additional witnesses depending on
10 what the nature of the concerns expressed. And it seems
11 clear that while Mr. Brann can answer some of these
12 questions, clearly they're within the knowledge and
13 experience of their expert in gas operations, which is Mr.
14 Hurlocker.
15 MS. ROSENFELD: Will Mr. Hurlocker be bringing any
16 Costco manuals or other documents or written materials in
17 support of his testimony?
18 MS. HARRIS: Not that, not that we have
19 anticipated. We have already submitted some information
20 into the record already, but -- so not that we anticipate.
21 MR. GROSSMAN: I might say that I know that you
22 did, quote, reserve the right to call additional witnesses.
23 Nobody really has a right to reserve that right if you have
24 to name witnesses when you file your prehearing statement.
25 On the other hand, I see no benefit to not allow him, a

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1 witness with more information on the point that's been
2 questioned by counsel for the opposition. So I certainly
3 will welcome Mr. Hurlocker if he is the witness who would
4 have the answers to --
5 MS. HARRIS: Yes. And then I mean --
6 MR. GROSSMAN: -- the opposition's question.
7 MS. HARRIS: -- there's another expert as well and
8 Mr. Brann can give this person's credentials, it's Mr. Dan
9 Goalwin.
10 THE WITNESS: Yes, Dan Goalwin is with Parhouse
11 and Consulting. This is a company that has designed all of
12 our gas stations for us and they're very intimately familiar
13 with our safety programs and training programs and things of
14 that nature.
15 MR. GROSSMAN: I'm sorry, what's the -- is it Dan?
16 THE WITNESS: Dan Goalwin, G-O-A-L-W-I-N.
17 MR. GROSSMAN: All right. Now when you use the
18 term expert, you're not talking about -- you're talking
19 about somebody who has an extensive factual knowledge of
20 your procedures as opposed to a hired expert, is that --
21 THE WITNESS: Right.
22 MR. GROSSMAN: -- what you're talking about?
23 Okay.
24 THE WITNESS: That's correct.
25 MR. GROSSMAN: Because there are certain concerns

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1 we have calling new expert witnesses in the classical sense
2 if you use the term here without having a prior opportunity
3 for the other side to review the summary of the expert's
4 statement, but that's apparently not what you're talking
5 about? They're just an expert in the sense of knowledgeable
6 about the way your operation functions?
7 THE WITNESS: Right.
8 MR. GROSSMAN: Okay.
9 MR. SILVERMAN: Mr. Grossman, I feel a little bit
10 prejudiced here. We're not prepared for this and yet I, the
11 witness said this is a main line of defense and I don't
12 understand why they didn't let us know what these people,
13 that these people were going to testify and what they're
14 going to say or any documents that --
15 MR. GROSSMAN: Well, I don't see how it could
16 prejudice you, Mr. Silverman, since what these witnesses --
17 these are fact witnesses that will answer questions that
18 were presumably going to be answered by this witness. So it
19 was just as, they have just more information which your
20 cross-examination for KHCA has asked. So I don't see how
21 that's a prejudice.
22 MR. SILVERMAN: Thank you.
23 MR. GROSSMAN: All right.
24 MS. ROSENFELD: And I agree. Mr. Grossman, I will
25 note for the record that operational, safety operational

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1 issues have been raised as part of our case for many, many,
2 many months, if not years. I certainly would welcome the
3 opportunity to cross-examine the additional witnesses and
4 just would ask that if they do intend to provide written
5 materials of any kind or new exhibits in support of their
6 testimony, that we have an opportunity to review them in
7 advance of their testimony.
8 MR. GROSSMAN: And so Ms. Harris would arrange
9 that and also if there is a need for some rebuttal because
10 of any surprise entered at testimony, if that's the case,
11 then we would certainly give you that opportunity too.
12 MS. ROSENFELD: Thank you.
13 MR. GROSSMAN: But my understanding is this is
14 just to flush out the picture that Mr. Brann has painted of
15 their operations, not anything that would be a surprise
16 nature if I understand correctly, Mr. Brann.
17 THE WITNESS: No, that's correct. I have a very
18 general knowledge of the gas station training, but he could
19 go, he can answer any question on training I suppose.
20 MR. GROSSMAN: Okay.
21 BY MS. ROSENFELD:
22 Q I'll reserve my questioning on those lines then
23 for the other experts, through the other witnesses. Going
24 back again to the vehicle, the fuel trucks.
25 A Uh-huh.

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1 Q Could you describe to me how they would enter and
2 leave the site?
3 A The fuel truck will enter from the ring road to
4 the south of the site. They enter on the drive aisle just
5 to the west of the gas station, travel north to the fill
6 ports for the tanks. They will pull slightly off of the
7 road so that they are only partially blocking the northbound
8 lane and then they would offload their fuel and when they're
9 done with that, they will pull them north and head, turn
10 west at the east-west drive aisle and then leave the site
11 from there.
12 Q And do you know if, which entrance they would use
13 on a, directed to use a particular entrance?
14 A They are not directed to use a particular
15 entrance, no.
16 Q Do the trucks come from a specific location?
17 A No, they do not. They come from any one of the
18 gas suppliers in the state of Maryland.
19 MR. GROSSMAN: When you say particular entrance,
20 are you talking about an entrance to the mall or entrance
21 to --
22 MS. ROSENFELD: To the mall.
23 MR. GROSSMAN: Okay.
24 MS. ROSENFELD: Yes, to the mall.
25 MR. GROSSMAN: I presume they have to use only one

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1 entrance to the gas station area?
2 THE WITNESS: Correct. There is only one way in
3 to the gas station, to the gas station pump.
4 MR. GROSSMAN: They can make either a left or a
5 right turn off the ring road as --
6 THE WITNESS: That is correct.
7 BY MS. ROSENFELD:
8 Q Will the tanker be located entirely inside of the
9 boundary for the special exception that's shown there?
10 A No, the tanker, the tanker would be sitting right
11 at the boundary right here on the western side of the gas
12 station on the western side of the tank location.
13 Q But not beyond?
14 A Not beyond, no.
15 Q And if two trucks arrive at the same time, how
16 does that work?
17 A We try to schedule it so that does not happen
18 because then you would have a truck that was having to sit
19 and wait until the other truck came --
20 Q And if that didn't --
21 A -- because of scheduling, because as scheduling
22 goes, we try to schedule so that we don't have two tankers
23 on the site at the same time.
24 Q And if it does happen, where --
25 A They would have to wait either to the east side of

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1 the building, there's a large parking area that you'd wait
2 in.
3 Q Can you show me which building?
4 A The east side of the Costco building. There is a
5 surface --
6 Q Which would be where?
7 A -- surface lot where they could wait. It's -- let
8 me get you a picture.
9 MS. HARRIS: This is an aerial photo that is not
10 in the record, has not been submitted yet.
11 MR. GROSSMAN: So let's mark that and it will be
12 Exhibit 102. And aerial photo -- is that of all of Wheaton
13 Plaza and vicinity?
14 THE WITNESS: It is. Yes.
15 MR. GROSSMAN: Wheaton Plaza and vicinity.
16 (Exhibit No. 102 was marked for
17 identification.)
18 THE WITNESS: Correct. As I stated, we would try
19 to schedule the delivery so that we don't have two tankers
20 on the site at one time. Obviously, we can't accommodate
21 two tankers at the fuel station. There is a large, under-
22 utilized parking area to the east of the building where they
23 could wait if necessary. They would not wait, they would be
24 instructed not to wait on the ring road.
25 MR. GROSSMAN: Could you mark these then at

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1 Exhibit 102?
2 THE WITNESS: I did.
3 MR. GROSSMAN: Thank you.
4 MS. ROSENFELD: And do you mind if I write in
5 yellow?
6 THE WITNESS: I didn't get this.
7 MR. SILVERMAN: Accidents happen.
8 MS. HARRIS: Upside down.
9 MR. GROSSMAN: Thank you.
10 MS. ROSENFELD: Mr. Grossman, may I ask the
11 witness to highlight in yellow the area where he's shown
12 just so the exhibit will show?
13 MR. GROSSMAN: Certainly.
14 MS. ROSENFELD: That --
15 MR. GROSSMAN: Do you have a yellow marker?
16 MS. ROSENFELD: I do.
17 MR. GROSSMAN: Okay. Ms. Harris is handing you --
18 THE WITNESS: I'm sorry, what did you, what --
19 BY MS. ROSENFELD:
20 Q If you could just mark in yellow the general area
21 where they, if there was more than one tanker?
22 A If there was more than one tanker, we would
23 probably send them to this area right here.
24 Q Okay.
25 A It is an extremely underutilized parking area on

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1 the mall site. As I said before, we would try to schedule
2 them so that that does not occur. This is purely
3 speculative.
4 Q And would you, would your attendants know --
5 A The attendants --
6 Q -- that's where they would --
7 A Yes, the attendants --
8 Q -- are they trained?
9 A -- are instrumental in gas delivery. They
10 actually check the drivers in. They have an 18-point, or a
11 13-point checklist they go through before the gas is even
12 dropped, so as part of the gas drop, the 13-point checklist
13 they go through. And the driver cannot offload fuel unless
14 the attendant is there with him to check off and the
15 attendant actually is the one who unlocks the --
16 Q That's all right. That's -- you answered me.
17 A Sorry.
18 Q You mentioned that the tanker trunks need certain
19 safety standards. Are all of the vehicles owned by Costco?
20 Do you have your own fleet?
21 A The tanker delivery vehicles are not owned by
22 Costco, no, they're owned by the companies that operate the
23 fuel depots.
24 Q And how, what kind of certification do you have to
25 ensure that they meet the safety standards?

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1 A The trucks have to meet the same Maryland
2 requirements. We don't control those trucks, so I can't
3 answer to that, but I do know that we require clean,
4 certified vehicles.
5 Q Okay. So the -- when you were referring to clean,
6 certified vehicles earlier and that's not a special Costco
7 standard, that's --
8 A No, that's a, something that is --
9 Q Every, every --
10 A That's a state standard. That's not -- the state
11 doesn't require the statements be issued. Costco requires
12 that they be clean diesel certified.
13 Q And how do you verify that they are clean diesel
14 certified?
15 A First, well, obviously the first thing we do is we
16 notify the suppliers that that's what we require and the
17 second is that the vehicles are actually, have a sticker on
18 the outside of the vehicle they're certified as clean
19 diesel.
20 MS. ROSENFELD: I apologize, Mr. Hearing Examiner.
21 MR. GROSSMAN: No problem. Take your time.
22 MS. ROSENFELD: Ms. Harris, do you have a copy of
23 Exhibit 54(i)?
24 MS. HARRIS: 54(i)? Can you tell me what that is?
25 MS. ROSENFELD: I believe it's the truck turning

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1 radius exhibit.
2 MS. HARRIS: Well, as I noted, the civil engineer
3 is planning to get into this with great detail and we were
4 going to present that exhibit through him.
5 MS. ROSENFELD: Okay.
6 MR. GROSSMAN: Yes, we also have all of the
7 exhibits we have up here, so if you want any particular
8 exhibit, you can have it pulled out.
9 MS. ROSENFELD: Oh, I'll save my question on
10 that --
11 MR. GROSSMAN: Okay.
12 MS. ROSENFELD: -- exhibit until Mr. Duke takes
13 the stand.
14 BY MS. ROSENFELD:
15 Q Mr. Brann, the consultant studies that were
16 performed, where did they get their numbers for the volumes
17 of gas that would be pumped at the Wheaton station?
18 A We asked them to utilize what, at the time what
19 the quantities sold at the Sterling, Virginia, warehouse,
20 which was 12.1 million gallons. That's the highest gas
21 sales on the east coast.
22 Q Looking at Exhibit No. 56(e), which is actually an
23 attachment to one of the environmental consulting reports,
24 and in this it says the Wheaton, the estimates for Sterling
25 are 13.9 million gallons? Do you know --

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1 A Oh, that was the, that, I'm sorry, you're correct.
2 That's the FAA for this past year, for this year's sales.
3 Q Oh, okay.
4 MR. GROSSMAN: This year being this calendar year?
5 THE WITNESS: No, this past fiscal year --
6 MR. GROSSMAN: The past fiscal --
7 THE WITNESS: -- ended for us on September 1.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: So it would have been --
10 BY MS. ROSENFELD:
11 Q September 1, 2011?
12 A 2012.
13 Q Through September 1 --
14 A Through September 1, 2012.
15 MR. GROSSMAN: Through September 1 or through
16 August 31st?
17 THE WITNESS: August -- I believe it was September
18 1 this year.
19 MR. GROSSMAN: Your fiscal year ends on the first
20 day of the month?
21 THE WITNESS: It varies from year to year.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: The end of August or first of
24 September.
25 MR. GROSSMAN: Okay.

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1 BY MS. ROSENFELD:
2
3 Q So, in fact -- so you're, the assumption there is,
4 okay, I understand. Did that change your assumptions for
5 the Wheaton station in terms of your projections?
6 A No.
7 Q I understand that the trucks will not continue to
8 run while deliveries --
9 A Correct.
10 Q -- occur? And who enforces that requirement?
11 A We do, Costco enforces those requirement as part
12 of the, part of the training responsibilities for the gas
13 station attendants.
14 Q And I believe it was your opening comments, it was
15 also some of your testimony, you made, you gave us a list of
16 charities and other community group good services that
17 Costco provides. If the gas station is not approved, will
18 you discontinue any of those programs?
19 A No.
20 Q If the gas station is not approved, will you be
21 required to shut the warehouse down?
22 A No.
23 Q So the warehouse remains self-sufficient?
24 A Yes.
25 MS. ROSENFELD: Mr. Grossman, I'd like to turn
questioning over to Mr. Silverman.

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1 MR. GROSSMAN: All right.
2 MS. ROSENFELD: And I may have some follow-up
3 questions after he's concluded.
4 MR. GROSSMAN: Well, in fairness, I'm allowing,
5 you know, multiple cross-examiners, but I don't think we
6 should have multiple shots by the same attorney going back
7 unless there's a redirect.
8 MS. ROSENFELD: Okay.
9 MR. GROSSMAN: All right?
10 MS. ROSENFELD: That's fine.
11 MR. GROSSMAN: So, Mr. Silverman, you're up at
12 bat.
13 MR. SILVERMAN: Thank you very much.
14 BY MR. SILVERMAN:
15 Q Good afternoon, Mr. Brann, nice to see you. Yes,
16 I'm very interested in this clean diesel certification. So
17 who certifies?
18 A I do not know. My understanding is it's the state
19 of Maryland certifies it. I know the trucks that come to
20 our, from our depot are run by Swift Carriers and all of
21 their trucks are Port of Baltimore, clean diesel certified.
22 Q Yes, but this --
23 A My understanding is the state does the
24 certifications.
25 Q The Swift is one company that you work with?

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1 A That's one company.
2 Q But the 16 fuel depots around the state --
3 A Correct.
4 Q -- everybody works, everybody in the state gets
5 their gasoline from them, right?
6 A That's who you purchase from, that's correct, yes.
7 Q All right. And you said that -- you were told
8 that the air coming out of the exhaust pipe was cleaner than
9 the air going into the engine? Do you stick by that, do
10 you?
11 A I do and that was in a meeting we held with Dr.
12 Chase's office, one of the physicians who worked with
13 International Harvester for many years.
14 Q I think we have a solution to the air pollution
15 problem here, just convert everything to diesel. I want to
16 ask you about the -- you talked about parking. You said,
17 you said two things. You said the parking, after you build
18 the station and dig up the grassy surface where the original
19 station was supposed to be, after you do that there will be
20 the same parking and then you said there will be the same
21 number of parking spaces. So are those the same things?
22 A In Costco's world, yes, they are. They require a
23 10-foot wide bay at each space is minimum.
24 Q I've got you. So now if I'm a customer and --
25 A And --

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1 Q Yes, I like Costco, if I'm a customer and I am
2 parked in that southwest corner, right?
3 A Right.
4 Q Show me the route I take to go into the store and
5 then how I wheel my large, extra large Costco cart out to my
6 car?
7 MR. GROSSMAN: I think there are many, one of the
8 other exhibits that --
9 THE WITNESS: Yes, I can use the exhibit. Dan and
10 I are going to trade playing Vanna for each other. The
11 picture included this one, I think.
12 BY MR. SILVERMAN:
13 Q I like that one.
14 A So if you were parked in the southwest corner --
15 Q And what exhibit is that again?
16 A This is Exhibit 101.
17 Q Okay.
18 A If you were parked in the southwest corner over
19 here by the ring road, the most logical path would be for
20 you to travel north to the east-west, bypass to the east-
21 west connector and either walk along that, across it and
22 walk, you could basically walk along this to keep from
23 having to snake through traffic. Now where the gas station
24 is being proposed, one of the things that Parks and Planning
25 asked is to add was a pedestrian access across the north

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1 face of the gas station area. So there will be a marked
2 pedestrian crosswalk across the north face of the gas
3 station area the cars have to stop at before they exit.
4 Q And now so you can have, well, what -- what's a
5 large number of cars at the gas station, 30, 50, 100?
6 A Whichever number you want to pick. Let's pick 30.
7 The queuing spaces will accommodate about 40 cars, so let's
8 say 30.
9 Q Okay. So you got 30 cars and you can have a, one
10 of these clean diesel trucks filling up at the same time and
11 then you have people leaving the gas station and so the,
12 isn't it correct to say that the people pushing big carts
13 will sort of have to navigate their way through, through a
14 lot of traffic that wouldn't otherwise be there?
15 A No, they would not have to navigate through the
16 queuing spaces if that's what you're --
17 Q Not through the queuing space, but people leaving,
18 the trucks leaving, the trucks parked partially in the
19 right-of-way, that would be, do you think that would be the
20 same experience as people who would be parking right next to
21 this door?
22 A No, it wouldn't be the same experience, but that's
23 where we're, that's the area where you line up for the gas
24 station.
25 Q Now when -- I'm trying to sort of picture this

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1 because there are an awful lot of parking spaces in that
2 mall where you can't find a place to park or a good place to
3 park. Now suppose you got a lot of cars queuing and so on
4 and then the truck is coming up, is there going to be any,
5 any congestion between the queuing cars and the filling up
6 cars and the truck to fill up the gas station?
7 A No, there should be no congestion.
8 Q But aren't they both entering from the same point
9 or not?
10 A No, they're entering on the ring road. One will
11 enter at the gas stations entrances further east than the
12 entrance for the truck.
13 Q Okay. All right.
14 A It's a completely separate entrance.
15 Q And will the truck be blocking the ability of the
16 customers in the westerly few to get out of the gas station?
17 A No, the truck will not have any interaction with
18 the queuing cars.
19 Q Okay. Now you said -- you said right now your
20 surface lot is full every day and has been since you've
21 opened?
22 A Correct.
23 Q But you said --
24 A It was full on opening day when I was there.
25 Q Right. And the -- you also said, I'm looking for

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1 your exact words, but I can't find, but I think, the thrust
2 of it was you said it was going to even itself out. Now do
3 you sell gas on an even basis, let's say sell the same
4 amount of gas most every day and most every hour of the day?
5 A No, it's very, sales vary throughout the day and
6 they vary from day to day.
7 Q They vary --
8 A Some days our highest sales, as I testified
9 earlier --
10 Q They vary a lot, right?
11 A Yeah.
12 Q So you'd have, at Christmas you'd have a lot more?
13 A Not necessarily.
14 Q Not necessarily? Okay. Well, how about the --
15 suppose the price of gas goes up, would that affect, does
16 that affect your business?
17 A I'm not sure I understand the question.
18 Q In other words, normal gas prices rise all over
19 the country as they did part of last year, very
20 dramatically. It was a campaign issue. Does that increase
21 the number of people who want to go to get the discount gas
22 at Costco?
23 A Typically we'll see a small surge in business.
24 It's because people know we offer the best value.
25 Q And in cases of weather or other emergencies, you

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1 could see a big surge, isn't that right?
2 A In the event of a weather emergency such as
3 Hurricane Sandy and we're the only one available in town,
4 sure, we'll see a big increase.
5 Q Well, even in anticipation of an emergency of
6 severe weather, you know, people still out of milk and so
7 and the gasoline stations tend to fill up, does yours fill
8 up too or is that not right?
9 A You're, with respect -- yes.
10 Q Okay. Now you said that the Sterling station,
11 which you used to estimate volumes, was --
12 A Can I correct you on that --
13 Q Yes.
14 A -- because we use it to estimate volumes.
15 Q Why did you mention it?
16 A We used to get a large, the highest volume gas
17 sales on the east coast in order to do our studies that we
18 performed for this warehouse. We knew it, we, far in excess
19 of anything we would ever sell here, but we want to have a
20 worse case scenario for our garden service.
21 Q But your worse case really wasn't your worse case,
22 it was a little bit less than your worse case?
23 A No, when we first started it was worse case and we
24 updated many studies to include that worse case.
25 Q I see.

