OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

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

A hearing in the above-entitled matter was held on June 17, 2013, commencing at 9:39 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman

Hearing Examiner

A P P E A R A N C E S

For the Applicant:

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C O N T E N T S

E X H I B I T S

P R O C E E D I N G S

MR. GROSSMAN: This is the sixth day of a public hearing in the matter of Costco Wholesale Corporation, Board of Appeals No. S-2863, OZAH No. 13-12, petition for a special exception pursuant to Zoning Ordinance Section 59-G-2.06 to allow petitioner to construct and operate an automobile filling station which would include 16 pumps. The subject site is located at 11160 Veirs Mill Road, Silver Spring, Maryland. That's Lot N, 631 Wheaton Plaza, Parcel 10, also known as the Westfield Wheaton Mall, and it's zoned C-2, general commercial. The hearing was begun on April 26th, 2013, resumed on May 1, May 6, and May 23 and June 4, 2013. It was noticed to resume again today. The next session will be -- has been noticed for Wednesday, June 19. That will take place in the seventh floor council hearing room in this building, COB, at 9:30 a.m.

This hearing is conducted on behalf of the Board of Appeals. My name is Martin Grossman, Hearing Examiner, which means I will take evidence and write a report and recommendation to the Board of Appeals which will make the decision in this case. Will the parties identify themselves, please, for the record?

MS. HARRIS: Good morning. Pat Harris --

MR. GROSSMAN: Ms. Harris.

MS. HARRIS: -- with Lerch, Early, & Brewer on

behalf of the applicant, Costco.

MR. GROSSMAN: All right.

MR. GOECKE: Good morning. Mike Goecke, also on behalf of Costco.

MS. CORDRY: Karen Cordry with the Kensington Heights Civic Association.

MS. ROSENFELD: Michele Rosenfeld, counsel to Kensington Heights Civic Association.

MR. SILVERMAN: Larry Silverman with Stop Costco Gas Coalition.

DR. ADELMAN: And Dr. Mark Adelman for the SCGC.

MR. GROSSMAN: All right.

MS. ADELMAN: And Abigail Adelman, chair of Rockville Stop Costco Gas Coalition.

MS. DUCKETT: Eleanor Duckett, Kensington View Civic Association.

MR. GROSSMAN: Okay. Are there also others here who wish to be heard today?

(No audible response.)

MR. GROSSMAN: I see no, no other hands; so we will proceed with the usual cast of characters. All right. Let's first deal with a few preliminary matters before we resume with Mr. Gang's cross-examination. I wanted to mention on June 11 I sent an e-mail, which is now in the record as Exhibit 166, requesting a supplemental needs

analysis, requesting it to Ms. Harris, not mandating it, but requesting it based on the possibility that I will not accept the applicant's concept of what the term general neighborhood means in the particular section on needs analysis. I haven't made any final decisions in that regard, but I did want to have her have notice that that was a possibility so if she wished to provide a supplemental needs analysis at least 10 days in advance of her expert's testimony so that all sides would have an opportunity to review it and provide rebuttal should they wish to. That's in the record, as I say, and I did send it to all of the participants in the hearing as we've announced today.

The second thing is that Renee Kamen of the technical staff sent an e-mail to me with some preliminary concerns about the proposed plan changes which I've forwarded to the parties and made part of the public record, it's Exhibit 167, and I invited everybody who's a participant to contact Ms. Kamen, should they wish to do so, to share any concerns or observations they may have for inclusion in her analysis and also asked her to determine whether or not the Planning Board wished to have further commentary on the case.

I also received various additional exhibits since our last session. We received Kensington Heights Civic Association's response to my 20 questions, that's Exhibit

165 in the record; applicant's notice letter to technical staff regarding proposed plan changes, Exhibit 163; received an opposition letter from a Karen Richardson, Exhibit 164. And, also, I see that Ms. Harris's plan with wall detail has now been made Exhibit 168, and I believe there was some additional e-mail changes on Sunday and maybe this morning which have not yet gotten into the exhibit list. And I understand from Ms. Harris's e-mail that the parties --

MS. ROSENFELD: Excuse me.

MR. GROSSMAN: I'm sorry. Did I hear, Ms. --

MS. ROSENFELD: Well, if you were about to go through those e-mails from this morning, then I'll, I'll stop, but if --

MR. GROSSMAN: Not yet. I'll let you -- I understand you sent a letter. I haven't really reviewed them thoroughly yet, but I saw something, a letter from you.

MS. ROSENFELD: Oh, to Ms. Kamen, but that's not --

MR. GROSSMAN: Okay.

MS. ROSENFELD: -- we won't be discussing that today. Kensington Heights won't be discussing the letter today.

MR. GROSSMAN: Okay. That hasn't yet been exhibitized; so -- I received some critique from my coining of that word, but it works quite well.

MS. HARRIS: Michele, did we receive a copy of that?

MS. ROSENFELD: Yes, you did.

MR. GROSSMAN: Okay. All right. I understand from Ms. Harris's e-mail that the witnesses scheduled for today will be Mr. Gang for his cross-examination and David Sullivan. Okay. Are there any other preliminary matters? We'll start out with Ms. Harris.

MS. HARRIS: I have for you a CD of the highlighted sector plan since it didn't, wasn't able to be transmitted electronically.

MR. GROSSMAN: Okay, that -- great. Thank you. Thank you very much. We'll mark that as Exhibit 169, CD of highlighted sector plan. I did receive a copy, an electronic copy of the highlighted portion of design, of the design portion --

MS. HARRIS: Okay.

MR. GROSSMAN: -- but apparently the full highlighted portion wouldn't go through.

Okay. Now, I saw also, on the table up here were two things. There is a plasticized version of Blue Lagoon's card. Is there a particular reason for that, sir?

(Exhibit No. 169 was marked for identification.)

MR. ESHAVE: No.

MR. GROSSMAN: All right.

MR. ESHAVE: Sometimes it's to hang on your neck like a dog tag.

MR. GROSSMAN: Okay, to identify myself as a Blue Lagoon subject. All right. And then I also see a June 17 letter to Renee Kamen from Michele Rosenfeld on behalf of Kensington Heights Civic Association. I presume this is the hard copy of what you e-mailed to, or the e-mail that I saw this morning?

MS. ROSENFELD: I had sent an electronic copy, and a hard copy is being mailed today. Somebody --

MR. GROSSMAN: Okay.

MS. ROSENFELD: -- must have printed that for you.

MR. GROSSMAN: Oh, okay. All right. So we'll call this Exhibit 170, and it's June 17, 2013, letter from Michele Rosenfeld on behalf of KHCA to Renee Kamen regarding plans or proposals to change applicant's special exception plan. Is that a fair summary?

(Exhibit No. 170 was marked for identification.)

MS. ROSENFELD: That is.

MR. GROSSMAN: All right. Ms. Harris, any other preliminary matters by you?

MS. HARRIS: No. Thank you.

MR. GROSSMAN: All right. We'll turn to

Kensington Heights. Any preliminary matters?
MS. ROSENFELD: No preliminary matters.
MR. GROSSMAN: The Stop Costco Gas Coalition, any preliminary matters?
DR. ADELMAN: No, no preliminary matters.
MR. SILVERMAN: No, sir.
MR. GROSSMAN: Okay. And how about Kensington View Civic Association?
MS. DUCKETT: No. Thank you.
MR. GROSSMAN: None, Ms. Duckett? Okay. Okay. Then we will proceed. I see we have a movie screen up here. Are we -- who's going to be showing us films today?
MS. HARRIS: Mr. Sullivan's --
MR. GROSSMAN: Okay.
MS. HARRIS: -- presentation lends itself to PowerPoint, which was distributed previously, and so we put the screen up in advance.
MR. GROSSMAN: Okay. All right then, I guess our next order of business is resuming the cross-examination of Mr. Gang?
MS. HARRIS: Yes.
MR. GROSSMAN: Do you all agree with that?
MS. ROSENFELD: That's correct.
MR. GROSSMAN: All right. And I think where we left off, we were in the middle of Ms. Rosenfeld.

MS. ROSENFELD: Cross-examination with Kensington Heights, that's correct.
MR. GROSSMAN: All right. You may resume. You're still under oath, Mr. Gang.
MR. GANG: Yes, I am.
(Witness was previously sworn.)
CROSS-EXAMINATION (Resumed)
BY MS. ROSENFELD:
Q Mr. Gang, for purposes of the remaining questions, could you identify for the record which site plan layout your testimony goes to? There has been an amended, a proposed amended plan submitted in the record, and is your testimony addressing that site plan layout or is it the previous layout that had been --
A My testimony deals with master plan or sector plan conformance, does not deal with specific site plan issues.
Q So your testimony does not address issues related to the pedestrian path?
A That is correct.
Q As far as you're concerned, the existence or absence of a pedestrian path is immaterial to sector plan conformance?
A The sector plan does not show a pathway around the perimeter of the ring road.
MR. GROSSMAN: Well, that wasn't exactly the

question. The question was, in your opinion, is it immaterial to your testimony whether or not there is a pedestrian path along the southern ring road?
THE WITNESS: Yes, it is.
MR. GROSSMAN: Thank you.
BY MS. ROSENFELD:
Q And the proposed changes also include a 46-foot extension in the perimeter wall. Does that extension or lack of extension affect your conclusions with respect to conformance with the sector plan?
A No, it does not.
Q So is it your testimony, or is it your conclusion that the wall as originally proposed conforms to the recommendations for the sector plan?
MR. GROSSMAN: Let me stop, hop in here for a second. Hold on, Mr. Gang.
THE WITNESS: Right.
MR. GROSSMAN: When you say as originally proposed, let's make sure we understand what we're talking about. This is before the extension of the wall?
MS. ROSENFELD: Before the extension of the wall.
MR. GROSSMAN: Okay. So do you understand the --
THE WITNESS: Yeah. I don't know how to answer it, quite frankly --
MR. GROSSMAN: All right.

THE WITNESS: -- and the reason I say that is there is no recommendation in the sector plan about any wall in that location --
BY MS. ROSENFELD:
Q So let me ask --
A -- and this was -- I'm sorry.
Q Let me ask the question --
A Sure.
Q -- a different way then. In your view, the wall feature of the special exception application is immaterial to your sector plan findings?
A I still don't. Honestly, I don't, I mean, and the reason the wall was there -- the wall is proposed because of an agreement between Westfield and the citizens when they walked the site on a specific day. I was not there. I don't know what was agreed upon.
MR. SILVERMAN: Objection.
MR. GROSSMAN: What's the objection?
MR. SILVERMAN: He's talking about things he didn't even hear or witness.
MR. GROSSMAN: That's actually a fair --
THE WITNESS: Correct, but --
MR. GROSSMAN: -- a fair point. You're talking about an assumption you're making about that conversation. So --

THE WITNESS: Right.
MR. GROSSMAN: -- so we'll strike that portion of your answer, but let's --
THE WITNESS: Right, and that's why I don't know how to answer that.
MR. GROSSMAN: Well, I don't know that the question goes to why the wall was there, or proposed to be there, I should say. It goes to your evaluation of the wall's existence, if it is put there, in connection with sector plan compliance. So that's really the question. Does the, if the wall -- let's put it this way --
THE WITNESS: Right.
MR. GROSSMAN: -- if the wall is erected in the way it was originally proposed, without the extension, the 40-some-odd-feet extension to it, would that be consistent with the sector plan or not?
THE WITNESS: And the reason I don't know how to answer that, because there is no discussion about any additional wall. There's an existing forested buffer within that area. If the wall assists in the purpose of the buffer, forested buffer, then the answer would be yes, but there is no discussion about additional buffer requirements between existing Kensington Heights and the mall.
MR. GROSSMAN: All right. And does that same answer apply to the wall if it is extended for the -- is

that 46 feet, 43 feet? I haven't figured it out.
MR. GOECKE: Forty-six.
MR. GROSSMAN: Forty-six feet that is now proposed in the plan, would the same answer apply?
THE WITNESS: Well, again, in reference to the sector plan, the answer is yes.
MR. GROSSMAN: Okay. All right. Does that help, Ms. Rosenfeld?
MS. ROSENFELD: Yes. Thank you.
MR. GROSSMAN: All right.
BY MS. ROSENFELD:
Q And with respect to the other changes that you have proposed, one includes moving the fueling location for the fuel trucks eastward, more toward the interior of the special exception itself. Does that change have any bearing on your sector plan analysis in this case?
A No, it does not.
Q And with respect to the addition of the bollards and of the removable chains, does the addition or does that proposed amendment affect your sector plan analysis in any way?
A No, it does not.
MR. GROSSMAN: So is it fair to say that none of the proposed changes would affect your sector plan analysis?
THE WITNESS: Yes, it would be fair.

MR. GROSSMAN: Okay.
BY MS. ROSENFELD:
Q I believe in your report you concluded or you stated that the overall square footage of the special exception area is 37,754 square feet, is that correct?
A Yes, it is.
Q And that is less than but close to an acre in size, is that correct?
A It's less than an acre in size, yes.
Q All right. I'd like to bring your attention back to the photographs which are Hearing Examiner's Exhibit No. 160 that were introduced when you testified the last time. Do you have a copy of those?
A Yes, I do.
Q Okay. Would you look at Site No. 28, Montgomery Blair High School? Do you have that?
A I have it in front of me.
Q Okay. Do you know if a 37,754 square-foot gas station would fit at that location on, on the property that's shown with an existing gas station?
A Can you rephrase the question, please?
Q Do you know if the property that's shown as Site 28 is more or less than an acre in size?
A Do I know by fact, by record plat? The answer is I do not know.

Q And so you don't know if in fact the proposed gas station in a format shown at Wheaton Mall would indeed fit at this location, do you?
A I do not know.
Q And do you know if it would accommodate a wall in addition to the gas station itself?
A Do I know if it would accommodate a wall? I think it would accommodate a wall if it had to.
MR. GROSSMAN: Okay. Let me interrupt for one second.
(Discussion off the record.)
MR. GROSSMAN: All right. Sorry for the interruption. Go ahead, Ms. Rosenfeld.
BY MS. ROSENFELD:
Q And, Mr. Gang, I have the same two questions for Site 29. First, do you know if that property where that gas station is located is approximately an acre in size?
A I do not know for a fact.
Q And do you know if a wall could be accommodated on that site?
A Yeah, I do think a wall can be accommodated on that site.
Q And the same question for Site 30, and I believe there you show two gas stations side by side.
A Yes.

Q Do you know if the --
MR. GROSSMAN: Ms. Rosenfeld, let me interrupt you. How would whether a wall can be accommodated on other sites really impact on what I have to review here?
MS. ROSENFELD: To the extent that these locations have been shown as corollary to the subject property. There are two components to the gas station. One, of course, is the fueling station itself, and where there are adjoining residential properties, the zoning ordinance requires a wall. So it's an integral component of what's required. I believe and I expect to show that these sites are really apples and oranges, that they don't accurately compare with the subject property that's before you for consideration.
MR. GROSSMAN: You may proceed.
BY MS. ROSENFELD:
Q Site 30, do you know the square footage of either of those sites?
A No, I do not.
Q And do you know if they could accommodate a wall?
A These I do not because I do not know the setbacks off of Bel Pre Road.
Q Okay, thank you.
MR. SILVERMAN: Could the witness speak up? We're having a little trouble hearing.
THE WITNESS: Sure, I'll be happy to speak up.

MR. SILVERMAN: Thank you.
THE WITNESS: I'm trying a little change of pace from last time.
BY MS. ROSENFELD:
Q And I have the same questions for Site 48 and 49 at Veirs Mill Road and Kensington Boulevard in Wheaton.
A Sure. I do not know the size of those parcels, and a wall could be accommodated.
Q And Site No. 51, 20650 Frederick Road?
A Well, if you'll turn to the pictures on 51, you can see there's a fence that's a wall that met the zoning ordinance requirements. I do not know the size of -- I take that back. Just curious. If you'll hold on for one second. The parcel on 51 is 52,000 square feet.
Q And I have the same question for Sites 44 and 45 at Democracy Boulevard and Westlake.
A I'm sorry, 40 and 45 I do not know.
Q And do you know if it would accommodate a wall?
MR. SILVERMAN: Michele, could you speak closer to the mike --
MS. ROSENFELD: Oh, sure.
MR. SILVERMAN: -- please?
THE WITNESS: Could it accommodate a wall?
MR. GROSSMAN: I don't know that the --
MR. SILVERMAN: That's the problem, the mike is

not going to reach.
MR. GROSSMAN: Yes. The mike is not amplifying your voice within the room --
MS. ROSENFELD: Okay.
MR. GROSSMAN: -- as far as I know. Is it?
COURT REPORTER: No.
THE WITNESS: Could it accommodate a wall on 44 and 45? The answer is yes.
BY MS. ROSENFELD:
Q And for Site 47 at Coddle Harbor Lane and Seven Locks?
A Could it accommodate a wall? Yes.
Q And do you know the square footage of that property?
A No, I do not.
Q And Site 36 at University Boulevard and Lexington Street?
A Well, the picture shows a wall. So the answer is yes, and I do not know the parcel size.
Q And I believe the final location is Site 43 at Georgia Avenue and Blueridge, and there are two stations there. Do you know the square footage at the property for either of those stations?
A No, I do not.
Q And do you know if either one --

A These, they have buildings as, you know, sitting on the property lines. So, you know, in reference to the wall that is being proposed at this filling, at the proposed filling station, the answer is probably no on those because there's another form of, of buffer in the context of where they are.
Q Okay, thank you.
A You're welcome.
Q In evaluating the distance between the proposed special exception and the nearest residences, did you take into account the homes that had been approved under a project known as Mount McComas?
A Sure.
Q And what is the distance?
A Sure. In my planning report, I think my planning report had 20, and I think, you know, I had mentioned, you know, if we count, there's eight. So the, I'm trying -- so the answer is yes, in my planning report, it did account for Mount McComas being approved.
Q And what is the distance to the nearest proposed home in Mount McComas?
A I don't know that because I don't have the plans in front of me.
Q Do you know if it's closer or more distant than the existing homes, than the nearest existing home?

A I do not know. I do not know, sorry.
Q On page 8 of your report, you note that the proposed, quote, filling station is unique to both Montgomery County and the surrounding neighborhood, end quote, given it is only available to those individuals with a Costco membership. This unique quality reflects a non-inherent characteristic of the gas station, doesn't it?
A I'm sorry. I'm looking, I was trying to look at -- you said page 8, or is it --
Q Sure, page 8 of your report.
MR. GROSSMAN: As I recall, that's Exhibit 10.
THE WITNESS: Could you tell me what paragraph it is?
MS. ROSENFELD: Exhibit 10.
MR. GROSSMAN: Yes.
BY MS. ROSENFELD:
Q Yes. It's the second sentence of the second full, of the second paragraph at the top of the page.
A I'm sorry. I'm looking at November 2012. Is that the same? No, I don't see that. I apologize.
Q I do. That is the one I'm looking at, and I will be happy to show you my copy.
A Okay. No, it's because of the size of the font. Okay. Let's go to No. 3.
MR. GROSSMAN: What page are you on?

MS. ROSENFELD: I'm not sure. His copy is not the same as mine.
MR. GROSSMAN: I see.
THE WITNESS: It is the same. It's just -- where are we? Right here?
BY MS. ROSENFELD:
Q Yes.
A Okay, I got it. Thank you.
Q All right.
MR. GROSSMAN: So what page?
MS. ROSENFELD: Page 8.
THE WITNESS: It's the same place. It's just, fills it up, yes.
MR. GROSSMAN: Yes, but I can't recall the page.
MS. ROSENFELD: Page 8.
MR. GROSSMAN: 8? Okay, thank you.
THE WITNESS: Thank you.
MR. SILVERMAN: Mr. Grossman? Excuse me, Mr. --
MR. GROSSMAN: Yes.
MR. SILVERMAN: Would you ask Mr. Gang to speak a little bit louder too? When the system is working, it cuts down on volume.
MR. GROSSMAN: Okay, yes.
MR. SILVERMAN: Thank you.
MR. GROSSMAN: If you could keep your voice up, please.

THE WITNESS: I'd be happy to.
MR. GROSSMAN: Thank you.
THE WITNESS: I will do my best.
MR. GROSSMAN: We don't mind a change of pace but not a --
THE WITNESS: I know.
MR. GROSSMAN: -- not a change of volume.
THE WITNESS: Okay, change of same volume. Could you please repeat your question?
BY MS. ROSENFELD:
Q Yes.
DR. ADELMAN: Would you like the mike --
THE WITNESS: No. I like to --
MR. GROSSMAN: All right.
BY MS. ROSENFELD:
Q That unique quality that you referenced, it reflects a non-inherent characteristic of the gas station, doesn't it?
A Yes, it does.
Q Did you prepare a prior report in the case of Special Exception 2794?
MR. GROSSMAN: That's the predecessor application --
MS. ROSENFELD: Predecessor application.

MR. GROSSMAN: -- to, for the Costco gas station when it was planned at a location a couple hundred feet to the west of the currently planned location.
THE WITNESS: Yes, I did.
BY MS. ROSENFELD:
Q I'm going to read to you a statement that you made in that report: As a result of existing leases between Westfield and other mall retail tenants and the associated restrictions on the parking field, the proposed location of the filling station is the only feasible location on the mall parcel for the proposed filling station. Do you recall that statement?
MS. HARRIS: Mr. Grossman, objection. That's a report that's in a different special exception -- a statement that's in a different special exception case.
MR. GROSSMAN: Well, it's a perfectly legitimate question, though. Whether or not he made the statement at some point that a different location is the only feasible location is perfectly acceptable as long as it's not erroneously based. If, in fact, he said that -- and he can answer if he didn't -- then it's a perfectly legitimate question as it pertains to this case. You may --
BY MS. ROSENFELD:
Q And if you don't recall, I'm happy to show you a copy. It might refresh --

A No, I remember what I wrote.
Q Okay.
A The answer is yes.
Q Okay. And the proposed location has since changed, has it not?
A Yes, it has.
Q And on page 2 of your report, you now say the southwest corner of the mall property is the only feasible location for the proposed filling station. What makes the new location feasible now when in your, according to your prior analysis, it was not?
A Sure. I think, basically, it's Zoning Text Amendment 12-07.
Q And explain what about 12-07 would make the current location infeasible before it was adopted.
A I'm sorry. I don't understand.
Q Well, I think I asked what makes the new location feasible now when it was not feasible before, and you said it's the zoning text amendment.
A Oh, what made it now feasible?
Q Correct.
A I was not involved in the, how should I say, the location and the siting of the gas station. I was not involved in that decision-making process.
MR. GROSSMAN: I don't think that's the question.

I think what she's --
THE WITNESS: I know, but --
MR. GROSSMAN: -- pointing to is the fact that with the previous location, which was a couple hundred feet to the west, you said that was the only feasible location.
THE WITNESS: Sure.
MR. GROSSMAN: Then when asked why in the current location you say it's the only feasible one, how do you account for that difference?
THE WITNESS: Sure. It's like information -- it's like in any other planning process: there's information which at that point in time you are aware of. At the point when the filling station was originally developed, in the minds of the parties, that was the only place where they thought it worked. As time went on and it became much more restrictive in reference to the requirements, you know, whatever the requirements are with the leases of the mall, the major anchors, the setback requirements, those started to define even a more restrictive location.
MR. GROSSMAN: So you're saying that when you used the term this is the only feasible location, you were talking not about your opinion as to whether it was the only feasible location but rather what the applicant had represented?
THE WITNESS: What the applicant? You mean --

MR. GROSSMAN: You said in the minds of the parties at the time.
THE WITNESS: Well, meaning Westfield also.
MR. GROSSMAN: Right.
THE WITNESS: So that is my understanding.
MR. GROSSMAN: Your statement that this is the only feasible location was what the applicant and Westfield had represented to you?
THE WITNESS: That is correct.
MR. GROSSMAN: I see. Okay.
BY MS. ROSENFELD:
Q So is it fair to say that these feasibility limitations were contractual and not based on land use considerations?
A Yes.
Q And what information did you have when you relied on your conclusion that the only feasible location now is the current location?
A One is the contractual, my understanding, the contractual obligations between the mall, the mall users and the requirements as imposed by the zoning text amendment.
Q And have you reviewed those contractual agreements yourself?
A No, I have not.
Q And so who gave you the information regarding

those contractual limitations?
A My client.
Q And specifically who?
A Erich.
MR. GROSSMAN: Erich Brann?
THE WITNESS: Yes.
MR. GROSSMAN: Okay.
THE WITNESS: Could I just add one sentence back also in reference to, to limitations? Also the CR zone along Veirs Mill Road.
MR. GROSSMAN: Ms. Rosenfeld, can he add a sentence?
BY MS. ROSENFELD:
Q What about the CR zone provides this limitation?
A It doesn't provide the limitation. It's just the goal and vision of the master plan for -- that's where they would like the redevelopment to occur for Wheaton.
Q In your prior report, you stated that there would be 18,000 visitors a day per week at the mall, and in your current report at page 7, you state that there'll be 13,500 visitors per day during the week. Which is the correct number?
A I think, as Mr. Agliata testified to, it's the new report.
Q The 13,500 per day?

A On a normal weekday, and I think it was like 17,500 on a weekend.
Q I'm sorry, 17,500?
A I think that's what he mentioned. He said there was a range depending upon the day or the week, and he did give a range.
Q Does your report reflect a range?
A Yes, it does.
Q And can you show me where?
A Sure, page 3, third paragraph.
Q It says the mall parcel currently receives approximately 13,500 visitors a day on an average weekday, and in your prior report, you said 18,000 visitors a day during the week. Is it your testimony that 13,500 represents a range?
A It's my testimony that Mr. Agliata testified to what the actual ranges were and these fall within the ranges that he testified to.
Q Does your report take into account this range, between 13,500 and 17,500 visitors per day?
A I'm afraid I don't understand the question.
Q In your report you're evaluating sector plan conformance and certain compatibility issues, and you say here that the mall parcel currently receives approximately 13,500 visitors a day on an average weekday. Your prior

report indicated 18,000 visitors a day during the week, and you said Mr. Agliata's testimony was that it could range as high as 17,500 per month.
A Per day on a Saturday.
MR. GROSSMAN: Just so the record is clear, we're talking about Jim Agliata, A-G-L-I-A-T-A.
MS. ROSENFELD: Thank you.
THE WITNESS: Thank you.
BY MS. ROSENFELD:
Q In your prior report, you indicated that you, that the mall would receive approximately 24,000 average visitors on Saturdays. Where did you get that information for the prior report?
MR. GROSSMAN: This is the one in the prior application?
MS. ROSENFELD: The one in the prior special exception.
MR. GROSSMAN: Okay.
THE WITNESS: Again, from our client.
BY MS. ROSENFELD:
Q Do you, in your report, your current report, indicate how many average visitors arrive each day during holidays?
A No, it does not.
Q Your prior report indicated approximately 40,000

people a day during holidays. Do you have any reason to question that number from your prior report?
A I don't remember; so I can't answer that right now.
Q Going back to page 3 of your current report, at the bottom where you say the improvements on the property are located approximately 396 feet from the residential property line to the west and approximately 258 feet to the residential property line from the south, are those distances accurate?
A No, they are not.
Q Can you tell me what those correct numbers are, please?
A Sure. The 396 is 379, and the 258 is correct.
Q And is this where you addressed Mount McComas?
A No.
Q Or is that anywhere in your written report?
A It's nowhere written in my report.
Q Did I misunderstand you earlier when you testified that Mount McComas was addressed in your report?
A It was not.
Q It was not, okay.
A And these are two property lines. So the property line for Mount McComas is still the southern property line. So that, those dimensions do not change.

Q In your report at page 4, you state that a six-foot wide pedestrian path will be located between the curb and the parallel parking along the outer perimeter of the ring road.
A That is correct.
Q At one point, you provided a supplemental land use report. Do you recall that supplemental land use report?
A Yes, I do.
Q And was that provided in this case or in the prior case?
A The prior case.
Q Okay. And in that report did you indicate that a nine-foot path would be provided in connection with the proposed fueling station?
A That, I do not remember.
MR. GROSSMAN: When you say nine foot, you mean nine foot wide?
MS. ROSENFELD: A nine-foot path was shown.
MR. GROSSMAN: I know but that could be nine feet in length or it could be nine feet in width.
THE WITNESS: Width.
MS. ROSENFELD: I believe it was nine foot in width.
MR. GROSSMAN: All right. Well, we don't, you don't know from the report itself? It doesn't state in the

report?
MS. ROSENFELD: I have to get it. I'll --
MR. GROSSMAN: I mean, once again, I mean, it's legitimate cross-examination to point out prior inconsistent statements, but I don't know that that's inconsistent with anything that he said, but --
MS. ROSENFELD: I'll come back to that question.
MR. GROSSMAN: Okay.
BY MS. ROSENFELD:
Q On page 9, I'm sorry, on page 6 of your report, you state that there are no vehicular or pedestrian connections between the property and the residential areas to the south and west.
A Could you show, tell me what sentence?
Q Sure.
MR. GROSSMAN: Now we're back to the current report?
BY MS. ROSENFELD:
Q We're back to the current report, page 6, the third paragraph. Second or third sentence from the bottom states, significantly, there are no vehicular or pedestrian connections between the property and the residential areas to the south and west.
A Well, I think on the footnote -- there's a Footnote No. 2.

Q Yes.
A It clarifies that there are two existing pedestrian connections located in the southeast, approximately 800 feet, and there's a third connection to the property in the northwest. There is three, you know, from the south. So, as a footnote, so it does show that there, you know -- the property itself is not abutting any of the properties; so that's why. It's just clarification of, technically, this special exception does not have any sidewalks.
Q And could you show me on the, on the current special exception site plan where the location of those three pedestrian connections are located?
MR. GROSSMAN: Do you have a copy of the plan for him to look at? And let's identify which exhibit number you're referencing.
MS. ROSENFELD: Pat --
MS. HARRIS: Yes.
MS. ROSENFELD: -- which is the latest?
MS. HARRIS: And what are you looking for? The special exception --
MS. ROSENFELD: The special exception.
MS. HARRIS: Well, that's right in front of you, but I don't --
MS. ROSENFELD: This one?

MS. HARRIS: The current special exception plan I don't believe is mounted. The most current one was the one that was submitted on June 4th --
MR. GROSSMAN: Yes. It's --
MS. HARRIS: -- and we didn't put a copy of that up.
MR. GROSSMAN: 163(f) is the redline overlay plan, if you want. Or the full-size version of the revised proposed plan is Exhibit 152(a), (b) and (c). That's actually --
THE WITNESS: I'm sorry. That's not the special exception plan?
MR. GROSSMAN: That's an aerial photograph.
MS. HARRIS: Here's the most current special exception plan. Is that what you're looking for?
MS. ROSENFELD: Yes, thank you.
MR. GROSSMAN: All right.
MS. HARRIS: Do we have clips?
MR. BRANN: Yeah. There should be some clips on -- a couple of those boards have clips on them.
MS. ROSENFELD: And this is Exhibit --
MR. GROSSMAN: What page --
THE WITNESS: May I see it, please?
MR. GROSSMAN: -- what page of the plan is it, Michele?

THE WITNESS: Thank you.
MS. ROSENFELD: 3 of 3.
MR. GROSSMAN: 3 of 3. Then that's Exhibit 152(c) if that's the latest.
BY MS. ROSENFELD:
Q If you'll just look at 152(c).
A Sure. Exhibit 153?
MR. GROSSMAN: 152(c) --
THE WITNESS: 152(c).
MR. GROSSMAN: -- if that's page 3. That's the Revision 7 dated May 24, 2013. Is that correct?
THE WITNESS: Yes, it is.
MR. GROSSMAN: Okay.
BY MS. ROSENFELD:
Q I have a blue highlighter here. Could you just highlight there the general location of the paths that you're referencing in your footnote?
A They're not on this plan.
Q Oh, they're not on that plan at all?
A No, they are not.
MR. GROSSMAN: Okay.
THE WITNESS: Do you need this still? I'll leave it here for now.
MR. GROSSMAN: Okay.
THE WITNESS: If he wants any other questions,

we'll have it throughout. We don't need it because --
MR. BRANN: Between the two of us, we were able to get it.
THE WITNESS: There is no, per the question, there are none.
BY MS. ROSENFELD:
Q Looking at Exhibit No. 102, can you locate any of these three pedestrian paths on that exhibit?
MR. GROSSMAN: Exhibit 102 is the aerial photograph that you're displaying now?
MS. ROSENFELD: That's correct --
MR. GROSSMAN: Okay.
MS. ROSENFELD: -- dated 10/2012.
MR. GROSSMAN: All right.
THE WITNESS: Yes, I can.
BY MS. ROSENFELD:
Q And could you show me where those three paths are located, please?
A Sure. Let me describe verbally, and then I'll go up to the board and point them out to you. One is off the cul-de-sac off of Faulkner Place, which is in the northwest corner of the Westfield Mall property.
MR. GROSSMAN: Do you want to use a laser pointer to point it out?
THE WITNESS: Sure, that would be great.

MR. GROSSMAN: That might be easier for you.
THE WITNESS: Yeah. Let's see. It's right, let me see, it's right there.
MR. GROSSMAN: All right. Pointing at the western side, a little bit north of center on the west.
THE WITNESS: Yeah. It's due west of where the Target loading area is. And the other two, there's two coming off of the Stephen Knolls School --
MR. GROSSMAN: Okay. To the --
THE WITNESS: -- just to the west of that.
MR. GROSSMAN: And that's to the southeast of the mall.
THE WITNESS: Right. And the third one, if you want to call it, in this area --
MR. GROSSMAN: South, I guess on the south side of the mall.
THE WITNESS: Yeah, is off of Toreno Court, if I got --
MS. CORDRY: Torrance.
THE WITNESS: Thank you, Torrance, which is right there.
MR. GROSSMAN: Okay.
THE WITNESS: Thank you.
MR. GROSSMAN: You're welcome.
BY MS. ROSENFELD:

Q And if I were to draw your attention to the same exhibit, 102, do you see an open area directly to the south of the special exception location, south, just below the western side of the warehouse?
A I do see it.
MR. GROSSMAN: The Costco warehouse?
MS. ROSENFELD: The Costco warehouse.
BY MS. ROSENFELD:
Q Do you see this open --
A I do see that.
Q And if I give you a chance to take a look at this, do you see --
A Sure.
Q -- any informal pedestrian pathway through there?
MR. GROSSMAN: How do you mean by informal?
BY MS. ROSENFELD:
Q Do you see any indication of a pedestrian, informal pedestrian trail at that location?
A On this aerial?
Q Yes.
A Yes, I do.
Q Okay. And could you just show generally where you see -- can you describe it?
A Sure. It runs in a north-south direction through the parcel, generally.

Q And --
MR. GROSSMAN: And comes in right south of the, of the Costco warehouse location?
MS. ROSENFELD: Correct.
MR. GROSSMAN: Okay, just in the corner of it. It's the, I guess it's the southwest corner --
BY MS. ROSENFELD:
Q And did you --
MR. GROSSMAN: -- of the Costco warehouse.
BY MS. ROSENFELD:
Q And did you take that informal pedestrian path into consideration in your analysis of the sector plan?
A I didn't prepare the sector plan. So --
Q In your analysis of the project's conformance to sector plan goals.
A Did I take that into consideration? Again, I don't know how to answer that. It's --
MR. GROSSMAN: Well, it's a pretty straightforward question.
THE WITNESS: But I --
MR. GROSSMAN: Did you take into account, when you analyzed conformance with the sector plan, of the proposed plan, did you take into account what you have found to be an apparent informal pedestrian path just to the southeast corner of the Costco warehouse location?

THE WITNESS: No.
BY MS. ROSENFELD:
Q Are you aware of any other informal pedestrian paths of a similar nature along the perimeter of the mall parcel?
A No, I am not.
MR. GROSSMAN: Ms. Rosenfeld, do we know if that, that particular informal path that you're talking about actually connects into the ring road or --
MS. ROSENFELD: I think you'll have --
MR. GROSSMAN: There'll be evidence to that effect?
MS. ROSENFELD: -- extensive testimony --
MR. GROSSMAN: Okay.
MS. ROSENFELD: -- on that point, yes.
MR. GROSSMAN: All right, thank you.
BY MS. ROSENFELD:
Q In your report you state there'll be approximately between one and five fuel deliveries a day and that each delivery takes approximately 45 minutes, is that correct?
A That's what my report states.
Q And where did you get this information?
A Same place.
Q The same --
A Yeah, source.

Q Which source? We've cited to several today.
A Erich.
Q Mr. Brann?
A Yes.
Q And do you know how many days a week the deliveries are expected to occur?
A No, I do not.
Q On page 17 of your report, you make a determination going to Section 59-G-1.21(a)(5) of the zoning ordinance relating to the economic value of surrounding properties, and you conclude that the special exception application -- I'm sorry. You rely on a report by Lipman, Frizzell & Mitchell to conclude that there will be no detrimental economic value, don't you? Is that correct?
A Yes, it is.
Q Did you make any independent evaluation as to impact on economic value?
A No, I did not.
Q Okay. So your conclusion relies on their report, is that --
A Yes, it does.
Q Okay. And going to Section 59-G-1.21(a)(6), also in your report, again on page 17, addresses issues of objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject property, and you conclude that the proposed special exception will not cause any of these effects. Where did you reach that conclusion? What information did you use to rely on?

A From our experts, our health experts.
Q Your health expert. And can you identify which report that is in the record?
A Can I get the list of exhibits, please? Thank you. Exhibit 15, environmental report/health report. I'll go through all of these with you.
Q And did you make any independent analysis in reaching these conclusions?
A No, I did not.
Q And going to Section 59-G-1.21(a)(8) of the zoning code, which addresses findings relating to the health of residents, visitors, or workers in the area of the subject property, and you conclude that there will be no adverse effect on those populations, where did you -- what information did you rely on to reach that conclusion?
A Same thing, my health experts.
Q Your health experts. Can you identify where in the record Mr. Sullivan is identified as a health expert?
A Well, again, I don't know who -- I don't remember who did the health report, but there are two reports. One was environmental, and the other was a health report.

Q You also reached a finding related to the impact of the potential -- the impact of the special exception on property values, is that correct? Actually, strike that. I've already asked the question.
Going to Section 59-G-2.06(a)(2) of the zoning code, which you address on page 20 of your report, you conclude that the proposed use will not create a traffic hazard or traffic nuisance. What information did you rely upon in reaching that conclusion?
A Mr. Guckert's report.
Q And did you do any independent traffic analysis with respect to vehicular impact on intersections within the mall parcel?
A No, I did not.
Q Or intersections outside of the mall parcel?
A No, I did not.
Q And did you do any analysis with respect to pedestrian movements within the mall parcel?
A No, I did not.
Q Or pedestrian movements outside of the mall parcel?
A No.
Q Are you familiar with where the fuel tankers will be located when they deliver fuel?
A From the testimony when I was here, the answer

would be yes.
Q Okay. Have you reached any conclusions as to traffic or pedestrian circulation or safety given -- at the time that fuel tankers are unloading fuel?
MR. GROSSMAN: Now, just so we, I assume that under the revised plans, the fuel tankers will be at a slightly different location; that is, they'll be a few feet to the east. Is that, are you assuming that or not, Ms. Rosenfeld, in your question?
MS. ROSENFELD: I do assume that --
MR. GROSSMAN: Okay.
MS. ROSENFELD: -- but I'm not aware that that plan is technically before us at this point in time.
MR. GROSSMAN: Well, that's a fair question. I guess we have two proposed plans before us in that sense. We have the next to the last plan and then the one that's most recently proposed, which would have -- which would move the refill location to the right. We haven't had technical staff give their final opinion on the newly proposed location, but it is before us because, if I understand correctly, Ms. Harris, that is the plan that you are proposing at this point, is the last one that you submitted, correct?
MS. HARRIS: Correct.
MR. GROSSMAN: Okay. So it's conceivable that

technical staff may have an objection which may influence whether or not that ultimately becomes the plan that is proposed, but right now I think we can work off the assumption that that is the proposed plan by the applicant based on what they say. You can certainly ask, if you want to cover all the bases, you can ask the question for both of those plans, the one immediately before that one since that's --
MS. ROSENFELD: Well, Mr. Gang has testified that on most of these issues, he has relied on the opinions of other experts to make certain of his findings. And --
MR. GROSSMAN: Yes.
MS. ROSENFELD: -- the location of the tankers and the relocated fuel tank pad and the issue of the bollards and the chain are all issues that, I think, need to be addressed by Mr. Duke from a technical perspective and/or perhaps Mr. Guckert. I think it would be appropriate to have their technical testimony before Mr. Gang speaks to the revised plan.
MR. GROSSMAN: Well, I don't know that that's necessary, but at this point, you can certainly ask the witness what you asked, but I just wanted to make clear which location you're talking about in your question. That's all.
MS. ROSENFELD: My --

MR. GROSSMAN: When you said, or you asked the witness are you aware of where the fuel tankers would be --
MS. ROSENFELD: Right.
MR. GROSSMAN: -- when they are unloading their fuel, I wasn't sure whether you were referring to under the current proposed plan or under the one immediately before it. I just want you to make sure that you're --
MS. ROSENFELD: Sure.
MR. GROSSMAN: -- that the witness understands which location you're talking about.
MS. ROSENFELD: Mr. Grossman, I think what I'll do is just strike that question in its entirety --
MR. GROSSMAN: Okay.
MS. ROSENFELD: -- and after we have more technical testimony from the other experts on the new plan, I'll recall Mr. Gang, if I think it's appropriate, on that issue.
MR. GROSSMAN: Well, I leave it to you. I'm not telling you you can't ask the question of this witness. I'm just saying let's make sure we're clear as to which location you're talking about in the question, that's all, if you would.
MR. SILVERMAN: Sir, we can recall him on our volition? So it's not dependent on Ms. Harris?
MR. GROSSMAN: You can recall Mr. Gang --

MR. SILVERMAN: Yes.
MR. GROSSMAN: -- you're referring to?
MR. SILVERMAN: Yes.
MR. GROSSMAN: I suppose if it became necessary to make Mr. Gang available, you know, we would do that, but I'm not sure that that's the case. So I'm not going to, I'm not going to say -- I mean, I want to give the parties some leeway in terms of cross-examination since we have had a plan change in the middle of a case somewhat, I would say, in response to a concern raised by the questioning by the opposition about the impacts on traffic within the parking area.
So I presume, based on the nature of the change, that it was to improve a situation, the potentially problematic aspect of which was pointed out by the opposition in its questioning. Whether that requires further testimony from Mr. Gang, who said he based his analysis on another expert, I don't know. So let's cross that bridge when we come to it.
MS. ROSENFELD: Okay.
BY MS. ROSENFELD:
Q In your opinion, is the Costco warehouse a, quote, structure or a, quote, building?
A Outside of my -- outside my realm of expertise.
MR. GROSSMAN: That's definitional. You're asking

if the Costco warehouse is a structure or a building?
MS. ROSENFELD: Yes.
MR. GROSSMAN: Well, that's definitional in the code. It's both. I mean, I don't understand.
BY MS. ROSENFELD:
Q Are you familiar with the location of the Costco warehouse loading docks as they're incorporated into that building?
A Yes, I am.
Q And what is the distance between the loading docks and the proposed special exception?
A I'm looking at the special exception plan.
Q And can you just give an exhibit number?
A Sure. It's 152(c).
Q Thank you.
A It does not show the westerly portion of the building; so I can't give the answer in front of the information I have in front of me.
Q Okay. Do you, in your report, analyze the traffic impact of the special exception in relation to the loading docks for the Costco warehouse?
A In my report, no.
Q Do you analyze --
A Or I don't remember unless you can point that out to me.

Q Do you analyze the traffic pattern from the Costco warehouse?
A Not in my report.
Q Or the loading docks?
A Not in my report.
Q And are you familiar with the tire service component of the warehouse?
A Do I know where it's located?
Q Yes.
A Yes, I do.
Q Okay. Are they located in the warehouse structure, in the warehouse building?
A Yes, they are.
Q And do you, in your report, analyze the traffic impact of the special exception in relation to the traffic from the tire service component of the warehouse?
A In my report, no.
Q I'd like to turn your attention to Exhibit No. 121, which I believe is on a board. Let me see if I can find it.
MR. GROSSMAN: It's an aerial photo of a portion of the Wheaton Mall site dated July 31, '06.
MS. ROSENFELD: Do you know if that was on a board, Pat?
MS. HARRIS: Which one?

MS. ROSENFELD: 121, the aerial photo, this aerial, Exhibit No. 121.
MR. BRANN: Oh, we don't, no, we don't have that one.
MS. ROSENFELD: You don't have that one? Okay.
MR. BRANN: We have a newer one, but we don't have that particular shot with the -- yeah, we don't have that shot.
MS. ROSENFELD: Okay.
BY MS. ROSENFELD:
Q All right. Mr. Gang, I'm going to show you what's been marked as Exhibit No. 121 --
MR. GROSSMAN: All right.
BY MS. ROSENFELD:
Q -- it is the special exception file. Are you familiar, does that show the, generally, the mall parcel?
A Yes, it does.
Q In your report you had discussed a former use at that location: the Montgomery Ward auto service center. Did you?
A Can you point to what page in my report, please?
Q Oh, actually, I'm not --
A I mean, I do know about the -- page 2, second paragraph from the bottom.
Q Yes, thank you.

A You're welcome.
Q Page, that's correct, second to the last full paragraph: During the entire existence of the mall and up to approximately 2002, there was a full-service automobile repair center owned and operated by Montgomery Ward, located on the mall parcel. Can you locate on Exhibit 121 where that auto service center was located?
A Yes, I can.
Q And is the building generally shown on that aerial photograph?
A Yes, it is.
Q And can you just identify on that exhibit where it's located?
MR. GROSSMAN: You can hold it up so we can all see.
THE WITNESS: Sure. This is, I think, the, I'm going to call it, the existing parking garage, which is on the right side of the photograph. Due west and due left of the existing garage, I think, was the old Hecht's building, and due west of that is where the, the, the building which you're talking about.
BY MS. ROSENFELD:
Q And is it shown generally as a stand-alone rectangular building?
A Yes, it is.

Q Okay. What firsthand knowledge do you have about the operations of the Montgomery Ward service center?
A I've lived in the area 30 years. I've gone to this mall many times. So I'm very aware what's on that mall. So the answer is yes.
Q Is the Montgomery Ward building closer or more distant to the southern boundary of the mall than the location of the proposed special exception?
A Further away from the southern property line.
Q And do you have any personal knowledge, on average, as to how many customers a day visited the service center?
A I do not.
Q Do you have any firsthand knowledge as to whether there were vehicular queues waiting for service on a regular basis?
A I do not.
Q Do you know what the hours of operation were for the service center?
A I do not.
Q Do you know how frequently supplies were delivered to the service center?
A I do not.
Q Were there ever fuel deliveries to the service center?

A I could say, since it was a tire place, the answer is no.
Q Okay. In terms of general deliveries to the service center, do you know how often trucks delivered products?
A I do not.
Q Do you know if the auto center operated through a special exception approval, or is it allowed by right in the C-2 zone?
A I do not know.
Q Okay. I'd like to turn back to your report.
A Who may I give this exhibit back to?
Q Thank you.
A You're welcome.
MR. GROSSMAN: Ms. Rosenfeld, do you want to enlighten me as to how do I factor that, those tidbits of information in, the responses to those cross-examination questions?
MS. ROSENFELD: There are, has been testimony in at least one of the reports, if not more, that the auto service center on the mall parcel is similar or precedential for purposes of the automobile filling station.
MR. GROSSMAN: I see. And so you're drawing a distinction between what might have happened at that automobile repair facility and what is proposed now?

MS. ROSENFELD: That the intensity of the use in no way correlates.
MR. GROSSMAN: All right.
BY MS. ROSENFELD:
Q In your review of the sector plan, is there any indication that there's a shortage of gas stations in the Wheaton area?
A I did not review -- I did not review gas stations in the sector plan.
Q Meaning you didn't look for anything or you didn't find anything?
A I know there's six gas stations within the sector plan area, but did I review whether there's a shortage or not, outside my realm of expertise.
Q Was there any recommendation in the sector plan that more gas stations would be encouraged or appropriate?
A No.
Q In your report at page 14, you reference a TOD. Could you please explain to me what that is?
A Transit-oriented characteristics, that's what TOD means. It means that a mix of uses that, that can be, how should I say -- TOD is transit-oriented development. Transit-oriented is a mix of uses within confines of close proximity to, to public transportation.
Q Is that term actually used in the sector plan?

A No, it is not.
Q Is it defined somewhere in the zoning code perhaps?
A In the zoning code? To best of my knowledge, no.
Q So where did you get that nomenclature?
A It's an acronym among planners in reference to, to design concepts in higher density areas near Metro stations.
MS. ROSENFELD: Mr. Grossman, do you mind if we take a five-minute break?
MR. GROSSMAN: Certainly.
MS. ROSENFELD: Okay, thank you.
MR. GROSSMAN: All right. It's now 10 to 11:00. So we'll come back about, about five to 11:00.
(Whereupon, a brief recess was taken.)
MR. GROSSMAN: All right. Back on the record here. You may resume, Ms. Rosenfeld.
MS. ROSENFELD: Thank you very much, Mr. Grossman.
BY MS. ROSENFELD:
Q Mr. Gang, I'd like to turn your attention to Exhibit No. 150, 150, which is the Wheaton CBD Sector Plan that you had marked up and that you've previously testified to. I'd like to first turn your attention to page 28, and on the left-hand side of page 28, there's a large blue arrow from the lower left-hand corner pointing toward and through the mall parcel. It says Westfield Wheaton Mall, and in the

legend on the right-hand side of that same page, that icon is reflected as local access to downtown core. Could you please explain in your opinion what that arrow represents?

A Sure. It shows that there are a number of options to go from the Kensington Heights community to the yellow area, which is the redevelopment area for the, you know, for the downtown area.

Q And in your opinion, does that reflect pedestrian access?

A It could, I think, and as I mentioned, was, was, there are a number of choices. This is like a big bold arrow. There are no specifics saying this is down the street you need to go to. So you're shown, you know, the exhibit on Map 8 shows five arrows, and each of those arrows are saying I have a number of options: it could either be by car, it could be by bike, it could be by walking, it could be by -- it won't be by mass transit, but it could be. It says local access. So it's any one of these ways to get, you know, get to the area for redevelopment.

Q On page 29 -- I'm going to give you a little, a little highlighter.

A Okay.

Q On page 29 under Connectivity, the second, third sentence says the Westfield Wheaton Mall will be integrated with the CBD through pedestrian connections and

street-oriented uses along its edges. Would you highlight that and then please explain to me what in your opinion that means?

A I'm sorry. I'm highlighting it in my book, or whose book?

Q Actually, if you could highlight it in the official exhibit.

MR. GROSSMAN: Well, no, let's not. Let's -- first of all, what page are we looking at now?

THE WITNESS: Twenty-nine.

MS. ROSENFELD: We're on page 29.

MR. GROSSMAN: All right. Let's not change any exhibits that we --

MS. ROSENFELD: Okay.

MR. GROSSMAN: -- have already got. What are you referencing here, what paragraph?

MS. ROSENFELD: It's page 29 --

MR. GROSSMAN: Okay.

MS. ROSENFELD: -- under Connectivity --

MR. GROSSMAN: All right.

MS. ROSENFELD: -- and the third sentence, beginning with the Westfield Wheaton Mall.

MR. GROSSMAN: Okay.

MS. ROSENFELD: And if --

MR. GROSSMAN: And what do you want him to

emphasize?

MS. ROSENFELD: I'd like him to highlight that sentence and then offer his opinion as to what that means.

MR. GROSSMAN: All right. Well, let's not have him highlight it because I don't want to change an exhibit that we already have here. If you want to have that page submitted with highlighting on it as a new exhibit, you can do that, but let's -- so you want to know what this sentence, the Westfield Wheaton Mall will be integrated with the CBD through pedestrian connections and street-oriented uses along its edges?

MS. ROSENFELD: That's correct.

MR. GROSSMAN: Okay. What does --

THE WITNESS: Sure. Sure. I would go to, you know, like the opening paragraph of this urban design. Third sentence says the Wheaton Urban Design Guidelines will be prepared to complement this plan, to provide additional, provide additional detail. If we go -- and this is, this is like the basic concept -- if we go to the urban design concept plans and we look at -- well, I'll go through each one of these things. We can almost go through any one of these pages in the beginning. They talk about the different types of connectivity. For example, we'll start on page 13, which is, I think, is the closest to the mall. They talk, they show -- they have, first of all, the first thing is

major highways, which is identified also in this section where you talk about connectivity. The first sentence says Georgia Avenue, Veirs Mill, and University Boulevard will be boulevards to tie Wheaton together, and as was testified by Mr. Guckert, you know, there's 100,000 trips per day going through this area. Then -- I just heard people talking in the background. So I just want to make sure, if they want to talk --

MR. GROSSMAN: No. Let's --

THE WITNESS: -- I'll hold.