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1 A It still is.
2 Q But it didn't change any of your conclusions?
3 MR. GROSSMAN: I think that's a question. Did it
4 change any of your conclusions?
5 THE WITNESS: No, it did not.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: No.
8 BY MR. SILVERMAN:
9 Q A lot of the documents you sent us, Ms. Cordry
10 suggested every one of them, in fact, suggested 13.5 to
11 13.9. When did, as far as Sterling goes, when did you
12 learn -- when did it change from 12 to 13.9, or the --
13 A I assume it was sometimes last year when we got
14 the records. And we've updated all the studies and, as you
15 said, you have copies of all of them.
16 Q Right. Which study shows -- which study suggests
17 the 10 million was the real number, which one of your
18 studies, which one of your exhibits?
19 A None of the exhibits show the 10 million as a real
20 number. That's an internal, return on investment
21 calculation that our operations people did. And that was
22 not part of this, part of the studies that we did.
23 Q And which of your documents show 12 million for
24 Sterling?
25 A We found one of the earliest versions of some of

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1 these reports. Off the top of my head, I don't remember.
2 Q Can we get some clarification on that or do you
3 know of any one that shows that?
4 MS. HARRIS: That shows what?
5 MR. SILVERMAN: That the Sterling, that their
6 assumption was barely just 12 million?
7 MR. GROSSMAN: Mr. Silverman --
8 MR. SILVERMAN: Yes?
9 MR. GROSSMAN: -- what difference does that make
10 in terms of what I have to decide?
11 MR. SILVERMAN: Well, one of the difficulties in
12 this case, one of the first controversies in this and every
13 other aspect is who is being conservative in their numbers
14 and who was not and how good are the numbers. But I've made
15 my point. I won't belabor it.
16 MR. GROSSMAN: Well, I'm not telling you not to --
17 MR. SILVERMAN: Yes.
18 MR. GROSSMAN: -- pursue your point --
19 MR. SILVERMAN: Yes.
20 MR. GROSSMAN: -- if it is something that will
21 produce relevant evidence here and that's my question.
22 MR. SILVERMAN: Well, I --
23 MR. GROSSMAN: Why does it make a difference to me
24 whether they had some underestimate initially and now they
25 have the correct estimate?

1 MR. SILVERMAN: Well --

2 MR. GROSSMAN: Why do I need to go back into that?

3 MR. SILVERMAN: Well, you raised it, Mr. Grossman,

4 you raised the question what the right number was.

5 MR. GROSSMAN: That's correct.

6 MR. SILVERMAN: What I'm suggesting is that Costco

7 doesn't always know the right number and I'm not suggesting

8 mendacity, I'm just suggesting that these things vary by a

9 lot of things. There are a lot of factors that vary here

10 and it could be 10 million, it could be 12 million and

11 perhaps your 12 million number was not just conservative, it

12 was sensible. The number may actually be greater.

13 BY MR. SILVERMAN:

14 Q In Redland, California, you have a station that

15 sells 12 million, is that not right?

16 A I can't answer that. I don't know.

17 Q Well, do you know that they're trying to increase

18 it to 20 million, do you know that?

19 A I, we don't ever increase stations based on sales.

20 I think they're trying to increase to 20 pumping stations.

21 So they would have five islands with 20 stations versus this

22 one, up to 16, so --

23 Q Well, I hope you'll take another look at that.

24 MR. GROSSMAN: Well, let me interrupt you a

25 second. When you suggested the figure of 10 million as your

1 estimate, if I understand you correctly, you're saying that

2 was more a matter of figuring out what your, how it would

3 affect your profits or whatever, not a matter of estimating

4 what the demand would likely be --

5 THE WITNESS: That's correct.

6 MR. GROSSMAN: -- in this area?

7 THE WITNESS: That's correct.

8 MR. GROSSMAN: Is there a figure for the likely

9 volume of gas you would sell based on an analysis of the

10 demand in the area?

11 THE WITNESS: That's the 10 million gallon.

12 That's what we based that number one, what we think the

13 demand will be.

14 MR. GROSSMAN: Okay. All right. It's not -- so

15 that is the number that you're assuming it will be, not the

16 number that passes your break even point or whatever in

17 terms --

18 THE WITNESS: No.

19 MR. GROSSMAN: -- of your financial aspect, this

20 is actually a prediction of what the number of gallons a

21 year that would be pumped from the station?

22 THE WITNESS: That's correct. And I would like to

23 reiterate one thing. We don't have a break even point. The

24 gas station is an ancillary business we provide as part --

25 MR. GROSSMAN: Right.

1 THE WITNESS: -- as part of the warehouse.

2 MR. GROSSMAN: No, I just wanted to understand

3 where the figure, you know, how the figure was developed and

4 if it's a true estimate of what you expect from demand and

5 you're telling me that it is a true estimate of that --

6 THE WITNESS: Uh-huh.

7 MR. GROSSMAN: -- that you've analyzed the likely

8 number of people who are going to come to the station and

9 how many gallons you're going to be pumping?

10 THE WITNESS: That is correct.

11 MR. GROSSMAN: Okay.

12 MR. GROSSMAN: And the term conservative estimate

13 has been bandied about here. Is this a conservative

14 estimate and when we say conservative, meaning that you're

15 estimating on the high end or on the low end, or right in

16 between?

17 THE WITNESS: Correct. An estimate for sales

18 would be right in between. The numbers that Mr. Silverman

19 was discussing are what we based our, all these studies on

20 are traffic reports, things like that. We try to use much

21 higher numbers just so we have worse case scenarios

22 predicted.

23 MR. GROSSMAN: All right. Okay.

24 BY MR. SILVERMAN:

25 Q Since the, on leak detection, you said that

1 there's no monitoring group around here. What is a

2 monitoring group?

3 A We have a company that is, the main company is

4 Veeder Group and --

5 Q What, I'm sorry?

6 A Veeder, I believe it's V-E-E-D-E-R, Veeder Group

7 is, they perform the 24-hour monitoring functions of our gas

8 stations.

9 Q Now, but there's no Veeder Group team here?

10 A No, there is, they just, they -- every state has

11 different rules and regulations. California's rules, you

12 have to have a designated monitor monitoring the person, I

13 believe it is, that is assigned to your stations. We,

14 Veeder Group is a monitoring company that monitors our

15 stations 24 hours a day, seven days a week.

16 Q And you have -- in some of your stations do you

17 have monitoring wells to see if gasoline gets into

18 groundwater?

19 A No, it does not have monitoring.

20 Q You don't have it anywhere?

21 A No, we have observation wells.

22 Q Oh. And what is an observation well?

23 A An observation well is very similar to a

24 monitoring well, but it is a steel well and we particularly

25 put them in the corners of the tank and the reason is that,

1 is that the reader route system tells us we have a leak and
2 shuts down the system. We can open that up and take a
3 sample of the groundwater immediately to find out what's
4 going on.

5 Q And do you have --

6 A The monitoring well requires a monitoring program
7 to be in place. We do not monitor the stations on a regular
8 basis unless there is an issue.

9 Q And do you have an observation well on here?

10 A Yes, we have two.

11 Q Okay. When you originally proposed a gas station,
12 you wanted to put it in the southwest corner?

13 A Correct.

14 Q Why did you pick the southwest corner instead of
15 picking this corner?

16 A Well, the southwest corner put it out to where, as
17 you mentioned earlier, the pedestrian traffic would not have
18 to cross in front of the gas station. It was the most
19 logical place for us to put it based on the site plan of our
20 warehouse.

21 Q And the egress and the ingress for the trucks and
22 cars would be, a more direct route to the ring road, is that
23 correct?

24 A It would be basically similar to what it is now.
25 We had one entrance from the ring road for the cars. The

1 trucks pulled directly off the ring road into a fueling
2 spot.

3 Q But you have, you -- when you were in the
4 southwest corner, your people could, were not interfering
5 with the close-up parking as they would be here, isn't that
6 correct?

7 A Yes, that's correct.

8 Q Okay. I want to ask you about your attendants,
9 your first line of defense.

10 A Yes, sir.

11 Q I'm sure they're admirable people. Do you ever --
12 did you ever do any health studies of them?

13 A To my knowledge, no.

14 Q Do you have situations where you're putting your
15 gas station, your attendants essentially between two walls
16 between the Costco building and then a wall on the other
17 side, is that a -- do you typically put your gas stations in
18 such enclosed spaces?

19 MR. GOECKE: Mr. Grossman, I would object to this
20 as relevant. What's the relevance?

21 MR. SILVERMAN: The relevance is the health
22 standards --

23 MR. GROSSMAN: For the employees?

24 MR. SILVERMAN: For the employees or for
25 customers, but certainly the employees.

1 MR. GROSSMAN: I'll give him a little latitude on
2 this, but I think it's really off the, what we'd be talking
3 about or what anybody has filed in terms of the concern.
4 And I think that the -- he is, there is a standard, not a
5 zoning ordinance, for the health of employees as well in the
6 area. So I can't say it's totally irrelevant but, and it --
7 there are obviously other organizations that, such as OSHA
8 that establish standards for employees. So let's keep this
9 to a relative minimum, but I'll let him answer a question
10 about it.

11 THE WITNESS: I'm sorry, could you repeat the
12 question?

13 BY MR. SILVERMAN:

14 Q Yes. You have a situation where you've got the
15 Costco building, essentially a wall on one side. I believe
16 you're going to put a wall on the front of the station by
17 the ring road, is that correct?

18 A Well, on the outside edge of the ring road, that's
19 correct.

20 Q Yes.

21 A We've proposed an 8-foot high wall.

22 Q So you can name any Costco stations where you have
23 two walls around the station?

24 A I'm not intimately familiar with every single
25 Costco gas station designed.

1 Q But you know a lot of them. Do you know of that,
2 can you think of any offhand?

3 MR. GROSSMAN: Well, what's the difference whether
4 there are other stations that have it? That doesn't go to
5 the question of the health effects that you are apparently
6 aiming at. Do you have any evidence that there's going to
7 be a health impact on employees from this two wall situation
8 you are posturing?

9 MR. SILVERMAN: We're going to have a lot of
10 testimony, Mr. Grossman, about walls. Maybe we should save
11 it, but there's been a lot of discussions of what the wall
12 protects. The walls, it's just, it's like any fluid, the
13 wall will deflect the motion of fumes and toxins one way or
14 the other. I'm just trying to figure out -- I mean there's
15 a lot -- and Costco will come forward and say that its walls
16 are going to protect people, but it will deflect the
17 movement of the toxins. But if it deflects it one way, it's
18 going another way. It's got to go someplace. I'm just
19 trying to know if you've dealt with this situation before,
20 you have any other examples of it.

21 MR. GROSSMAN: All right.

22 THE WITNESS: We have a couple of examples in the
23 area, the Beltsville gas station has a building on one side
24 of the gas station. The Lanham, Maryland, design of the
25 building is on the south side of the gas station and

1 directly to the north side of the station is a berm
2 landscape area that completely encloses that area, so we do
3 have other examples of that. To my knowledge, we have no
4 health issues from that.

5 BY MR. SILVERMAN:

6 Q To your knowledge, both you and Ms. Harris
7 referenced other stations around the country. And you also
8 said this is, this is probably the most thoroughly studied
9 gas station. Are there other cases where the issue of air
10 pollution would --

11 A Well --

12 Q Are there other cases where you hired Mr. Sullivan
13 or people like him to advise you on air pollution issues?

14 A On the west coast more so than here. Mr.
15 Sullivan, this is the first time he's worked for my office
16 that I know of, yet we do have air quality studies done on
17 many other stations.

18 Q You do? Would they be available for us?

19 A Well, most of the studies that I'm speaking of
20 would be down in the California region where you have air
21 quality baselines that are already established. So it would
22 be -- I'm not sure what relevance it would have.

23 MR. GOECKE: Yes, Mr. Grossman, I'd like to object
24 to this as well. It's not a question about these other
25 stations. It's not relevant to this proceeding.

1 MR. SILVERMAN: My impression, Mr. Grossman, is
2 that I, well, the Planning Board staff told us that in the
3 primitive gas stations, in granting a special exception in
4 Montgomery County, there's never been a discussion of air
5 pollution in a serious way and I don't know of any others.
6 Perhaps you know better. And my impression, too, is that in
7 the citing of Costco gas stations, there's never really been
8 a thorough vetting of this. So this is a case of first
9 impression and the applicants are trying to argue, oh, we do
10 this all the time. But I don't think the, I don't think
11 they've done it in a conscious, deliberate way all the time
12 unless they could prove me wrong. I'd like to see --

13 MR. GROSSMAN: Well, whether they've done it
14 before, the question that's before me is whether or not
15 there's going to be a problem in this particular station, so
16 if we're ever going to finish this hearing, we certainly
17 ought to direct our evidence to what's going to happen here
18 and that's what I'd like to do.

19 MR. SILVERMAN: Yes, sir. Thank you.

20 BY MR. SILVERMAN:

21 Q Yes, the -- I want to go back to the adequacy of
22 your first line of defense and I'm not talking about their
23 health, but about how, about the job you give them. So if
24 you have, you've got, you've got 16 pumps operating, you
25 might have a queue and you're -- a tanker truck may come in.

1 He's got 18 questions to ask and you have, in the morning
2 you have one person doing all this and you think that's an
3 adequate line of defense?

4 MR. GROSSMAN: I don't know what you mean by line
5 of defense.

6 MR. SILVERMAN: Well, that's his word. I mean in
7 terms of safety and cleanliness and pollution prevention and
8 following your rules and so forth, do you give them -- and
9 waiving off cars, you give them a lot of responsibilities.

10 THE WITNESS: You've combined a whole lot of
11 events all at once that go, they have no points. And the
12 first thing in the morning we are very slow. We will get a
13 couple of big gas deliveries in the morning sometimes and if
14 need be, we call another employee out there so that we have
15 adequate coverage.

16 BY MR. SILVERMAN:

17 Q So usually two, is that the ideal?

18 A It is typically one or two people, that is
19 correct, that will go out and assist. And if need be, it
20 would be three.

21 Q Okay. Would it be possible for Costco to serve
22 its customers their gasoline, discount gasoline needs if
23 they put, if they put the station someplace else, not
24 necessarily connected to the store?

25 A That's not a practice that Costco does.

1 Q Well, don't -- didn't you do it in Wisconsin
2 someplace?

3 A The station is within, I think the station in
4 Wisconsin is less than -- I think it's on the edge of the
5 site. It's an eighth of a mile from the front door, I
6 believe.

7 Q I --

8 MR. GROSSMAN: I think the point --

9 MR. SILVERMAN: Yes.

10 MR. GROSSMAN: -- is they're entitled to have the
11 special exception they're applying for considered --

12 MR. SILVERMAN: Right.

13 MR. GROSSMAN: -- and there may be other
14 alternatives and, in fact, they've said that it's not, they
15 could actually continue with Costco warehouse without the
16 gas station, but the point is they're entitled to have this
17 particular one they're proposing considered, not the
18 alternative they might have. So let's stick to that.

19 MR. SILVERMAN: Thank you.

20 BY MR. SILVERMAN:

21 Q You indicated that in the area, the grassy area
22 there is a storm water pipe. Could you tell me about that?

23 A I'm not sure what the pipe is. I know there's a
24 regular pipe in the area. Our civil engineer could probably
25 testify to that. I honestly do not know what it is.

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1 Q Okay. Great. Did you have, sir, going to the
2 Sector Plan, do you have assessed family Costco customers
3 use the Metro on your --
4 A No, I don't. I know it's not a convenient way to
5 shop Costco.
6
7 Q No, no, do you have people ever shop at Costco and
8 pick up the products later or do they always walk out with
9 them?
10 A No, they typically walk out with them.
11 Q At Pentagon City, people do use the Metro, don't
12 they?
13 A Occasionally we've heard stories of people
14 purchasing and using the Metro, that's correct.
15 Q Are you --
16 A We don't track that information.
17 Q And you're not marketing to them especially, is
18 that right?
19 A I'm sorry, marketing to Metro customers?
20 Q Yes.
21 A We don't do any marketing period.
22 Q Well, let me rephrase it if I may. Thank you for
23 the precision of your language. You're not necessarily,
24 you're not going out of your way to offer services to people
25 who are, who use the Metro, would that be correct?
A No, we offer the same services to the people who

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1 use the Metro as anybody else.
2 Q But I mean you indicated that -- I think the point
3 is made, you indicated that the way you sell bulk goods and
4 so forth is conducive to people coming in their car?
5 A That's correct.
6 Q Yes?
7 A Yes.
8 Q Do you do anything that's conducive for people not
9 coming in cars? Are you going to contribute to the transit-
10 oriented development in this area in any way?
11 MS. HARRIS: Objection.
12 MR. GROSSMAN: What's the objection?
13 MS. HARRIS: Mr. Brann, that's outside the scope
14 of what he testified to. There was no discussion about the
15 TOD issue.
16 MR. SILVERMAN: He testified --
17 MR. GROSSMAN: I think it's fairly within the
18 scope. He's the representative of the company, so I think
19 it's a fair question in view of the fact that transit
20 orientation is an issue that is in the case by virtue of the
21 Planning Board's recommendation.
22 THE WITNESS: The typical Costco customer is going
23 to rely on a personal vehicle. We do occasionally have
24 people that would use the Metro or employees would use the
25 Metro. We don't dictate how people get to or from the

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1 warehouse. And as far as contributing towards transit-
2 oriented design, I'm not sure I know how to answer that
3 question. I'm not sure what we can do to be able to do
4 that.
5 BY MR. SILVERMAN:
6 Q One last question. When did you hire Mr.
7 Sullivan?
8 A Oh, I want to say sometimes in 2010.
9 Q And when did you decide to put a gas station at
10 this site, that you wanted to do that?
11 A It was when we first initiated the site search.
12 Q Was that before 2010 or after?
13 A The site search would have been initiated before
14 2010. That's before we had gotten into the special
15 exception process, so --
16 Q I see. And so you -- did you do any environmental
17 investigations before deciding on the site?
18 A No, we didn't do any -- we wouldn't do any
19 investigation before deciding on the site, no. That's true
20 of any site we pick.
21 Q Well, you do market investigations, don't you?
22 A We do a market investigation, that's true.
23 Q But you don't do investigations intended to
24 protect health?
25 A I'm not sure I understand the question, though. I

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1 mean that's -- you're talking about two completely different
2 subjects.
3 Q Really? I mean a large part of your case is that
4 we're following --
5 MR. GROSSMAN: Don't explain.
6 MR. SILVERMAN: I won't.
7 MR. GROSSMAN: Just ask the question.
8 MR. SILVERMAN: Yes. Yes.
9 BY MR. SILVERMAN:
10 Q Well, so just to clarify, you pick a site for
11 economic reasons and then, and then when you have to go
12 through a special exception or other procedure, you hire
13 experts to make your case for you, is that right?
14 A Well, part of my job is after we, the market
15 people have decided on a site, and we get the site approved
16 through the executive committee, it's my job to get the
17 Government permits and the approvals. If the approvals were
18 required that we do those things, then we'd hire the
19 required experts and do the studies.
20 Q But you --
21 A We would never do that before we have approved the
22 site.
23 Q You would never plan ahead to avoid environmental
24 issues, is that a fair characterization?
25 MR. GROSSMAN: It's not really. Once again --

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1 THE WITNESS: No, it's not.
2 MR. GROSSMAN: -- it's not an issue for me when I
3 have to decide or at least for a recommendation or finding
4 based on what's in front of me now in terms of the evidence,
5 not on what they did, you know, at the very beginning,
6 whether they considered environmental issues at the
7 beginning. So --
8 MR. SILVERMAN: Well --
9 MR. GROSSMAN: -- it doesn't gain us anything in
10 this hearing to go into that kind of a collateral issue.
11 MR. SILVERMAN: I'll just say one word if I may --
12 MR. GROSSMAN: Yes.
13 MR. SILVERMAN: -- about why it's not collateral.
14 MR. GROSSMAN: Okay.
15 MR. SILVERMAN: It's very difficult for people who
16 are not scientific experts like myself to evaluate a large
17 body of scientific investigation, but one way to do it is to
18 say, well, what was their process? Was it a process
19 designed to elucidate and to bring out health issues and
20 environmental issues or was it one designed to justify or
21 rationalize decisions already made? And in the world of
22 environmental decision-making, the process is very important
23 and it's easier to respect a judgment which you may not
24 fully understand when you see people following the process
25 that you do understand and which is the standard process for

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1 good decision-making. That's why I want to know.
2 MR. GROSSMAN: Well, I'm not going to be that
3 process-oriented here. I'm going to try to understand the
4 evidence and reach a conclusion from that to the best of my
5 ability --
6 MR. SILVERMAN: Thank you, sir.
7 MR. GROSSMAN: -- rather than wondering about
8 whether or not they employed a process that somebody else
9 might have favored. Are you finished, Mr. Silverman?
10 MR. SILVERMAN: I am finished.
11 MR. GROSSMAN: Okay. Are there other questions,
12 cross-examination questions here that have not been
13 addressed, for example, from Kensington View Civic
14 Association?
15 MR. SHEVEIKO: Eleanor, you're being asked if
16 Kensington View has --
17 MR. GROSSMAN: Do you have --
18 MS. DUCKETT: I was going to ask her to ask the
19 questions.
20 MR. GROSSMAN: Okay. That's fine.
21 BY MS. ROSENFELD:
22 Q Mr. Brann, would you please show where the closest
23 entrance to the warehouse is on the western side of the mall
24 is?
25 A Okay. It's on the western side, the northern end

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1 of the Costco building, the western side of the building.
2 The mall entrance is right here. It's right at the very
3 farthest north piece of the Costco building.
4 MR. GROSSMAN: The northwest corner of --
5 THE WITNESS: The northwest corner. When you
6 actually enter the mall with application and then once
7 you're in there, you enter Costco up here inside the mall.
8 MS. ROSENFELD: Thank you.
9 MR. GROSSMAN: Mr. Charman, did you have some
10 other question that you wanted counsel --
11 MR. CHARMAN: Ms. Rosenfeld answered for, received
12 most of the answers, but I did have a couple of questions.
13 BY MR. CHARMAN:
14 Q Do you have an estimate of the number of trucks
15 that will be delivering gasoline between 3:00 and 7:00 p.m.
16 on a weekday?
17 A No, I don't.
18 Q Would it be safe to say that there would be at
19 least one or two a week?
20 A I can't speculate on what time the trucks would
21 arrive at the site.
22 Q Could you --
23 A You could say that, but I can't speculate.
24 Q Okay. Where would those trucks leave the mall
25 should they come into the mall?

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1 A That would be purely speculative on my part. We
2 have not established those routes, but the easiest route for
3 them would possibly be the University exit. They would turn
4 left, turn right and head straight up to the exit towards
5 University Boulevard.
6 Q Well, in fact, there are only two --
7 MR. GROSSMAN: No, you can't testify, Mr. Charman,
8 you cannot testify now.
9 MR. CHARMAN: Okay.
10 MR. GROSSMAN: You have to just ask questions if
11 you have cross-examination.
12 MR. CHARMAN: Okay.
13 BY MR. CHARMAN:
14 Q And has there been a study of the impact on the
15 University Boulevard in terms of traffic at the 3:00 to 7:00
16 p.m. period of time?
17 A Yes, there has been. Mr. Wes Guckert, who
18 performed that study, will be here to answer any questions
19 on my behalf.
20 Q And has there been an emergency response plan
21 established should there be some sort of accident at the
22 facility?
23 A The emergency response plan, well, we had talked
24 with the fire department and police departments and they all
25 said they have all indicated that our 9-1-1 procedures are

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1 what they would utilize and they would, obviously, they will
2 get there as quickly as possible once that has been done.
3 Any time there is an emergency at the gas station, all, the
4 entire system is shut down.
5 Q So is it my -- is it our understanding that Costco
6 has not done an emergency response plan for this proposed
7 facility?
8 A I'm afraid you'd have to be a little more clear
9 defining emergency response plan. Emergency could be many
10 different things. As our operations people can tell you
11 later, we have different scenarios of what to do in the case
12 of many different events. It just depends on what the
13 emergency is.
14 Q Well, I guess that means that there is nothing
15 more than call 9-1-1?
16 MR. GROSSMAN: He didn't testify to that.
17 THE WITNESS: No, I didn't.
18 MR. GROSSMAN: He said --
19 MR. CHARMAN: I'm sorry. I didn't understand.
20 MR. GROSSMAN: He said 9-1-1 is part of the
21 procedure in some emergencies, but there are procedures to
22 follow depending on the event.
23 BY MR. CHARMAN:
24 Q And, unfortunately, I haven't been part of this
25 process until today, but have you put into the record any of

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1 those procedures?
2 A To my knowledge at this point we have not
3 submitted our manuals on emergency procedures.
4 Q Because at one of the -- the meetings that you had
5 with the community --
6 MR. GROSSMAN: No. You can just ask questions --
7 MR. CHARMAN: Okay.
8 MR. GROSSMAN: -- at this point. You can testify
9 later if you want, when it comes to your turn.
10 MR. CHARMAN: Okay.
11 MR. GROSSMAN: Right now you can just ask cross-
12 examination.
13 BY MR. CHARMAN:
14 Q Accidents happen, correct?
15 A Correct.
16 Q And, in fact, one accident happened on your
17 opening day, correct?
18 A No, I don't know about an accident that occurred
19 on our opening day.
20 Q Well, there was a power outage --
21 MR. GROSSMAN: No. Once again, sir. All right.
22 Was there a power outage?
23 THE WITNESS: There was a momentary power outage
24 because the switch gear had not been set properly. The
25 breakers were reset and the power was back on.

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1 MR. CHARMAN: I have nothing further.
2 MR. GROSSMAN: Okay. I don't want to cut you off
3 on these things, but you're not a sworn witness now. I
4 can't take testimony from you. That's why I'm saying that
5 at this point the process calls for cross-examination
6 questions and later on if you want to testify, you'd be
7 sworn and subject to cross-examination yourself.
8 MR. CHARMAN: Thank you, sir.
9 MR. GROSSMAN: All right. Are there any other
10 cross-examination questions? Seeing no hands, is there any
11 redirect?
12 MS. HARRIS: Yes, just briefly.
13 MR. GROSSMAN: Okay.
14 REDIRECT EXAMINATION
15 BY MS. HARRIS:
16 Q Mr. Brann, Mr. Grossman, I want to touch first on
17 Mr. Grossman's question about minimum sales. And did you
18 have an opportunity to reflect or have any discussions with
19 other Costco representatives with respect to that issue?
20 A I did discuss that with Costco representatives and
21 the correct answer to that question is we don't have a
22 minimum. It's not a question of a minimum, it's a question
23 of a service being provided to our members. The gas station
24 is a very profitable service we provide to our members and
25 at this point we do not have a minimum of sales.

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1 Q And then I believe you also testified that if,
2 historically warehouses without stations do a significant
3 less amount of business than those with, is that correct?
4 A That's correct. The testimony earlier was for
5 every dollar of gas sold, there's an additional 30 cents
6 spent in the warehouse beyond the gas sales.
7 Q So if, in fact, there were a minimum cap, a
8 maximum cap presented in this station, would you anticipate
9 that would affect the overall sale within the warehouse?
10 A If we reached the cap and had to close the
11 station, it would affect the sales in the warehouse, yes.
12 Q Moving on to deliveries, I just want to be clear,
13 what day of the week is your busiest day for gas
14 consumption?
15 A The busiest day for gas is on Saturday.
16 Q So does that suggest that deliveries on Saturday
17 are important?
18 A Deliveries on Saturday are important, that's
19 correct.
20 Q And would there be any reason in your mind to
21 preclude deliveries on that day?
22 A No.
23 MR. GROSSMAN: Deliveries or --
24 MS. HARRIS: Gas.
25 MR. GROSSMAN: -- gas pumping? Okay.

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1 BY MS. HARRIS:
2 Q And then in terms of that, you know that, or there
3 was questions by opponent's counsel regarding the potential
4 for two deliveries at one time and I think you said that
5 that's highly speculative?
6 A It is and we do schedule the deliveries and we do
7 work with different suppliers, but we try very hard to not
8 have too few trucks on the site at one time.
9 Q So it would be rare if that occurred?
10 A It would be rare.
11 Q And would you or would Mr. Hurlocker, would he
12 testify, be able to better explain the details as to why
13 that event would be so rare?
14 A I think he, Mr. Hurlocker would be speculative.
15 If it comes back to a scheduling aspect, if we scheduled the
16 deliveries so that we do not have two trucks on the site at
17 one time.
18 Q And then just one final question, one final one,
19 which is you had indicated that, to the question of what
20 makes Costco gas so attractive, it's that it is safe,
21 convenient and -- safe and convenient for your members,
22 correct?
23 A Correct. It's also the members know we're
24 providing a good value.
25 Q And a good service to go along with that?

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1 A That's correct.
2 Q So it's in your interest in terms of
3 coordinating --
4 MR. GROSSMAN: Let's not, let's not lead the
5 witness to much.
6 MS. HARRIS: Okay.
7 BY MS. HARRIS:
8 Q So can you just reiterate for me what does Costco
9 do in terms of fuel deliveries to make sure that that safety
10 and convenience to your customers is assured?
11 A Well, probably the biggest difference from Costco,
12 as I testified earlier, is that we do have trained
13 attendants at gas pumps versus somebody sitting behind a
14 counter in each store. So we have the attendants there to
15 help people. They're there to help direct traffic in order
16 to -- if anyone has a problem within any gas station,
17 they're there to respond to that situation.
18 Q Thank you.
19 MS. HARRIS: Excuse me one second.
20 BY MS. HARRIS:
21 Q Because the convenience is so, is paramount to
22 Costco's overall operation, is there planning and procedures
23 that are in place in advance of opening this station in
24 order to ensure safety and convenience of a customer?
25 A I'm not sure I understand the -- the site planning

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1 stage when we first started out, we tried to design it so
2 that the gas station is in as unobtrusive a spot as
3 possible. And so it's as convenient as possible for members
4 to get to the front door. Obviously that's, you know, the
5 parking closest to the front door is the best parking and we
6 try not to impede that if at all possible. That's why the
7 original design for this one had the gas station on the
8 southwest corner.
9 Q Okay.
10 MS. HARRIS: That concludes my questions.
11 MR. GROSSMAN: Any recross limited to the scope of
12 the redirect?
13 (No response.)
14 MR. GROSSMAN: Seeing no hands, I take it there
15 are not recross questions. So thank you, Mr. Brann.
16 MS. ROSENFELD: No, I'm sorry.
17 MR. GROSSMAN: Oh, I'm sorry.
18 MS. ROSENFELD: I was conferring with Ms. Adelman.
19 RECCROSS EXAMINATION
20 BY MS. ROSENFELD:
21 Q Notwithstanding the fact that you say that
22 warehouses without gas stations sell less at the warehouse,
23 you'd still have a viable warehouse without the gas station,
24 correct?
25 A Correct.

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1 Q You say your busiest day is Saturday. By busiest
2 do you mean more people, more cars, greater volume, when you
3 say it's your busiest day, tell me what you mean?
4 A Well, that's when you see our peak sales for
5 gasoline is on Saturday, Saturday afternoon actually. It is
6 peak sales for gas, so --
7 Q Is it also peak sales for the warehouse?
8 A I'm going to say typically yes, but that will vary
9 depending on holidays and things like that. It's Saturday,
10 during the week our Saturdays would be our busiest days
11 probably.
12 Q Would that mean you have -- you sell greater
13 volume or you have more people?
14 A Sell greater volume.
15 Q Do you have a greater number of shoppers?
16 A We would, yes.
17 Q So you would have more vehicles, customer
18 vehicles?
19 A I would assume so, yes.
20 Q Is that when you experience the greatest need for
21 parking?
22 A Yes.
23 Q And is that when you would have the greatest
24 number of customers walking through the parking lot to and
25 from the cars?

1 A That would follow in that line of logic, yes.

2 Q And would that be a day that you would have the

3 most number of fuel deliveries?

4 A That may, it depends on how many deliveries they

5 have on Thursday and Friday before. If the tanks are full

6 Saturday morning, the chances are we may need only one or

7 two deliveries.

8 Q And so the amount of fuel that you have on hand on

9 a Saturday morning depends on how many sales you had Friday

10 afternoon, the last delivery?

11 MR. GOECKE: Mr. Grossman, I think we're getting

12 pretty far beyond the scope of redirect at this point.

13 MR. GROSSMAN: You did touch on --

14 MS. ROSENFELD: No, I believe your --

15 MR. GROSSMAN: -- on this --

16 MS. ROSENFELD: -- questioning was --

17 MR. GROSSMAN: No, that's all right, counsel.

18 MS. ROSENFELD: -- what's the busiest day?

19 MR. GROSSMAN: Right. You did have a redirect on

20 this area, so she's entitled to cross, the recross on it.

21 BY MS. ROSENFELD:

22 Q So, in fact, to the extent that the tanker trucks,

23 in fact, would impede the drive aisle that we discussed

24 earlier, they would impede on the day when you have the

25 greatest amount of traffic, the greatest amount of activity

1 in the parking lot, would that be true?

2 A The time they were there that would be true.

3 Q You also indicated that you would expect that

4 truck deliveries, two truck deliveries at the same time

5 would be rare because you scheduled the truck deliveries, is

6 that --

7 A That's correct.

8 Q -- true?

9 A That is correct.

10 Q But there are events that happened outside of the

11 schedule that influence when the vehicles have arrived, for

12 example, the Beltway. Need I say more?

13 A That is correct. It would depend on where the

14 trucks were coming from, that is correct.

15 Q So it may be rare, but it's not unforeseeable --

16 A No, it's not.

17 Q -- that that could happen, particularly in this

18 area? You also said that your primary concern was to make

19 sure that the location of the gas station was in an

20 unobtrusive a spot as possible. When you say unobtrusive,

21 unobtrusive to whom?

22 A To the members parking in the parking lot.

23 Q Would that be -- was there -- so unobtrusive to

24 adjoining property owners is not a consideration in that?

25 A Well, I guess that is always is a consideration,

1 but you have to, you have the set design in an overall

2 scheme. It can't just be, you can't have tunnel vision in

3 designing just based on what we think is right. We have to,

4 you have to do the entire site and consider all the factors.

5 Q And you said primary, the primary goal is to make

6 it unobtrusive to the members of Costco?

7 A The primary goal is to make it unobtrusive to the

8 parking area so people can get in and out of the warehouse.

9 Costco typically sites its buildings as free-standing

10 buildings, so we typically do not go into mall areas.

11 Q I'm not trying to belabor this point. I'm trying

12 to understand. When you say to me unobtrusive to the -- you

13 want to put it someplace so that people can easily see where

14 the parking areas are, is that what --

15 A So people --

16 Q -- you mean?

17 A -- can easily get from the parking area to the

18 Costco warehouse.

19 MS. ROSENFELD: Thank you. That's all.

20 MR. GROSSMAN: No further recross? All right.

21 Thank you, Mr. Brann.

22 MS. HARRIS: Mr. Grossman?

23 MR. GROSSMAN: Yes?

24 MS. HARRIS: May we take a 5-minute break?

25 MR. GROSSMAN: Certainly.

1 MS. HARRIS: Thank you.

2 MR. GROSSMAN: It's eight minutes to 3:00. Let's

3 come back 3:00 sharp.