MR. GROSSMAN: No, nobody's talking. Go ahead, sir.

THE WITNESS: Okay. Then --

MS. CORDRY: I'm sorry. Were you referring to page 13, though? I thought --

THE WITNESS: 13 of the urban design guidelines.

MS. CORDRY: Oh, of the urban design guidelines.

THE WITNESS: Yeah, I'm sorry, because it references, this is like -- you know, sector plans give overall visions, and then as time goes on, they become much more specific. The specifics, as Ms. Rosenfeld identified, was the road, you know, the local access, you know, those big arrows. Then it starts talking about how you're going to integrate.

Page 13 is a diagram which shows, which has the

arrows, has the points, shows the street connections, shows the sidewalk. So it does show specifically where those connections to the mall should occur and what they, you know -- and the design guidelines reference the building setbacks, et cetera --

BY MS. ROSENFELD:

Q And do those, do those --

A -- so this becomes a lot more -- sorry.

Q Well, let me interrupt you for a minute. Where in those, where in the page that you're referencing is it talking about the southwestern quadrant of the mall parcel?

A If you look on page 5 --

Q Yes.

A -- I'm sorry, page 13, page 13 is Veirs Mill Road running from the upper left to the lower right, has University Boulevard in the lower right-hand corner --

MR. SILVERMAN: Excuse me. Mr. Grossman --

MR. GROSSMAN: Yes.

MR. SILVERMAN: -- last week we got handed the design guidelines. Is that what you're referring to?

THE WITNESS: Yes, I am.

MR. GROSSMAN: That's what he's referring to. That's what he said.

MR. SILVERMAN: We didn't get the whole document. We just got pages.

MS. CORDRY: Yes, that's not -- the only pages of the design guidelines that are currently an exhibit are 7, 10, and 25. So we don't, we don't know what he's talking about.

MR. GROSSMAN: All right. And so it appears, Exhibit 151, design guidelines --

MS. HARRIS: Mr. Grossman, that's correct. We, in connection --

MR. GROSSMAN: Right.

MS. HARRIS: -- with Mr. Gang's direct, we submitted the relevant pages --

MR. GROSSMAN: Right.

MS. HARRIS: -- but I would note that these were adopted by the Council, and we would request judicial notice of the design guidelines.

MR. GROSSMAN: That's fair, but let's just, so that people have an opportunity to know what he's saying while he's talking about it, do we have other --

MS. HARRIS: I have just one copy. I can put it up there.

MR. GROSSMAN: What page is it? What page were you referencing?

THE WITNESS: Page 13.

MR. GROSSMAN: All right. Let's see if we have a copy.

MS. HARRIS: Michele, do you have a copy?

MS. ROSENFELD: I have a complete copy here.

MR. GROSSMAN: Let me see if I have another copy here. I don't have a copy here of the design guidelines. What pages are we going to be referencing?

THE WITNESS: Right now, I think only page 13 --

MR. GROSSMAN: Okay.

THE WITNESS: -- because this gets into the details.

MS. ROSENFELD: Let me just ask one clarifying question about page 13.

BY MS. ROSENFELD:

Q Does page 13 talk about the southern perimeter of the ring road as it abuts the Kensington Heights community?

A Page 13? No, it does not.

MS. ROSENFELD: I have no questions on this page 13 of the design guidelines.

MR. GROSSMAN: All right. Does your answer require something from page 13? Do you --

THE WITNESS: Yes, it does. Was her question --

MR. GROSSMAN: -- do you have page 13 in front of you?

BY MS. ROSENFELD:

Q My question was, how does this sentence, the Westfield Wheaton Mall will be integrated with the CBD

through pedestrian connections and street-oriented uses along its edges, relate to the graphic that's shown on page 28 --

A Sure, and all I'm saying --

Q -- of the Wheaton Sector Plan?

A The answer is, is page 28 is very diagrammatic at this stage, basically gives the overall concept of how. Page 13, as, you know, as identified --

MR. GROSSMAN: Page 13 of the design guidelines?

THE WITNESS: Of design guidelines. As identified in the opening paragraph, the last sentence is the guidelines will be more specific. Since we want to talk about more specific issues, because we're at that stage, it does talk about how that will occur. It shows the --

BY MS. ROSENFELD:

Q Along Veirs Mill Road?

A The entry -- the connections, which, which talks about the Westfield connections, will be integrated with the CBD, which is the central business district. The central business district is along Veirs Mill Road. The core is across the street, as well as all the other redevelopment areas, as I talked about previously, is within that area, and it's also the area highlighted in yellow on page 28. It also, on page 28, it has the two red arrows, mall/core connections, which are also very diagrammatic.

MR. GROSSMAN: The page 28 you're referring to is back to the actual sector plan itself?
THE WITNESS: Correct. And all I'm saying is the specifics in reference to how that meets -- will be integrated through the central business district through pedestrian connections and street-oriented uses along its edges -- is in the design guidelines on page 13 of exactly what that vision is.
BY MS. ROSENFELD:
Q So is it your view --
MR. GROSSMAN: All right. Now, Ms. Rosenfeld, do you have the design guidelines in front of you now?
MS. ROSENFELD: I do.
MR. GROSSMAN: Okay.
BY MS. ROSENFELD:
Q So is it your view that the edges referenced on page 29 of the sector plan relate only to the edge of the mall, as it's reflected on page 13 of the design guidelines?
A Yes.
Q Okay. And so in your view, the arrow on the lower southwestern quadrant of the map on page 28 has no significance?
A Oh, I think it has -- I mean, it does have significance.
Q What significance does it have?

A The significance is, is that there is redevelopment planned within the core area, which is the area highlighted in yellow, and --
Q So it relates, it relates to the core, and it doesn't --
MR. GOECKE: Mr. Grossman, if he could finish his answer, please.
MR. GROSSMAN: Yes, I think that's fair.
MS. ROSENFELD: I apologize.
MR. GROSSMAN: Let him finish his answer.
MS. ROSENFELD: I apologize.
THE WITNESS: Okay. And I'm sorry, I got to get my thoughts together. So that's --
MR. GROSSMAN: Just answer.
THE WITNESS: Excuse me?
MR. GROSSMAN: Just answer. Go ahead.
THE WITNESS: I am. I just -- okay. The core area is where redevelopment is going to occur. It is important that the, how should I say, the, it's not only the areas -- and you'll notice that the arrow goes outside the sector plan area -- that there are multiple options for those residents, whether, again, it's by car, walking, bikes, that they do have those options to get to the core area.
BY MS. ROSENFELD:

Q And can you speak particularly with any significance it may have with respect to the Kensington Heights component of the sector plan?
A That, I can't.
Q I would like to turn your attention now to page 61 of the sector plan.
MR. GROSSMAN: Ms. Rosenfeld, let me ask you a question that pertains to this line of questioning. How does it bear on what I have to analyze whether or not the sector plan is advocating some sort of pedestrian connection through the southwest, as your questions kind of imply?
MS. ROSENFELD: One of the findings that you need to make is whether or not the special exception conforms to the recommendations of the master plan or the sector plan in this case, and in fact, one of -- the Planning Board's recommendation of denial turns on a lack of conformance, in its view --
MR. GROSSMAN: Right.
MS. ROSENFELD: -- and with the overall principles of the sector plan, which include transit-oriented design and pedestrian-friendly connectivity and an effort to get away from vehicular-intensive uses.
MR. GROSSMAN: But the vehicular-intensive use is a separate question. I mean, you're addressing a pedestrian-access question here, and I'm trying to

understand how you connect that with the proposal for a gas station at this location. I understand that there's been a proposal to first have a pedestrian path along the southern ring road, then not, and then adding it back in, but it's technically outside of the special exception area itself.
So I'm not sure I understand the line of questioning that goes to interpreting the sector plan, as to whether or not the gray arrow that's shown in the -- well, the series of gray arrows, one of which passes through the southwestern section of the sector -- how that exactly pertains to what I have to analyze.
MS. ROSENFELD: Well, to the extent that the vehicular-intensive use of this particular special exception undermines the overall goals of the sector plan, the pedestrian path, if proposed, could help offset that impact. So I think it does go to that issue. It also goes to broader issues respecting, with respect to pedestrian safety overall within the mall parcel.
MR. GROSSMAN: Well, I'm not saying those issues don't exist. I'm just wondering whether those issues are really pertinent to what I have to recommend in terms of a proposal for a gas station which is, technically doesn't reach the ring road and is, technically doesn't abut the outside of the, of the ring road. I mean, I understand --
MS. ROSENFELD: Well, it certainly is being --

MR. GROSSMAN: -- the, you know, the air pollution issues, but I'm just, and also the question of whether or not this is traffic-centric or vehicular-centric versus pedestrian, I understand those, but I'm not sure how your line of questioning actually pertains to something that I'd have to analyze.

MS. ROSENFELD: Well, I certainly think that the pedestrian path, to the extent that it's offered, is being offered as a component of the special exception. It's an off-site design amenity associated with the special exception.

MR. GROSSMAN: I understand that and I'm not criticizing having it in there. I'm just saying that you're going a step further and trying to analyze whether or not the, whether or not the gray arrows are supposed to indicate something to me that affects whether or not, or how I'd analyze the proposal for a gas station. I'm not sure I make that, quite that connection with regard to the pedestrian --

MS. ROSENFELD: Well, let me state it another way. Depending on the ultimate design of the gas station itself --

MR. GROSSMAN: Yes.

MS. ROSENFELD: -- if it's location and size and operational features preclude future, the future ability to provide a pedestrian path, then that additionally would

undermine the goals of the sector plan because it will be here on a long-term basis.

MR. GROSSMAN: So if the, you're saying, if the gas station itself somehow precluded a pedestrian path?

MS. ROSENFELD: Certainly. Certainly. It has long-term implications for the future development of this site --

MR. GROSSMAN: All right. Okay.

MS. ROSENFELD: -- and to the extent that it impacts on the long-term goals envisioned of this sector plan, I think it's highly relevant.

MR. GROSSMAN: Okay. All right, thank you.

BY MS. ROSENFELD:

Q Would you please go to page 61 of the sector plan?

A I'm there.

Q And on that map, on the lower southern quadrant, southwestern quadrant of that map, there's a dashed green line. Do you see that line?

A Yes, I do.

Q And I believe you highlighted that in your previous -- in your exhibit, is that correct?

A Yes, I did.

Q And can you explain what that dashed green line signifies?

A Signifies, well, one is, there is the major

heading which says pedestrian connection. Then the dashed line with the star says proposed, then under that says not designated in the Master Plan of Highways; alignment to be determined during the development review process; these connections could be public or private.

Q And does it contemplate that there would be a pedestrian connection? Do you know the name of that road?

A Yeah.

MR. GROSSMAN: Which road?

MS. ROSENFELD: The one that has the dashed green arrow.

THE WITNESS: Peregoy Drive. Peregoy Drive.

BY MS. ROSENFELD:

Q Peregoy Drive. So does this, Map 17, indicate that a pedestrian connection is contemplated somewhere in the area of Peregoy Drive to the mall?

MR. GROSSMAN: When you say contemplated --

THE WITNESS: Yeah. It's --

MR. GROSSMAN: -- it uses the word proposed in the --

BY MS. ROSENFELD:

Q Proposed.

A Yeah, it does show proposed.

Q And the three straight green lines, undashed green lines that are indicated as existing, would those be the

three pedestrian connections that you discussed earlier in your testimony?

A Yes, they would be.

Q And do you know where the terminus of the wall, the proposed wall, begins and ends in relationship to these existing and proposed pedestrian connections?

A I know approximately.

Q Do you know if it begins, is starting with the most northwestern quadrant? Would the wall preclude or block that existing pedestrian access?

A No, it would not.

Q And does the wall begin somewhere to the south of that pedestrian connection?

A Which pedestrian connection?

Q The one in the upper west, northwest corner.

A I would estimate that it's halfway between the proposed and existing.

Q Okay. And that it would continue along the perimeter of the ring road. And do you know where along the southwestern quadrant it would end?

A It would end, let's see if I could -- do you see off of McComas Avenue, even though it's not labeled off of McComas Avenue, there are two streets going up with two little bulbs, one which is near Torrance Court -- I'm sorry, no. I'm saying the one on the right.

Q Could you show on the aerial map which one you're looking at?
A Sure. Let me just show you. Actually, it's probably easier to identify where the wall would approximately end.
Q That would be terrific.
A Okay. This is Exhibit, sorry if I don't see a number --
MR. BRANN: 102.
MR. GOECKE: Bottom left, 102.
THE WITNESS: Oh, 102, thank you. Okay. The wall, the existing pathways, which you were, which we were talking about; this was the one which we were just mentioning. The wall --
MR. GROSSMAN: You're indicating --
BY MS. ROSENFELD:
Q Which is just south of what street?
MR. GROSSMAN: -- in the northwest --
THE WITNESS: Northwest corner.
MR. GROSSMAN: -- corner?
THE WITNESS: The wall would end approximately due east of the tennis courts.
BY MS. ROSENFELD:
Q End or begin?
A Let's say begin --

Q Okay.
A -- all right, with one -- I go clockwise, so sorry, would begin at the, at the, approximately where the tennis court would end. The other wall would end approximately -- I'll give you an approximate location because these are without sidewalks -- would end approximately in the middle of the Costco warehouse.
Q And do you know if that is the wall as it was submitted, or do you know if that's the wall with the proposed 46-foot extension?
A It's with -- the wall with the 46-foot extension.
Q Okay. All right.
A And the reason I'm giving you approximate is the question would it impact the existing walkways. The answer is no.
Q And would the wall, if constructed, completely block the ability to provide a pedestrian connection for the length of the wall, a new pedestrian connection?
A Not necessarily.
Q And could you explain?
A Sure. You could run the wall, the walk parallel to the wall in either direction and then connect up.
Q On the outside perimeter of the wall?
A Right, and you probably would do that anyway because of the severity of the slope within that area. I

think, as Mr. Duke might have testified, it is very severe and you probably would not want to go straight up; you would probably would want to run parallel to the contours. So would you have the ability to connect to a proposed walkway? The answer would be yes.
MR. GROSSMAN: Mr. Gang, would the -- the proposed wall would not block the pedestrian path in the, that's indicated in the southwest corner of the mall right there?
THE WITNESS: What I'm saying is, is, if you're going as a straight shot and assuming it's a flat topography, which was testified to, is, is, yes, it would block in that direction. I'm saying, if you were planning a walkway, because it is rather severe topographically in that area, that you might consider -- and I say, you know, this is Mr. Duke's expertise --
MR. GROSSMAN: Right.
THE WITNESS: -- and Mr. Willard -- you might consider, you know, just like you'd go up a mountain, you know, a meandering walk so you do have a flatter slope. You're going up at two to five percent instead up, you know, at a four to one slope. So my answer is, if you went straight up, it would block it; if you were doing it, you know, to be, you know, handicap accessible, you would do, you would connect where the wall ends or begins.
MR. GROSSMAN: Right. I just want to make sure I

understand. The wall does not extend all the way -- the proposed wall would not extend all the way up to the pedestrian path which is indicated as existing in the northwestern --
THE WITNESS: Nowhere near.
MR. GROSSMAN: Okay.
THE WITNESS: All I'm saying is the wall --
MR. GROSSMAN: It would --
THE WITNESS: -- ends approximately right in that location, you know, halfway between.
MR. GROSSMAN: Right.
THE WITNESS: So --
MR. GROSSMAN: But it would extend in that portion where it looks like with the dotted green in the southwestern corner where it says proposed pedestrian path, is that correct?
THE WITNESS: Yes, there's a wall in that area.
MR. GROSSMAN: Okay. And what you're suggesting is that if the pedestrian path in that area where it says proposed continued on, it would continue on along the southern ring road? Is that what you --
THE WITNESS: That's what we -- right. I'm saying, just working with the topography, yeah, I would be working out with the appropriate parties on --
MR. GROSSMAN: Okay.

THE WITNESS: -- if the wall is built, how to accommodate --
MR. GROSSMAN: Okay.
THE WITNESS: -- that sidewalk.
MR. GROSSMAN: All right. Thank you.
BY MS. ROSENFELD:
Q And on the aerial photograph, Exhibit 102, can you show where the proposed Mount McComas development would be located?
A Yes, I can. You were nice enough to borrow the highlighter, I mean, the -- I'll get my own. It is the area, it's, there's a road open, running parallel to the west side of the Costco warehouse. If you went straight down south, that's the Mount McComas area and it's also the area open with no vegetation.
Q And so would the proposed wall include pedestrian access from that location as well?
A There's the wall right in front. As I remember their grading plan, there is a grade of homes -- Mount McComas right now is built up on a hilltop coming up from McComas Avenue. So that grade needs to be dropped. As I recall, they have, from a, you know, from a planner's perspective, there are uphill townhomes in the back which means they pick up grade from front to rear. So it would be the concept, that if that walk gets built, it could meander

somewhere in the rear to connect up to that pathway.
Q So your suggestion is that a path would parallel the wall until you reach one end or the other --
A Once, once you --
Q -- to access the mall site?
A That is one option. The other option -- again, the purpose of the wall was to screen the fueling station -- that if it did make sense, you could also punch an opening in the wall. So, I mean, there's a number of different options as you, as, I'm going to say, we go through the process to determine the most appropriate location for that walkway on how to connect to the adjoining properties.
Q If you would please turn to page 67 of the sector plan.
A I'm here.
Q That is a Map 18 --
A Yes.
Q -- and you testified about Map 18 earlier.
A Yes.
Q Could you identify in this map if there is any kind of existing or proposed bikeway identified around the southern perimeter of the mall parcel?
A Yes. It's labeled LB-5, and in the legend it shows an LB. It's a signed shared roadway/on-road proposed local connection, or bike --

Q Okay. Class 3?
A Yes, Class 3.
Q Okay. And does that proposed segment, LB-5, does that connect elsewhere with other proposed paths on the mall parcel?
A Yes, it does.
Q And can you identify what those segments are?
A LB-3, which is the ring road connecting parallel of University Boulevard from Valley View Avenue through Reedie Drive, and then from the Reedie Drive connection, there's an SR-26.
Q And taken together, do those three segments entirely circumvent the mall parcel?
A Circumvent? Meaning connect?
Q Connect --
A Yes, they do.
Q -- around the entire perimeter of the mall parcel?
A Yes, they do.
MR. GROSSMAN: I want to mention something. I didn't realize when I marked Exhibit 170 -- that was Ms. Rosenfeld's letter to Renee Kamen, technical staff -- that it also attached a memorandum supporting the letter. And I've now designated that memorandum as Exhibit 170(a), memorandum supporting June 17 Rosenfeld letter, just so it's easily referenced in the record.

(Exhibit No. 170(a) was marked for identification.)
BY MS. ROSENFELD:
Q Mr. Gang, I'd like to bring your attention to page 66 of the sector plan. I don't believe that you referenced this either in your testimony or in your report. It's Table 3. It's a chart of countywide and local bikeways. If I can draw your attention to the left-hand column, it says route number, and if you look down that column, it says LB-5. Do you see that?
A Yes, I do.
Q And the second half of that column speaks to the mall ring road, is that correct?
A Yes, it does.
Q And can you explain what that, what that chart means, in your opinion?
A Sure. It shows that there is either a shared roadway or a shared-use path; there is a path in both of those locations in reference to the connections which are showing from Kensington Heights to those two areas.
Q And this is a site-specific recommendation, is it not, site-specific to the mall parcel?
A Yes, it is.
Q Was this contained in your report?
A No, it was not.

Q Did you address it in your testimony?
A The specific thing on Table 3?
Q Yes.
A No, it was -- no, I did not.
Q Okay. I'd like to turn your attention to page 92 of the sector plan, please, and 92 actually is a duplication of the County Council's resolution in adopting the sector plan. And on what's reflected as page 11 of the resolution, do you see a reference to page 64, Table 3?
A I see the upper left-hand corner or the second bullet point: Page 64, Table 3, Countywide and Local Bikeways.
Q That's correct. If you would look at the first table under that. It says modify LB-5 as follows. Do you understand in a resolution when text is underlined, do you understand that to mean that it was added?
A The answer is yes, I do understand that.
Q Okay. And is this a site-specific recommendation in the sector plan?
A Yes, it is.
Q Okay. And was this included in your report?
A No, it was not.
Q And did you address this in your testimony?
A No, I did not.
MR. GROSSMAN: I just want to make sure I

understand which underline you're referring to here.
MS. ROSENFELD: The first table on -- it's page 92 of the sector plan. It's shown --
MR. GROSSMAN: Yes.
MS. ROSENFELD: -- as page 11 of Resolution No. 17-313.
MR. GROSSMAN: Right.
MS. ROSENFELD: And the first table here specifically adds a shared, signed shared roadway or shared-use path for the southern edge of the ring road, listed as LB-3, which, on --
MS. CORDRY: LB-5.
MS. ROSENFELD: Oh, I'm sorry. It's LB-5, LB-5, which --
MR. GROSSMAN: You mean where it says modify LB-5 as follows, and then it --
MS. ROSENFELD: That's correct, and it's --
MR. GROSSMAN: Right.
MS. ROSENFELD: -- and it's, it correlates to the chart and maps on page 66 and page 67 of the sector plan.
MR. GROSSMAN: Okay. Hold on one second. So if I understand what you're getting at, when I look at LB-5 on page 67, which -- in other words, the table, Table 3 on page 66 reflects the Council change.
MS. ROSENFELD: It does reflect the Council

change. My point is --
MR. GROSSMAN: Okay. So I'm not sure why you reference back to it. It does reflect it already.
MS. ROSENFELD: Yes, but my point is that this was a Council-level change. It was a change to the amended plan --
MR. GROSSMAN: Okay.
MS. ROSENFELD: -- and it's a site-specific reference in the sector plan.
MR. GROSSMAN: Okay. And that LB-5 says that -- a shared roadway or a shared-use path, and that LB-5 reflects the southern ring road?
MS. ROSENFELD: That's correct.
MR. GROSSMAN: Okay. All right.
BY MS. ROSENFELD:
Q And if I could turn your attention to page 53 of the sector plan.
MR. GROSSMAN: I have one other question.
MS. ROSENFELD: Oh, sure.
MR. GROSSMAN: When they say shared roadway, in your mind or by definition, does that always include a bike path or can it be a pedestrian path alongside of a vehicular road?
MS. ROSENFELD: I think we'll be testifying on that through the course of our --

MR. GROSSMAN: Well, give me an advanced hint while my mind is on it.
MS. ROSENFELD: I think it could be either. I think it could be either --
MR. GROSSMAN: Okay.
MS. ROSENFELD: -- pedestrian and/or pedestrian and bike path.
MR. GROSSMAN: Along a vehicular?
MS. ROSENFELD: Oh, absolutely, along a vehicular roadway.
MR. GROSSMAN: If LB-5, as indicated here, does contain a pedestrian path, even if it's not the six-foot wide one that you would like, along the ring road, that would be -- that would comply with that, that Council addition to the --
MS. ROSENFELD: I think it would be consistent with the recommendations of the sector plan.
MR. GROSSMAN: Okay. And also, since we're on this point, let me pose this question because -- since you just submitted this letter today, I haven't had a chance to read over your whole text in your memorandum, but I did catch the essence of it, I think, which is that you're, you're asking technical staff to reject the current proposals by, by the applicant, and part of what you argue is that there's a safety component, et cetera.

I just wonder whether -- as I understood from an earlier question I asked the opposition back when we were in the auditorium, you do want a pedestrian path there, but if it were not possible to have a pedestrian path as wide as you would like it but it is possible to have one that's ADA-compliant along that ring road, are you perhaps making the perfect the enemy of the good here in your position if in fact the Board of Appeals ultimately would decide to approve this application but would be concerned about technical staff's recommendation against the pedestrian path based on your opposition? I just wonder whether or not --

MS. ROSENFELD: No, I think you're overstating our position.

MR. GROSSMAN: Okay.

MS. ROSENFELD: Certainly a pedestrian path is preferable to no pedestrian path. It's our view that the pedestrian path is inadequate, and so for that and other circulation reasons, we think that the special exception should be denied. But if you're asking do we want --

MR. GROSSMAN: No, I know you believe it should be denied, but I just wonder whether or not, if you happen to get a recommendation from technical staff -- they've already recommended denial in their ultimate -- if you were to get a recommendation from the technical staff against the pedestrian path that's recommended, in part, because you've

opposed it on a safety ground, you know, I don't know what the Board of Appeals ultimately does. If it decides to grant the special exception, what happens to the pedestrian path?

MS. ROSENFELD: It's our view that the pedestrian path that's been proffered is not safe in and of itself. We don't think it's adequate. If you're asking do we want to make the perfect the enemy of the good, no. A path is preferable to no path. We don't think that what's been proffered is adequate for a number of reasons, which are contained in that letter.

MR. GROSSMAN: All right. I just want to raise the concern I have --

MS. ROSENFELD: Yes.

MR. GROSSMAN: -- about this. I understand the position of the opposition, you know, certainly the overall opposition to the gas station, but I don't know if every element of what you've suggested here is actually, depending on what the, what technical staff recommends here, is ultimately going to be forwarding the interest that you ultimately have, is all, and I just wanted the opposition to cogitate that, is all.

MS. CORDRY: If I might say, in reading technical staff's letter, it did not appear to me that they were suggesting no path was the preferable option. It appeared

to me they were suggesting the same thing we said, which was --

MR. GROSSMAN: Technical staff's letter or you're talking about --

MS. CORDRY: Or Renee Kamen's e-mail. In any case, I thought I read that to say the same point we were making, which was that they thought that three feet was not adequate to be a safe pedestrian path.

MR. GROSSMAN: Yes, I thought that was -- that was their preliminary look at it, and I don't want to --

MS. CORDRY: Right. I don't think either one of us suggested that zero was better than three or six.

MR. GROSSMAN: Well, I don't know. If -- here's the point, though -- if in fact they decide that what's been suggested is sufficiently unsafe, maybe it is zero versus -- you may end up with a no path and a Board of Appeals decision that is in favor of the gas station. I don't know. I have no idea what -- I'm just saying that when you make that argument, as I think you strongly have in the papers that Ms. Rosenfeld filed, and as I said, I just had a preliminary look at it because it just came in today, you do raise that issue. If that's what you want to raise, you are perfectly right and within your rights to raise it.