4 MS. HARRIS: Thank you.

5 (Recess)

6 MR. GROSSMAN: We'll resume. And I just want to

7 mention to people there is some water in the back there with

8 some cups if you all need it. All right. We're back on the

9 record and would you call your next witness please?

10 MS. HARRIS: Yes. Thank you. Our next witness is

11 Mr. Dan Duke, the civil engineer of Boehler Engineering.

12 MR. GROSSMAN: Hold on a second. Okay. Mr. Duke,

13 would you raise your right hand please?

14 (Witness sworn.)

15 MR. GROSSMAN: All right. You may proceed, Ms.

16 Harris.

17 MS. HARRIS: Thank you.

18 BY MS. HARRIS:

19 Q Can you please introduce yourself to Mr. Grossman?

20 A Certainly. My name is Daniel Duke. I am with

21 Boehler Engineering. I'm a licensed, professional engineer

22 with a specialty in civil engineering.

23 Q And how long have you been practicing civil

24 engineering?

25 A 17 years.

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1 Q And can you please briefly explain your
2 educational background and your professional background?
3 MS. ROSENFELD: Ms. Harris, Mr. Grossman, we're
4 happy to stipulate to Mr. Duke is an expert civil engineer.
5 MR. GROSSMAN: All right. And I think his resume
6 is in the record as well. Do you recall what exhibit number
7 that was?
8 MS. HARRIS: 17(g).
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: Yes. Okay. Thank you.
11 MR. GROSSMAN: And is there anybody else that --
12 let me explain a little bit about the process. When
13 somebody is called to be an expert witness in a case, there
14 is a process called a voir dire, a questioning period that's
15 devoted solely to the issue of the witness's expertise and
16 in this case Ms. Harris began that questioning and then Ms.
17 Rosenfeld said she would agree that the witness is qualified
18 as a civil engineer based on his resume and whatever else,
19 other information she had. Is there anybody else who has
20 questions regarding this witness's expertise as a civil
21 engineer?
22 (No response.)
23 MR. GROSSMAN: All right. And if nobody else
24 does, then based on his qualifications as indicated in his
25 resume and as briefly outlined by him, I -- and I take it

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1 you are licensed in the state of Maryland?
2 THE WITNESS: Yes, sir.
3 MR. GROSSMAN: All right. I -- and, by the way,
4 have you ever testified as an expert before?
5 THE WITNESS: I have.
6 MR. GROSSMAN: All right. And --
7 THE WITNESS: On multiple cases.
8 MR. GROSSMAN: And have any of them been in
9 Montgomery County?
10 THE WITNESS: Yes, sir.
11 MR. GROSSMAN: And what cases were they?
12 THE WITNESS: BP Snouffer School Road, BP 124 and
13 Rickenbacker, BP Aspen Hill, Safeway at Cloverly.
14 MR. GROSSMAN: Okay. And what body was that
15 before?
16 THE WITNESS: It was before the Zoning Hearing
17 Examiner.
18 MR. GROSSMAN: Okay. All right. Based on his
19 prior certification as an expert and his other
20 qualifications, I accept him as an expert in civil
21 engineering.
22 MS. HARRIS: Thank you.
23 MR. GROSSMAN: That's the way the process
24 generally works for, in a voir dire of an expert. And there
25 will be other experts called here and they will go through

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1 the same process, although there may be additional
2 questioning, all right? You may proceed.
3 MS. HARRIS: Thank you.
4 BY MS. HARRIS:
5
6 Q Are you familiar with the special exception
7 application which is the subject of today's proceeding?
8 A Yes, I am.
9 Q And can you please describe the scope of services
10 that Boehler was employed to perform in connection with
11 this?
12 A Boehler Engineering was responsible for preparing
13 the plans, the engineering plans and documents that were
14 submitted with the application. Those documents include a
15 field survey done by our survey crews, preparing the NRI,
16 FSD plan, preparing the forest conservation plan exemption
17 documents, preparing the actual special exception plats
18 preparing the storm water management concept plans and
19 calculations and various other exhibits and studies that
20 were prepared in conjunction with the application.
21 Q And have you been out to the subject site?
22 A Yes, I have.
23 Q Multiple times I --
24 A Multiple times.
25 Q Are you familiar with the zoning ordinance,
including the provisions of section, the sections related to

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1 the C-2 zone?
2 A Yes, I am.
3 Q And are you familiar with the zoning ordinance
4 requirements for special exception approval, including the
5 specific requirements for an automobile filling station?
6 A Yes, I am.
7 Q And are you familiar with Chapter 19 of the
8 Montgomery County Code, the erosion sediment control and
9 storm water management provisions?
10 A Yes, ma'am.
11 Q And Chapter 22(a) pertaining to forest
12 conservation?
13 A Absolutely.
14 Q And, finally, are you familiar with the 2012
15 Wheaton CBD Sector Plan?
16 A Yes, I am.
17 Q I think it may be helpful, and Mr. Brann touched
18 on this, to provide a basic orientation regarding the site
19 and going through some of the details in terms of the
20 proposed gas station as it relates to the mall property.
21 And --
22 A I will refer to an exhibit that's already been
23 submitted, 54(h). This is an overly illustrative plan of
24 the mall property. To orient everybody, north is to the top
25 of the page.

1 MR. GROSSMAN: Bless your heart for doing that.
 2 The Hearing Examiner gets easily confused when north is over
 3 there, so --
 4 THE WITNESS: Absolutely. What I listed -- in
 5 multiple cases we did that before. So north is to the top.
 6 East is to the right of the plan. West is to the left and
 7 south is to the bottom. The Costco proposed fill station is
 8 within the mall property. You have Veirs Mill Road on the
 9 east or right along with Georgia Avenue, east or right.
 10 University Boulevard runs in a northeast direction. That's
 11 up towards the top of the plan. And then you have
 12 residentially zoned properties to the west or left and south
 13 as well.
 14 The access to the overall mall property, to answer
 15 one of the other earlier 20 questions, is a total of five
 16 access points. There are three on the Veirs Mill Road side,
 17 one by the Wendy's, one by the garage and then a third that
 18 is actually part of the CBS parcel. There's an inner-parcel
 19 connection between the CVS and the mall. And then on the
 20 north side of the property off University Boulevard there
 21 are two more access points, one by the office building and a
 22 second behind the Giant.
 23 So those are the primary and only access points to
 24 the overall mall property. As it exists today, I would say
 25 the mall is there. Costco has been constructed. The

1 warehouse has been constructed that is located in this area
 2 on the plan. The fuel station is located just beyond the
 3 loading dock area across the main drive out the front, so it
 4 would be just to the west of the Costco warehouse.
 5 The Costco fuel station is basically an island
 6 within the mall property. It is surrounded by the mall
 7 itself. You have Costco on the east, parking directly to
 8 the north, a drive aisle and soon to be parking hopefully to
 9 the west and the ring road to the south. Also, I'm surely
 10 going to be spending a lot of time talking about this today,
 11 but there is a forested buffer that is located on the south
 12 of the mall property, as well as on the west of the mall
 13 property.
 14 MR. GROSSMAN: Go, going back for a second to the
 15 access points, when the, someone from that position
 16 indicated there were only four. Is it that CVS access point
 17 that's in question as to whether or not it's an access point
 18 to the mall?
 19 THE WITNESS: I can't speculate, but that would be
 20 my --
 21 MR. GROSSMAN: Is that exit -- if you access CVS,
 22 can you also access the mall thereafter --
 23 THE WITNESS: Yes.
 24 MR. GROSSMAN: -- from the CVS lot?
 25 THE WITNESS: Yes.

1 MR. GROSSMAN: Okay.
 2 MS. HARRIS: Thank you.
 3 BY MS. HARRIS:
 4 Q I'm going to ask you a series of questions based
 5 on your knowledge of the zoning ordinance, as well as your
 6 professional experience, starting with the C-2 development
 7 standards of the special exception and the proposed
 8 project's compliance with this. So I think it's -- is there
 9 a detail of -- is there another exhibit that --
 10 A Well, I can walk you through it.
 11 Q -- do you want to walk, start with this?
 12 A Do you want me to walk --
 13 Q Okay.
 14 A -- through the --
 15 Q Okay.
 16 A -- requirements of the C-2 zone?
 17 Q Yes.
 18 A There's a number of dimensions that we're going to
 19 talk about today and I'll try to be as specific as possible
 20 because I know that always -- so many other questions. So
 21 from a zoning code standpoint in a C-2 zone, the first
 22 requirement is a 10-foot setback from the property line
 23 adjoining structure. So that's measured from the main roads
 24 to the actual fuel station itself. So those distances are
 25 from University Boulevard to the fuel canopy is 1,354 feet

1 and then from Veirs Mill Road to the canopy is 1,513 feet.
 2 The next criteria is the side and rear yards. So
 3 we have residential R-60 zones to our side and rear, so the
 4 requirements are 20 feet and 18 feet. The south or rear
 5 from the canopy structure to the property line, canopy
 6 structure to the property line is 258 feet. On the west
 7 side from the kiosk that's a little attendant's booth, from
 8 the kiosk to the property line on the west side is 379 feet.
 9 The next C-2 code criteria is the minimum green
 10 space on the property. Now this calculation is based on the
 11 overall mall property itself. The minimal requirement is 10
 12 percent. The overall site provides 13.6 percent. The next
 13 criteria we looked at was parking. The parking requirement
 14 for the fuel station is basically per employees. We
 15 provided one space, which is an ADA space. That's within
 16 the special exception area and then there's also, I see
 17 additional spaces all around for the other station
 18 employees.
 19 Q Thank you. And Section 59G 1.23(e) requires
 20 special exceptions to be consistent with approved
 21 preliminary water quality plans to the extent that such
 22 plans exist for the special exceptions. Is there an
 23 approved preliminary water quality plan for this proposed
 24 filling station?
 25 A No, that section is not applicable.

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1 Q And why is it not applicable?
2 A Because this is not an area that requires another
3 parking lot.
4 Q Thank you.
5 MR. GROSSMAN: Because they're only required in
6 special protection areas?
7 THE WITNESS: Correct.
8 BY MS. HARRIS:
9 Q And will the special exception be located at least
10 300 feet from the lot line of any public or private school,
11 park, playground, daycare center or outdoor control
12 entertainment or recreational use, and I would note that
13 this is the new requirement that was required by Zoning Text
14 Amendment 1207?
15 A Well, yes, the station will -- this calculation or
16 this measurement is from property line to special exception
17 line. So on the west, which is where the swim club is, to
18 the special exception line, so it's west from the Kenmont
19 Swim Club to the special exception line is 375 feet. Now
20 the other nearby facility that falls into that category is
21 the Stephen Knolls School. So from the corner of the
22 special exception area to the Stephen Knolls School property
23 line is 875 feet.
24 The previously withdrawn special exception
25 application proposed locating the filling station as we

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1 already discussed in that green area that's out there now.
2 That was within 300 feet of this site, Kenmont Swim Club.
3 So the applicant has relocated that fill station to comply
4 with that requirement.
5 Q Thank you. I think it would be helpful also to
6 describe the distances between the special exception area
7 and the adjacent residential, well, the nearby residential
8 areas.
9 A So the, from the special exception lines to the
10 nearest residential lines will start with the south. So
11 going south, from the special exception line to the nearest
12 residential property line is 118 feet and to the west from
13 the special exception line to the nearest residential
14 property line is 331 feet.
15 Q And can you explain the screening -- please
16 explain the geographic and other factors that, other
17 components that will either exist or proposed in between
18 those two points of --
19 A Sure.
20 Q -- the property?
21 A Between the special exception area and the
22 residential properties, first you have the existing wooded
23 buffer that exists today. There's also a significant amount
24 of topography between the special exception area and the
25 residential properties. The field station essentially is at

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1 an elevation higher than the residential properties.
2 MR. GROSSMAN: Are the distances shown on that
3 exhibit by the way?
4 THE WITNESS: This provides the dimension from the
5 property line to the special exception line or, I'm sorry,
6 from the property line to the canopy and from the canopy to
7 the property line. So those dimensions are provided.
8 MR. GROSSMAN: And what are those dimensions?
9 THE WITNESS: Well, that's that, that's the --
10 MR. GROSSMAN: That was the property line for --
11 THE WITNESS: That was --
12 MR. GROSSMAN: -- the club?
13 THE WITNESS: Well, yes. I provided, I provided
14 the, I provided the distances from the special exception
15 line to the property line.
16 MR. GROSSMAN: To the property line of what?
17 THE WITNESS: From the special exception line to
18 the property line. The special exception line to the
19 property line.
20 MR. GROSSMAN: No, but I -- my question is to the
21 property line of the nearest residence, those distances
22 indicated on that diagram, because you're giving me two
23 figures.
24 THE WITNESS: No, they are not.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: That is not specifically from this
2 diagram.
3 MR. GROSSMAN: Okay. Because as I understand your
4 testimony, the distance from, to the resident to the,
5 residence to the south is 118 feet and then you said the
6 distance to the nearest residence to the west is 337 feet.
7 MR. GROSSMAN: That sounds correct. That was
8 special exception line to the property line.
9 MR. GROSSMAN: Right.
10 MS. HARRIS: And if I could, I still have the
11 witness --
12 MR. GROSSMAN: To property line, are you talking,
13 I don't know if there's an intervening property between --
14 THE WITNESS: There is.
15 MR. GROSSMAN: -- the property line of the mall
16 and the property line of the residence. So what property
17 line are you talking about?
18 THE WITNESS: I'm talking about the property line
19 as separates the mall from the residence.
20 MR. GROSSMAN: Okay. So you're saying that the
21 residents are abutting the mall property line?
22 THE WITNESS: That is correct.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: Yes, sir.
25 MR. GROSSMAN: All right. So those are one in the

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1 same?
2 THE WITNESS: Correct.
3 MR. GROSSMAN: Okay. All right.
4 BY MS. HARRIS:
5 Q And I believe, can you please clarify, was it 331
6 or 337?
7 A Okay. So I said 331 --
8 MR. GROSSMAN: Oh, okay.
9 THE WITNESS: -- which is a special exception
10 line for the property line. There is --
11 MR. GROSSMAN: On the west?
12 THE WITNESS: On the west.
13 MR. GROSSMAN: Right. I said 337. I just mis-
14 read my handwriting which is noted for that.
15 THE WITNESS: No problem. So back to the site
16 elements. So I mentioned the wooded buffer next to the
17 property. In addition to that, the Costco is proposing a
18 screen wall and if we can get the special exception plan
19 please?
20 BY MS. HARRIS:
21 Q While he's doing that, can you explain the
22 topographical differences?
23 A The fuel station property is at a higher elevation
24 than the residential properties along for the outside of the
25 mall. That total elevation difference changes depending on

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1 where you walk.
2 MR. GROSSMAN: What's the distance from the
3 closest fuel pump to the closest residence?
4 THE WITNESS: I do not have that written down.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: If you'd like me to --
7 MR. GROSSMAN: Could you figure it out for the
8 next hearing?
9 THE WITNESS: Okay.
10 MR. GROSSMAN: And then Ms. Harris can supply it
11 to me.
12 BY MS. HARRIS:
13 Q And when you noted that the property changes, so
14 it's hard to specify exactly, but can you give a range of
15 the topographical change?
16 A It varies. It ranges from 10 feet to 30 feet
17 depending on where, where you are.
18 Q 10 feet to?
19 A 30 feet.
20 Q 30 feet. Thank you. With the subject site being
21 higher than the --
22 A Correct, subject site being higher than the
23 residential properties.
24 Q And the landscape architect will get into this,
25 but in terms of this, there's a forested buffer. Can you

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1 describe that in a little bit more detail?
2 A Yes. The buffer is located to the south and west
3 of the fill station area. It was reviewed and mapped in
4 accordance with the NRI FSD requirements and that forested
5 buffer is preserved for this application.
6 MR. SILVERMAN: Could we spell that, those
7 initials?
8 MR. GROSSMAN: I'm sorry, could you --
9 MR. SILVERMAN: The acronym, the initials just
10 used?
11 THE WITNESS: Natural Resource Inventory/Forest
12 Stand Delineation. So that forested buffer is going to be
13 augmented with a proposed screen wall, a high screen wall,
14 starts on the western portion of the property and runs just
15 behind the curb line, right behind the curb line of the ring
16 road, goes around the curve as you work your way east and
17 ends beyond the loading zone for the Costco warehouse.
18 MR. GROSSMAN: And I take it that wall is between
19 the proposed special exception and the residences?
20 THE WITNESS: That is correct. The residences are
21 in this area --
22 MR. GROSSMAN: This area being the south and west?
23 THE WITNESS: South and west, and the special
24 exception area being just to the west of the Costco
25 warehouse.

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1 MS. HARRIS: And I would note for the record that
2 Exhibit 86(i), which is one of the landscape plans, has a,
3 the accurate location of the mall because it was extended
4 slightly along the eastern boundary.
5 MR. GROSSMAN: Okay.
6 MS. HARRIS: So it's not accurately reflected on
7 Exhibit 54.
8 BY MS. HARRIS:
9 Q Not to belabor the point, but just I want to make
10 sure we're clear. When you measured from the special
11 exception line to the property line, is the property line
12 not the residence, the actual residential structure, is that
13 correct?
14 A It was the special exception line for the
15 property.
16 Q Okay. Thank you. Will the special exception
17 protect against the placement of product displays, parked
18 vehicles and other obstructions at locations which might
19 affect visibility at intersections or station driveways?
20 And I would note that this is 59G 2.06(b)(3) of the code.
21 A Yes, the filling station will not have a retail
22 sales component and there will be, there will be no products
23 displayed on site.
24 Q And then subsection (b)(5) --
25 A The --

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1 Q -- addresses the issue of whether the subject
2 property is on the corner of --
3 A And the subject property is not a corner lot, so
4 that section does not apply.
5 Q Will the gasoline pumps and service appliances be
6 located at least 10 feet behind the building line?
7 A There's no real building line applicable for,
8 because of where it's situated as an island inside the mall.
9 The only structure on the site is the 128 square foot
10 employee kiosk which is located immediately west of the
11 pumping islands.
12 Q Okay. And will there be adequate separation
13 between driveways in --
14 A Yes, there will. As previously testified, there
15 is one access point into the fueling area. There are access
16 points to the, well, or to the parking areas around it, but
17 they all meet current standards and there's no 20-foot
18 separation distance required between the driveways because
19 we are not off of a street. It's internal to the property.
20 Q And you can tell from the variety of these
21 questions and Mr. Guckert will get into this in more detail,
22 but they're oriented toward gas stations that are located
23 off public right-of-ways. So some of them may not be
24 applicable, including subsection (b)(6), which deals with
25 whether the driveways will be perpendicular to the curb or

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1 street line?
2 A Correct. And since the site is not located off of
3 a street as defined by the zoning ordinance, that the drive
4 aisles, it's not a requirement, but the access points are
5 perpendicular regardless of the retreat.
6 MR. GROSSMAN: I'm not sure if I read that
7 sentence quite the way you do because it says, there must be
8 at least 20 feet between driveways on each street, and then
9 it says, each driveway must be perpendicular for the curb or
10 street line. You're saying because you don't have a street
11 per se, you don't have an applicable street line or curb, is
12 that what you're saying?
13 THE WITNESS: Correct.
14 MR. GROSSMAN: Okay. All right. In any event,
15 they're perpendicular. So we don't have to worry.
16 THE WITNESS: In any event, they're perpendicular.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Yes, sir.
19 MR. GROSSMAN: I always thought that provision was
20 a little bit questionable because sometimes, and I had a
21 case in which the circumstances were such that not
22 perpendicular would have been better, safer and so on, but
23 in any event it's in the code.
24 BY MS. HARRIS:
25 Q Will all service stores and similar activities be

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1 conducted entirely indoors?
2 A The application is for the filling station only,
3 no service store to similar activities are proposed.
4 Q Which leads to the next question. Will any major
5 repairs, spray paint operations or body or fender repairs be
6 conducted on the site?
7 A No. No like automobile repair work or repair work
8 of any kind will be done on the property.
9 Q And will any parked vehicles overhang the club
10 right-of-way?
11 A No.
12 Q Are there any automobile, truck or trailer rental
13 lots or car washes proposed at the special exception?
14 A No, ma'am.
15 Q And then finally in connection with subsection
16 2.06, is the site located within the rural village overlay
17 zone?
18 A It is not.
19 Q Thank you. I want to move now to a few questions
20 regarding the screen wall, recognizing that the landscape
21 architect will get into more detail on that. Please
22 identify the location of the proposed screen wall and the
23 limits of disturbance involved in the construction of the
24 well? And I'd refer to Exhibit 86(i), which is --
25 MR. GROSSMAN: I take it when you refer to the

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1 screen wall, that's the same as the green wall that has also
2 been referred to, is that correct?
3 MS. HARRIS: Yes, and there's a little history
4 there that it was formerly called a green wall and then Park
5 and Planning staff, for a variety of reasons, requested that
6 it be screen wall. But it will have a green screen and the
7 landscape architect will get into that, not to --
8 MR. GROSSMAN: Well, now I'm curious why did
9 staffs want to call it a screen wall rather than a green
10 wall?
11 MS. HARRIS: I'd have to -- I, I'm not sure.
12 MR. GROSSMAN: Okay.
13 BY MS. HARRIS:
14 Q 86(i) is a landscape architect --
15 A Right.
16 Q -- and so we don't have that.
17 A We don't have this exhibit, that's correct.
18 Q Well, I think you --
19 MR. GROSSMAN: We have.
20 BY MS. HARRIS:
21 Q I think you could use --
22 A I could --
23 MR. GROSSMAN: We have any exhibit you want. I
24 have a carton full of exhibits here, so --
25 THE WITNESS: I think we can speak to --

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1 MS. HARRIS: We can speak to it with --
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: -- 54(i)?
4 THE WITNESS: 54(f). 54(f). As previously
5 indicated, the screen wall is indicated as a dark line on
6 the plan located just to the south or west of the existing
7 curb line on the ring road. The screen wall is installed.
8 It does not have an actual footing. It's a sonotube that's
9 drilled into the ground. Then you plop it in, then you plop
10 it in there with all the concrete and put the posts in
11 there. So there's no earth movement or other kinds of
12 activities that are required to install the green wall.
13 It's like installing an area light in the parking lot in
14 terms of getting a post in there.
15 BY MS. HARRIS:
16 Q Thank you. So there's no limits of disturbance
17 or --
18 A No.
19 Q -- is that correct?
20 A There is not.
21 Q Okay. Moving on to the issue of deliveries and
22 there was a fair amount of testimony regarding that earlier
23 with Mr. Brann. And he noted that generally there will be
24 three to five deliveries a day. Can you explain the
25 delivery route and turning movements with respect to the

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1 delivery trucks, and I'd refer to Exhibit 54(i).
2 A So as previously indicated, there's direct access
3 points off of Veirs Mill and University Boulevard where the
4 trucks can enter the property just like how the Giant trucks
5 enter or the Costco trucks go into the warehouse. You will
6 drive along the ring road. They would pull into the curb
7 cut that is just to the west of the fill station area. The
8 special exception area encompasses that curb cut. There is
9 a parking space in front of the tanks where the truck would
10 deliver products. The truck continues on and makes a left-
11 hand turn onto the internal drive before it makes a left or
12 a right onto the ring road to exit the site.
13 One item that I did not mention earlier when I was
14 doing the orientation, as part of the fuel station
15 construction, there's a new pedestrian path that is going to
16 be installed just south of the islands on the east-west
17 access road that that will take pedestrians to the parking
18 area beyond the fuel station layout. That's this striped
19 area with, on this Exhibit 54(i).
20 Q And when you stay stripes, so there will be actual
21 striped delineation in the parking field?
22 A Correct. There's an actual stripe delineation
23 within the parking field that would allow pedestrians and
24 customers to walk from the station and walk through the
25 parking area, designated area, through the parking area to

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1 get to the parking field.
2 Q Okay.
3 A And I'd just note that the reason we did this
4 exhibit was to show the overall tracking through the areas
5 to make sure our radiuses worked for where the truck was
6 turning. That's why there's an area northeast of the fuel
7 station area that's striped out that allows room for the
8 truck to make its turns. The purpose of this exhibit is to
9 just show the truck running through. It wasn't drawn to
10 show it actually parked in front of the tanks to deliver
11 products. This is just to show the routing through the
12 access points.
13 Q But in terms of -- once a car makes the maneuvers
14 that are shown on that exhibit and they've parked, they've
15 turned off their engine and then you get in the parking
16 process, are they totally confined within the special
17 exception area?
18 A Yes, they are.
19 Q And when they are totally confined within the
20 special exception area, maybe, can you explain --
21 A Sure.
22 Q -- the cars to the immediately west that are
23 parked --
24 A Sure.
25 Q -- and what access they have?

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1 A Sure. The drive aisle is 24 feet wide. So it's a
2 very wide drive aisle. The parking spaces are 10 feet wide.
3 So they're wide as well. When the trucks park there, the
4 minimal amount of space that will be provided is 16 feet.
5 We've done the analysis and 16 feet is sufficient for a
6 vehicle parked within one of the spaces to pull out and be
7 able to exit the space.
8 Q Thank you. Moving on to a related field, related
9 issue which is parking, and Mr. Guckert is going to be
10 addressing the overall parking of the mall parking, but I
11 wanted you to discuss and explain the issue of the number of
12 parking spaces that are currently located within the special
13 exception area as it relates to the number of spaces that
14 will be located in the grassy area that was indicated on the
15 aerial photo.
16 A Sure. Right now within the parking area where the
17 fuel station is going to go, there are 109 parking spaces.
18 Of those 109 spaces, seven will be put back in place after
19 the fuel station goes into place. On the adjacent pad where
20 it's grass right now, there are a total of 162 parking
21 spaces that will be proposed.
22 MS. ROSENFELD: I'm sorry, that number again?
23 THE WITNESS: 162.
24 MR. GROSSMAN: So you're saying you will have
25 more?

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1 THE WITNESS: Correct.

2 BY MS. HARRIS:

3 Q Thank you. Then moving on to several questions

4 regarding stormwater management and sediment control.

5 Turning to Chapter 19 in the requirements, was the

6 stormwater management concept plan and sediment erosion plan

7 required for the project?

8 A The stormwater management concept plan is required

9 and has been approved. It was approved by the Department of

10 Permitting Services on December 11, 2012. That is approval

11 number 241647.

12 MS. HARRIS: And I would note that that's Exhibit

13 54(a) in the record. And I would also note that we don't

14 have, but we certainly submit to the record the

15 corresponding stormwater management plan that was approved

16 in connection with that? So we'd like to enter that in as

17 the next exhibit.

18 BY MS. HARRIS:

19 Q Do you want to just briefly discuss that a bit?

20 A So while we're bringing up that plan, I'll also

21 note that a, in the course of permitting for the fuel

22 station, if we ever get to that point, that a sediment

23 control plan will be prepared for the fuel station

24 improvements that will include sediment control devices such

25 as silt fence, stone construction entrances and the

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1 protection of the property. So this exhibit, which number

2 are you going to make this exhibit?

3 MR. GROSSMAN: Exhibit 103. This is the concept

4 stormwater management plan?

5 THE WITNESS: This is the stormwater management

6 concept plan, that is correct. This is the plan that was

7 approved with the approval No. 241647.

8 (Exhibit No. 103 was marked for

9 identification.)

10 BY MS. HARRIS:

11 Q Thank you. Can you please, excuse me, explain the

12 proposed stormwater management measures and how sediment

13 will be managed?

14 A The storm water management concept has been

15 approved, has been prepared in accordance with environmental

16 site design criteria. There are two fire retention areas

17 that are located on the south side of the site labeled on

18 the plans as ESD-1 and ESD-2. In addition to those

19 facilities, the area underneath the canopy will drain to a

20 Costco required oil/water separator. That is a Costco-

21 specific device that will be provided for the area that

22 drains underneath the canopy.

23 In addition to that, there is another County-

24 required device, a second oil and water, oil separator that

25 is provided. Once the water leaves that area, whether it be

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1 the --

2 MR. GROSSMAN: Hold on one second. So does it go

3 through one and then the other?

4 THE WITNESS: It does. And then it keeps going.

5 So it goes through those two devices or through the

6 bioretention areas. It leaves those areas via pipes and

7 then it goes through two more systems. One system is

8 located to the west that's actually already installed, it

9 was part of the overall development. That water drains into

10 another filter and pipe storage system and then there is yet

11 another system that's actually already installed that was

12 located just to the south of the loading bays that drains

13 more of the site. So actually there are multiple levels of

14 stormwater management treatment that the water goes through.

15 BY MS. HARRIS:

16 Q So if I understood you correctly, the Costco

17 requirement is above and beyond what the County would, does

18 require?

19 A That is correct. And I would also add that from a

20 quantity control standpoint, all the water from the special

21 exception area will flow to the Wheaton branch regional

22 facility. None of the water from the special exception

23 area, none of it, goes to Kensington. It all goes to

24 Wheaton. Within the Wheaton branch, there is a regional

25 stormwater management facility that provides quantity

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1 control.

2 Q Is it correct that the former site with respect to

3 the application that installed in 2010, did that flow to a

4 different area?

5 A The, with the warehouse construction, these

6 devices were put in place that directed the water. Before

7 the warehouse was there, all the water in this area flowed

8 out to the Kensington branch.

9 Q I see. Okay.

10 A So we actually redirected the water away from the

11 Kensington branch.

12 Q Okay. Thank you. Turning to forest conservation

13 in Chapter 22(a) of the code, does the application require

14 preparation on the preliminary forest conservation plan?

15 A No. The --

16 Q Any reason?

17 A The site is exempt, a forest conservation plan

18 exemption No. 42013053(e) --

19 MR. GROSSMAN: Start that -- 42 --

20 THE WITNESS: 42013053(e) was granted by M-NCPPC,

21 Park and Planning, on November 9, 2012. That forest

22 conservation plan exemption was specifically in only four

23 subject special exception area. To answer one of Mr.

24 Grossman's earlier questions, forest conservation exemptions

25 are applied for on a case-by-case basis. So every time a

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1 development project comes into the mall, a new set of plans
2 need to be submitted to demonstrate whether they comply with
3 the forest conservation or not.
4 MR. GROSSMAN: And was that, Ms. Harris, is that a
5 copy of that exemption in the file, the specific one granted
6 November 9, 2012?
7 MS. HARRIS: I would need to go back and check the
8 record.
9 MR. GROSSMAN: I just know, I remember in reading
10 through the materials there was a contention that there was
11 not a specific exemption for this redone special exception.
12 I think that's what the, one of the concerns was that was
13 raised. Maybe I misunderstood it. Maybe the concern was
14 that an exemption was granted and they felt it shouldn't
15 have been, but I guess we'll find out, more about that, but
16 if --
17 MS. HARRIS: Well, in any event, we can certainly
18 submit. I'll review the exhibit list.
19 MR. GROSSMAN: Okay.
20 MS. HARRIS: If it's not there, we'll certainly
21 submit it.
22 MR. GROSSMAN: All right. Thank you.
23 THE WITNESS: So what I would like to add to that,
24 in our natural resources inventory, the forest and
25 delineation plan --

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1 MR. GROSSMAN: Yes.
2 THE WITNESS: -- has to be prepared first and
3 that, I believe, is one of the -- how we didn't mark this,
4 I'll let you know what that is. This is a plan that was
5 signed and approved by Park and Planning.
6 MR. GROSSMAN: Right. You're NRFSD. The question
7 is it an exhibit that's in the record?
8 MS. HARRIS: I don't see that it is in the exhibit
9 and it's not even submitted. We will submit it.
10 MR. GROSSMAN: I mean I see I have Exhibit 8 was
11 an NRI/FSD 421, but that's 4210, 12052(e), not 42113. I
12 have the small version of it here. Exhibit 8.
13 MS. HARRIS: But the number doesn't correspond
14 with the one that Mr. --
15 MR. GROSSMAN: Right.
16 MS. HARRIS: -- Duke just referenced.
17 THE WITNESS: It's the -- it has the same date on
18 it, but --
19 MR. BRANN: This is before it was approved. This doesn't
20 have the stamp on it.
21 MR. GROSSMAN: Okay.
22 MS. HARRIS: So in that --
23 THE WITNESS: This -- the copy that I have here is
24 a stamped, approved copy.
25 MS. HARRIS: So we should submit that for the

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1 record.
2 MR. GROSSMAN: And, also, don't forget the
3 electronic versions of all these --
4 MS. HARRIS: Yes.
5 MR. GROSSMAN: -- plans, et cetera.
6 MR. SILVERMAN: Could you just clarify the numbers
7 of what they're showing? You mentioned a, I'm sorry if
8 I'm -- I don't mean to interrupt, but --
9 MR. BRANN: This is Exhibit 104.
10 MR. GROSSMAN: That's already labeled 103.
11 MR. BRANN: No, it's, that's the previous one,
12 yes.
13 MR. GROSSMAN: Okay. And you have one in your
14 hand that's and NRI/FSD?
15 MS. ROSENFELD: My numbers don't correlate. I
16 have 102 as an aerial photograph and 103 as a second new
17 exhibit that was an aerial photograph?
18 MR. GROSSMAN: Yes. 101 is an aerial photo of the
19 Costco building at Wheaton Mall and -- that's 101. 102 was
20 aerial photo of Wheaton Plaza.
21 MS. CORDRY: No, no, 101 is the questions.
22 MS. ROSENFELD: 101 was your questions.
23 MR. GROSSMAN: No, 100 --
24 UNIDENTIFIED SPEAKER: No, un-unh.
25 MR. GROSSMAN: NO, I didn't mark my questions of

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1 any --
2 MS. ROSENFELD: Oh, I'm sorry. I did.
3 MR. GROSSMAN: Perhaps I should have, but I
4 didn't.
5 MS. ROSENFELD: Okay. On that I'm kind of
6 confused.
7 MR. GROSSMAN: I didn't mark the ZTA 1207 as an
8 exhibit, 99.
9 MS. ROSENFELD: I have that.
10 THE WITNESS: So I think the, well, the overall
11 NRI/FSD plan is 104.
12 MR. GROSSMAN: Okay. So that's the approved --
13 THE WITNESS: NRI/FSD.
14 MR. GROSSMAN: -- NRI-FSD, and that is No. 42 --
15 THE WITNESS: It's the 2-page plan.
16 MR. GROSSMAN: Right, 4201305 --
17 THE WITNESS: -- 3 --
18 MR. GROSSMAN: -- 3--
19 THE WITNESS: -- (e).
20 (Exhibit No. 104 was marked for
21 identification.
22 MR. GROSSMAN: (e). Well, of course, that was
23 the, I thought that was the, an exemption.
24 THE WITNESS: That is the exemption. The NRI/FSD
25 got approved first and then the --

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1 MR. GROSSMAN: Did they have the same number?
 2 THE WITNESS: They do. They do have the same
 3 number.
 4 MR. GROSSMAN: Okay.
 5 THE WITNESS: The FC exemption number is listed on
 6 the approval stamp.
 7 MR. GROSSMAN: Okay.
 8 THE WITNESS: And then there is, there's two
 9 sheets. There's the overall and then there's the wall for
 10 the fuel station.
 11 MR. GROSSMAN: Okay.
 12 BY MS. HARRIS:
 13 Q Can you please explain why the property is exempt
 14 from the forest conservation?
 15 A The property is exempt from forest conservation
 16 requirements because, one, it is an existing, developed
 17 property which does not require subdivision plans. Two, it
 18 does not propose removing more than 5,000 square feet of
 19 forest. And, three, it does not affect any forest in the
 20 stream buffer. Those are the three criteria for extensions,
 21 all of which the site qualifies for and all of which the
 22 site was approved for.
 23 Q And so the determination that it validly qualified
 24 for an exemption is made by which agency?
 25 A Park and Planning.