MS. ROSENFELD: I appreciate your observations.

MR. GROSSMAN: Okay.

MS. ROSENFELD: We'll go back and revisit --

MR. GROSSMAN: Okay.

MS. ROSENFELD: -- our comments.

BY MS. ROSENFELD:

Q Mr. Gang, if you could please take a look at pages 52 and 53 of the sector plan, and I believe you did have some discussion of this in your testimony, these site-specific recommendations. Looking at the, Figure 4 on page 52 along the southern boundary of the mall parcel, the lighter orange mall parcel, there's a segment along the southern boundary that's highlighted in a darker orange. Do you see that?

A Do you mean the thin line --

Q Yes.

A -- which is identified as existing green buffer?

Q Yes. Well, that was my question. Is that the existing green buffer as you understand it?

A Yes, it is.

Q Okay.

MR. GROSSMAN: That's the way it's labeled on the, in the sector plan.

MS. ROSENFELD: I overlooked that. You're correct.

BY MS. ROSENFELD:

Q Turning to page 55 of the sector plan, the top

bullet which you mentioned, would you please read the first sentence of that bullet?
A Sure, no structures should be allowed within the buffer zone.
Q Are you familiar with the definition of structure in the county zoning ordinance?
A Conceptually, yes. The exact definition I don't have in front of me.
Q Okay. The zoning code defines a structure -- and I'll read the relevant excerpts -- as an assembly of materials forming a construction for occupancy or use including, among other things, fences, walls, and poles. Assuming that's the correct definition, would placing the wall within the buffer conform to this recommendation on the top of page 55?
MR. GROSSMAN: Does your question assume that that wall will be within the buffer --
THE WITNESS: Right.
MR. GROSSMAN: -- as opposed to just outside it?
MS. ROSENFELD: Their current plan shows it in the buffer. So, yes, it does assume that.
MR. GROSSMAN: All right. Well, I guess that's the question. If -- you're saying that the buffer begins at the very end of the ring road; is that what you're saying?
MS. ROSENFELD: The buffer ends at the curb line.

MR. GROSSMAN: At the curb line. Is that defined? Is that specific line included somewhere, that, that the buffer ends at the curb line?
MS. ROSENFELD: It is shown in their NRI as the buffer.
MR. GROSSMAN: No, I just wonder, is there language that says the buffer is, you know, ends at the curb line? And I wonder whether the meaning of this, of this sentence in this sector plan, when they say within the buffer, are they talking about things that are right at the border of the buffer or are they talking about things that are constructed inside of the buffer zone?
MS. ROSENFELD: It says, no structures shall be allowed within the buffer zone, and our reading --
MR. GROSSMAN: Right.
MS. ROSENFELD: -- certainly means that includes anything beyond the curb line of the property.
MR. GROSSMAN: Okay. I'm not sure I agree with that reading. I mean, I think that --
MS. ROSENFELD: I understand.
MR. GROSSMAN: -- I think that it's reasonable to, to read that as being, you know, don't build something inside the buffer, but it doesn't mean that if you build a wall that protects the buffer, that that -- on the outside, you know, the outside perimeter of the buffer -- that that

somehow is within the buffer. I'm not sure --
MS. ROSENFELD: Well, I will note --
MR. GROSSMAN: -- it means that. I mean, you can argue it. I'm just saying that --
MS. ROSENFELD: I will note that Ms. Kamen's letter raised, among other concerns, the issue of the construction of a wall within the buffer.
MR. GROSSMAN: Right. It may or may not. I mean, I'm not saying you're wrong. I'm just saying that that's another interpretation of this, and one could certainly argue that a wall there protects the buffer.
MR. SILVERMAN: Can I take exception to protects? I mean, that's a forestry determination. Nobody's testified that it protects the buffer.
MR. GROSSMAN: Well, I don't know whether they will or they won't. I'm saying one could argue that that, that the purpose of the wall is to protect the buffer in some way. I don't know whether that's going to be in evidence or not. I just, I don't want to make an assumption about what the exact dimension of the buffer is unless I see it specified somewhere, and I also don't want to make an assumption that a wall at the periphery of the buffer is within the buffer. I don't know that. I mean, one could argue it. I just don't know the answer to that. I don't want you to go off on an assumption that that's not the

case. And I guess I'll add on to my question, does the community not want the wall there? I mean, what is the opposition's, what's your position, Ms. Rosenfeld? Do you not want a wall there if in fact the special exception were approved?
MS. ROSENFELD: The wall is there because of the special exception. It's a mandatory component of the special exception itself --
MR. GROSSMAN: Right.
MS. ROSENFELD: -- and the wall is clearly not there to protect the buffer. The wall is there because of the special exception and not -- if it was there to protect the buffer, it would, and if it was necessary, it would have been put there a long time ago. If we're correct in that the wall is not allowed within the buffer, then it needs to be located elsewhere on the property. We're not saying we don't want a wall. We do need a wall, but we want a wall that complies with the standards of the code --
MR. GROSSMAN: I see.
MS. ROSENFELD: -- and the requirements of the sector plan.
MR. GROSSMAN: Okay. All right. You may proceed.
MS. ROSENFELD: Okay.
MR. GROSSMAN: And I take it that, Ms. Rosenfeld, that the section that you're referring to, when you say that

a wall is required, is 59-G-2.06(b)(2), is that correct? Is that what you're referring to?
MS. ROSENFELD: I believe so, Mr. Grossman. Can I give you an answer after lunch?
MR. GROSSMAN: Well --
MS. ROSENFELD: It's the provision specific to the automobile filling station.
MR. GROSSMAN: Yes. I'm going to read it to you --
MS. ROSENFELD: Yes.
MR. GROSSMAN: -- that's why I -- it's 59-G-2.06 parens (b), parens (2), which says, when such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, comma, the use must be screened by a solid wall or a substantial, solid fence, not less than five feet in height, together with a three-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. That's the provision you're talking about?
MS. ROSENFELD: That's correct, that's the provision I was referencing.
MR. GROSSMAN: So if in fact the special exception were effectively screened by natural terrain features, then

there is no requirement for a wall, is that correct?
MS. ROSENFELD: That's my reading.
MR. GROSSMAN: Okay. So I'm not sure that -- once again, I want the community to be aware that you conceivably could set up a situation here where your advocacy against the proposed wall ends up with a gas station and no wall, and I just want you to understand that since you do have a forest buffer here, that sometimes you have to be careful what you wish for, okay? All right. You may proceed.
MR. SILVERMAN: To get to that situation where you have no wall, then the Board would have to find that Costco was wrong in proposing a wall?
MR. GROSSMAN: No. They would just have to find that the section requirements were met without the wall, that there was adequate natural terrain screening without the wall. I don't know if the evidence is going to lead to that kind of conclusion, but I just want you to be aware that that, my recollection of that -- that's why I went back to look at the actual wording, because that was my recollection of the statute. And, when Ms. Rosenfeld said the wall is required by the special exception, it's a wall is required if certain circumstances are not met, and it could conceivably, depending on the evidence, how the evidence comes in, could conceivably conclude that the, it's met without the wall. So I'm not saying it will be. I'm

just saying that -- I just want the community to be aware what its potential is with what it's advocating. Yes.
MR. SILVERMAN: The -- oh, go ahead.
MR. GROSSMAN: Ms. Adelman.
MS. ADELMAN: Mr. Grossman, I have a question, and I'm glad you read that section of the code.
MR. GROSSMAN: Yes.
MS. ADELMAN: I have a background in this type of construction. My understanding is a wall has a footing that goes consistently along wherever it was going to be located. My, I would say this is a fence and not a wall because it has separate and distinct footings that occur at periodic intervals.
MR. GROSSMAN: They described it as sonotubes, and it would be, it would be set in --
MS. ADELMAN: That's right.
MR. GROSSMAN: -- sonotubes put into the ground.
MS. ADELMAN: So my question is, why throughout this hearing is this referred to as wall when in fact it's a fence?
MR. GROSSMAN: I don't know. I'd have to look back. I'm not sure whether it falls into a fence or a wall.
MS. ADELMAN: They make a distinction like you just read. You said wall or fence, and, and --
MR. GROSSMAN: Right. I'm not sure whether this

falls into the definition of wall or fence. I'd have to look back at the code to know. I don't really have an opinion. I didn't look at it. I have no opinion about that. I don't -- I think we know what we're talking about; that is, we know they're referencing the wall or fence that they have proposed, whichever it is. I don't think -- does it make a difference in terms of --
MS. ADELMAN: Well, it makes a difference in several ways, actually, yes.
MR. GROSSMAN: All right.
MS. ADELMAN: My understanding of the definition, architectural definition, this is by definition a fence.
MR. GROSSMAN: And why does it make a difference in your mind whether it's a wall or a fence here if it's --
MS. ADELMAN: Oh, well, first of all, maintenance comes just to mind instantly because if you have a separation -- I believe the drawing showed six inches between grade and the base, the bottom of the fence sections, not, not the sonotubes before it --
MR. GROSSMAN: Right.
MS. ADELMAN: -- but the fence sections, then you have a maintenance issue where trash and everything gets stuck in there which wouldn't occur with a wall.
MR. GROSSMAN: My recollection is not that there was going to be a six-inch separation between ground and the

wall, fence, or whatever it is there, but I don't -- I'd have to look back at it.

MS. ADELMAN: Well, you make a good point because the documents are inconsistent. At some points, they say six inches above; very specifically it's called out, and other times it isn't.

MR. GROSSMAN: Okay.

MS. ADELMAN: That's a good point.

MR. GROSSMAN: Well, I don't want to make a point. I just don't, I just don't recall whether it is. I just -- my recollection of the testimony was not that there was six inches' separation between the ground and the wall, fence, whatever you want, material, but --

MS. ADELMAN: Well, the documents show that.

MR. GROSSMAN: All right. I mean, I -- yes, it might make a difference in terms of maintenance. I'm not sure whether it makes a difference in terms of what the statute calls for, a fence or a wall, something providing screening. So they might be compliant -- if one of those is necessary, some sort of structure like that is necessary, then, then they may be compliant with it regardless of whether it's a wall or a fence. Mr. Silverman.

MR. SILVERMAN: The issue, the wall, the reason for the wall is not just the statute. The statute talks about five feet. We're talking about -- we're talking about

a much higher wall here, eight feet or 12 feet in some places. And I take it there was a reason for this additional screening, which, you know, if you went to the property, went to someone's bedroom, you would see the reason very quickly.

MR. GROSSMAN: Well, the hearsay you objected to --

MR. SILVERMAN: Yes.

MR. GROSSMAN: -- before from the witness --

MR. SILVERMAN: Yes.

MR. GROSSMAN: -- suggested that it was a community request when there was a walk-along. I don't know. You'd probably know that answer better than I. It says not less than five feet in height. So I think from the, from the views that they showed a couple of weeks ago, the presently planned height would entirely screen a view of the station. Whether a lower height would entirely screen it I can't recall without looking back at those particular shots of what it would look like, but I just wanted you to all make sure you understood what the potential outcomes might be. So --

MS. ROSENFELD: Mr. Grossman, I have --

MR. GROSSMAN: Yes.

MS. ROSENFELD: -- no further cross-examination at this time. I --

MR. GROSSMAN: Okay.

MS. ROSENFELD: -- do believe that there might be other community groups who --

MR. GROSSMAN: Well, certainly.

MS. ROSENFELD: -- have cross-examination.

MR. GROSSMAN: Yes. Who wishes to take it for the Coalition?

DR. ADELMAN: Yes.

MR. SILVERMAN: Mr. Grossman --

MR. GROSSMAN: Yes.

MR. SILVERMAN: -- I think we both would, and we -- and I promise that after Dr. Adelman is finished, I will not ask any repetitive questions, but I have some questions somewhat different from his.

MR. GROSSMAN: No. In fairness, we're allowing a lot of cross-examination here, and each group is allowed to have one questioner cross-examine. That's the general rule in any, in any court proceeding. You can't have multiple people from the same entity doing cross-examination. So you can choose one or the other.

BY DR. ADELMAN:

Q Mr. Gang, I believe you may have already answered this question, so if you'll excuse me. In your report on page 1, you say the subject property on which the filling station will be located consists of 37,754 square feet of

area, et cetera. Am I, am I quoting your report correctly?

A Yes, you are.

Q In the most recent revision of this special exception plan that the applicant filed -- that's Exhibit 148, which is this packet -- on page 2 of 2 there's a statement that the special exception area is 36,800 square feet, is that correct?

A I don't have a copy of the plan in front of me.

MR. GROSSMAN: You have a copy now, sir.

BY DR. ADELMAN:

Q Okay. It's in the lower right corner.

MR. GROSSMAN: Actually, the full-size version of that, page 2, would be 152(b). You're looking at the 11 by 17, but -- so we're going to look at the full-size version of that. All right. All right. And now what was your question, DR. ADELMAN, Dr. Adelman?

BY DR. ADELMAN:

Q The statement is, am I correct in saying that in the lower left corner of the second page, which is page 2 of 2 --

A Yes.

Q -- it says the special exception area would be 36,800 square feet; am I correct?

A You are correct.

Q Can you explain the apparent discrepancy as to the

square footage of the special exception area?
A No, I cannot.
MR. GROSSMAN: Do we want to have Ms. Harris explain it, if you, if that would --
DR. ADELMAN: No. I think, I think Mr. Gang can answer it.
MR. GROSSMAN: Okay.
BY DR. ADELMAN:
Q Were you aware of this apparent discrepancy before?
A No, I was not.
Q Had you been aware of it, would it have been appropriate -- strike that. Strike that, sorry.
A different topic entirely. In your report you referred to, in Section IV-A6, the results of the traffic impact analysis, is that correct?
A Could you please tell me what page that's on?
Q Yes, just a second. Yes, that's on page 12 of your report, Item 6, a long discussion of the elements of all the requirements for a traffic impact analysis, et cetera.
A I see that.
Q Okay. Excuse me. I lost my questions. With reference to that TIA, you commented on a number of factors such as the internal capture rate and the number of new

trips expected to be generated and so forth, is that correct?
A This report does mention that.
Q Okay. Are you aware that the section of the TIA -- that's OZAH Exhibit 11(a) -- on which those numbers are based, or estimated, excuse me, was based on a Columbia, Maryland, site -- that's the Gateway Overlook site -- and that that station has some 12 pumps, whereas the proposed gas station will have 16 pumps?
A No, I am not.
Q Do you know the square footage of the Columbia, Maryland, station?
A No, I do not.
Q In Section -- oh, excuse me. On page 19 of your report, you refer in the first full paragraph, the one that begins the proposed filling station, you refer to a health analysis, is that correct?
A That is correct.
Q Are you aware that the petitioner's statement, OZAH Exhibit 3(a), lists some 29 exhibits, none of which are named a health analysis?
A I'm sorry. I don't understand the question.
Q Are you aware that the petitioner's statement, which is OZAH Exhibit 3(a), lists some 29 exhibits, none of which are named health analysis?

A I have not seen 3(a); so I can't answer that.
Q Are you aware that the OZAH exhibit list includes, as Exhibit 15(b), a health report?
A Yes, I am.
Q Are you aware that the petitioner's statement, OZAH Exhibit 3(a), lists some 29 exhibits again, none of which are named health report?
MR. GROSSMAN: He's already answered that question.
DR. ADELMAN: It's a slightly different question than asking about the distinction between naming something health analysis versus health report.
MR. GROSSMAN: What difference does it make?
DR. ADELMAN: If you'll let me finish the next two questions, I think it will become obvious.
MR. GROSSMAN: All right. Go ahead, sir.
DR. ADELMAN: Thank you.
BY DR. ADELMAN:
Q Are you aware that the CD by which the applicant transmitted the digital filings, the digital versions of its filings, contains a file labeled ChaseCostcoReport 11-19.PDF --
A No, I --
Q -- and that this report is what the OZAH exhibit list names as health report?

A No, I am not.
MR. GROSSMAN: I'll take your word for it, by the way. I haven't checked back to make sure you're accurate, but I'll assume you're accurately referring --
THE WITNESS: Right.
DR. ADELMAN: I've been working on this.
MR. GROSSMAN: I believe you, sir.
BY DR. ADELMAN:
Q Are you aware that this report, which is now OZAH Exhibit 15(b), is a three-and-a-half page letter which lists some 15 literature references, all of which refer to diesel gas?
A No, I am not.
Q Will the gas station proposed in S-2863 be selling diesel gas?
A No, it will not.
Q There has been some discussion about the definition of neighborhood as --
MR. GROSSMAN: Well, before you get to that, Dr. Adelman, you -- I still don't understand why you make a distinction between a label health report and a label health analysis. Why are you making that distinction?
DR. ADELMAN: I'm not --
MR. GROSSMAN: You promised me I'd understand after the next few questions, but now I still don't

understand.
DR. ADELMAN: Well, I'm not actually making a distinction between health report and health analysis. I'm attempting to establish, without testifying, that the existing health report or analysis, whichever it is, is a very brief letter which was not called out as an exhibit by the applicant in its original filing --
MR. GROSSMAN: All right.
DR. ADELMAN: -- and that, without testifying, it seems strange to me, given now the changes in the code that were introduced by ZTA 12-07, which essentially spoke to health, that that is the extent of the health report or analysis or whatever you wish to call it.
MR. GROSSMAN: I mean, I'll let you proceed with your next question about the neighborhood. I think I understand -- I understand the point you're making. I don't know why it was necessary to go into that distinction between report and analysis, which was the essence of one of your questions, but okay, go ahead, sir.
DR. ADELMAN: It was necessary because I don't really know how to phrase the questions correctly. I'm trying.
MR. GROSSMAN: All right. You're doing great, though. Go ahead.
DR. ADELMAN: Okay. This microphone is not

working properly. So it's --
MR. GROSSMAN: I think you're getting feedback, but maybe that's because the speaker is too close to the microphone or the device.
DR. ADELMAN: It's the same, it's the same place that it's been placed every day.
MR. GROSSMAN: Has it? Was it?
DR. ADELMAN: Okay.
MR. GROSSMAN: All right.
BY DR. ADELMAN:
Q Can you hear me?
A I hear you perfectly. Can you hear me?
Q Yes. Right. Okay. We can move right along now.
A Right.
Q There has been extensive discussion of the definition of neighborhood by various parties at the table. In your definition of neighborhood or Applicant's definition of neighborhood, has there been a discussion of the people, persons in the neighborhood?
A Yes.
Q Could you tell me where?
A Sure. I think it's in my, was in my testimony as well as my planning report. If you turn to Page No. -- I think I would go to page 7, and this is in reference to the way I defined neighborhood at our last public hearing; and,

basically, the reason, you know, one of the reasons or many reasons defined the Westfield District as a separate neighborhood was, one is the average people per day, the retail stores, which is vastly different than Kensington Heights, it has office within it, the hours of operation within the mall area, the lighting within the mall area, and it continues on to the top of page 8.
MR. GROSSMAN: Gentlemen, please, go on with your cross-examination.
BY DR. ADELMAN:
Q The people who attend meetings in the mall, shop at stores in the mall, some of them come from the Kensington Heights neighborhood, do they not?
A I would say that's a fair assumption. Do I know that for a fact?
Q You don't know that for a fact?
A I would say it's a fair assumption they do attend because it is their local shopping center and by definitions.
Q Thank you.
DR. ADELMAN: We have no further questions.
MR. GROSSMAN: All right. How about from Kensington View Civic Association -- any questions?
MS. DUCKETT: Yes, I have some questions, yes.
MR. GROSSMAN: All right.

MS. DUCKETT: And I don't think they've been covered yet, but you know, I couldn't hear --
MR. GROSSMAN: Okay. Give it a whirl, Ms. Duckett.
MS. DUCKETT: -- everything. Yes.
BY MS. DUCKETT:
Q I have a question about something that, Mr. Gang, you just said. You said the core area is where redevelopment will occur when you were showing a map of Veirs Mill Road.
A One of the four other districts. There are, there are five districts within the sector plan. The core area is one of the other districts. So there are other districts in which redevelopment is planned for. All I was pointing out to is the core area is the adjoining property off of Veirs Mill Road which correlates to the map on page 28 --
Q Okay.
A -- Map No. 8.
MS. ROSENFELD: Of what? Page 28 of what document?
THE WITNESS: The --
MR. GROSSMAN: Sector plan?
THE WITNESS: -- sector plan.
BY MS. DUCKETT:
Q Well, what did you base that on? Are there

current plans out there, or did you base it on what happened with the sector plan? I'm not sure what you based the --
A Sure. Sure, fair enough.
Q -- statement on.
A Yeah. If we go, if we turn to page 42 of the sector plan, labeled Districts --
Q Okay.
A -- in the right-hand corner, there are six colors identifying the five districts, which is an orange for the core, I would call it a very dark gray for price, a bluish purple for Blueridge, a red for Westfield, and a green for Kensington View/Wheaton Hills. Those are the five districts as identified on top of page 43, which says there are five districts, each with their distinct character. So that's how I came up with the districts.
Q Maybe I'm dense. I don't understand how that map shows where redevelopment will occur. Based on your statement, you said --
A Sure.
Q -- core area is where redevelopment will occur.
A Sure. We go to -- I want to go to some other exhibits. First, on the top of page 33, which says zoning recommendations are based on five goals, those are zoning recommendations. The first four are within the CBD, you know, the central business district, which are the Class A

office, the retail, the housing mixed with retail surrounding, also CBD, and the highest density is in the center of the CBD. Then we go to page 39, which is proposed zoning, CR zoning -- CR is commercial residential zoning -- and that's where the highest densities are, if you turn to page 40, with the variety of proposed densities as within, within that area. And it goes --
Q Okay. Oh, I'm sorry.
MR. GROSSMAN: Let him finish.
THE WITNESS: Am I finished or --
MR. GROSSMAN: No, no.
BY MS. DUCKETT:
Q You could be.
A -- did I answer your question already? If I answered your question, I'll stop.
Q Well, when you said 39, you were answering -- you were saying that it was based on the zoning, is that correct, on the changed zoning, that you'd feel that's where redevelopment will occur?
A Should occur.
Q Should occur?
A Or could occur. It's where it's -- that's where it's envisioned within the sector plan, the areas in purple.
Q Okay. Now, all of those areas in purple, are they along Veirs Mill Road and University on that map, page 39?

A Well, it extends anywhere from, if I was to give it a boundary, the eastern boundary is generally along Amherst. When you get to the northeast corner, it goes on the other side of Amherst and Blueridge, it goes all the way over on the northern property to Grandview, also on the opposite side of Grandview near Kensington Boulevard, and then it extends, why don't we call it, westward towards where the entrance into the mall is. So it's the area which is labeled CR Zones.
Q So you're expecting that redevelopment will only occur where the, where the zoning changes have occurred?
A Do I expect that's the only place? No. I think if you go to the sector plan, the sector plan specifically talks about each of these districts and what is envisioned in reference to, you know, zoning regarding heights, FAR, which I identified, you know, what floor area ratio is, what the mix of uses are, and some of the parcels, you know, they say, conform to those specific zones. So I think the sector plan specifically talks about what is envisioned in each of those five, each of those five general districts and, also, parcel by parcel.
Q Okay. Is part of Westfield Mall rezoned as CR?
A Yes, it is.
Q And part of it isn't?
A That is correct.

Q Is all of Westfield Mall in the Westfield District?
A Is all of the Westfield Mall within the Westfield District? The answer is yes.
Q Yes?
A Yes.
Q Okay. On the sector plan on page 43, does it mention a vision for the Westfield District?
A If you're talking about a vision, there's a statement on the second sentence that says the Westfield District has the potential to evolve into a mixed-use district that enhances the mall as a retail destination. If that's what you're talking about --
Q Yes.
A -- the answer is yes.
MR. GROSSMAN: That's actually the third sentence. It's the second highlight.
THE WITNESS: I'm sorry. I, yeah, I -- correct.
BY MS. DUCKETT:
Q So that doesn't distinguish whether the area was rezoned or not rezoned --
A Yes, it does.
Q -- it just talks about the Westfield District?
A Sure. The rezoning, if you turn to page 38 and 39, 38 shows where the existing zoning of the mall was, and

it shows, prior to the sector plan, it shows the Westfield Mall completely being in the C-2 zone. Then if you turn to page 39, which we just talked about, it shows that portion of the Westfield Mall which got rezoned through the sector plan from C-2 to CR.

Q Yes.

MR. GROSSMAN: What are you getting at, Ms. Duckett? What's your point?

MS. DUCKETT: I'm asking him, and it does --

BY MS. DUCKETT:

Q Does it distinguish, the sector plan distinguish between, when it talks about the Westfield District, talk about whether -- it's only talking about the rezoned portion or the portion that remained?

A Sure. If you turn to page 53, 53 has specifically the area -- I'm sorry. If we go to page 52, 52 shows, first of all, the area which has been rezoned to CR and the specific recommendations for the density and the heights within the Westfield District. On page 53 are the bullet points which specifically describes the rezoning and confirming, you know, the second bullet point is confirming the existing C-2 for the remaining portion of the site. The first bullet point is where the CR zone is. The second bullet point is confirming the C-2 zone for the remainder of the property.

Q Okay. On page 53, in the middle of the third paragraph, it says, however, the CR zones would not work effectively with the existing mall. Do you know why?

A I'm sorry. You have to --

Q 53.

A Yes, I know. I'm sorry. Which sentence and which paragraph?

Q It's in the --

MR. GROSSMAN: Third paragraph, there's a sentence you highlighted.

BY MS. DUCKETT:

Q Third paragraph.

MS. DUCKETT: Is this their highlighted version?

MS. ROSENFELD: That's their highlighted.

THE WITNESS: Oh, sorry.

BY MS. DUCKETT:

Q However, the CR zones would not work effectively with the existing mall.

A I can't answer that, but --

Q And it goes on to say the main mall portion of the property could be rezoned for mixed-use development as part of the comprehensive rewrite of the County's zoning ordinance underway --

A Sure.

Q -- at the time of plan adoption.

A Sure. May I talk about the rezoning rewrite, because I thought we were not allowed to, but I'll be happy to address it because --

MR. GROSSMAN: I'll let you answer her question.

THE WITNESS: Sure. The rezoning rewrite is underway. The County, which was interesting, is, is, recently -- I'll just find out the --

MR. GROSSMAN: While he's looking, Ms. Duckett, I'm not sure I understand what -- what are you trying to establish here?

MS. DUCKETT: I'm trying to establish that the sector plan is stating that they could not rezone the whole mall, it wouldn't work effectively --

MR. GROSSMAN: Right.