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1 Q Thank you. The agency charged made such a
 2 determination?
 3 A That is correct.
 4 Q Thank you. In terms of sustainability, the
 5 Wheaton Sector Plan, pages 73 and 74, emphasizes
 6 sustainability for the Wheaton Sector Plan area. Can you
 7 please describe the components of the proposed project which
 8 in your opinion further this environmental law?
 9 A Sure. There are several elements that comply with
 10 that requirement. First, the site was designed utilizing an
 11 environmental site science technique for stormwater
 12 management to decrease runoff from the special exception
 13 area. Another item is the forested buffer was retention,
 14 was retained and as the landscape architect will testify to,
 15 that forested buffer will have to be enhanced with
 16 additional landscaping.
 17 Within the stormwater management areas that I
 18 mentioned, there are going to be new and additional
 19 plantings that are provided on site. And given the
 20 stormwater management and the plantings, there's actually a
 21 decrease in the impervious area on the site. The amount of
 22 green space within the special exception area goes up by
 23 about 900 square feet.
 24 And as previously testified, the overall site
 25 itself does actually exceed the green area requirement for

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1 the C-2 zone. 10 percent is required, 13.6 is required.
 2 Q Thank you. In terms of adequate public
 3 facilities, have you evaluated the availability of the
 4 water, sewer, gas and other utilities to the location and
 5 will the property be served by the public facilities?
 6 A Yes, the property will be served by adequate
 7 public facilities. During the permeating phase, a new site
 8 utility plan will be submitted to the water and sewer
 9 providers. The site will be serviced by a one-inch line.
 10 There will be a new fire hydrant that is proposed offsite,
 11 excuse me, to provide for adequate fire coverage. A new 6-
 12 inch sanitary lateral connection will be provided to the
 13 kiosk facility and all of these utilities exist within the
 14 mall property today.
 15 The electric, power, natural gas, phone services
 16 are all also available within the mall and will be provided
 17 to the filling station as needed. With respect to public
 18 facilities, since this is not a residential use, there's no
 19 school impact issues. This site is located within two miles
 20 of a police station at 2300 Randolph Road and it is also
 21 within half a mile of the fire and rescue station at the
 22 corner of Blue Ridge Ave and Grandview Ave. And as staff
 23 noted in the staff report at page 28, it did consult with
 24 Montgomery County Fire and Rescue. Montgomery County Fire
 25 and Rescue did receive the plan and determined that it was

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1 sufficient. And I would also note that the fuel station
 2 itself will undergo an extensive permanent review test if it
 3 reaches that point that will require it to comply with any
 4 and all state, Federal and local requirements and permits.
 5 Q And I would note that a traffic engineer will
 6 address APF with respect to traffic.
 7 A Correct.
 8 Q Thank you. So, in conclusion, well, let me,
 9 before we get to the conclusion, is there anything else
 10 that -- you don't like this question -- the general question
 11 of anything else to add?
 12 A No, I think we've covered it.
 13 Q With respect to the sections of the code to which
 14 you testified, in your professional opinion does the special
 15 exception satisfy those code requirements?
 16 A Yes, in my professional opinion the station and
 17 site as designed meets all the applicable code requirements.
 18 Q Thank you.
 19 MS. HARRIS: That concludes our questioning of
 20 this witness.
 21 MR. GROSSMAN: Was there a change made since you
 22 indicated that this, the exhibits I have, Exhibit 8(b),
 23 which is the small version of 8(a), the NRI/FSD submitted,
 24 was there a change made from when this exhibit was made for
 25 approval?

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1 THE WITNESS: If I may, I'd like to study that and
2 then I can come back --
3 MR. GROSSMAN: Okay.
4 THE WITNESS: -- report through packing and tell
5 you.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: I know at least one difference is
8 the approval stamp.
9 MR. GROSSMAN: Right.
10 MR. SILVERMAN: What?
11 MR. GROSSMAN: The approval stamp. Okay. All
12 right. Cross-examination, Ms. Rosenfeld?
13 MS. ROSENFELD: Yes. Thank you.
14 CROSS-EXAMINATION
15 BY MS. ROSENFELD:
16 Q I'd like to start, the area between the special
17 exception and the ring road and progressing down toward the
18 residential property, that's the area I'd like to focus on
19 right now. Which exhibit would be most useful as to
20 information on that in terms of topography and distance?
21 A Well, probably a combination of the special
22 exception plan and the overall plan for --
23 Q Would the aerial help?
24 A There's also -- why don't we use the --
25 Q We can --

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1 A the NRI/FSD plan?
2 Q Which one has the most information on the
3 topography?
4 A The NRI/FSD or let me just check to see if that's
5 right. We'll go with the NRI/FSD plan.
6 Q Okay.
7 MR. GROSSMAN: Does that have a number or anything
8 on it?
9 THE WITNESS: It was, it's the second sheet for
10 the Cobra Off Plan, which was --
11 MR. GROSSMAN: I think that was 104.
12 THE WITNESS: 104.
13 MR. GROSSMAN: So why don't we make it 104(a) and
14 (b), okay, so we've seen 104(a) and would you make that,
15 will be a 104(b), I guess, if it's the second sheet.
16 MS. ROSENFELD: I'm sorry, (a) is what?
17 MR. GROSSMAN: A is the front page of the, with
18 the approval stamp on it and (b) is, I don't know what,
19 what's on the second page.
20 THE WITNESS: It's a blow-up and it just zooms in.
21 MR. GROSSMAN: It's a blow-up. All right. A
22 blow-up of the same thing.
23 (Exhibit No. 104(b) was marked for
24 identification.)
25 BY MS. ROSENFELD:

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1 Q At the southernmost portion of the special
2 exception area, could you tell me generally what elevation
3 that lower, that southern line, that southern boundary of
4 the special exception area is?
5 A If you'd just give me a second?
6 Q Take your time.
7 A 441.
8 Q And then progressing south, right now we're
9 talking immediately south, it's across the ring road, what
10 is the elevation at the southernmost boundary of the ring
11 road?
12 A The southernmost bend is roughly, about 441 is,
13 it's about the same elevation as you move east along the
14 special exception area, it starts falling down and it goes
15 to 440, then 239.
16 Q Okay. So at the curve of the road, let's just say
17 the, I don't know how you describe it, but what, at the
18 corner, at the deepest curve in the road --
19 A Right here?
20 Q -- move west right there. What would the total be
21 at that location?
22 A So this 441 right here is a high point.
23 Q Okay.
24 A So I mean it's that way and then it starts going
25 this way. Just estimating, you know, 339, 338, 337.

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1 Q Okay. So -- and going east on the ring road?
2 A 441, 339, 338.
3 Q So you went from 441 to 339 --
4 MR. GROSSMAN: All right. So the points you've
5 just described --
6 MS. CORDRY: I mean 400 all the way across?
7 THE WITNESS: Pardon me?
8 MS. CORDRY: When you say 441 and then you say
9 339, you mean --
10 THE WITNESS: I said that this, at this point
11 which is west of the special exception area, it's
12 approximately 441.
13 MS. CORDRY: Yes. Okay.
14 THE WITNESS: And then as you move east, it starts
15 to fall down, 441, 440 --
16 MS. CORDRY: Okay. Because you were saying --
17 okay.
18 MS. ROSENFELD: That would be a steep slope.
19 MS. CORDRY: That would be a very steep slope.
20 THE WITNESS: And then as you move west, it kind
21 of follows that same pattern.
22 BY MS. ROSENFELD:
23 Q Okay. Now going --
24 MR. GROSSMAN: And the points you just described,
25 they're points along the southern edge of the ring road?

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1 THE WITNESS: Yeah, I'm overall describing the
2 ring road.
3 MR. GROSSMAN: Right.
4 THE WITNESS: I have detailed spots. I'm just
5 reading --
6 MR. GROSSMAN: Yes.
7 THE WITNESS: -- the contours and --
8 MS. ROSENFELD: You might want to stay there for a
9 minute.
10 BY MS. ROSENFELD:
11 Q Now looking, okay, I'm going to start where I
12 started before. At the southernmost boundary of the special
13 exception area we get to the ring road and we're about 441.
14 Then as you move farther south through the balance of the
15 property, when is the elevation, southernmost boundary of
16 the mall property?
17 A So I just want to make sure I'm getting where you
18 want the elevation. As you're coming this way?
19 Q No, keep going south. No --
20 A As you go --
21 Q -- but find the southernmost boundary of the
22 special exception.
23 A Southernmost boundary of the special exceptions?
24 Q It will be right to the south to the ring road.
25 A Yes.

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1 Q Now go directly to the boundary of the mall.
2 A Okay.
3 Q What is the elevation at that point?
4 A 428.
5 Q And then from there what is the topo of the
6 nearest structure south of, south of that location?
7 A I do not have that information. I don't have that
8 information on landscape.
9 Q You don't have that on any surface?
10 A I know that the landscape architect has studied
11 the site lines and has that information.
12 Q Okay. Just, you've been to the site?
13 A Yes, I have.
14 Q Just generally do you know if it drops off?
15 A It drops off?
16 Q Farther?
17 A It goes down.
18 Q Okay.
19 A Not as steep, not as steep as between the ring
20 road and the property line.
21 Q But the residential property would be at a lower
22 elevation than 428?
23 A That is correct.
24 Q All right.
25 A That's correct.

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1 Q And going west, could you just generally describe,
2 the curve goes southwest, how the topo slopes there?
3 A The topo slopes from the curb line down as you go
4 around the curve, slopes down. As you keep going west,
5 continues to slope down.
6 Q And as you move east from the ring road down
7 through to the property down the ring, then to the
8 residences, what happens to the topo there?
9 A The topo from the ring road curb line to the
10 property line goes down and then you hit Mount McComas where
11 it hops back up and it's roughly at grade with the ring
12 road. And then once you get to the other side of Mount
13 McComas, it starts to fall back down again.
14 Q Okay. All right. Thank you. And do you know if
15 the topo continues to slope as you head toward the school?
16 A Yes, it does.
17 Q Okay.
18 MR. GROSSMAN: Just for the record, what school
19 are you talking about?
20 MS. ROSENFELD: The Stephen Knolls School.
21 MR. GROSSMAN: Okay.
22 BY MS. ROSENFELD:
23 Q I know the landscape architect is going to discuss
24 in greater detail the green wall/screen wall, but you did
25 talk about how it would be installed with a sauna tube

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1 drilled into the ground?
2 A Correct.
3 Q And do you know if the wall will touch the ground
4 or is it elevated somewhat above ground level?
5 A The bottom --
6 Q Describe what the bottom looks like.
7 A Yeah, the -- obviously there's a post which is
8 what I'm testifying to, there's a post that's going to
9 connect the sauna tube. As far as the rest of it, I would
10 leave it up to the landscape architect or the architect to
11 further describe it.
12 Q Okay. So you really -- excuse me, you really just
13 testified with, to the extent of limited disturbance
14 that's --
15 A Yes, ma'am.
16 Q -- the extent of your testimony there? Along the
17 ring road, excuse me, the southern boundary of the ring
18 road, can you explain whether or not there is a marked
19 pedestrian path along the southern boundary of the ring
20 road?
21 A There is not a marked pedestrian path.
22 Q Do you know if there was?
23 A Not to my knowledge.
24 Q Not on any of your former exhibits at no point?
25 A Yes, at one point we did consider adding a

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1 pedestrian path on the ring road.
2 Q Was it one of your prior submittals?
3 A I don't know if it was submitted as part of the
4 record, but I do know I prepared exhibits that showed the
5 potential pedestrian path.
6 Q Okay. And do you know why there's not a
7 pedestrian path now?
8 A It was determined by Westfield and also
9 recommended by Park and Planning not to provide a
10 residential path.
11 MR. GROSSMAN: At that location?
12 THE WITNESS: At that location.
13 BY MS. ROSENFELD:
14 Q Is there a pedestrian path at any point on the
15 ring road?
16 A At the Stephen Knolls School there's crosswalks to
17 the east. To the north or west, then north along the ring
18 road there's crosswalks.
19 Q Is there parking along the perimeter of the ring
20 road?
21 A Yes, ma'am.
22 Q And could you describe that parking?
23 A It is parallel parking.
24 Q And how far along the ring road does that extend?
25 A I will refer to the overall plan, 54(h). The

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1 parallel parking is about a space throughout the ring road.
2 It starts at the north, closer, north and west closer to
3 Target. Again, it stops at some nexus points, continues,
4 starts again, and then it starts again along the curve,
5 continues up to short of where the fuel area is and then it
6 picks back up again and then it looks like it stops probably
7 close to where the Stephen Knolls School begins.
8 Q And, I'm sorry, can you be more specific about
9 where it picks up again?
10 A Well, it stops and starts.
11 Q I'm sorry, specific to the area in the vicinity of
12 the special exception?
13 A Okay. It starts south of the east-west connector
14 that leads to Costco. It starts south of there, runs along
15 the curve, stops at the access in the loading for the
16 warehouse, then starts again until the crosswalk and then at
17 the exit it picks up again after that.
18 Q And can you tell me the difference, the distance
19 between those parallel parking spaces and the interior wall
20 of the green wall, screen wall?
21 A I just want to make sure I, I'm answering the
22 question correctly. You want to know the distance between
23 the, where the parallel park space begins and where the curb
24 line is?
25 Q The green wall.

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1 A The green wall is going to be right behind the
2 curb line.
3 Q Okay.
4 A So, I'm going to give you an exact number. 12
5 feet.
6 Q 12 feet between --
7 A 12 feet from the edge of the, what's striped as
8 the parallel parking and the back of the curb, which is
9 where the screen wall is going to be.
10 Q With the parking? Now if I'm, let me do it this
11 way. If I'm parallel parked going east --
12 A Uh-huh.
13 Q -- on the passenger side of the car, how much
14 distance would there be approximately between the passenger
15 side of the car and the ring wall?
16 MR. GROSSMAN: So how do you open the door and get
17 out?
18 THE WITNESS: No, there's going to be six feet.
19 BY MS. ROSENFELD:
20 Q There will be six feet?
21 A Correct.
22 Q So --
23 A Well, assuming your car is six feet wide.
24 Q So when you say just, just beyond the curb line,
25 it's not just beyond the curb line. Would six feet be on

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1 the curb line?
2 A No. No. So the parallel parking space was
3 striped inside of the curb line. Normally the parallel
4 parking space is eight feet wide. They actually made them
5 12 feet wide. That's almost the full length. The parallel
6 parking space is almost the full length. So when you go and
7 the car is plus or minus six feet wide, when you come and
8 you parallel park in there, that edge of that striping is 12
9 feet, 11 1/2, 12 feet from the face of the curb. The car is
10 six feet wide. You're going to have six feet between that
11 car and the wall.
12 Q Do you have an exhibit that shows this sort of
13 larger dimension, the distance between, just how that
14 parking is laid out?
15 A Okay. So on the special exception --
16 MS. ROSENFELD: Mr. Grossman, may I approach
17 Mr. --
18 MR. GROSSMAN: Sure.
19 MS. ROSENFELD: -- Duke?
20 MR. GROSSMAN: As long as you don't hit him with
21 anything.
22 MS. ROSENFELD: I wouldn't do that.
23 THE WITNESS: She's been known to do it.
24 MS. ADELMAN: I love it.
25 BY MS. ROSENFELD:

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1 Q I'll save us some questions. Okay. Now talk me
2 through it.
3 A Okay. So here's the ring road. I'm looking at
4 Exhibit 103. Here's the -- actually, where is my name when
5 I use the special exception plan. So here's the special
6 exception plan which is 54(f) from the curb line of the
7 field station over. We have a 13-foot lane, 11-foot lane,
8 one-foot striping, 11.7 feet, then this white line to the
9 edge is 3.7, another 8 feet curb line. That's just in that
10 area.
11 Q But if I'm reading this correctly where it says
12 7.6, is that seven?
13 A Correct.
14 Q Is that seven feet, six inches?
15 A Yes.
16 Q So, and this is the stripe that indicates just,
17 just to the west on this exhibit there's a corner on the, it
18 appears to me it would be the corner marking where a car
19 would park inside that space, am I correct?
20 A Yes, and now that I see this, I have a line on
21 here that I didn't have on my earlier plan, so this is
22 showing the dashed white line and then the 3.7 and then the
23 parallel parking space.
24 Q So if I'm reading this correctly, there is 7 1/2
25 feet between the outer edge of the parking space and the

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1 curb?
2 A The face of the curb, correct.
3 Q And a typical car is six feet wide?
4 A Plus or minus.
5 Q Okay. And how far -- what's the distance between
6 the curb and the wall?
7 A The wall would be a foot behind the curb.
8 Q So how do you get out of your car on the southern
9 side?
10 A It's like a parking space. So when you open up
11 your car door, it's just like opening up your car door
12 within a parking space. It's going to be nine feet, well,
13 this dimension is not because it's got 7.8, plus another
14 foot. So you've got almost nine feet total to fit your car
15 in there and to get out.
16 MR. GROSSMAN: It's not 12 in total?
17 THE WITNESS: It's not 12 -- that's why I'm saying
18 I've got an additional line up here on this one that I can
19 see it better.
20 MR. GROSSMAN: Okay. So it's nine feet. So if
21 your car is six feet wide and you get right to the end on
22 the driver's side against the marker --
23 THE WITNESS: You have three feet.
24 MR. GROSSMAN: -- you have three feet? But if you
25 don't, you have whatever, a lower amount you have?

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1 BY MS. ROSENFELD:
2 Q Okay. Thank you. Do you know the reasoning
3 behind the decision by Westfield and the recommendation by
4 Park and Planning that no path would be appropriate, no
5 pedestrian path would be appropriate?
6 A No, I do not.
7 Q Would there be enough room to include a pedestrian
8 path and the parking and two drive aisles between the
9 southern boundary of the ring road and the southern boundary
10 of the special exception area?
11 A That would require an extensive amount of study.
12 I would be prepared to answer that.
13 Q What is the width of a typical drive aisle?
14 A The minimum in the Count is 10 feet wide for one
15 lane.
16 Q Okay. What's the minimum parking depth?
17 A 18 feet, unless it's compact.
18 Q I'm sorry, parallel parking?
19 A For parallel? I would have to get back on what
20 the parallel parking minimum dimensions are. I don't have
21 that on there.
22 Q In your experience is a seven foot, eight inch
23 parallel parking space typical?
24 A Yes.
25 Q On the exhibit that we were just looking at,

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1 Exhibit No. 54(i)?
2 A 54(f).
3 Q (f)? Looking for a minute at the area where the
4 fuel trucks will be located --
5 MS. ROSENFELD: Mr. Grossman, I think I'm going to
6 approach the witness again.
7 BY MS. ROSENFELD:
8 Q When the fuel trucks enter the fuel truck drive
9 aisles, I understand it's on the western side?
10 A Correct.
11 Q What is the width of the drive aisle just as the
12 trucks drive into, to unload fuel?
13 A The curb cut out, the interface with the ring road
14 is 34 feet and then they narrow it down to a 24-foot wide
15 drive aisle.
16 Q And when the trucks are fueling, what is the width
17 of a typical truck, the dimension?
18 A Eight feet.
19 Q Eight feet? And so where exactly are the fuel,
20 what do you call them, the --
21 A The tanks are here, so the truck parks right here.
22 Q Okay. And where, where do they, where is the hole
23 in the ground?
24 A The hole in the ground are -- this is just
25 graphical, but it's on top of the tanks --

1 Q Okay.

2 A -- where they then drop it in. It just depends on

3 where the tanks are and where the top gets positioned.

4 Q And so when the fuel tanks are parked, are they

5 parked within the drive aisle?

6 A Yes.

7 Q And how far into the drive aisle are they parked?

8 A It will be parked along the edge of the curb line,

9 so a truck is eight feet wide, so you have 16 feet between

10 the truck and the parking spaces.

11 Q Which is not wide enough for a 2-way drive aisle

12 as I understand it if each drive aisle would be 10 feet?

13 A Well, there's varying standards for that, but it

14 technically is not a two-way drive aisle at that point.

15 Q And when the tanker truck pulls out, how and where

16 does it pull out?

17 A It's parked in this position on top of the tanks

18 and then it pulls out and makes its turns.

19 Q And is that the kiosk?

20 A This is the kiosk right here.

21 Q And do they have to veer around the kiosk or is it

22 another drive aisle?

23 A There's an island, you know, there's an island

24 here, so --

25 Q What's --

1 A -- he really just pulls straight through.

2 Q What's the width of the drive aisle between the

3 kiosk and the front parking spaces?

4 A That's 24 feet.

5 Q Just one general question about the wall, and if

6 you don't know that's fine. Is the wall a solid wall or do

7 you know if there are breaks in the wall?

8 MR. GROSSMAN: Are you talking about the green

9 screen wall?

10 MS. ROSENFELD: The green screen.

11 THE WITNESS: Yes, I would defer to the architects

12 in regards to this.

13 BY MS. ROSENFELD:

14 Q Okay. The area where cars begin queuing to enter

15 to get gasoline on either side, the drive aisles on either

16 side, are there, are cars able to sort of U-turn or cut

17 through the drive aisles to get into the line or is there

18 some barrier that prevents access so that the only way to

19 get into the queues is through the main entrance?

20 A It's designed for cars to enter through the main

21 entrance. There are curves that surround on both sides,

22 east and west of the fuel station. There's obviously a

23 break in that curb where the fuel tanks are. And then

24 there's a break on the other side that's going to be striped

25 out, Chevron striped out, and that's directly across from

1 the layby.

2 Q And why would there be a curb at that area?

3 A We wanted to provide additional flexibility for

4 the trucks loading the warehouse in case they needed to

5 extend a few feet further out.

6 Q And why did they need to extend further out?

7 A Just for their backing in, there was just a pull

8 up and back into the loading dock.

9 Q Do you have any, I see on your exhibit you show

10 the turning radius for pulling forward the tankers

11 elsewhere. Do you have any exhibit that shows the required

12 turn radius for the loading dock?

13 A I have not brought one with me, but we can submit

14 a exhibit that shows. What the truck does is it pulls in

15 and then backs into the loading dock and then pulls out.

16 Q And there's adequate space --

17 A Absolutely.

18 Q -- for the truck to do that, except in case when

19 it doesn't, you need the --

20 A It just gives us a factor of safety.

21 Q That depends on your definition of safety. What

22 about the people who were queuing in the line?

23 A Well, the people that are queuing in the line are

24 going to be here and if they are queuing, obviously the

25 truck is going to see them.

1 MR. GROSSMAN: So is your point that the, that

2 they, well, they're turning around and backing up, they

3 would have to back-up into the queuing line?

4 MS. ROSENFELD: Well, as I understand his

5 testimony, they would not put the curve on the eastern side

6 of the site plan to allow trucks that are delivering

7 supplies to the warehouse --

8 MR. GROSSMAN: Right. I --

9 MS. ROSENFELD: -- to back into the queues.

10 MR. GROSSMAN: So that's, I think that's a good

11 question. All right. If there are people queued fully in

12 those four queues in the station, can the, does the truck

13 still have room to come in, that truck that's going to the

14 loading dock, come in and turn around and go into the

15 loading dock?

16 THE WITNESS: Yes, the stalls will not impact the

17 queue.

18 MR. GROSSMAN: Okay.

19 BY MS. ROSENFELD:

20 Q On the western side, the special exception area

21 extends, it sort of bumps out a little boot on the left. Is

22 there room there for people to use, to enter and exit that

23 drive aisle on the southern side?

24 A Yes.

25 Q There's a full movement --

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1 A That's a full movement.
2 Q -- either way?
3 A -- correct.
4 Q And do you know if trucks are going to be allowed
5 to idle in the loading dock?
6 A At the Costco loading dock? That is not -- I'm
7 not prepared to testify to that.
8 Q On the eastern side of the special exceptions area
9 is there room there for delivery trucks, not vehicular
10 delivery trucks, but to the warehouse? Is there room there
11 for those trucks to park along that drive aisle or parallel
12 to the queue lines?
13 A There's not a designed truck parking space.
14 That's a drive aisle. That's a very wide drive aisle, but
15 we have not designed that for parallel parking for trucks.
16 Q And if the truck were parked there, would there be
17 enough room for a driver to pass through two-way traffic?
18 A That, the width, the curb cut is 40 feet so, yes,
19 there's plenty of room there.
20 Q Okay. You had mentioned earlier a strange
21 pedestrian path. Is it shown on that exhibit?
22 A Yes, ma'am.
23 Q Okay. Can you show me where it is?
24 A It starts in front of the Costco, runs in a east-
25 west direction, parallel to the east-west connector to the

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1 ring road and it's striped out.
2 Q All right. And so the fuel trucks that were
3 leaving, would they necessarily have to cross that
4 pedestrian pathway?
5 A Yes. When the fuel trucks leave, they cross that
6 path.
7 Q And is it --
8 A They cross the drive aisle.
9 Q And is it demarcated with letters and striping?
10 A It is demarcated with striping. I haven't shown
11 any other size for it at this time.
12 Q Okay.
13 MR. GROSSMAN: Well, that question, will there be
14 other sides?
15 THE WITNESS: We could study it. We could
16 potentially put some pedestrian crossing signs, provide
17 that, but it's not normal to do that. There's plenty of
18 visibility. It's wide open. It's not there's a landscape
19 and there's nothing obstructing the views when the trucks
20 pull up there, so I wouldn't deem that necessary. You're
21 approaching a stop sign anyways and you pull up there, so --
22 MR. GROSSMAN: Okay.
23 BY MS. ROSENFELD:
24 Q Did you conduct any test borings on the site?
25 A No, ma'am, I did not.

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1 Q Do you know if anybody has conducted test borings?
2 A If you're referring to a geotechnical
3 investigation?
4 Q Yes.
5 A Then yes. I know one was conducted.
6 Q And do you know who would be available to speak on
7 that?
8 A Yes. There are, there's an engineer that did the
9 geotechnical studies.
10 MS. HARRIS: Mr. Grossman, we would be in the
11 position again of needing to bring in another witness that
12 wasn't identified if, in fact, they want information the
13 geotechnical.
14 MR. GROSSMAN: Okay.
15 MS. ROSENFELD: Okay. Thank you. We will --
16 MR. GROSSMAN: What information are you looking
17 for on the geotechnical?
18 MS. ROSENFELD: The tanks are going to be buried
19 underground and we do have questions about the sub-surface
20 conditions and how they relate to underground, large,
21 underground fuel tanks.
22 MR. GROSSMAN: Okay. So would you bring that --
23 who would that be?
24 MR. BRANN: That would be Jeffrey Wiebolt of
25 Cardno, C-A-R-D-N-O.

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1 MR. GROSSMAN: And what's, Jeffrey with a G or J?
2 MR. BRANN: J. And his last name is spelled W-I-
3 E-B-O-L-T.
4 MR. GROSSMAN: Okay.
5 MS. ROSENFELD: Mr. Grossman, I have no further
6 questions.
7 MR. GROSSMAN: All right. Mr. Silverman.
8 MR. SILVERMAN: Can we take five minutes, Mr.
9 Grossman?
10 MR. GROSSMAN: All right. 25 after, will you come
11 back? Well, 27 after I guess. That clock is a little slow,
12 so --
13 (Recess)
14 MR. GROSSMAN: Implied suggestion. We're back on
15 the record now. I'm going to label my list of questions as
16 Exhibit 105. It's labeled S-2863 Costco Hearing Examiner's
17 Questions for parties on first day of hearing.
18 (Exhibit No. 105 was marked for
19 identification.)
20 MS. ROSENFELD: What is that? Your questions?
21 MR. GROSSMAN: I think it's not a bad idea to just
22 label them as, so people can refer to it if you want. I
23 hadn't intended to just because I read them into the record.
24 All right, Mr. Duke.
25 THE WITNESS: Yes, sir.

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1 MR. GROSSMAN: Mr. Silverman, you're up.
 2 MR. SILVERMAN: Thank you. I'll try to be brief.
 3 BY MR. SILVERMAN:
 4 Q Boehler Engineering, you did, did you do all of
 5 the forest conservation and stormwater work for Costco in
 6 connection with this whole project?
 7 A Yes, I did.
 8 Q Not just the gas station, but the original gas
 9 station --
 10 A Correct.
 11 Q -- and the Costco site itself?
 12 A Correct.
 13 Q How many stormwater concept plans did you prepare?
 14 A Two.
 15 Q And which were?
 16 A One for the old location, one for the new
 17 location. Actually I'll say three, well, take a step back.
 18 The warehouse was one. We had the, we actually had the old
 19 fuel station location on the warehouse concept. Then the
 20 County at DPS asked us to break that into a separate
 21 concept, so that would be two, and then this one is the
 22 third.
 23 Q And did you design an out pall to the Kensington
 24 Branch?
 25 A Yes.

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1 Q Did that require a stormwater concept plan?
 2 A No.
 3 Q Okay. Did it require anything from the County?
 4 A It was a maintenance requirement from the County,
 5 so it was not a central permit that was required.
 6 Q And how many forest conservation exemptions did
 7 you apply for?
 8 A One for the warehouse, two for the old fuel
 9 location, three for the new.
 10 MR. GROSSMAN: You mean one, two three?
 11 MS. ROSENFELD: One, two, three?
 12 MR. GROSSMAN: Or three new ones, for the last
 13 thing?
 14 THE WITNESS: Well, three total.
 15 MR. GROSSMAN: Three total? Okay.
 16 BY MR. SILVERMAN:
 17 Q Did you ever think about filing of one total, a
 18 comprehensive plan?
 19 A For what?
 20 Q For the Costco warehouse and station?
 21 A Well, as I just said, the first stormwater plan
 22 you submitted included the fuel pad, but the County
 23 requested, required that we pull the fuel pad off it.
 24 Q And how about forest conservation exemptions? Did
 25 you ever just think of one, look at the whole thing?

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1 A Well, the, as I stated, the NRI/FSD is for the
 2 entire property. Forest conservation is for that specific
 3 project. Every project that goes in, you need to file the
 4 NRI/FSD and a forest conservation plan.
 5 Q You said the -- within the special exception area
 6 there was a, you decreased permeability by 900 square feet?
 7 A Decreased an impervious area.
 8 Q I'm sorry, perviousness. You increased the
 9 perviousness. Now did you increase imperviousness anywhere
 10 on this property outside of the special exception area?
 11 MS. HARRIS: Objection. He's testifying to the
 12 special exception area.
 13 MR. GROSSMAN: Well, he can, he can answer that.
 14 MS. ROSENFELD: And he testified as to a
 15 decrease --
 16 MR. GROSSMAN: Yes, he can --
 17 MS. ROSENFELD: -- overall.
 18 MR. GROSSMAN: -- he can certainly answer that.
 19 He's testified he increased the, he decreased the impervious
 20 air and now he's asking if he increased it anywhere by --
 21 THE WITNESS: Yes, honestly I don't recall if we
 22 increased the imperviousness when we added the warehouse. I
 23 can't say that we still meet the code requirement for this
 24 exemption.
 25 BY MR. SILVERMAN:

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1 Q How about the southwest parking area that used to
 2 be the old gas station site?
 3 A This area?
 4 Q Yes, isn't that green now?
 5 A That's approved for pavement.
 6 Q So how much are you paving?
 7 A Exactly what's going to be, well, exactly what's
 8 shown on this plan?
 9 Q And how does that compare to 300 square feet?
 10 A I assume that paving was in place in calculating
 11 that number.
 12 Q Say again?
 13 A I assumed that paving was in place in calculating
 14 that number. In other words, first of all, that 900 square
 15 feet is only for the special exception area.
 16 Q Right.
 17 A This is outside the special exception area.
 18 Q I understand, but you know the rain doesn't
 19 understand and the trees don't understand. I think they
 20 look at the area as an area. So I'm just trying to figure
 21 out what it is the net effect. You're paving some areas and
 22 you're unpaving some other areas. So what's the net?
 23 A The net is this area is planned for paving. I was
 24 paving before. It's planned to be paved now. We have a
 25 permit to pave it.

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1 Q You have permits for all this in your exemptions,
2 I know, I'm just trying to, I'm just trying to see if you're
3 suggesting of making some improvement because you've
4 decreased some impervious areas, but you seem to be also
5 taking some areas which are now green and changing them over
6 to something pervious. Isn't that -- am I missing
7 something?
8 A Well, yes, it's grass up there now. It was paved
9 before. It's going to be paved again. So I assume that was
10 a wash.
11 Q Because at one time it was impervious and now it's
12 pervious, and so now you're going to -- so this is all very
13 good for getting your permits and getting through your kind
14 of process, but in terms of enhancing the forest buffer and
15 so forth, it doesn't really help to take a pervious area, a
16 grassy area and turn it in -- and pave it, would you agree
17 with that or not?
18 A Well, I would disagree with the premise that it's
19 paved, it's planned to be paved, it's in a temporary
20 condition right now. So it doesn't, it doesn't matter.
21 Plus, stormwater has been provided for that area for when
22 it's going to be paved.
23 Q Okay. Well, I guess the facts are clear. It's
24 temporarily green --
25 A Well --

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1 Q -- so let's go on.
2 MR. GROSSMAN: Let's make sure --
3 MR. SILVERMAN: Yes.
4 MR. GROSSMAN: -- the facts are -- I just want to
5 make sure I understand. What you testified to was that you
6 were going to decrease the impervious area by certain, how
7 many square feet was that again?
8 THE WITNESS: 900.
9 MR. GROSSMAN: Okay. It was for 900 square feet
10 or so, by building this gas station. When you said that,
11 does that take into account the fact that there will now be,
12 where you have a previous location that showed on a photo as
13 grassy, that that will then be paved over? And if -- so
14 that's essentially what the, Mr. Silverman's questions are
15 getting at.
16 BY MR. SILVERMAN:
17 Q Could we get that, the picture of the --
18 A Well, to answer your question --
19 Q Right.
20 A -- no, I did not take into account that green
21 space --
22 MR. GROSSMAN: Okay.
23 THE WITNESS: -- for the reasons that I
24 enumerated.
25 MR. GROSSMAN: And is that green space relatively

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1 the same size as the gas station area that, or the,
2 relatively the same size as the amount of space that you,
3 pervious area that you will save, or impervious area that
4 you will save? I made that a confusing question, didn't I?
5 THE WITNESS: Yes. Sorry, you lost me.
6 MR. GROSSMAN: My point is what's the net? That
7 was Mr. Silverman's question. When you pave over that green
8 area, are you really going to have a gain of about 900
9 square feet of area that's not impervious?
10 THE WITNESS: Well, my point was within the
11 special exception area --
12 MR. GROSSMAN: Yes.
13 THE WITNESS: -- you're increasing our green
14 space.
15 MR. GROSSMAN: I understand.
16 THE WITNESS: So, so --
17 MR. GROSSMAN: But I want to take it to that
18 parking lot, that whole southwest corner of the parking lot.
19 THE WITNESS: We are --
20 MR. GROSSMAN: Right.
21 THE WITNESS: -- it's bigger, so clearly when you
22 pave, when you put that parking lot in, even with all the
23 islands, there's going to be more perviousness if that's
24 what the question is.
25 BY MR. SILVERMAN:

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1 Q That's the question. Now if you didn't build a
2 gas station, would you need to pave over that green area?
3 A Yes.
4 Q Because?
5 A Because the mall and Costco, they want as much
6 parking as they can get.
7 Q Now, wait a minute, you're going to, you're even
8 with, even with the, if you didn't build a gas station and
9 you had that whole gas station area for parking, you say
10 they still won't need it?
11 A No, I'm just saying, you know, they have the
12 space. They own the property. They're going to want to use
13 it.
14 Q So that is a desirable for a parking point-of-view
15 to not have a gas station and not have a green space is what
16 I'm hearing you say, from the parking point-of-view it
17 should all be parking because there's a need?
18 A No, that's not what I'm saying.
19 MR. GROSSMAN: Yes, I think I understand what the
20 witness --
21 MR. SILVERMAN: Okay. All right.
22 MR. GROSSMAN: -- point is on -- I mean he's
23 saying that if, in fact, it had remained -- it's not going
24 to remain green, so it's going to be either parking lot in
25 any event. I think he's saying that given that that's going

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1 to be parking lot paved over impervious area, when you add
2 the gas station to what is now parking lot and impervious,
3 it's going to have 900 square feet of less impervious area
4 where he puts it. Is that fair? Okay? I think I
5 understand what's happening.
6 MR. SILVERMAN: Okay. All right.
7 BY MR. SILVERMAN:
8 Q Now did you, were you involved in applying for the
9 parking waiver?
10 A No, I wasn't.
11 Q No. You know, Costco got a parking waiver, do you
12 know that?
13 A I was not involved in the parking waiver.
14 Q So I think the Sector Plan talks about protecting
15 and enhancing the forest buffer. Do you think building a
16 gas station next to the forest buffer is a good, is a way to
17 do that in your professional opinion?
18 A In my professional opinion?
19 Q Yeah.
20 A That I'm not a planner, when we designed the site,
21 we protected the forested buffer.
22 Q But you didn't, I understand you're doing the best
23 you can, but you didn't really answer the question. That's
24 all right. We'll move on. The, there are -- is part of the
25 stormwater plan, the original stormwater plan for the store

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1 and the original site for the gas station, that did not use
2 environmental site design and techniques, is that right?
3 A That correct.
4 Q And because you, there was an exemption, a
5 grandfather clause for you --
6 A The plan was approved prior to May 4, 2010.
7 Q A month before? A week before?
8 A No, it was, well, it was a month or two. I don't
9 remember the exact date.
10 Q So did you not as a civil engineer think it might
11 be a good idea to use --
12 MR. GROSSMAN: I don't see what the relevance is.
13 The question is did they have environment site design in the
14 current plan, isn't that the question? I mean why do I
15 care?
16 BY MR. SILVERMAN:
17 Q Well, there is -- it's hard for me -- I'll go
18 back. The -- did you tell us, you put a lot of tanks in the
19 ground, water tanks to hold the storm water, is that right?
20 A The plan is designed with pipes that sore the
21 runoff.
22 Q How big are these pipes?
23 A Eight feet, six feet, eight feet in diameter.
24 Q So they're storage tanks?
25 A I said they're pipes.