MS. DUCKETT: -- and I could ask him would it make it a non-conforming use. It's also saying that this could change.

THE WITNESS: Sure.

MS. DUCKETT: Now, my other questions will be about the C-2 zoning itself, does it allow mixed-use in the current state that it is. I don't want to get into that rewrite because that's going to, that could change.

MR. GROSSMAN: All right. You asked the question, though. That's --

THE WITNESS: But you asked me --

MR. GROSSMAN: -- so if you don't want to get into it, fine. So you withdraw your question?

MS. DUCKETT: Not the zoning code rewrite itself because nobody knows what that will end up.

MR. GROSSMAN: Well, anything could --

THE WITNESS: Right, but what --

MR. GROSSMAN: Hold on a second. The Council can change, the Council has the power to change the zoning if it votes to change zoning.

MS. DUCKETT: That's right.

MR. GROSSMAN: So we know things can change, and it can do it as part of the rewrite or not. So I --

MS. DUCKETT: That's right. That's why I don't want to get into that.

MR. GROSSMAN: -- I just don't understand. So what does this establish? What am I, what am I supposed to --

MS. DUCKETT: Well --

THE WITNESS: Oh --

MR. GROSSMAN: -- what am I supposed to glean from, from --

MS. DUCKETT: Let me --

MR. GROSSMAN: -- your line of questioning? I just don't understand its relevance to this.

BY MS. DUCKETT:

Q Is C-2, is C-2 different for the mall property than it might be for other locations in the county?
A Okay.
MR. GROSSMAN: No. Hold on a second. I want to understand why we're going through this exercise. What is the point of your cross-examination?
MS. DUCKETT: The point is that when they, when they said the Westfield District --
MR. GROSSMAN: Yes.
MS. DUCKETT: -- and they talked about, you know, the vision for the Westfield District, my point is, even if it's C-2 --
MR. GROSSMAN: Yes.
MS. DUCKETT: -- or it's CR, they could have mixed-use based on the fact that Westfield Mall is a Metro station policy area, it's within so many feet, it's a regional shopping center based on the current --
MR. GROSSMAN: But what difference does it make to me in terms of my having to analyze this and make a recommendation? That's what I don't understand. Let's say it could be, it could be mixed-use, it could be C-2, it could be CR. What -- how does that affect what I have to analyze in terms of this request to have a special exception?
MS. DUCKETT: Well, he is --

MR. GROSSMAN: I have a C-2 zone. I don't have a CR zone. I have a C-2 zone. What -- how does that affect what I analyze?
MS. DUCKETT: Well, he's indicating that the only place that change could occur were in the CR; otherwise, it's going to have to stay the way it is, when it said the vision for Westfield District is a mixed-use. Now, that -- my point is that mixed-use could be anywhere, who knows where it may be.
MR. GROSSMAN: Right, but so, and my question is, so what's the end result of that? Let's say you're correct. Let's say he's wrong and you're correct, assuming he means what you say he means.
MS. DUCKETT: My point is, with the sector plan, a large gas station may not be what the vision for Wheaton is, and I have one more question about the redevelopment.
MR. GROSSMAN: Well, I don't want to -- first, I'm just trying to understand why it is that your questions pertain to what I have to analyze. So you're saying that, okay, it is C-2 now but it could be something else and therefore a gas station might not be consistent with the sector plan? And you think that he's emphasizing --
MS. DUCKETT: I believe it's not consistent with the vision of the sector plan.
MR. GROSSMAN: All right. And so you think he's

overemphasizing the fact that it's C-2 now, and you think that there could, at some point, this could change and there could be other things there?
MS. DUCKETT: I think, I think the impression I got, based on the testimony that I heard from him --
MR. GROSSMAN: Yes.
MS. DUCKETT: -- was that C-2 is for general retail and, you know, because they didn't change it to CR, that somehow the vision for Wheaton might not apply to the C-2 portion. That's the impression I have.
MR. GROSSMAN: I think that's the impression I got too. I'm not saying that your impression is incorrect. I think his, the sense of his testimony is that this area where the, that's not in the CR zone was intended to remain a C-2 unless it's rezoned at some point thereafter, and it's conceivable that will and that sentence implies that that's going to be looked at, but --
MS. DUCKETT: Okay.
MR. GROSSMAN: -- that's, I have the same understanding. I'm just not sure that given that it's C-2 now and they left it C-2 in the sector plan, that I can reach any other or project any other conclusion. I have to go by what, what the sector plan recommended for it and what it is, not what it might be under a rewrite --
MS. DUCKETT: Oh, I agree. I'm just --

MR. GROSSMAN: -- that's what I have to assume.
MS. DUCKETT: -- I was just pointing out the fact that it is a Metro station policy area --
BY MS. DUCKETT:
Q Well, I could ask you that. Is it?
A Yes, it is.
MR. GROSSMAN: Okay. All right. Go ahead ask any other questions.
MS. DUCKETT: Okay.
BY MS. DUCKETT:
Q Is Westfield Wheaton Mall in the Wheaton Urban District and the Wheaton Enterprise Zone?
A Yes, it is.
Q What's the purpose of the enterprise zone?
A I'm not 100 percent sure. I mean, I know conceptually, but I'm not 100 percent sure to give an answer on the record.
Q Well, it's on page 21 of the Wheaton Sector Plan. I'll read it: entire plan is an enterprise zone, a state economic development program that provides tax incentives to eligible businesses locating or expanding in designated zones. Correct?
A That's what it says.
Q Okay. How many employees will be added by this gas station?

A I don't know because it's related to the overall warehouse. So I don't know the answer to that.
Q Okay. Does the zoning code define regional shopping malls by distance or by square footage?
A The zoning ordinance? I do not know that.
Q Well, I know that you said that malls have a 25-mile radius, but when you look at 59-C-4.351 --
(Discussion off the record.)
BY MS. DUCKETT:
Q A regional shopping center is defined as a shopping center comprised of a minimum of 600,000 gross leasable square feet and a minimum of 50 separate stores. Would you agree with that?
A If you tell me that's what it says, I will agree.
Q Well -- oh, that, that's the definition, but 59-C-4.351 states, differentiated uses within the center that have more than 1.2 million square feet of retail space. Are you aware of that? Not offhand? You don't have the zoning code there, but --
A No, I do not know that. No, I do not.
Q -- uses are differentiated in that section --
A Okay.
Q -- of the code. So does the C-2 zone allow different uses for Metro station policy areas and/or regional malls other than C-2 zoned properties in the

county?
A I'm sorry. Can you ask that question again and --
Q Oh, what was your answer?
MR. GROSSMAN: No, no. Ask it again.
THE WITNESS: I said, can you please ask it again because I will get --
BY MS. DUCKETT:
Q Oh, I'm sorry.
A -- I'll get the zone and --
Q Does the C-2 zone allow different uses for Metro station policy areas and/or regional shopping malls than from other C-2 zoned properties, say, like a C-2 zone in, I don't know, Colesville? I'm trying to think. Well, there is no --
MR. GROSSMAN: Why don't we say this: If you know. Do you know?
THE WITNESS: Well, I'm reading it right now --
MR. GROSSMAN: You're reading it from the zoning ordinance?
THE WITNESS: -- and the answer is yes.
BY MS. DUCKETT:
Q Pardon me?
A I think your answer is yes --
Q Okay.
A -- if I'm reading this correctly.

MR. GROSSMAN: All right.
BY MS. DUCKETT:
Q Does 59-C-4.350, purpose, state, a further purpose of this zone is to encourage housing with commercial uses within 500 feet of a business transit center, Metro station policy area, and in close proximity to Metro stations located in the Wheaton central business district?
A Yes, it does.
Q So could Westfield, based on its location and having C-2 zoning, add mixed-use, a hotel or a movie complex, to their current C-2 zoned property?
A I have to look up -- the housing, the answer is no.
Q I'm sorry?
A The housing portion is no. And you're asking why? Sure. There --
MR. GROSSMAN: Well, I don't think she asked why, but --
BY MS. DUCKETT:
Q I didn't ask why.
A Well, I'll tell you, for housing the answer is no.
Q Housing is not allowed on the C-2 portion?
A Not in this specific site.
MR. GROSSMAN: Now, Ms. Duckett, once again, I have to ask, why is this relevant to what I have to

consider? I don't understand. So --
MS. DUCKETT: Well, it --
MR. GROSSMAN: -- let's say they can or they can't. What --
MS. DUCKETT: -- it just goes all back to the sector plan, that's all, and the point that they want mixed-use and walkability.
MR. GROSSMAN: Yes, but if the zone does or does not permit it, that's -- the zone will control, and I don't understand how that affects what I have to evaluate when I evaluate this special exception request.
MS. DUCKETT: Well, if -- he had stated that general commercial does not, you know. He had stated C-2 was only general commercial. My point is, in a Metro station policy area, the type of development that could occur --
MR. GROSSMAN: Yes.
MS. DUCKETT: -- even if it is C-2, even if it's not changed to CR --
MR. GROSSMAN: Right.
MS. DUCKETT: -- could be mixed-use. I'm not saying that this gas station is mixed-use. I'm just saying that based on the sector plan and the vision of Wheaton, the C-2 would not disallow the type of, type of development that the sector plan is looking for.

MR. GROSSMAN: Okay. All right.
THE WITNESS: And can I answer why, because I know --
MR. GROSSMAN: Well, she didn't ask the question, sir.
THE WITNESS: I know.
MR. GROSSMAN: You have to, let's, let's get --
MS. DUCKETT: I wasn't asking.
THE WITNESS: It will be asked. So --
MR. GROSSMAN: Well, not necessarily. Well, let's see what she asks.
THE WITNESS: Right.
BY MS. DUCKETT:
Q Okay. When we go back to that little map that has the zoning changes on it, page 34, I guess --
MS. CORDRY: 38 and 39, Eleanor.
MS. ROSENFELD: 38 and 39.
MR. GROSSMAN: See, if what you're trying to reach is that -- I understand that the opposition's concept of, and perhaps I would say the Planning Board's concept, of the sector plan is that the goals of a transit-oriented sector plan apply across the board to the whole of the plan and the nature of Mr. Gang's testimony was that it's different strokes for different folks within the --
MS. DUCKETT: Right.

MR. GROSSMAN: -- the sector and they specifically allowed this commercial area C-2 and so not every goal is applicable to every little portion of it. I understand the distinction. So I'm not sure --
MS. DUCKETT: Okay.
MR. GROSSMAN: -- and that, that seems to be the dichotomy between your view of it and his view of it --
MS. DUCKETT: Okay.
MR. GROSSMAN: -- I understand that distinction. Is there something else that you wanted me to get at there?
MS. DUCKETT: No.
BY MS. DUCKETT:
Q There's only one other thing with the, with Map, the map on page 39 where you said that, you know, the CR zone, that's where they have the proposed redevelopment. That's what you stated, what you've --
A Generally, because --
Q Generally?
A Generally.
Q So it's all along University Boulevard and down Veirs Mill Road, is that correct, where the purple is?
A On the, where the purple -- northern side of University and coming down, right.
Q Yes. One -- the section I want to talk about is University Boulevard down Veirs Mill Road.

A Yes.
Q Okay. Now, the entrance to the gas station will be on the mall property, is that correct?
A Yes.
Q Okay. How do you access the mall property?
A There are two access points off of University and three off of Veirs Mill.
Q All right. So the only way for all of these cars to come in would be to go through the proposed redeveloped areas, is that correct?
A All the cars through the redevelopment area? No.
Q How would they access the gas station without traveling on University or Veirs Mill --
A I'm sorry.
Q -- entrances?
A There are two access points off of University which do not traverse the CR zone.
Q So, you're saying that the fact that the other side of the street is going to be, or has been up-zoned for redevelopment has no bearing on the entrances there?
A I can't answer that. I'm not a transportation engineer.
Q All right. If the people from -- University Boulevard is where my community is, behind the purple.
A Right.

Q We're behind the purple. If we go back to the blue arrows that everybody hates, how would the people in my redeveloped proposed area get to the core or get to the amenities in the mall --
A Sure.
Q -- without going across the entrances?
A You know your community 10 times better than I do --
Q Oh, yes.
A -- all right? Well, I, you know, but you asked my opinion, all right?
Q Yes, and because I'm telling you --
A And the point is -- sorry.
Q -- the redeveloped areas.
A Sure. You asked my opinion. Wheaton, as far as I know, every pedestrian way, except for one that I know of, and you'll correct me, uses a street as part of their pedestrian way. The only one I know is where the Chevy Chase Bank is; you know, crossing Georgia Avenue, there's a pedestrian way connecting Georgia Avenue down to Parking Lot 13. All the other pedestrian ways outside the mall uses their streets and sidewalks along that area. So to answer your question is, I would probably walk down one of the streets, you know, where there's a sidewalk and where there's a safe crossing where there's a traffic light and

cross over there, which are the two locations on University Boulevard and the three along Veirs Mill Road.
Q Okay. So do you believe it makes sense to change the zoning at every entrance to the mall to a zone that promotes economically, environmentally, and socially sustainable development patterns where people can live, work, play, and have access to services and amenities while minimizing the need for automobiles and then add the first mega gas station in the county with its only access via these rezoned areas?
MR. GOECKE: Mr. Grossman, I would object to that.
THE WITNESS: Yeah, right.
MS. DUCKETT: It sounds like a yes or no.
MR. GROSSMAN: All right. I'm going to sustain that objection. First of all --
THE WITNESS: Right.
MR. GROSSMAN: -- it's a difficult mouthful to get around --
THE WITNESS: Right.
MR. GROSSMAN: -- but secondly, it seems to me it goes well beyond what --
THE WITNESS: Right.
MR. GROSSMAN: -- what is a reasonable assumption here of --
BY MS. DUCKETT:

Q Okay. Let me ask this: Does the --
MR. GROSSMAN: -- where we are factually.
BY MS. DUCKETT:
Q Okay. Does the CR zone promote -- well, I don't need to ask you that. The purpose of the CR zone, it's where people can live or play and have access to services and amenities while minimizing the need for automobiles?
A I don't know about the last piece, but you know, in reference to being mixed-use, when I've worked with CR zones, that is the goal.
Q I'll have to -- I can find it.
MR. GROSSMAN: Well, it says whatever it says.
MS. DUCKETT: All right. That's all.
MR. GROSSMAN: I think you did a great job highlighting the distinctions between your view of the sector plan and the applicant's. I just want you to know that. Okay. Is there anybody else, any other cross-examination questions in the audience?
(No audible response.)
MR. GROSSMAN: No. Okay. Any redirect?
MS. HARRIS: Yes, please. Thank you.
MR. GROSSMAN: You're sure?
REDIRECT EXAMINATION
BY MS. HARRIS:
Q Mr. Gang, I want to turn first to Section

59-G-2.06(b)(2), which has to do with the buffer and ask you a number of questions related to that.
A Sure.
Q Does the special exception property abut a residential zone?
A The special exception area does not abut a residential zone.
Q And can you please describe the width of the forest buffer that adjoins the mall parcel to --
A You mean along the whole periphery --
Q Yes.
A -- from, from north --
Q Yes. Do you know the width, the range of widths?
A You know, I don't remember, but it basically ranged, like, from 30 feet to 70 feet in wide with the widest point in the southwest corner of the mall of being approximately 190 feet. It ranged in vertical height from 11 to 17 feet.
Q And are there currently planted trees in that area? Is there currently landscaping existing within that buffer area?
A Are there existing trees within that area? The --
Q Yes.
A -- answer is yes.
Q Okay. And what is the topographical difference

between the subject special exception area and the --
A Sure. It generally ranges, you know, in closest proximity to the site, between 11 and 17 feet.
Q So in your view, those factors that you just identified, do those constitute an effective natural terrain feature that would screen the special exception area from the residential area?
A Yes, it would.
Q And in your opinion, is the proposed wall necessary to meet the requirements of 59-B-2.06(b)(2)?
A The wall is not necessary to meet that specific finding in the zoning ordinance.
Q And is there any requirement in the zoning ordinance that a gas station cannot be visible from a residential property?
A No, there is not.
Q I want to turn now to pages -- I'm going to talk about two pages at the same time -- pages 28 and page 61.
MR. GROSSMAN: Of the sector plan?
MS. HARRIS: Of the sector plan.
THE WITNESS: Okay.
BY MS. HARRIS:
Q If one were looking for the specific recommendations of pedestrian connections to the mall site, would you be referring -- would you refer to page 28 or to

the plan on page 61?
A The specific connections, I would go to page 61.
Q And referring to aerial, which is Exhibit 102, which we see, can you identify where the -- I believe there are water towers immediately north of the Wheaton Mall parcel.
A Yeah, I can do that.
MR. GROSSMAN: Well, we can see them on the --
MS. HARRIS: Okay.
THE WITNESS: Right.
MR. GROSSMAN: -- thing. They're almost central on the diagram but due north. Is that what you're talking about?
MS. HARRIS: Yes.
MR. GROSSMAN: Okay.
BY MS. HARRIS:
Q And then can you relate the location of those water towers to the gray arrow that appears on page 28?
A Well, I think it goes right through the center of the water towers.
Q And --
MR. SILVERMAN: Could you speak up?
THE WITNESS: I think it goes right through the center of the water towers.
BY MS. HARRIS:

Q And so the plan on page 28, what -- can you again summarize what the purpose of it is?
A Again, it shows the overall concept of having connectivity, conceptual connectivity from the adjoining community, both inside and outside the sector plan area, to, I'm going to call it, the core area, which is highlighted in yellow.
Q And then if one were focusing on the specific connections, it's correct that you would turn to page 61 to see what those are intended to be?
A That would be correct.
Q You testified that the sector plan does not recommend more gas stations. I believe this was in recommendation to one of Ms. Rosenfeld's questions, is that correct?
A That is correct.
Q And is there anything in the sector plan that precludes gas stations?
A No, there is not.
Q There was some discussion about an informal pedestrian path along Mount McComas that --
A Yes, there was.
Q And does that informal path currently connect to the mall parcel, are you aware?
A I've walked it and I think it does connect to the

mall parcel.
Q And is there an easement or any legal right for that traversing of the mall parcel in that area that you're aware of?
A I am not aware of any easement.
Q Referring back to page 61 again, in terms of the existing and proposed pedestrian connections, is there one shown for that informal path that currently exists?
A No, there is not.
Q Were you aware that the gas station, the existing gas, the previously proposed special exception gas station site, that that was within Costco's lease area of the mall parcel?
A I was not aware of that.
Q Okay. Would it surprise you if I told you that it was located within it?
A No, it would not.
MR. GROSSMAN: What difference does it make if it would surprise him or not?
MS. HARRIS: It wouldn't.
BY MS. HARRIS:
Q Do you know where Costco's lease area is?
A Do I know specifically? No, I do not.
Q Okay. The bicycle path that shows on page 67 --
A Yes.

Q -- and the chart on page 66, which is referred to as LB-5 and it says that it, a signed shared roadway or a shared-use path --
A Right.
Q -- can exist to accommodate bicycles --
A Right.
Q -- is there anything in your opinion, is the gas station in any way precluding a signed shared roadway bike path along the ring road?
A As -- identified as a Class 3, the answer is no.
Q And can you explain in a little more detail why that, why you reached that conclusion?
A Sure. On the right-hand side, you know, there's a Class 1, Class 2, Class 3. Class 1 is a bike lane, completely separated from the street. A Class 2 is a dedicated bike lane within the street; you've seen the bike arrows. The Class 3 is a bike lane within the street. And the reason I came to that conclusion is I've ridden my bike around the ring road a number of times to see whether it works or not, and the answer, it works. Matter of fact, I feel safer in the ring road than the rest of Wheaton, mainly because of the way it's set up.
MR. GROSSMAN: Well, hold on a second. I just want to understand the class distinctions that you made. You said a Class 1, is that a bike path?

THE WITNESS: It's a bike path, completely separated from the street.
MR. GROSSMAN: I see. So Class 1 is a bike path, separate from the street.
THE WITNESS: Off-road.
MR. GROSSMAN: All right. Class 2 is what now?
THE WITNESS: Is a dedicated bike lane within the street. You've seen the bike lanes --
MR. GROSSMAN: Right.
THE WITNESS: -- it says dedicated bike, you know, bike, you know --
MR. GROSSMAN: Dedicated bike lane.
THE WITNESS: -- it's on the road, but it's, it has its own dedicated lane.
MR. GROSSMAN: Okay. And Class 3?
THE WITNESS: They share it with the street, and there might be a sign up; like, for instance, I have seen it, like, on New Hampshire Avenue, you know, you're just sharing the street, or on 16th Street.
MR. GROSSMAN: So there's no separate lane or anything. It's just --
THE WITNESS: There's no separate lane. It just says -- you know, Georgia Avenue going down into Silver Spring, it says, you know, bikes are allowed to share the full width of the travel lane.

MR. GROSSMAN: Okay. And so the particular one that was indicated for the ring road was what class?
THE WITNESS: Class 3.
MR. GROSSMAN: Okay.
BY MS. HARRIS:
Q And, in fact, can you comment on the -- well, and that's based on the plan that's shown on page 67, is that correct?
A Yes.
Q Okay, thank you.
MR. GROSSMAN: So do you make the assumption there that if there were a pedestrian path, that that would not be the bike path, that there would be a separate pedestrian path of, the proposed one is three feet wide, and then bikes would then not ride on that path, they would ride on the street with the cars and then the pedestrians would occupy the path? How do you --
THE WITNESS: I can't say where bikes are going to ride, but as a Class 3 and being a bicyclist, it's a lot easier to ride on a street than on a sidewalk.
MR. GROSSMAN: Yes. Okay.
MS. HARRIS: Thank you.
BY MS. HARRIS:
Q Early on in your testimony, you testified that, or in answer to a question, you noted that, the fact that the

gas station would be memberships only but that was a non-inherent characteristic. In your opinion, is it an adverse non-inherent characteristic of the gas station that it's members only?
A It does not have an adverse effect.
Q It's just --
A It's a -- I'll call it neutral or whatever, but it has no negative impact.
Q Thank you. And then can you -- you're familiar with the originally proposed special exception, S, I believe it was, 2742 -- and can you please explain why the special exception, why that special exception was withdrawn and we, and Costco filed a new special exception application?
A It was to conform to the setback requirements of the zone, new -- the zoning text amendment, which called for 300-foot setbacks from certain types of uses.
Q Thank you.
MS. HARRIS: Just one moment. No other questions.
MR. GROSSMAN: Any recross based solely on the questions asked on redirect? Ms. Rosenfeld?
MS. ROSENFELD: Yes.
RECROSS EXAMINATION
BY MS. ROSENFELD:
Q Mr. Gang, Ms. Harris asked about the prior special exception, SE-2794, and you had prepared a supplemental land

use report referencing a nine-foot wide path. Do you recall that report?
A I do remember the supplemental report. I do not remember the pathway width.
Q I'd like to show you. Can you tell me if that's the report and does it refresh your memory?
A It looks like it, yes.
MR. GROSSMAN: Shall we mark that as an exhibit since it's not in the case, or do you have --
THE WITNESS: This is --
MS. ROSENFELD: I'm not going to use it as an exhibit.
MR. GROSSMAN: Okay.
THE WITNESS: -- yeah, right.
BY MS. ROSENFELD:
Q Okay. And do you know why there is no nine-foot path proposed in the current project?
MS. HARRIS: Objection.
MR. GROSSMAN: Hold on one second. Yes, what's your objection?
MS. HARRIS: It's beyond the scope of the redirect.
MR. GROSSMAN: I'm going to give her a little leeway here. So go ahead. Do you know why?
THE WITNESS: No, I do not.

MR. GROSSMAN: Okay.
BY MS. ROSENFELD:
Q And Ms. Harris mentioned a specific pedestrian connection shown on page 61, Map 17, of the sector plan.
A Yes.
Q And I'm going to show you what had been marked in Prior Special Exception Case SE-2794. Again, going to the specifics -- and I will ask that this be marked as an exhibit -- but can you take a look at the lower southwestern quadrant of that map? Do you see --
MR. GROSSMAN: This will be, hold on, this will be Exhibit -- find my exhibit list in this morass of paperwork here, hold on -- 171. And 171 is an aerial photo, 8 and a half by 11, from prior application --
MS. ROSENFELD: It was --
MR. GROSSMAN: Hold on -- S-2794.
(Exhibit No. 171 was marked for identification.)
MS. ROSENFELD: And it was Exhibit 37(e) from that case.
MR. GROSSMAN: Okay. Well, I'm not going to put the second exhibit number in because we'll just confuse the issue. So, okay, so what's your question of him?
BY MS. ROSENFELD:
Q And looking at the southwestern corner of that

exhibit, do you see anything that would indicate a pedestrian path connection as part of that special exception application?
A Yes, I do.
Q And how would you recognize it?
A It's labeled --
Q And what does --
A -- as a four-foot wide pedestrian connection to neighborhood per the master plan.
Q Okay, thank you. And there's no, just to clarify, there's no such connection proposed in the current application, is there?
A That is correct.
MS. ROSENFELD: Mr. Grossman, I have no further questions.
MR. GROSSMAN: Okay. Does the Coalition have any redirect --
MR. SILVERMAN: We do, just --
MR. GROSSMAN: -- recross, rather --
MR. SILVERMAN: Recross.
MR. GROSSMAN: -- based solely on the redirect?
MR. SILVERMAN: Based solely on the redirect.
BY MR. SILVERMAN:
Q You indicated, Mr. Gang, that there's an 11- to 17-foot topographic difference between the residence and the

gas station?
A Within the general vicinity of the filling station.
Q Now, how about if you were looking out the window on the second floor of one of the homes, one of the residential homes -- would there, what would be the difference there?
A Sure. I would need to get Mr. Willard's plan because he has the elevations, as you, you know, as I mentioned during my original testimony, for, you know, the view out from the second floor. I --
Q Well, when you said --
A -- don't have that information in front of me.
Q Well, when you said 11 to 17 feet, you were talking about the difference between the street and the residential areas and the, and the top of the hill?
A No, the existing -- along the existing grade along the common property line. From the ring road to the property line, abutting, you know, the Kensington Heights, you know, those residences abutting Kensington Heights.
Q It's the property line. I understand it's the property line, but the --
MR. GROSSMAN: It's ground level. Is that what you're asking?
THE WITNESS: Ground level.