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1 Q They're pipes? Okay. But they're serving as
2 storage?
3 A They're serving as storage.
4 Q Okay. And how many of those pipes are there?
5 A I don't have the exact number, but it's easily 800
6 linear feet.
7 Q And there's also, there are storage tanks for the
8 gasoline?
9 A Yes, sir.
10 Q Well, can you show us where the juxtaposition
11 between pipes, the water pipes begin in the storage tanks?
12 A Storage, I'm referring to 54(f), storage tanks are
13 on the southwest portion of the fuel area. There are
14 storage pipe directly to the west of those tanks and there
15 are storage pipe to the north and the west.
16 Q So the storage pipe that is directly to the west
17 of those tanks, and would you say the distance between them
18 is two feet, five feet, 10 feet?
19 A 20 feet.
20 Q 20 feet? Okay.
21 MR. GROSSMAN: The distance between the two pipes
22 is 20 feet?
23 THE WITNESS: Between the underground storage
24 tanks and the storm water pipes.
25 BY MR. SILVERMAN:

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1 Q Between the oil and the water, or the gasoline and
2 the water? When you say you have pipes, where do the pipes
3 lead?
4 A Well, there's a network of pipes throughout the
5 site. Is there a specific pipe you want to know about?
6 Q Well, I'm interested in that one that's close to
7 the gas tank.
8 A Okay. So these pipes are run in a north-south
9 direction. They tie into a water quality structure and tie
10 into a trunk line within the mall ring road and then they
11 run east.
12 Q And end up where?
13 A They end up either to -- this is Exhibit 54(h).
14 They end up at, on the far east portion of the property.
15 There is an existing stream that all the mall water
16 discharges to.
17 Q And previously where did the storm water on the
18 site discharge to? I'll call that a special exception area.
19 A The special exception area previously, before
20 Costco went in there, the water, a portion of it went that
21 direction. The rest of it went to the Kensington branch.
22 Q I see. And so now all of it is going to the
23 Wheaton branch?
24 A Well, in the special exception area.
25 Q Well, it's, there's, is there still storm water

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1 going to the Kensington branch?
2 A Yes, there is still storm water that goes to
3 Kensington.
4 Q Okay. Is the flow to the Wheaton branch
5 increased?
6 A The flow rate has not increased.
7 Q Well, that's not what my question is. Has the
8 flow increased?
9 A If your question is volume --
10 Q Yes.
11 A -- then the volume increased. The rate has not
12 increased.
13 Q Okay. Now there's -- you mentioned there's a
14 storm water facility in the Wheaton branch?
15 A There's an original storm water management
16 facility, that's correct.
17 Q Right. Well, that's the one that was built in
18 1971?
19 A I do not know the date it was built.
20 Q It's been around for awhile? Do you know any time
21 it was not around?
22 A I do not.
23 Q And do you know if that's been approved at all to
24 accommodate those changes?
25 A It was determined, brought by PPS that this area

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1 was in the watershed going to that facility and so it's
2 designed to handle this area.
3 Q Okay. But a change was made?
4 A Yes.
5 Q Okay. All right.
6 MR. GROSSMAN: What do you mean a change was made?
7 What do you mean?
8 MR. SILVERMAN: Was more water flowing into --
9 MR. GROSSMAN: More or higher volume?
10 MR. SILVERMAN: Yes.
11 MR. GROSSMAN: Not a higher rate, if I understood
12 the --
13 MR. SILVERMAN: That's correct. Well, the --
14 MR. GROSSMAN: I'm not sure I understand what the
15 distinction is there -- what is the distinction in this case
16 between volume and rate? I'm asking you.
17 THE WITNESS: So rate is the --
18 MR. GROSSMAN: I know what they mean, but I don't
19 understand the distinction as you applied it.
20 THE WITNESS: Well, he was assessed, I think he
21 gave his assessment request and I was trying to insert it,
22 you know, if it's flow rate, there's not an increase. If
23 it's a quantity of volume that it's increase is going to
24 tend to go into Wheaton, but I can't say.
25 BY MR. SILVERMAN:

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1 Q Now just clarify, if there's an increase in the
2 flow rate, that's something that means trouble for streams
3 where it's going through, is that -- would you agree with
4 that?
5 A I would agree.
6 Q Now if there's an increase in the volume, that
7 sometimes could cause difficulties with the storage facility
8 such as the Dennis Avenue storage facility which services
9 this area, would you agree with that?
10 A Yes.
11 Q Okay. That's the one point. Have you -- you
12 examined the flood potential in this area, in Kensington
13 Heights and other area up and the Wheaton branch, have you
14 looked at the flooding issues, have you looked at FEMA maps,
15 anything of that sort?
16 A We have looked at FEMA maps and we, as part of the
17 design for the site, we were required to provide 100-year
18 storage on the property.
19 Q And that 100 years is based on, well, why were you
20 required to provide 100 years storage? What was the County
21 trying to protect?
22 A The County has the ability to request and require
23 100-year storage. The mall, when it was developed, it
24 didn't have any storm water management --
25 Q Right.

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1 A -- and so they wanted to provide as much storm
2 water management as they could.
3 Q Right. And other than the -- was there some, some
4 bad thing that might happen that they were trying to avoid
5 by requiring this 100-year storage?
6 A DPS came back and said that there had been
7 complaints downstream on the Kensington branch and they
8 requested that we then provide that 100-year storage.
9 Q And the complaints were in the nature of flood
10 complaints?
11 A I do not -- I mean we didn't get the complaints
12 directly, so I went through DPS.
13 Q But you're just following orders here?
14 A Well, we made sure we met the code. We made sure
15 that DPS wasn't asking for anything more than the code, but
16 they requested that we provide it and we did.
17 Q Well, what is a 100-year storm these days on these
18 two streams?
19 A It varied. Off of this property, I think before
20 storm water was in place, the flow going to Kensington was
21 like 98 cubic feet per second and what the, the vices we
22 have in place now, that's been reduced down to 28 cubic feet
23 per second.
24 Q And did you ever make a judgment as to whether
25 that reduction is adequate to prevent storms in the future?

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1 A No.

2 Q Now suppose --

3 MR. GROSSMAN: You said prevent storms. You mean

4 storm water run-off?

5 MR. SILVERMAN: Not just run-off, but prevent,

6 prevent floods I should say.

7 MR. GROSSMAN: Thank you.

8 BY MR. SILVERMAN:

9 Q Future floods. So now have you noticed that our

10 understanding of rain events and flood events is not as good

11 as it used to be in certain ways, they are less predictable,

12 would you agree with that? I don't want to get into deep

13 things --

14 A Yes. Yes.

15 Q -- I just want to get a sense of it.

16 MR. GROSSMAN: A 100-year storm is one that occurs

17 every two months or so?

18 MR. SILVERMAN: That's the idea, yes.

19 THE WITNESS: Well, 100-year storm is a

20 probability event.

21 MR. SILVERMAN: Right.

22 THE WITNESS: You know, 1 percent every year and

23 certainly you can have 1 percent events more than one year

24 in a row.

25 BY MR. SILVERMAN:

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1 Q So suppose a future storm water management, the

2 people in the County or the state should say, you know, this

3 flood hazard is worse than it used to be and they want to,

4 they want to create more storage, could they convert the

5 gasoline tanks to water tanks?

6 A No.

7 Q No? And, in fact, wouldn't the presence of the

8 gasoline tanks make it very difficult to go in there and

9 retrofit the area for worse retention?

10 A I haven't studied it, but given that here is where

11 our main storage facility is and we have significant space

12 to the south of it, I think it would be easy to add more

13 pockets.

14 Q You think it would be easy to add more storm water

15 evangel?

16 A Yes.

17 Q You don't think the presence of gasoline tanks

18 might interfere with things?

19 A No where they're located, no.

20 Q Okay. And that's true if you wanted to add it to

21 the west of the property line?

22 A If I wanted to add it to the facility that ran in

23 a north-south direction, we could do that too.

24 MR. GROSSMAN: Let me ask you, as presently

25 planned, will this project, assuming that it's approved

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1 exactly as requested, will it improve the storm water

2 management situation here that has reduced the likelihood of

3 flooding or storm water runoff off the site from what it is

4 now?

5 THE WITNESS: Yes.

6 MR. GROSSMAN: And is it consistent with all the

7 current state and County and Federal regulations?

8 THE WITNESS: Yes, sir.

9 MR. GROSSMAN: All right. Let me ask you this,

10 Mr. Silverman. I just want to make sure I understand what

11 you're getting at in the question. Are you suggesting that

12 I could impose some requirement in terms of storm water

13 management beyond what the state and County require even

14 though this project, assuming that this is correct, will

15 improve the storm water management situation and follows all

16 applicable rules and regulations? I just want to understand

17 what you're asserting here because I know you've written a

18 piece on this, so --

19 MR. SILVERMAN: Well, I mean the standard for the

20 Special Exception Board is probably -- it pre-dates any of

21 these other standards and it's probably health and safety

22 generally. It all goes back to the Euclid case, as you

23 know, in 1819. So the question is my sense of in the air

24 pollution area certainly and also even in this water area is

25 that it may be -- it's particularly true in air pollution --

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1 it may be that this thing, rules don't really protect you in

2 the same way, don't get to the point you have to get to.

3 And with regard to --

4 MR. GROSSMAN: Let's not talk about air, the

5 air --

6 MR. SILVERMAN: Okay.

7 MR. GROSSMAN: -- the air pollution issue --

8 MR. SILVERMAN: With regard to the --

9 MR. GROSSMAN: -- right now because that's --

10 MR. SILVERMAN: -- to the water, my concern is

11 that -- I mean I have heard, I don't want to testify, but I

12 heard seriously informed people talking about building dams

13 on the Wheaton Mall at some point in the future because,

14 because there's a concern about flooding because the stream

15 runs so close to the mall.

16 MR. GROSSMAN: Well, try to answer my question

17 now. Are you suggesting that I should, assuming that this

18 witness is correct and that he's followed all state, County,

19 Federal regulations, everything is properly approved by the

20 proper authorities that review this and it will actually

21 improve the storm water situation at this site, am I still

22 under your theory to prohibit them from this project based

23 on storm water management?

24 MR. SILVERMAN: Well, I guess, yes, I guess my

25 answer is yes, particularly where you have, particularly

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1 where you have a responsibility to protect the forest
2 buffer, particularly where you have really an absence of
3 flood information.
4 MR. GROSSMAN: Where do I get the standard that I
5 apply? I mean that's one of the concerns I was trying to
6 get to in my questions. Where do I get the standard that I
7 apply to, for, and then once again right now I'm restricting
8 it to this question of storm water management --
9 MR. SILVERMAN: Right.
10 MR. GROSSMAN: -- that fairly gives anybody doing
11 any project a knowledge as to how they should plan it?
12 MR. SILVERMAN: Well, I --
13 MR. GROSSMAN: I just pull it out of the air? How
14 do I get the standard?
15 MR. SILVERMAN: Well, this case is made more
16 difficult by the number of exemptions and grandfathers and
17 other sorts of things. It makes it sort of hard to say, oh,
18 this is -- we're really protecting ourselves here.
19 MR. GROSSMAN: Well, in forest, in terms of the
20 forest conservation exemption, that's also a bit of a
21 separate issue. But in terms of storm water management, are
22 there exemptions on the storm water management grant here,
23 or not storm water, there are no exemptions there?
24 MR. SILVERMAN: Well, the major part of the storm
25 water management which was supposed to serve this site, it

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1 was grandfathered, but did not use the environmental site
2 design which would have been a really good thing to do. So
3 it's not, it's -- and unnecessarily so. There was no long
4 planning horizon. I mean they could have done it the right
5 way.
6 MR. GROSSMAN: Not the special exception site,
7 right?
8 MR. SILVERMAN: No, not the special exception
9 site.
10 MR. GROSSMAN: That's really what I have to --
11 that's the limit of my authority. I have to focus in on
12 that and I have to be fair to both sides here. What
13 standard do I apply under your theory here that would be
14 fair to everybody? You can think about it. You don't have
15 to answer me now, but I mean I have to raise that based on
16 the way your, your questions to this witness. But I'll let
17 you continue your cross-examination. You can think about
18 it.
19 BY MR. SILVERMAN:
20 Q Well, will the, will the, will the construction of
21 the station improve storm water management?
22 A Yes.
23 Q How?
24 A Because we're installing more storm water
25 management devices that are out there today.

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1 Q Well, I mean you're putting a lot in the old, so
2 you're building those pipes, but is the pipe on the western
3 side, is that part of the -- is that something you wouldn't,
4 wouldn't that be something you'd want to do anyway?
5 A The pipe on the west side is already installed.
6 Q So it's installed?
7 A Right. It's in the ground. What I'm saying is
8 the addition of the two fire retention areas is going to
9 further improve the storm water quality of the site.
10 Q All right. That's okay. All right.
11 MR. SILVERMAN: I think I'll stop and think about
12 Mr. Grossman's question.
13 MR. GROSSMAN: Okay. Any other cross-examination
14 questions from the opposition?
15 (No response.)
16 MR. GROSSMAN: No? Any redirect?
17 MS. HARRIS: No, no redirect.
18 MR. GROSSMAN: Thank you very much, sir.
19 Appreciate it, Mr. Duke.
20 THE WITNESS: Thank you.
21 MR. GROSSMAN: All right. We're at 10 to 5:00.
22 Should we start another witness or should we consider
23 ourselves lucky that we got through with two witnesses?
24 MS. HARRIS: I think our timing is impeccable.
25 MR. GROSSMAN: All right. Then we are going to

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1 resume here on May 1. I see from the number of people here
2 that we -- I think we could properly fit within our normal
3 hearing room, however, the Board of Appeals is going to be
4 occupying it on May 1, because that's a Wednesday. But some
5 of the days, you know, we may be able to just fit back into
6 the normal hearing room which would be a little easier for
7 some people to, you know, hear what we're doing.
8 And, by the way, I did talk to the gentleman who
9 was filming before and he alleviated one of my concerns. He
10 promised that he'll make me look skinny in the film, so
11 everything is okay.
12 MR. SILVERMAN: True artist.
13 MR. GROSSMAN: All right. Is there anything else
14 that we need to decide before we adjourn for the day?
15 MS. HARRIS: I had just one matter and that is to
16 the extent we are bringing in another witness, a gas
17 operations person, that person is coming from out of town
18 from Costco's headquarters.
19 MR. GROSSMAN: Right.
20 MS. HARRIS: So once we identify a date, I'm
21 hoping that we can all agree that that will be the date
22 since they'll fly him in.
23 MS. ROSENFELD: We can certainly be flexible on
24 that.
25 MR. GROSSMAN: Well, I actually have three

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1 additional people, is it?
2 MS. HARRIS: Right. The other ones are not out of
3 town.
4 MR. GROSSMAN: Herlocker, Dan Goodwin and Jeffrey
5 Weibolt.
6 MS. HARRIS: Oh, and, oh, I'm sorry, two people
7 out of town. Okay.
8 MR. GROSSMAN: Okay. I'm sure we'll agree --
9 MS. HARRIS: Okay.
10 MR. GROSSMAN: -- on dates.
11 MS. ROSENFELD: I'm sure we'll be able to --
12 MS. HARRIS: Okay.
13 MS. ROSENFELD: -- that's fine.
14 MS. HARRIS: And then one more --
15 MR. GROSSMAN: If you can, I suggest counsel talk
16 and figure something out.
17 MS. HARRIS: And then I had one other item.
18 MS. ROSENFELD: And so did I.
19 MS. HARRIS: Okay.
20 MR. GROSSMAN: All right.
21 MS. ROSENFELD: You can go ahead.
22 MS. HARRIS: Okay. Just based on the testimony
23 that we've heard, I just want to reiterate the original
24 request that I think a site visit would actually be very
25 beneficial in this case.

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1 MS. ROSENFELD: And I would share in that.
2 MR. GROSSMAN: All right. Well, I said I'll
3 consider that. I'm not going to make that decision until I
4 think about that. I mean I'm familiar with Wheaton Plaza
5 so, and the area around it and I've handled a number of
6 rezonings in that area. So it's not that I'm not familiar
7 with the area. So whether we need to do a formal site visit
8 is another question.
9 MS. ROSENFELD: Okay. And this is a procedural
10 question. There were several exhibits that were introduced
11 today that are new to us.
12 MR. GROSSMAN: Yes.
13 MS. ROSENFELD: And I would like to have copies
14 before the next hearing. I would like to reserve the right
15 to further cross-examine on those exhibits. And I can't and
16 I don't expect, think that will be necessary, but I would
17 like to reserve that right since today is the first day
18 we've seen them and only up on the boards.
19 MR. GROSSMAN: Okay. We'll give you a tentative,
20 possible reservation there.
21 MS. ROSENFELD: I understand.
22 MR. GROSSMAN: And then we'll see if it's, if it
23 need be. And we're going to get -- Ms. Harris, in the
24 interim, you'll make copies available to us as well and
25 along with electronic copies. All the ones that have been

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1 marked here, I'd ask that we make sure they get up to the,
2 my office upstairs. Actually when I go upstairs, my
3 administrator's staff will come down and help get exhibits
4 together. Anything else?
5 MS. HARRIS: Would you prefer for us, what, can we
6 bring them up or do you want us to wait here until they come
7 down?
8 MR. GROSSMAN: Why don't you wait here so they can
9 all, they have something -- I think they'll have a little
10 cart to carry out cartons here too, so -- are those cartons
11 I see on the side there, have they already been submitted in
12 the record, those white cartons of --
13 MS. HARRIS: Right. They're the number cards and
14 I believe you have a CD of those, but --
15 MR. GROSSMAN: Okay.
16 MS. HARRIS: -- I need to double-check and --
17 MS. ROSENFELD: They're the what?
18 MS. HARRIS: -- so, they're the postcards of
19 support.
20 MR. SILVERMAN: The nose count.
21 MS. ROSENFELD: Plebiscite.
22 MS. HARRIS: And we haven't admitted --
23 MR. GROSSMAN: In contrast with the commentary
24 about, you know, plebiscite, I agree that it's not a
25 plebiscite and so, but it's interesting that in spite of

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1 that you gave me cartons full of cards.
2 MS. HARRIS: But as I said, they go to the need,
3 so --
4 MR. GROSSMAN: All right. So --
5 MS. HARRIS: So we were going to, we were not
6 going to keep those in your office because they haven't been
7 introduced yet.
8 MR. GROSSMAN: Okay. Fine. All right. Anything
9 else that we need to decide? All right. Then we'll meet
10 back here, the same Council Office Building auditorium, 9:30
11 on May 1. I thank you all.
12 MR. SILVERMAN: Thank you.
13 MS. HARRIS: Thank you.
14 MR. GROSSMAN: Have a good evening.
15 MR. SILVERMAN: You, too.
16 (Whereupon, at 4:58 p.m., the hearing was
17 adjourned.)
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25

. Digitally signed by Tracy M. Hahn

ELECTRONIC CERTIFICATE

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 in the matter of:

Petition of Costco Wholesale Corporation
Local Map Amendment No. S-2863
Office of Zoning and Administration Hearings No. 13-12

By:

Tracy M. Hahn, Transcriber

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