MR. SILVERMAN: Yes.
BY MR. SILVERMAN:
Q It's --
A Yes.
Q -- ground level? Okay. Okay.
MR. GROSSMAN: Right.
BY MR. SILVERMAN:
Q And when you testified that a natural buffer would be an effective screen, you were talking about an effective screen from ground level, is that correct?
A No. The houses do fall off from even further down, you know, the hill, from both the adjoining, the southern and the eastern property line, and not only is there an effective hardwood buffer, there's even some evergreens along, you know, the common -- along the ring road where the guardrail is.
Q When you say that the houses fall off, I assume they fall off from some point. You mean some houses are higher than other houses?
A The whole topography -- the whole watershed falls away from the mall. The mall is almost like the high point. The adjoining properties are much lower, and as, even as you move further away from the mall, they even drop even further.
Q But the ones that are closest, the residents that

are highest, is there a 11- to 17-foot buffer there, or do you know?
A If I had some plans in front of me, I could probably answer that very specifically.
Q Well, do you have the plans here?
A Yeah, I mean, there are plans here, and I'd be happy to answer that for you.
Q Want to take a look?
A I would love to.
MR. BRANN: We don't have the full size of his plans. You still can --
THE WITNESS: That's all right, whatever. I mean, if I could --
MR. BRANN: And this is probably --
THE WITNESS: -- if I can answer it -- you know what? There's no -- you don't have Mr. Willard's plans?
MR. BRANN: We don't have his full plans, no.
MS. HARRIS: Well, we have it somewhere.
MR. GROSSMAN: What's the exhibit number? We can pull out the exhibit.
MS. HARRIS: The exhibit may be on the most revised --
MR. GROSSMAN: Were they part of this fat pack of 11 by 17s in Exhibit 86(g)?
MS. HARRIS: No. I think what, if I can --

MR. GROSSMAN: I seem to remember them in there, but --
MS. HARRIS: Is this what you're looking for --
THE WITNESS: Let's, I mean, I could --
MS. HARRIS: -- the colored one?
THE WITNESS: And if I could just spend two minutes evaluating.
MS. HARRIS: This is --
MR. GROSSMAN: I thought you were referring to --
MS. HARRIS: Wait. Do you want that?
THE WITNESS: I want to use this because this is very detailed --
MR. GROSSMAN: Okay.
THE WITNESS: -- in reference to the grades.
MR. GROSSMAN: All right. So what exhibit are you looking at?
THE WITNESS: This one is Special Exception Survey Plat/Existing Conditions, 2 of 3, but there is no exhibit number on here. This is from -- this is the revision date May 24, 2013.
MR. GROSSMAN: All right. So that's page -- what page is that?
THE WITNESS: Two of three.
MR. GROSSMAN: Two of three. So that's Exhibit --
MS. HARRIS: You referred to the most recent one.

THE WITNESS: Okay. Can I borrow the most recent one, please?
MS. HARRIS: Yes.
MR. GROSSMAN: Yes, I think that is.
MS. HARRIS: Was it Sheet No. 2?
THE WITNESS: This is Sheet 2 of 3, Revision No. 7.
MS. HARRIS: Okay. So that is the most recent.
MR. GROSSMAN: Okay. And so --
MR. GOECKE: It's Exhibit 152.
MR. GROSSMAN: Yes, 152 -- 2? You said Sheet 2? Sheet 2?
THE WITNESS: Sheet 2 of 3.
MR. GROSSMAN: Yes, that's (b), 152(b).
THE WITNESS: This is not marked yet as an exhibit.
MR. GROSSMAN: No, but we have the exhibit here.
THE WITNESS: May I write on this?
MR. GROSSMAN: You may if you wish.
THE WITNESS: Okay, because I just --
MR. GROSSMAN: 152(b).
THE WITNESS: This way, if I'm --
MR. GROSSMAN: So if anybody else has cell phones, please have them turned off. Thank you.
THE WITNESS: All right. Ready for my answer?

MR. GROSSMAN: Yes, we're ready.
THE WITNESS: Okay. The existing street at the, along the flow line in the center of the designated special exception area for the filling station is 442; elevation, 442. It drops slightly one foot heading east and one foot heading westward. So at the westerly property line of the special exception area, it's around 442.7; as you head eastward, it's about 441. The eye level, according to Mr. Willard's plan, at the second floor for all three houses is at 440.
BY MR. SILVERMAN:
Q So the difference between 440 and 441 is one foot. So would a person on the second floor see the gas station?
A Yeah, you could look up, yeah. It's at the grade, so yes. If there was no vegetation per my exhibit, which I think I presented, it would be, you could potentially see it, if there was nothing there.
Q And what about the trucks running through the ring road to fill up the gas station -- would that be seen from a second floor?
A I think so.
Q Would it be seen from a first floor?
A I'm going to just clarify my answers. Again, you have -- you know, I'm assuming, you know, my answers, that there's no woods, there's no forest, there's no nothing

there. Again, I think I've testified to, when I go out there, I can't see anything during -- I'm sorry. You know, generally, you know, during the six months when the vegetation is out, it is a generally forested buffer. Can you see through there? Yes, you know, you have to look through it. During the other six months, you do have understory, you know, both the woods, et cetera; there are some evergreens along the, you know, existing evergreens along the ring road. So I don't, I don't know for sure.

Q Well, it would be --

A I don't know. All I'm saying is --

MR. GROSSMAN: Well, let me ask you this question: Can you see, in the present existing condition, with the present foresting, et cetera, can you see the rest of the mall? Can you see Costco's warehouse? Can you see other features on the mall from --

THE WITNESS: Sure. Sure. If you were standing -- I mean, I'm going to do the closest single-families along Melvin Grove Court -- I was not able to see it, at least as I recollect. You can see them for some of the townhouses further east --

MR. GROSSMAN: Okay.

THE WITNESS: -- you know, which are not, you know, which are really not part of this viewshed, but you do see the Costco warehouse for the townhouses further to the

east.

MR. GROSSMAN: I guess the sense of my question is, would the gas station be, if erected as proposed and if there were no wall, would it be any more visible than the Costco warehouse to these homes?

THE WITNESS: No, they would -- I mean, I think it would not. The Costco warehouse is higher, it's closer. The filling station is further back. Usually, you know, from a line of sight, when something is flat and further back and you're down low, you know, 17 or 18 feet --

MR. GROSSMAN: Okay.

THE WITNESS: -- you know, if you're down a street level, you don't see it.

MR. GROSSMAN: Okay. Go ahead, Mr. Silverman.

MR. SILVERMAN: Yes.

BY MR. SILVERMAN:

Q Now, what's the height of the trucks that go by?

A I mean, most trucks are in the 13 to 13-and-a-half-foot range. I don't know the answer to your -- you know, the exact height.

Q All right. Have you checked, have you gone up to the second floor of any homes in Melvin Court to see what you could see?

A I've not been invited.

Q Well, that's a, that's a good answer. I think, I

think we'll --

A I was waiting for someone to invite me --

Q Right.

A -- you know, during all of these exhibits we presented, but --

Q Right.

MR. GROSSMAN: Anything else, Mr. Silverman?

MR. SILVERMAN: No. I think we'll have testimony on what you can see and can't see, which I --

MR. GROSSMAN: All right. Any recross from Kensington View Civic Association?

MS. DUCKETT: No.

MR. GROSSMAN: Okay. All right. Well, thank you. I think you've actually completed your testimony, Mr. Gang.

THE WITNESS: Thank you.

MR. GROSSMAN: Thank you very much. And so I guess we told them that we were going to be out of here at 1:00. Hopefully they'll come here and do whatever they have to do within the period of time of lunch, and we'll plan on coming back here -- well, it's about seven minutes after 1:00. So we'll come back here at 2 o'clock.

MR. GOECKE: Great.

MR. GROSSMAN: Does that sound about right to everybody?

MR. SILVERMAN: Yes.

MS. DUCKETT: Sounds good.

MR. GROSSMAN: Okay. And we'll start out with --

MR. GOECKE: Mr. Sullivan.

MR. GROSSMAN: -- Mr. Sullivan.

(Whereupon, at 1:07 p.m., a luncheon recess was taken.)

MR. GROSSMAN: We are back on the record. Are you ready for our next witness?

MR. GOECKE: Yes.

MR. GROSSMAN: All right. Call your next witness, please.

MR. GOECKE: Our next witness is David Sullivan, Mr. Grossman.

MR. GROSSMAN: All right. Mr. Sullivan, will you raise your right hand, please?

(Witness sworn.)

MR. GROSSMAN: You may proceed.

DIRECT EXAMINATION

BY MR. GOECKE:

Q Mr. Sullivan, I'd like to ask you some questions about the environmental analysis you did for the Costco proposed special exception, but first, would you please introduce yourself to Mr. Grossman and tell him where you work and what you do for a living?

A Well, my name is David Sullivan, and I am

president of Sullivan Environmental Consulting, Incorporated. We're in our 26th year of operation in Alexandria, Virginia. Our practice is limited to air quality-related issues, which includes meteorological data collection, air quality monitoring, air quality modeling analysis, noise, and odor. So that's the nature of our practice. We work for a range of clients, including the U.S. EPA, World Bank, environmental organizations, as well as state and federal agencies.

MR. GROSSMAN: All right.

BY MR. GOECKE:

Q And going back to your education, where and when did you graduate from college and with what degree?

A I was -- I had a B.S. degree in meteorology/oceanography from New York University in 1972 and a master's degree in meteorology from Penn State University in '74. After that time I became certified when I was qualified to take the examination, certified by the American Meteorological Society as a certified consulting meteorologist. I was awarded that in 1980. I have been practicing as a certified meteorologist since that time. My practice has another CCM as well, Dennis Hlinka, who has about the same number years of experience as I do, about -- I have 38 years of experience in air quality. He has about the same.

MR. GROSSMAN: All right.

BY MR. GOECKE:

Q And you've been a certified meteorologist for 37 years, you said, or 38 years?

A I've been a, I've been -- my experience goes back 38 years --

Q Yes.

A -- I've been certified for 33 years.

Q Okay. And when you become a certified meteorologist, how long is the certification good for?

A It's lifetime. Well, it's lifetime. Of course, there can be, it requires certain, upholding certain standards. So there's a requirement for ethics, competency and, you know, good behavior. I mean, it is not, it's not -- you could have it revoked for not following those requirements.

Q And as a meteorologist, have you been trained in air dispersion modeling?

A Yes, I have.

Q And have you actually employed those skills in the course of your years as a meteorologist?

A Many times.

Q Have you been trained in air quality modeling and analysis?

A Rephrase. The last question I thought you asked

me was air quality modeling.

Q The first one was dispersion modeling.

A Yes. They're, they're, I consider them synonymous --

Q Okay.

A -- so the answer is yes.

Q Okay. Have you been trained in doing noise analysis?

A Yes.

Q What about odor analysis?

A I have conducted a number of odor analysis, yes.

Q Yes.

MR. GROSSMAN: Well, he asked you if you were trained in it.

THE WITNESS: Trained. I haven't gone -- I didn't study it in school, no --

BY MR. GOECKE:

Q Yes.

A -- in that context.

Q And in the course of your career as a meteorologist, have you actually conducted noise analysis?

A I have.

Q How many?

A Two or three.

Q Yes. And what about odor?

A About the same number.

Q Yes. Have you ever testified as an expert before?

A Yes.

Q And where have you testified as an expert?

A I've testified as an expert about 20 times, federal court, district court, and sometimes at hearings.

MR. GROSSMAN: Expert in what?

THE WITNESS: Expert in meteorology and oceanography, I'm sorry, meteorology and air quality analysis.

BY MR. GOECKE:

Q Have you ever conducted air quality analysis to assess levels of toxic air pollutants?

A Yes, I have.

Q And can you tell us a bit about your experience in that field?

A Back in the early '80s, I worked for EPA as a contractor and that was a time when EPA was trying to determine how they were going to regulate toxic air pollution. Toxic pollution are things other than particulate matter, ozone, what they call, like, criteria pollutants. And at that time, I worked for a company called Versar -- they're in Springfield, Virginia -- and I was the principal investigator for air quality on EPA's integrated environmental management project and that study conducted

many of the early phases of what -- it ended up becoming EPA's policies and procedures in air toxics, including two studies that are fairly well-known. One is the called the six-month study or air toxics. The other is called the 35-county study of air toxics. The first was national in scope, all counties in the United States. The second focused on the most significant 35 counties. I served as principal investigator on both those, those projects and also worked for EPA on their urban-scale projects throughout the United States, including Baltimore, Philadelphia, Charleston, West Virginia, and other places. We would study the entire metropolitan area, all the inventory sources of air toxics, all of the, what we call, area source, including gasoline marketing, mobile sources, dry cleaners, and things like that, and those studies were helpful to the EPA in developing their policies to address toxic air pollution.

Q Have you ever done an air analysis that involved fine particulate matter?

A I have.

Q And tell us a bit about some of those studies.

A Well, I mean, I've done, I've done a number of studies where we model particulate matter in various forms, whether it be fine particulates, which are less than 2.5 microns or less than 10 microns or less than 30, which is called total suspended particulates. In those studies, in

terms of modeling, we will evaluate the emissions into the air, we'll identify the distribution of those particles, how heavy they are and various classes, and we'll remove them by gravitational settling and other, other removable mechanisms that are included in these dispersion models.

Q Yes. As part of your analyses and your experience as a meteorologist, are you familiar with assessing the dose of a chemical or pollutant that might be exposed to a population?

A Yes, I am.

MR. GROSSMAN: What do you mean that might be exposed to a population? What's that mean?

MR. GOECKE: Sure. Let me rephrase.

BY MR. GOECKE:

Q Do your analysis help determine the, or project what levels of exposure a population may have to a specific contaminate or chemical?

A That typically is my role in a project, especially one that involves exposure as well as risk assessment. I will generally do what they call the exposure assessment portion which does identify the dose that the person or persons are exposed to.

Q And, again, this is something you've done over the course of your career?

A Yes.

Q And can you give us some other, other examples that you can highlight that might be different from what you've already talked about?

A Well, one of the most publicized cases I've done was after the Bhopal tragedy in India where many people died because of methyl isocyanate poisoning. The administrator of EPA at the time was Lee Thomas, and Lee Thomas requested that a special study be done in Charleston, West Virginia, which had a heavy congregation of the chemical industry, including the process involved in India. And I worked in that particular valley for about three years, studying air toxic issues, identifying the dose to the people that lived in those, in that valley in terms of both cancer-causing chemicals as well as what's called non-cancer effects on acute and chronic exposures for toxic air pollution, and that study did identify some high pockets of high-risk areas, very high dose, that were voluntarily resolved by the industry due to that project. That project went through the EPA Science Advisory Board, was announced by the assistant administrator at a press conference when it was done, and was considered a successful project.

Q Thank you.

MR. GOECKE: Mr. Grossman, at this time, I'd like to move for the admission of Mr. Sullivan as an expert witness in the categories of meteorology, air quality

modeling and analysis, noise and odor analysis --

MR. GROSSMAN: Hold on a second.

MR. GOECKE: Sure.

MR. GROSSMAN: Air quality modeling, did you say?

MR. GOECKE: Air quality modeling.

MR. GROSSMAN: Okay.

MR. GOECKE: And analysis.

MR. GROSSMAN: And?

MR. GOECKE: Noise and odor analysis, and determining potential exposures to a population of chemicals or contaminants.

THE WITNESS: Could I also add that, you know, in terms of expertise, I also do have expertise in monitoring, involving air quality monitoring as well as meteorological monitoring.

MR. GOECKE: Thank you.

MS. ROSENFELD: I'm sorry. Could you repeat those last two? Monitoring of air quality?

THE WITNESS: Air quality monitoring and meteorological monitoring.

MR. GROSSMAN: So you're offering him as an expert in meteorology, air quality modeling and analysis, noise and odor analysis, determining potential exposure to toxic chemicals, monitoring of air quality, which may be the same as the other one, and meteorological monitoring. Is that

fairly stated?
MR. GOECKE: I think it was just -- so meteorology, I agree with number one. I agree with number two, air quality modeling and analysis, number two.
MR. GROSSMAN: Right.
MR. GOECKE: Number three -- I guess it's actually 3(a) and 3(b) -- noise, (a); and 3(b), odor analysis.
MR. GROSSMAN: All right.
MR. GOECKE: And then, four, determining exposure, potential exposure.
MR. GROSSMAN: To toxic chemicals, I think you have.
MR. GOECKE: To toxic chemicals, and I think five and six are redundant then.
MR. GROSSMAN: All right. Before I open this voir dire to further questioning, you mentioned that your certificate is good upon good behavior. With some hesitation I ask, what constitutes bad behavior for a meteorologist?
THE WITNESS: Bad behavior would include dishonest consulting practice, taking advantage of your clients --
MR. GROSSMAN: Okay.
THE WITNESS: -- fraudulent work, things of that nature.
MR. GROSSMAN: All right. Questions from the

opposition regarding this gentleman's credentials for the expertise that he has been offered for?
MS. ROSENFELD: You mentioned you had done two or three studies on noise. Can you tell me what projects those were?
THE WITNESS: I did a study in the county involving a trash-transfer facility and conducted an odor analysis for that particular study. We have done some odor analysis involving pesticide work; as part of our research activities on pesticide emission rates, have evaluated dilution ratios in that context. And, of course, the third example would be the project we did here at the Sterling gas station locally.
MR. GROSSMAN: I might mention that Mr. Sullivan's résumé is included as Exhibit 17(f), F as in Frank, and he does include a list of areas in which he's testified as well as publications and presentations.
MS. ROSENFELD: And on the issue of noise, can you tell me what projects those were?
THE WITNESS: We worked on a project at a nearby computer facility that is part of the Internet system where they have a number of chillers and so forth on their rooftops and at ground level, and it was a study of the noise in terms of monitoring the noise levels by frequency as well as conducting noise modeling with a SoundPLAN noise

model. That's an example, and of course, we did noise modeling for this study, as well as noise monitoring at the Sterling facility.
MS. ROSENFELD: And did you say you did or did not have training on noise issues?
THE WITNESS: Well, I haven't had formal training in noise issues, but I'm certainly qualified to use the equipment that I've used. And my staff has conducted noise modeling on my behalf, and they have extensive training in modeling in general and had no difficulty in running the noise models.
MS. ROSENFELD: Is it your staff then who's been trained in noise modeling?
THE WITNESS: We have not had formal training in noise modeling.
MR. GROSSMAN: We, meaning you?
THE WITNESS: Myself included.
MR. GROSSMAN: Okay.
MS. ROSENFELD: Okay. Have you ever testified as an expert on noise?
THE WITNESS: I have not.
MS. ROSENFELD: And with respect to odor, you mentioned three projects, one of which was at Sterling. Do you have specific training in odor analysis?
THE WITNESS: Well, much of odor analysis involves

modeling dilution ratios, and I have extensive training in doing dilution ratios. The other part of odor monitoring is collecting samples and sending the samples off to an odor laboratory, and I have extensive experience in conducting many research studies that involve sampling of pollution.
MS. ROSENFELD: And so the analysis of the samples is done by a third party?
THE WITNESS: Correct. It's done by a laboratory.
MS. ROSENFELD: Mr. Grossman, I would accept Mr. Sullivan as an expert on the air quality modeling and analysis topics that were listed initially, and --
MR. GROSSMAN: Presumably, meteorology as well.
MS. ROSENFELD: Meteorology, air quality modeling and analysis, those. I think there were about six different categories.
MR. GROSSMAN: Determining potential exposure to toxic chemicals.
MS. ROSENFELD: That's correct, monitoring of air quality.
MR. GROSSMAN: Monitoring, okay.
MS. ROSENFELD: Meteorological monitoring --
MR. GROSSMAN: Right.
MS. ROSENFELD: -- and on odor, and we would object to him as an expert on noise --
MR. GROSSMAN: Okay.

MS. ROSENFELD: -- on the grounds of lack of training, lack of experience, and the fact that he's never testified as an expert on that subject before.
MR. GROSSMAN: Okay. Do we have any questions, voir dire questions, from the Stop Costco Gas Coalition on this person's expertise?
MR. SILVERMAN: No.
MR. GROSSMAN: How about from Kensington View Civic Association?
MS. DUCKETT: No.
MR. GROSSMAN: Anybody else?
(No audible response.)
MR. GROSSMAN: Okay. An expert doesn't have to be specifically certified or have testified as an expert before. It has to be somebody who can offer a level of information beyond the ken of laymen which will be useful to the finder of fact. And certainly in those areas in which Mr. Sullivan has been conceded by Kensington Heights Civic Association to qualify as an expert, I would agree -- in meteorology, air quality modeling and analysis, odor analysis, determining potential exposure to toxic chemicals, and then monitoring of air quality and meteorological monitoring.
It's certainly a closer question on noise, but I'm going to qualify him as an expert for that based on his

experience in testing of it, and I will -- and the question of how much weight his testimony is to be given in that area I'll have to determine later based on the nature of the examination, the evidence he produces, and the cross-examination, but I'll leave that to the weight to be given to his evidence.
MS. ROSENFELD: Okay. We just, for the record, we object to his acceptance on that point.
MR. GROSSMAN: Your objection is certainly noted. Okay.
MR. GOECKE: Thank you. And before we proceed, Mr. Grossman, I just would like to make one request to our friends from Blue Lagoon: If we could get a copy of Mr. Sullivan's testimony after they've finished with this segment?
MR. GROSSMAN: You mean you want --
MR. GOECKE: My understanding is that we cannot preclude them from testifying here, and you've already ruled that because it's not disruptive --
MR. GROSSMAN: Preclude them from, you mean preclude them from -- not testifying.
MR. GOECKE: I'm sorry, not testifying, recording, I'm sorry. I misspoke.
MR. GROSSMAN: Recording, yes.
MR. GOECKE: That's right, but we would at least

like for Mr. Sullivan to have a complete copy of his testimony so that in the future, should a portion of it be used for anything, we have the complete sample to --
MR. GROSSMAN: Is Blue Lagoon agreeable to that?
MR. ESHAVE: I'd have to talk to my dad about that.
MR. GROSSMAN: He'd have to talk to his dad about it. So here's the thing: There is a rule, a Board of Appeals rule which specifies, unless it would be disruptive, it should be permitted.
MR. GOECKE: I understand.
MR. GROSSMAN: And so based on that, I, we generally try to follow the Board of Appeals rules, even though we're an independent agency -- that is, Office of Zoning and Administrative Hearings -- when we're conducting a Board of Appeals proceeding, and so we'll follow that rule. And I would request that the request to get a copy of Mr. Sullivan's video testimony be provided, but I'm not going to require it on penalty of not allowing them to video it because the rule provides for me to allow it unless it's disruptive.
MR. GOECKE: Understood. Thank you.
MR. GROSSMAN: Okay.
BY MR. GOECKE:
Q And, Mr. Sullivan, I understand that you've

prepared a PowerPoint presentation of your testimony today that is, can be found in the record at Exhibit 95(c), but before we get to that, I'd like to address a few questions to you that Mr. Grossman actually raised on the first day of our hearing.
MR. GROSSMAN: You're going to make me wait to get to the hamburgers versus diesel trucks, aren't you?
MR. GOECKE: Well, I am going to make you wait for that, yes. I have to --
MR. GROSSMAN: My area of great curiosity. All right.
MR. GOECKE: -- I have to keep your interest.
BY MR. GOECKE:
Q Mr. Grossman listed 20 questions, some of which are legal questions, some of which are fact questions, some of which, I think, fall under your category of testimony. I think it would be helpful for everyone if you address those before we get into the details. Question 10(c) on his list says what is the impact of pumping 10 to 12 million gallons of gasoline to the neighboring homes and how does the proposed green wall slash screen wall and intervening trees affect those homes. Can you talk about the volume of gasoline that's anticipated to be sold at Costco and how that may affect, generally, the residential neighbors?
A Well, the station is planned for 12 million

gallons per year, and Costco believes it will be somewhat less than that, but let's assume for the sake of discussion it's 12 million gallons per year. Our analysis, which was quite extensive, showed that there were not any violations of any standards of any kind or risk thresholds associated with that.

Now, the question is, did we take into account the trees in terms of our analysis. The answer is no, we did not. If we had, there would have been a small reduction in concentration. Typically, the rule of thumb that I've seen is, if you have a forested area, that will filter out some of the particles. It'll filter, remove them from the plume of pollution, but it's not a large factor. It could be 10 or 15 percent, I've seen in the literature.

The wall itself under certain conditions could potentially deflect the flow, especially at -- potentially at night, not very much in the daytime. Based upon the study we have done of the meteorology at the mall, it appears unlikely the wall is going to have much of an effect on deflection. So I think, basically, the wall is sort of a neutral factor. The trees will reduce things slightly, maybe 10 or 15 percent. We assumed they didn't reduce things at all.

MR. GROSSMAN: Well, I think the first part of my question went to your statement in some document you filed

that there was not a direct relationship between the quantity of gasoline pumped and the amount of emissions impact on the community, and I think you cited to the fact that you had various environmental controls, including the Arid Permeator and so on. So my question went to, well, what is the relationship between quantity of gasoline pumped and the amount of pollutants that would be released.

THE WITNESS: I have some slides in my presentation that do address that --

MR. GROSSMAN: Okay.

THE WITNESS: -- and it shows on a relative basis, if it was $12 million -- 12 million gallons obviously that didn't have the controls that Costco had, what would be the emissions from that compared to what you'd expect to have from Costco, if that addresses your question.

MR. GROSSMAN: Well, I guess what, I guess what I'm getting at, the first part of this question is whether or not the increase in volume yields -- an increase in volume pumped yields an increase in the amount of pollutants released in a bare, without referencing any of the devices that are used, just a ratio of gasoline pumped to pollutants released.

THE WITNESS: If all else is equal --

MR. GROSSMAN: Yes.

THE WITNESS: -- the more gas you pumped, the more

emissions you would have. It would be proportional if the controls are the same --

MR. GROSSMAN: Okay.

THE WITNESS: -- because the emission factors are based upon throughput, how many gallons you're selling.

MR. GROSSMAN: Okay. So your statement in the paperwork was based on the fact that there are antipollution devices included by Costco, including the Arid Permeator?

THE WITNESS: There's the Arid Permeator. There's also the fact, maybe a little bit more difficult to quantify, but unlike many gas stations, Costco has a full-time attendant that's outside with people that are pumping the gas. So if they have a small, a small spill, they can respond more quickly, which would tend to have, you know, a minor effect on further reducing emissions per gallon sold --

MR. GROSSMAN: Okay.

THE WITNESS: -- but primarily, it's the Arid Permeator that makes the biggest difference.

MR. GROSSMAN: Okay. But I do understand from you that the fact that you pump more gasoline, if you're not -- without referencing any other factors, would mean that you have a potential for higher pollution?

THE WITNESS: That's correct.

MR. GROSSMAN: Okay. There were any number of

other questions. I didn't want to interrupt your presentation, but I thought -- he went off on the forest and the trees, and I just wanted to make sure we were covering that area.

MR. GOECKE: Thank you.

BY MR. GOECKE:

Q Question 11(a) was, is there a separate federal standard for ultrafine particles as distinguished from fine particles.

A There is not.

Q Okay. And then, if not, would it be arbitrary or at least unfair for Mr. Grossman to hold Costco to a standard based on the expert evidence presented by the opposition?

MR. SILVERMAN: Objection. He's not really a judge of fairness. He's a judge of standards, is all.

MR. GROSSMAN: Well, that's true in a sense, but I guess you could take my word on fair and say would that be an inappropriate way from an expert's standpoint to evaluate it. I think that's what I was getting at in the question. So go ahead and answer that.

THE WITNESS: Well, obviously, it would be patently unfair for an applicant for any air permit or any permit that has an undefined standard. In other words, if there's the standard, the applicant is going to try to see

if they're above or below the standard. If they're above the standard, they'll install more controls to get below the standard. That's how the air emission business works, but if there's no standard, it would have to be arbitrary because there's no basis on a quantifiable benchmark for a decision.

MR. SILVERMAN: I would just renew the objection. First of all, there's no permit in this case. I don't quite understand the relevance.

MR. GROSSMAN: Well, by permit, I think he means by a grant of an authority. In this case, the grant of authority would be a special exception, and the question I --

MR. SILVERMAN: That's not what I understood, sir.

MR. GROSSMAN: Oh, then did I misunderstand what you said?

THE WITNESS: No, I was -- no, you did not. I mean, I was referring to any decision made at the county, state, or federal level on ultrafine particles, as an example, that doesn't have a standard would, by definition, be arbitrary.

MR. GROSSMAN: All right. Let's move to something else.

MR. GOECKE: Okay.

BY MR. GOECKE:

Q And then, finally, would the gas station actually be a very small part of the air quality problem as contended by Costco? And I believe what Mr. Grossman is asking, in contributing to the air pollution in the area generally, is the Costco contribution going to be --

MR. GROSSMAN: Right, and include in that answer not just the volume of gas being pumped but the impact of queuing vehicles -- and in this case that's part of the business model for Costco gas as we understand it, that they have queuing vehicles to, at the pumps -- and the fact that there will be a significant amount of time during the day that fuel tanks are pumping, I mean, fuel trucks are pumping gasoline into tanks, underground tanks. So that's the overall question.

THE WITNESS: Well, the gas station operations, of course, will emit volatile organics -- that's associated with the gasoline pumping process and the delivery process -- as will, any gas station will do that. This gas station is larger than most; so it will have somewhat more of those.

The queuing the cars, you know, if we're talking about the 1970s or '60s, that would be a big source. Queuing of cars in 2013 or 2014, when this station is built, is a very tiny source. It can be quantified, there are emission factors for it, we've modeled it in great detail, and I can give you some reference points later, but it's a

very small source.

MR. GROSSMAN: Even if they're continually idling while they're waiting?

THE WITNESS: Correct.

MR. GROSSMAN: Okay.

THE WITNESS: As of -- you know, we're talking about fleet mix in 2013. The EPA has made tremendous advancements in tailpipe control technology, and the cars of today are so different than the cars that, you know, I learned to drive how many years ago and that needs to be considered in making -- many, this queue has been discussed for two to three years now, and I've said this every time I had an opportunity, that the emissions are very, very small. That statement still is true.

MR. GROSSMAN: And what about the deliveries to the fuel tanks from the trucks?

THE WITNESS: They, of course, they do, they do add to some volatile organic emissions. We have quantified all those emissions, the delivery of the gas trucks, the fueling, the minor spills, the more major spills, looked into the tailpipe exhaust, cars driving there, and the comparison to the national standards shows they're well within the standards. And looking at risk assessment, cancer risk assessment and compare it to any guidelines that exist, it's low; it's at de minimis or lower levels. So

there is no, there's no basis in fact to conclude that the operation of this gas station will cause a health problem.

MR. GROSSMAN: Will cause a health problem in the immediate vicinity? You said it won't cause a health problem.

THE WITNESS: It won't cause a health problem in the immediate vicinity of the gas station, which was evaluated in great detail; and, frankly, will tend to reduce, to some extent, the regional emissions because --

MS. ROSENFELD: Objection. I don't believe that Mr. Sullivan was qualified as an expert on health. He was qualified for purposes of air quality and air emissions and air modeling --

MR. GROSSMAN: All right.

MS. ROSENFELD: -- but not as an expert in what effect it would have on the health of individuals.

MR. GROSSMAN: Yes, I should -- air quality is what I'm really talking about.

THE WITNESS: Well, if I could clarify, I'm not a health expert --

MR. GROSSMAN: Right.

THE WITNESS: -- and I can fully agree to that, but I don't have to be a health expert to determine that the standard -- we're below the standards, Costco is below the national standards, which are set by health experts. In

doing risk assessment, I'm using EPA cancer potency scores from their experts, but my modeling doesn't require expertise --

MR. GROSSMAN: Okay.

THE WITNESS: -- in health to make that assessment.

MR. GROSSMAN: All right.

MR. GOECKE: Okay.

BY MR. GOECKE:

Q And, Mr. Sullivan, let's turn now to your PowerPoint presentation, which, again --

MR. GROSSMAN: Well, he didn't quite finish my question. So if you want to, since we're, since you have started down that road a bit --

MR. GOECKE: Sure.

MR. GROSSMAN: -- let's go back for a second to what part the gas station plan would play in the, in the overall pollution of the atmosphere in the area. That is, assuming that this gas station were approved and operated fully as it is proposed, is there a way to determine what proportion of air pollutants would be caused, let's call them dangerous air pollutants, would be caused by this gas station versus the overall area level of pollutants?

THE WITNESS: Yes. Yes, we can, and our analysis did that assessment for each criteria pollutant. And what

we've discussed the most so far on this matter has been fine particulates. So if we use that as an example, fine particulate modeling of this facility shows, even if we scale up for the most recent mobile source emission model, the annual concentration at the maximum location is about .01 micrograms per cubic meter. The background concentration as of 2013 is approximately 10 and change, 10.8 micrograms per cubic meter; so it's approximately thousandths. So Costco's contribution at the most effective location is approximately one thousandths of the background.

MR. GROSSMAN: What about what's been called in this case ultra -- I presume what you're talking about is PM sub 2.5?

THE WITNESS: Correct.

MR. GROSSMAN: What about what has been characterized as ultrafine particulate matter -- did you do any analysis of that?

THE WITNESS: We certainly looked into the literature on that topic. Where there's no standard, we can't compare our numbers, but I can say that if a facility has a maximum impact for PM 2.5 or less or .01 micrograms per cubic meter, you would not find any regulator in the United States at the state or federal level that would have a concern about ultrafine particles.

MR. GROSSMAN: Which is to say --

MS. ROSENFELD: Could he repeat that?

MR. SILVERMAN: Yes. He's --

MR. GROSSMAN: His statement was you would not find any regulator in the United States, given his findings about fine particles of PM 2.5, that would find a problem with the volume of ultrafine particles likely to be admitted here, emitted here. Is that --

THE WITNESS: Correct.

MR. GROSSMAN: -- a fair summary of it? Can I ask you to divorce that from what you think other people might find and tell me what, in your expert opinion, you would be able to opine would be the likely level of ultrafine particles emitted by this proposed gas station given your findings about the likely level of PM 2.5 particles?

THE WITNESS: I can probably best answer it on a relative basis rather than give you particle counts. The issue is, if you were concerned about ultrafine particles in the Wheaton area, your concern is more regional. It's a regional issue. A lot of the fine particles are created in the atmosphere from the gases, a lot of it from mobile source emissions that cook over time and transform into particles. That study -- the literature clearly shows that that's a major factor that affects air pollution in any metropolitan area, including, including here, and the contribution from Costco to that is clearly trivial.

The other issue is, if you are concerned --

MR. GROSSMAN: By Costco, you mean the Costco gas station proposed?

THE WITNESS: Correct, the incremental source from Costco gas station. The other issue to consider, if you want to put it in context, is that, as, as my reports have shown, that the indoor -- or, actually, my PowerPoints have shown -- the indoor contribution from ultrafine particles and from fast food restaurants is much higher than you typically see, even if you're near a freeway. Inside your home, if you're frying onions and frying chicken and using incense and burning candles and, heaven forbid, smoking, you're going to have a lot higher particle counts than you're going to get in the typical ambient air.

MR. GROSSMAN: I don't want to jump too far ahead of what you planned, Mr. Goecke. Are you going to also address the assertion by the opposition about micro-areas of exposure, in other words, areas that they suggested that could be higher than other areas based on this, this -- I don't know how you propose to proceed, but that was one of the --

MR. GOECKE: One of the questions that you had addressed to us or to the other side?

MR. GROSSMAN: Well, no, I had addressed it to the other side --

MR. GOECKE: Yes.
MR. GROSSMAN: -- but it is a question that I want to know if you're going to have this gentleman testifying about.
MR. GOECKE: I don't think we have slides that specifically address that, but I think that we're -- we probably could get to that.
MR. GROSSMAN: Well, I'll leave that up to you --
MR. GOECKE: Yes.
MR. GROSSMAN: -- as you want to get into that. There was another point in my Question 13 --
THE WITNESS: Mr. Grossman, I could answer that --
MR. GROSSMAN: Oh, okay. Go ahead.
THE WITNESS: -- I could address it, if you want me to, now --
MR. GROSSMAN: Go ahead.
BY MR. GOECKE:
Q Sure.
A -- in some context.
Q Please.
A The concept of the personal cloud that was brought up by Dr. Dyson --
MR. GROSSMAN: Yes.
THE WITNESS: -- I agree, that is, that happens.

I mean, that's been well established in literature. What that means, if you're inside your home and you're walking around on your carpets and various surfaces and, as you move through your environment, you're kicking up some dust as you walk around, you, of course, breathe that dust. So if we were to put a personal monitor on you, attached to your side and up to your breathing level, you'd have a higher amount of particulate matter than a fixed monitor would receive.
But, first of all, there's no standard for air quality inside a home. There's no EPA standard for that; so you don't have any benchmark to compare it to. And, number two, it was talked a long time about particulate loadings. The particulate loadings are really, really small. I mean, we're talking about .01 at one house. The standard is -- the background is 10.
BY MR. GOECKE:
Q And when you say particulate loading, what does that mean?
A Well, we're talking about how much -- we're talking about the fact that the emissions to the atmosphere of particles are small from a gas station. I mean, generally, you would not worry about particles from a gas station; you worry about the gas phase, the VOCs and so forth.
MR. GROSSMAN: For the record, define VOC.

THE WITNESS: Volatile organic compounds.
MR. GROSSMAN: Okay.
THE WITNESS: So the issue is, I agree that that concept is real, it's been reported, that that's true, but in the context of this application, it really doesn't have any bearing.
MR. GROSSMAN: All right. Also, there was an assertion made in some of the opposition papers that you used the incorrect model; you used the model, the MOBILE6 model versus the MOVES simulator, M-O-V-E-S. I don't know if it's called the MOVES simulator or not.
THE WITNESS: Right.
MR. GROSSMAN: What about that allegation?
THE WITNESS: Well, that's false.
MR. GROSSMAN: Why is that false?
THE WITNESS: First of all, when we, when we did the, had our meeting about modeling, we agreed we'd look into MOVES, if you recall, and during that time, we approached the Washington Council of Governments, who's the one that would have the requirements of what input should go into a model like that, and we asked, we spent two weeks trying to get those inputs. They weren't available. We tried again in January, same response. We tried last week and told the same thing: sometime this summer they'll get those guidelines out.

They've received one application so far. One organization has done a MOVES model in the Washington, D.C., area. That's a total of one. I believe the one they're referring to is, the Sierra Club was questioning the HOT lanes project over in Duke Street, Alexandria. And I spoke to the modeler that did that, and she told me that they ran it and they had used the defaults. And my experience -- I've probably done 20, 25 traffic studies in D.C. -- we always follow what the Washington Council of Governments wants, they have used for fleet mix, options, and so forth. That's the standard, but it's not available. Furthermore --
MR. GROSSMAN: What's not available?
THE WITNESS: The guidance on how to run the model. You have a model that's very complex. There's no guidance available. There still is no guidance available of how they want to see it run.
BY MR. GOECKE:
Q So, Mr. Sullivan, if I could just interrupt you, you said the Sierra Club used the defaults. Can you explain what that means?
A They used the Fairfax County default inputs to MOVES. That's, it's not clear at this point in time if those will be consistent with what will be run ultimately when the guidance comes out at the Metro level, but they made, they made, they made a run with it. They evaluated PM

2.5 right next to the HOT lanes of 395. They didn't see a violation. Right next to the roadway, exactly in maybe, in the breakdown lane, it may be above the standard. By the time you go to ambient air locations, the standards were -- even in that setting, those cars were not hitting those PM 2.5 levels.

So, clearly, we were not in a position to run MOVES. We wanted to run it, we tried very hard to run it, but frankly, it's not being run now except that one case, and the transition didn't happen until March 2nd, 2013. Modeling was long done way before that time. I'll, in my, in my testimony, I'll describe the significance of it. We -- even our reports say, well, if we had used MOVES, based on the literature, would have had some higher numbers, not much higher, but we can show it, you know, I can describe that in greater detail.

MR. GROSSMAN: All right. All right. Just one last question. I notice you have a club-like device on the counter there. That's not to control unruly hearing examiners, is it?

THE WITNESS: No, sir. No, sir, but it would be effective for that. We'll talk about this later. This is a sonic anemometer.

MR. GROSSMAN: All right.

BY MR. GOECKE:

Q And we'll get to that later, correct?

A Yes.

MR. GROSSMAN: Okay.

MR. GOECKE: Okay.

MR. GROSSMAN: All right.

MR. GOECKE: You're going to put me out a job.

BY MR. GOECKE:

Q All right. Let's move on to the PowerPoint presentation, Mr. Sullivan.

A My PowerPoint basically summarizes the work we've done on this project. I can't say it covers every single thing we've done, but it certainly covers the, the high points of what the work that's gone into this since September of 2010. I'm going to start with the conclusions and then work my way backwards.

Q Please do.

MR. GROSSMAN: Okay.

THE WITNESS: The most important point is, based upon standard EPA methods, air quality impacts are far below all EPA National Ambient Air Quality Standards. That's the benchmark used to evaluate air quality projects. Are they above or below the standards? If you're below the standards, you're below the standards.

BY MR. GOECKE:

Q And that's the EPA National Ambient Air Quality

Standards, those are the benchmark?

A Correct.

Q And why are they the benchmark?

A Those, those are the national standards that apply throughout the United States, including Maryland, designed to be protective of public health, with a reasonable margin of safety, including for asthmatics and at-risk individuals.

MR. GROSSMAN: Now, when you say below, use the term below, I take it you mean are less than the toxic level?

THE WITNESS: Less than the threshold as defined by the National Ambient Air Quality Standards, correct.

MR. GROSSMAN: The thresholds being above the level it would be adverse; is that what you're saying?

THE WITNESS: Well --

MR. GROSSMAN: Well, let me put it differently. When you say below, it means you are, you're on the better side of the breakdown rather than on the worse side?

THE WITNESS: That's correct.

MR. GROSSMAN: Okay.

THE WITNESS: If the standard is 12 and you're at 10.8, you're in the speed limit --

MR. GROSSMAN: Right. Okay.

THE WITNESS: -- you're under the level.

MR. GROSSMAN: I just want to make sure the record

was clear that you weren't saying it's worse than; you were saying it's better than, right, when you say below?

THE WITNESS: Thank you. Yes --

MR. GROSSMAN: Okay.

THE WITNESS: -- that's what I was saying.

MR. GROSSMAN: All right.

THE WITNESS: And I would want to say that -- let's just say for the sake of argument you're at 12.1 and the standard is 12. Does that mean individuals are at risk? The answer is, very unlikely that would be the case because the standards are built with a margin of safety. So if you walk onto an elevator, it may say no more than 2,000 pounds, but if you're at 2,001, that cable is not going to break, and the EPA has the same kind of a philosophy. They build in a margin of safety, which is required by the Clean Air Act.

MR. GROSSMAN: Did you also compare to standards from the World Health Organization?

THE WITNESS: We did not, but we certainly can.

MR. GROSSMAN: Okay.

THE WITNESS: Those standards don't have applicability in the U.S., but I can discuss that further if you'd like.

MR. GROSSMAN: Do you know if the projected impacts, air quality impacts here would be below the World

Health Organization's standards as well?
THE WITNESS: If you looked at trend lines for the measured, measured particulate loadings, measured fine particulates in this area and you project them on to, I was projecting to 2014 at this point, assuming the station were to start in 2014, the projection shows it's substantially below those standards, even with the impact from Costco added on.
MR. GROSSMAN: Okay.
BY MR. GOECKE:
Q And when we refer to the World Health Organization, Mr. Grossman called them standards. Are they standards?
A They're guidelines.
Q And what's the difference?
A They have no rule of law. They're not applicable anywhere in the world, actually. They're put out as benchmarks with the idea that the local jurisdictions would use those for consideration and use their own, their own judgments, judgments to determine what the optimal level would be for their area. Some countries have much lower numbers than the United States; some have higher. The Soviet Union had, the Soviet Union had very restrictive air quality standards. They weren't enforced.
So it's kind of what does the country want to do.

The U.S. tries to set reasonable numbers that have a margin of safety. The level is set ultimately by the administrator of EPA. It's their judgment of what's, what needs to be protective and the adequate margin of safety.
MR. GROSSMAN: All right.
BY MR. GOECKE:
Q To your knowledge, did the EPA consider the WHO guidelines in formulating the National Air Ambient Quality Standards?
A They did. They did, among many other things --
Q Sure.
A -- they did a very exhaustive review of the literature.
We looked at risk, and risk doesn't have a standard in the sense of a national ambient standard cancer risk. There is no such threshold. So the only jurisdiction that really has guidelines that I'm aware of in the U.S. is California. They have guidelines to deal with cancer risk assessment. Their reporting level is 10 in a million. So if your incremental risk is 10 in a million or more, you have to report to the Air Resources Board and they may require you to use additional controls. In this case, the highest, the most -- the highest risk was less than one in a million and far below, below what we would be calling de minimis levels.

Noise is an issue. Noise can be measured, also can be modeled. We measured noise levels at Sterling, at a very similar gas station, same basic design. We measured background levels in the Kensington Heights neighborhood. They were, they were low. They were on the order of 53 decibels, not a high value, certainly below the county requirements.
And in terms of odors --
MR. GROSSMAN: Well, before you move to that, on the noise, you measured the decibels on an average or impact on sudden decibel levels?
THE WITNESS: We did it on an average. There were no impact issues at these sites to deal with. Those are A-weighted measurements.
MR. GROSSMAN: All right.
THE WITNESS: In terms of odor, as I mentioned, we took, we took samples, sent it to St. Croix laboratory, an odor laboratory. They had a panel review those samples from both the neighborhood of Kensington Heights as well as the Sterling gas station samples we collected, and they were, they were -- both sets were fairly neutral; they were not in a particularly high range. And we also did some field measurements using what's called a field olfactometer, which allows you to dilute the air to see how many dilutions you have to have until you can't smell any more -- in this case,

the gas fumes. And we conducted that analysis in Sterling, and -- where they did not even have an Arid Permeator -- and based upon that analysis, we, I expect that it would be fairly rare there would be detectable odors beyond the ring road.
BY MR. GOECKE:
Q Would the green screen wall that's been proposed, would that affect the traveled odor at all?
A I would say no, not significantly.
Q No. What about the wooded terrain in between the ring road and the residential neighborhood?
A Like I mentioned before, it could produce a small amount of additional dilution, maybe 10 or 15 percent, not on a big factor. But the big factor is, the Arid Permeator approximately reduces the emissions of odoriferous chemicals by about a factor of two. So when we were at the Sterling station, we were at about 320 feet. That's the furthest. We could smell odor at one point 320 feet from the pumping area, but if you applied that, reduced emissions by a factor of two, which is the same thing as a dilution factor of two, we couldn't smell anything and did it repeatedly. That was -- in the winter, that was that study. In the summer we did a study, and the furthest that we could detect the odors was 73 feet. That was also -- and Sterling did not have an Arid Permeator.

So putting that together, I won't say odors will never happen past the ring road, but I'm saying it's going to be -- it'll be rare and, as time goes on, even less of a chance because, as the fleet turns over and more and more cars have on-board canisters, the canisters reduce the amount of gases released when you fill up the car, and it's -- in about probably three or four years, most of the cars will have that on there, and the emissions of odor as well as other risk-causing chemicals will further drop by fairly a large percentage, and it's going to go down steadily over time.

Q And when you say the fleet, you mean the cars that are on the road right now?

A Correct.

MR. GROSSMAN: Mr. Goecke, I'm curious. I thought that all Costco gas stations had Arid Permeators. That was my understanding, this is a model that it's always used in. I'm understanding from this witness that the Sterling station, which is a large station, if I understand correctly --

MR. GOECKE: Yes.

MR. GROSSMAN: -- has no Arid Permeator. How is that?

MR. GOECKE: That's a good question, and Mr. Brann has just stepped out. I think I need to consult with him

before I can respond.

MR. GROSSMAN: He ran in advance of my question.

MR. GOECKE: He saw you coming.

MR. GROSSMAN: All right. Well --

MR. GOECKE: Thank you.

THE WITNESS: The top point, I think that it's been very clear from the record that what has been happening over the last couple of years, obviously there are people who do not support this gas station. They are concerned about the health effects of it. You know, we respect their opinion, we've met with them, but the reality is that, as I read the record -- and you can disagree if you like -- the opposition is taking a position that the EPA's air quality standards are not sufficiently protective, at least in this case, in their judgment. My, my point is that, well, first of all, they are. EPA makes decisions to protect the country. They don't delineate different regions. You're trying to have air quality that's safe nationally. If it's safe nationally, it's safe in Montgomery County as well. But as I mentioned earlier, regulatory in land use decisions, in my judgment, need to be based upon objective facts and standards. I can't hit a target I can't see. And when I work for industry -- which I do, I work for industry as well as environmental groups -- we're working for a, like I say, a cement plant and they're violating the PM 10

standards, what are we going to do? We have to come up with control methods that will reduce those emissions so it is acceptable, but if we don't know what the standard is, how can we approach that problem?

So if the position is, well, EPA standards aren't acceptable enough, well, what's Costco supposed to do? What are they supposed to look at for guidance to try to further reduce their emissions? There's nothing they can do. So decisions that are made absent any kind of objective standards, as I mentioned earlier, would seem to me to be arbitrary. It could be different from one application to another because there's no standard or objective benchmark to compare the numbers to.

To be clear, modeling estimates the expected concentration after the facility is built, and the real question is, is that acceptable or not. It's a quantifiable number. What are you going to compare it to? It would be like a policeman pulling you over and, you know, you say I'm following the standard, why did you pull me over; he says, well, I think it's, I think the speed limit is too high, I think it should be 20, not 25 miles an hour. Well, that's arbitrary. That's not going to stand up in court. Well, it's the same thing here. If Costco is meeting the standards and the position is, well, those aren't protective enough, I don't see any way to objectively go through the

process.

MR. GROSSMAN: Okay.

MR. SILVERMAN: I'd like to raise an objection to the legal opinions.

MR. GROSSMAN: I understand. It's a question -- he's raising the same question I have raised earlier in my questions: If we don't have a government standard to apply, how do I establish the appropriate standard in fairness to all the parties? So he's just raising the same question I've raised, but I agree with you, it's not really his bailiwick to determine what the land use standards are.

MR. GOECKE: And before we go on, Mr. Grossman, I do have an answer to your question. Thanks for your patience.

MR. GROSSMAN: Okay.

MR. GOECKE: So the Arid Permeator is a relatively recent invention. It's only been around for about a year and a half. Sterling has been around for many, many years. Every Costco station going forward will have the Arid Permeator, but they're not necessarily retrofitting all of the stations --

MR. GROSSMAN: Okay.

MR. GOECKE: -- that were built before. So that's why Sterling does not have it.

MR. GROSSMAN: Okay, thank you.

THE WITNESS: We're evaluating the impacts for Costco in 2013 -- that's what our most recent report did -- which is when we projected the station would be opening. Maybe it's going to be then, maybe it's going to be 2014, but the issue is that those impacts that we modeled in terms of air quality were low. The point I want to make here is, as time goes forward and the fleet continues to turn over, with newer cars going on the road and older cars going off the road, that evaporative losses will continue to go down as well as tailpipe controls such that, projecting to the future, the impacts will be less, substantially less.

And the last point on this slide is Costco Wheaton, it is a large gas station. There's no question about that. It's large in terms of sales, but in terms of emissions -- I'm going to show some trend lines here -- it's not an unprecedented gas station. Gas stations producing the emissions that Costco is producing have been around for many, many years.

This slide is showing comparisons, and let me get my pointer. We're looking from 1970 out to 2020.

BY MR. GOECKE:

Q And this is Slide 6.

A Slide 6. Slide numbers are shown on top. And the first, I'm looking at a 1-and-a-half-million-gallon-a-year station in gray, in brown I'm looking at a

3-million-gallon-per-year gas station, and the green is Costco, and I'm just projecting from 2013. I'm showing that going forward to 2020. This slide, the assumptions are defined and we're describing how controls have changed over time. If you go, and if you go back, even on a 1-and-a-half million dollar, 1-and-a-half-million-gallon gas station, back in the mid, early 1990s, you would have similar emissions as Costco would have when it opens now. If you go to a 3-million-gallon-per-year gas station, that goes back to, let's say, the early, the early 2000 time frame, and back in time, emissions were a lot higher than they are today. And to further make that point, when I say it's not unprecedented, this is showing when Costco opens. This is assuming 2013, but you can see if you go across -- you know, the late, maybe the mid to late 1980s, the 1-and-a-half-million-gallon gas station; around the mid-1990s, mid to late 1990s for the 3-million -- that, yeah, it's a big gas station, but compared to the trend lines, where things have been and where things are going, it's not so large. And this is projecting to 2020, and as you can see, with that projection, if I go back, now it's more like the 2005 or so for the 3-million gas station and late 1990s for the 1-and-a-half. So my point again is, it's not unprecedented; yes, it's a large station, but if you consider the controls that are in place and will be in

place, it's definitely not unprecedented.

Q And so, Mr. Sullivan, we're on Slide 8 now, and I just want to point out in your chart, the green line that shows the proposed Wheaton Costco station, it continues to decrease after it begins, so that by the year 2020, which is the last year on your chart, the gap between a 1-and-a-half-million-gallon station and the Costco proposed station continues to narrow. Why do you have that there and how can you be so sure about that?

A Well, the requirements are that the canisters have to go on the cars, for example, and the nozzles are being, are improving when they deliver the gasoline.

Q And when you say the canisters, you mean?

A On-board canisters. There's on-board charcoal canisters on the cars starting, I believe it was 2006/2007 or so time frame, and that as those cars come on the market, the emissions from gasoline marketing will continue to drop. There'll be a certain time, of course, when it may level, will level off, I assume, but we're still in a downward curve and will be for some time.

Q Thank you.

A This is just doing a comparison where on the left I'm showing, this is showing a 1-and-a-half-million-gallon-per-year gas station in terms of gasoline sold, and here's 12 million. So it's certainly, in terms of sales, it's a

much larger gas station than your typical gas station is. But if we compare your typical gas station to, well, where would we be in terms of emissions, well, if I had a 12-million-gallon-a-year gas station without the Permeator, it would be about -- this would be eight times higher than your typical gas station. But with Wheaton, with the Arid Permeator, it's approximately five times larger in 2013, and if I extend it to 2025 compared to today's, it will be on the order of two, two-and-a-half times larger. That's really just for perspective.

And in terms of the trends in air quality, I mean, this is -- I give a lot of credit to EPA. If you look at each of these criteria pollutants and look at the trends from 1980 to 2010, 1990 to 2010, and 2000 to 2010, you see a tremendous percent reduction in emissions. A lot of this is due to tailpipe controls on the cars, plus other steps the EPA has taken to remove lead and various other initiatives going on, but our air quality is improving for all of these different pollutants.

Q And where did you get this data from?

A That was from the EPA Web page --

Q Yes.

A -- air trends. Now to discuss methods and results of what was done for this analysis, in terms of an overview, as I mentioned before, all air quality impacts are within

applicable national and state standards and guidelines, and these are the chemicals that were evaluated: fine particulates, carbon monoxide, nitrogen dioxide, and volatile organic compounds.

Q Why did you analyze those particular chemicals?

A The first three have National Ambient Air Quality Standards that we could have compared it to, and VOCs were done to support a risk assessment for cancer effects.

Q Are these contaminants known to be associated with gas stations?

A They are. I mean, particulate matters, as I mentioned, is not particularly a trademark pollutant of gas stations, not usually the primary focus, like it has been here. Volatile organic carbon compounds are generally what's emphasized at gas stations in review. So it's an air quality analysis, and also, odor and noise impacts were evaluated.

Q Are there any other contaminants or toxics associated with gas stations that you did not analyze?

A Well, we certainly didn't analyze all of the particulate species that are emitted or all of the organic chemicals that are emitted from, from gas station operations. In terms of risk, we evaluated all of the volatile organic compounds that had quantifiable EPA-approved cancer potency scores as contained in the EPA

IRIS, I-R-I-S, database, those four of them. Those were all considered in here.

So in terms of how we got to we are right now, we conducted our first environmental report -- I believe this was the first -- in July of 2012. Between that point in time and September, Kensington Heights hired a consultant, Dr. Henry Cole; that, you know, he and I have met and worked together to some capacity on a protocol. And Dr. Cole, Dennis Hlinka from my staff, and myself collaborated on a protocol to model the Costco operations.

I want to say that the final report shows the modeling of Costco sources based upon that consensus approach. I'm not going to put words in Dr. Cole's mouth. He doesn't agree with everything that's in the analysis. I understand that and we can discuss in a few minutes where we diverged, but in terms of how to model Costco sources, whether it be the queuing, the gasoline marketing and so forth, we met, discussed different ways to proceed. My opinion is we had consensus on those aspects.

Interpretations do differ, there's no question, and you'll hear, you'll hear some conflicting testimony, I expect, but the basis for identifying the concentrations produced from the gas station operations is based upon running the EPA AERMOD dispersion model in a manner that followed the protocol that we jointly developed.

Q And that meeting in September of 2012, that was a face-to-face meeting?

A It was a face-to-face meeting. It involved Dr. Cole, CCM Dennis Hlinka, myself, Erich Brann, Howard Nussbaum, and Mr. Silverman.

MR. GROSSMAN: Is that Dr. Cole at counsel table?

MR. SILVERMAN: This is Dr. Henry Cole, sir.

MR. GROSSMAN: Hello, Dr. Cole.

MR. COLE: Hello.

THE WITNESS: Now, I, I certainly had hoped that we would come to this proceeding with consensus on how to determine the concentrations, and my feeling was -- and I had made this statement at the County Council -- if we could do that, the process would be much easier for the finder of fact -- in this case, Mr. Grossman.

We don't have full consensus in terms of the meaning of the results. I'll let Dr. Cole speak for himself in terms of how he ran the model, but I will say that we are at the point now where the Hearing Examiner can just look at the results and say I concur with the standards, now I see you have consensus. We don't have consensus. We tried, and I could describe the process at some point, but we didn't quite get there. I think we all made an honest effort to do so. We don't have consensus. And I guess I should say that I've done this sort of a project, this is my fourth or fifth

one of these in the last 10 years, and each of the other times I worked as a consultant to the community. And in that context, the first step that I, that I would do every time was to meet with their consultants and their management and to see if we could have an agreement on three points. If we could agree on these three points --

MS. ROSENFELD: Objection, Mr. Grossman. I truly don't see the relevance of this to the standards or the modeling or today's proceeding.

MR. GROSSMAN: All right. I would tend to agree. I guess what he's trying to say is how he ordinarily reaches consensus, and it's --

MS. ROSENFELD: Which hasn't occurred here. So I really don't see the relevance.

MR. GROSSMAN: I'll let him testify as to it for whatever weight it's worth.

THE WITNESS: Well, I think it might be helpful in the context that the way the process generally works is the consultants get together and they agree, number one, we'll follow EPA standard methods -- EPA has a guideline of how to run the models -- Point No. 2, got to meet, you have to meet the national standards; Point No. 3, both sides live with the results. We didn't achieve that, and I think in fairness, I don't think that the opposition fully agreed that the EPA standards were protective -- I mean, that's

come out during discussion -- and nor did they agree to the EPA methodology, and we can discuss that further. Dr. Cole had a number of things he wanted the, Costco to do that are very non-standard, and you know, so we could not get there. Everyone went in good faith, but we didn't quite make it.

MR. GROSSMAN: Okay.

BY MR. GOECKE:

Q Slide 15.

A On Slide 15, one of the areas we differed in quite a bit was the interpretation of fine particulates. Our position is, even applying a scale up to the MOVES model, the modeling of Costco's particulate emissions is 30 times lower, 30 times lower than what EPA defines as insignificant. EPA defines significance for incremental emissions. It's .3 on an annual basis. Costco is at .01. So my position is, if you're 30 times less in significance, it's clear you don't have a problem. Dr. Cole will testify about ultrafine particulates. He doesn't agree. I respect his opinion, but I don't agree with it.

Secondly, this is the other major point we didn't agree upon, was how to treat background. When you do dispersion modeling, you're modeling certain sources. You're not modeling an entire county. You're not modeling Northern Virginia and D.C. and so forth. The normal procedure that EPA follows is you model your facility and

you add to that a conservative representation of all other sources. They have a procedure to do that. Using available regional-measured data, you add the highest values on to what you're modeling. That's the standard procedure.

Q So let's be clear about that. You say you use the highest average background concentrations from a particular county or particular -- what's the region?

A Representative data for the region. So let's say it's carbon monoxide, eight-hour standard --

Q Right.

A -- you would look at the last three years of data, and we looked at Beltsville, Rockville, and Arlington, and we took the highest eight-hour CO concentration that occurred in any one of those locations over the three years and we added that to all our modeled values. That is EPA standard guideline approach.

Dr. Cole requested we more broadly model the mall sources and, I'm not sure, maybe beyond, maybe some of the local gas stations to get a more direct indication of their contribution to Kensington Heights and other places. That's not standard. We didn't agree to do that part, but certainly --

MR. GROSSMAN: Why not? It does seem like a reasonable suggestion, to use a mall model. I'm not quite sure, why would you not at least take a look at that, how

that measured out?

THE WITNESS: Well, what they're referring to is if you looked at each loading dock and all the delivery trucks that go to the mall, looked at all of the restaurant exhausts and evaluate those, too, and then what about the gas stations that are not too far away and the fast food restaurants on the other side of the street. There's no defined ending to that kind of an approach, and in fact, in the end we did model all the loading docks. And ultimately I can describe, but a factor I think was missed during the review is that we built in tremendous embedded conservatism that overstated the impacts from the mall anyway, and I can describe that in detail.

MR. GROSSMAN: Okay.

THE WITNESS: The way we modeled Costco had a large amount of overstatement in it for the loading dock, clean diesels, and other factors. So, but the point is that, respect the right for the opposition to have their own interpretation of this, use their own background, do their own interpretation of fine particulates. My point is that the modeling was based upon a consensus approach and how to model Costco, and we did our very best to put all the suggestions in for Costco. And we'll get into methodology.

Now, this is still related to the meeting we had in terms of trying to achieve consensus, and I'm going to

describe here the changes that we made and the agreements that we made to do additional analysis based upon meeting with Dr. Cole. First, Dr. Cole had the suggestion that we use minute-resolved meteorological data rather than hourly-resolved data. We thought that was a good idea. We agreed. We did that. It didn't make a big difference in results but that was a good suggestion.

The second suggestion, Dr. Cole was concerned about the issue of the hill behind the gas station that goes towards Kensington Heights, and the agreement was we would run a model that could do terrain analysis called CALPUFF -- it's a higher level model than AERMOD that we used generally -- and CALPUFF can determine wind fields, where the wind will tend to go, much more accurately. So we ran, we ran that particular model as requested. I can say that the results of the CALPUFF looked very, very similar to AERMOD. We did not see a significant difference with the results, but we ran it --

MR. GROSSMAN: Is this the model that you ran where you said that the heat difference probably negated the terrain effects?

THE WITNESS: That was monitoring.

MR. GROSSMAN: Okay.

THE WITNESS: We'll get to that, but this is --

MR. GROSSMAN: Okay.

THE WITNESS: -- running a dispersion model, a computer program that --
MR. GROSSMAN: Okay.
THE WITNESS: -- considers the terrain, the heating and various factors, and it computes how the wind will tend to follow that terrain.
MR. GROSSMAN: All right.
THE WITNESS: And it did not show a significant difference from AERMOD, but by doing that step, we had hoped that we'd come closer to achieving consensus. That was --
MR. GROSSMAN: Okay.
THE WITNESS: -- the objective. Dr. Cole requested that we add in major spills. In modeling a gas station, you know, every time you fill up your car and you put the nozzle back into the tank area, you spill a drop or two and that's in the emission factors themselves. But his point was, which is accepted, is that sometimes people spill more than just a little bit. Maybe they spill a gallon of it once in a while. That happens. And we checked with Costco. I got the history, operational history for that issue, and incorporated that into our analysis. We call it major spills. Like, a gallon is a major spill, in that context, but we worked it into our emissions analysis. So, so far, so good.
We increased the queuing assumptions. We -- I

certainly had an earful from the community, and I agreed with them that the queuing numbers in this report were too low. We had data from another study. I agree, it was too low. We increased those to match reality, which was subsequently tested in January of this year and found to be quite reasonable, but we did increase the queuing. This is a Costco refinement that was made.
MR. GROSSMAN: And when you talk about increasing the queuing, what was your initial assumption of the number of vehicles that would be queuing versus what you increased it to?
THE WITNESS: Right now, in the annual -- the annual average, which is the most critical averaging time here, we're assuming 10 cars queued on average during the operational time. It was much lower. I believe it was two before, which was from a different gas station, and it was too low.
MR. GROSSMAN: And that's 10 cars queued overall for all pumps or 10 cars for an individual set of pumps?
THE WITNESS: All pumps.
MR. GROSSMAN: Okay.
THE WITNESS: And that was confirmed in January. That number was confirmed during the testing done in January at Sterling, as an example -- weekend and weekday.
MR. GROSSMAN: When you say confirmed, you did a

count on the number of cars that were queued over some period of time and decided that the average, based on that, was 10?
THE WITNESS: Correct. I, we didn't, my firm didn't do it, but another firm did, Mr. Guckert. Guckert's firm did, and they counted the cars on a representative weekday and weekend.
MR. GROSSMAN: Okay.
BY MR. GOECKE:
Q Do you know where they counted the cars at?
A In Sterling.
Q Yes.
A So that increased the impacts to some degree. We also, I made a change in what's called the surface roughness. I modified the surface roughness term, made it more applicable to the airport conditions, and it basically increased the impacts by about a factor of two. That was a voluntary change that we made. We noticed that was too high, my feeling was too high. We made that adjustment. And that wasn't part of the discussions here, but we increased the impacts on that basis.
MR. GROSSMAN: Why does surface roughness have an impact?
THE WITNESS: The model we're using, AERMOD, has a meteorological processor called AERMET, and AERMET

determines the wind speed, the wind data that goes in the model, and we had a fairly rough surface we used initially, and it should have been much more lower, should have been more like the airport. So it wasn't matched to the airport as well as they should have been, and because of that, we had, we had too much dispersion in the model and it tended to lower the concentrations more than it should.
MR. GROSSMAN: Okay.
THE WITNESS: So that, I think we all can agree, the modelers can agree that that was a constructive change. And, lastly, we updated the vehicle emissions. Initially we didn't take any credit for some things. In the initial report, we didn't take credit for the canister, the technology that's on cars -- that made a very big difference -- and we didn't take any credit for the Arid Permeator, which we should have. The Arid Permeator takes out 99.27 percent of the VOCs. So we put those two refinements into the, this analysis.
MR. GROSSMAN: But as I understand it, that's only from -- that's the emissions from the underground tanks that it's removing because that's where the Arid Permeator is, is that correct?
THE WITNESS: It's on the vent, the vent that's --
MR. GROSSMAN: The vent from the tanks --
THE WITNESS: Correct.

MR. GROSSMAN: -- underground tanks?
THE WITNESS: Correct.
MR. GROSSMAN: It doesn't affect, at all, any leakage as a result of filling at the individual cars, is that correct?
THE WITNESS: The loss at the queuing area is not affected by that. So the bottom line of these changes is they were, some were -- based on the meeting, they're all with the intent of refining the analysis, making it more accurate.
Now, in terms of the conservatism, the modeling that is done even now substantially overstates the impacts, and just to give a few examples of why, the maximum peak traffic counts were used for all averaging times from the ring road in. I'm not sure that point was really grasped by folks. In other words, we're taking the hour of the day that has the highest number of cars and using that all the time, all year long. So the ring road is substantially overstated by about 84 percent. It was done -- we did that to be conservative.
BY MR. GOECKE:
Q So just --
A Number two --
Q I'm sorry. Just to be clear on that, so you took the hour of the day that has the highest amount of

concentration on the ring road and then assumed that the emissions from the ring road were at that level 24 hours a day, 365 days a year?
A During the operation of the mall --
Q During the operation --
A -- so at least 15 hours a day. We used that all the time. We --
MR. GROSSMAN: That's for determining background?
THE WITNESS: No. It's actually modeling. We modeled those emissions in our -- explicitly modeled those emissions, added it to background.
MR. GROSSMAN: Right, but I'm -- but that particular conservative assumption is one used towards determining the amount of background pollution, is that correct, not the amount of pollution that will be created by the gas station itself?
THE WITNESS: It's actually a little bit of both. To answer your question, yes, most of this is general mall traffic, either going to Costco or other places to the mall, but our analysis did consider cars just going to the gas station. That's included in our analysis, but most of these emissions are, yes; they're not incremental gas station emissions. We're modeling them and Costco and adding all that to this conservative background term --
MR. GROSSMAN: Okay.

THE WITNESS: -- that's what's going on. So that, that is extremely conservative right there.
Point No. 2, Intersection 16 and 20 on Mr. Guckert's analysis -- 16 is to the west and 20 is to the east -- we assumed that 90 percent of the cars that were coming in on those locations were going to the Costco parking lots. That clearly is not the case. That's an overstatement. I could also add, in terms of parking lots, we assumed that it, that it took five minutes of driving time to park your car and then drive away when you were done. It clearly doesn't take five minutes to do that. So we're overstating parking lot emissions by a tremendous factor.
BY MR. GOECKE:
Q And when you say the Costco lots, which specific lots are you referring to or which lots do you attribute to being the Costco parking lots?
A Let me, let me find that. I have a slide with that in here. Okay. The Costco lots, the west lots, we're referring to these areas here in yellow.
Q And I'm sorry. We're on slide 59 now, is that --
A Slide 58.
Q Fifty-eight? Okay. And you're pointing to the area highlighted in yellow, to the --
A The west lot of Costco.

Q -- southwest quadrant.
A South and west. This is the surface parking lot. On the east side, I'm pointing to the yellow area, that's a parking garage. So we assumed that all the cars coming into the area to this, from this side as well as from this side here --
MR. GROSSMAN: From the west and from the east.
THE WITNESS: From the east, 90 percent of them will go to the Costco, these two lots. Now, the point's been made that we're understating mall sources, that we understated that and, if you added them in, it would be higher. That is not correct. And basically, I can --
BY MR. GOECKE:
Q Why not?
A -- basically, I'll show two, for two reasons.
MR. GROSSMAN: It's not correct that you, that it would be higher, or it's not correct that you didn't add them in?
THE WITNESS: It's incorrect to say that we underestimated the overall model emissions, because we did not, and to clarify it, let me start with the parking lots. Do we have a -- may I use this board over here?
MR. GROSSMAN: Sure.
THE WITNESS: So in terms of the parking lots, 38 percent, 38 percent of traffic coming to the mall comes

through those two intersections, and we're assuming that, you know, 90 percent, .9, are coming to Costco's lots. That's the first assumption. Then we're assuming that people drive around for five minutes to park the car and then, when they're done shopping, to go away. The next time you go to a parking lot, any parking lot, try to drive five miles an hour. The lowest you'll be able to drive your car in a parking lot, try it, is about seven-and-a-half miles an hour.

If you drive your car seven-and-a-half miles an hour, which is really, really slow -- I mean, I jog faster than that; I'm 63 years old -- you'll find that it would really take you two minutes. You can work out the math. If you went to the center of the second-level parking lot, the parking lot on this side and drove to the middle of this parking lot here, it'll take you two minutes, not five. It'll take you two, not five. So there's a conservatism here of five over two. And then you look at the fact that we're using, we're assuming that these cars, if you take the worst hour in Mr. Guckert's analysis -- he assumed it happens all day long -- his analysis is 84 percent high. So that number, you can multiply it times 1.84. So if you scale this all up, you come up with 157 percent. We took more than, more than the cars that go into the mall and we put them into these two parking lots right here, right next

to Kensington Heights. We had embedded conservatism in this analysis. We did not underestimate any of the parking lot emissions whatsoever. Now, that's the first point.

The second point is, did we underestimate the loading docks? Costco has a loading dock, and their loading dock is, is right here. Well, in terms of the loading dock --

MR. GROSSMAN: Right here being the southwest corner of the Costco warehouse building.

THE WITNESS: Yes. For the loading dock, if you look at our actual files, you find out that we assumed each day that the heavy-duty diesel delivery trucks, that they have an equivalent of 100 miles of idling. That's a lot of idling. So if you look at 100 miles of idling, you take your 100 --

BY MR. GOECKE:

Q And what does that mean, 100 miles of idling?

A Well, the emission factors are by mile. So we, you know, using two-and-a-half miles an hour as the reference for the MOBILE6 and we say, okay, we're running, we're going to have to, we're going to run -- two-and-a-half miles would take one hour of idling. So I'm assuming 100 hours of idling. It's shown right in our Excel files. We had a factor we put into all of our analysis because MOVES wasn't ready for us, and we said we're going to have our,

we're going to increase our impacts by a factor of two and a half of idling vehicles. We made it more conservative by a factor of two and a half.

So if you take your 100 miles we modeled, divide it by the factor of two and a half that we had put into all of our analysis, you're left with 40 miles. If you have 40 miles in there, it's only, it's 10, it's 10 trucks. So it's happening four hours -- four miles, I should say, per truck. The trucks are going to have to idle for two -- to go two-and-a-half miles, they have to idle for an hour. So if you divide four by two and a half, I'll work out the math, it ends up being 96 minutes per truck. Costco is going to be 10 minutes. That's their policy. Actually, the county standard is five minutes.

So we have a, we have built-in embedded conservatism, a factor of 10x into idling trucks. So when the statement is made that we're underestimating the impacts from Target, Giant, and the rest, we 10x'd this particular point 10 times the idling they will have. And so I'll argue, this tremendously overstates any of the other loading docks around the entire mall. So we're conservative by a factor of 10x on idling, it's embedded conservatism, a factor of 157 percent shown previously for the parking lots. We put more cars than they actually have into these two lots right near Kensington Heights and still showed a minor

impact.

So then to finish it, we went through and we said what if we did our analysis at the same high-loading in the parking lots and the same high-loading in the loading docks and applied it to Target's lot and the one over here, and it made less than a one percent difference in fine particulate impacts at the locations in Kensington Heights. So my point being that, in terms of did we underestimate the loadings from the mall sources, the answer is we clearly did not. We overstated those impacts by quite a bit. Let me find my place again here.

MR. SILVERMAN: Excuse me. What was the slide number?

THE WITNESS: Fifty-eight.

MR. SILVERMAN: Thank you.

MR. GROSSMAN: Don't go too fast because you're going to confuse the NSA, and they monitor this.

THE WITNESS: That's true. They're watching us.

MS. ROSENFELD: Mr. Grossman, if I could just ask a point of clarification. Is this the same PowerPoint that is, I believe, Hearing Examiner Exhibit 95 or --

MR. GROSSMAN: That was my understanding.

MR. GOECKE: Yes, 95(c), I think.

MS. ROSENFELD: And has there been any text added to this PowerPoint that's not in the printed copy?

THE WITNESS: The only, the only text change was the -- it's like in here, I showed in red -- I added the line in red to try to clarify it, but I don't believe any slides have been modified except some clarifying clauses added to make it more readable.

MS. ROSENFELD: And I believe there might have been clarifying clauses on earlier slides referencing Dr. Cole perhaps. Was there additional text?

THE WITNESS: There could be. Do you want me to go back to the beginning and look?

MS. CORDRY: Excuse me. Are we going to get an exhibit that actually has this being shown?

MS. ROSENFELD: I thought we would have everything in advance.

MR. GROSSMAN: Yes, I think that's fair --

MR. GOECKE: If there are differences --

MR. GROSSMAN: -- but if he did add, if it's just clarifying, but I'm going to let you raise that on cross-examination on any --

MS. ROSENFELD: Okay.

MR. GROSSMAN: -- rather than making him go back to each slide now --

MS. ROSENFELD: Okay.

MR. GROSSMAN: -- on cross-examination you can raise any changes that were made.

MS. ROSENFELD: Well, it would be helpful if we had a copy of what's being shown here because I don't have a --

MR. GROSSMAN: Yes. Is that available?

THE WITNESS: I can use -- I can see if I can find the one that doesn't have the clarifying clauses in it. It makes it more readable, but --

MR. GROSSMAN: Well, did you remove any language?

THE WITNESS: No.

MR. GROSSMAN: Okay. So why don't we do it --

MS. ROSENFELD: If we could have a copy e-mailed?

MR. GROSSMAN: -- let's just go through his, what he's got now, and for anything that's added on that creates any confusion, you can stop us and --

MS. ROSENFELD: If they could certainly e-mail a copy to us at the close of today's hearing --

MR. GROSSMAN: Certainly.

MR. GOECKE: Absolutely.

MR. GROSSMAN: Okay, yes.

MS. ROSENFELD: -- so we can see it before next --

MR. GROSSMAN: Yes, but if there's any problem, as you go along -- if it's just added-on clarification and nothing changed or, you know, removed, then it seems to me that it ought to be okay for him to go forward with this.

MS. ROSENFELD: Just for purposes of us

understanding his testimony --

MR. GROSSMAN: Sure.

MS. ROSENFELD: -- and cross-examination --

MR. GROSSMAN: Absolutely.

MS. ROSENFELD: -- it's helpful to see it.

THE WITNESS: Yeah. I added, I added the red because I thought it might make it -- added additional information to be helpful. I didn't, I wasn't trying to make it difficult, but that was the reason why I made those changes.

We've talked a bit about the EPA conservative background method. I think it might be helpful to put that in context. You know, there's 8100 receptors in this model. That means there's 8100 places that the model is estimating concentration. And in every one of those 8100 places -- let's use CO eight-hour, as an example -- it's assuming that the worst-case measured air pollution in the region happened the same time that receptor happened to have its highest concentration.

So this is the highest over three years. So if you think of the math on that, basically -- I'll get a new page here -- trust my math on this, there's 195 -- 1,095 eight-hour periods per year, okay, and there's three years being evaluated. We're assuming that, okay, once out of all this number, so out of about 3,000 possible numbers,

possible time periods, we're assuming that the worst-case hour, worst eight hours for that receptor, let's say it's the closest home, let's say it happened in June 5th, 2007, first eight hours of the day, we're assuming that's exactly the same time that the worst case occurred at the monitor. Now, what are the odds of that happening? Well, the odds are -- do the math. It's about one in 10 million. If you assume they're independent, which is a reasonable assumption, one in 10 million. We've seen that happen 8100 times. So is it conservative? Yes.

If we were to model the entire county, would we get a lower answer? The answer is yes, we would. If we could model every gas station and every road, every driveway, and every source of pollution, which we can't, but if we could, you'd have a lower concentration because there's inherent conservatism in EPA's approach.

The EPA recognizes that you can't go out and monitor for every gas station or specialty, every factory that's built. They can't go out and do three years' worth of monitoring to get background. So they have a conservative approach that overstates -- and everybody knows it overstates -- but it avoids the problem of what do you do. Do you make an applicant get three years' worth of measured data before they do anything? Well, the answer is they don't have people routinely do that. They use regional

available data so that decisions can be made in a conservative way, but you know, it's manageable, it works. You can't use a short data set to try to evaluate these kind of background values. It's not stable enough to give you reliable data.

And, frankly, the question has come up, well, what if we put, had put monitors at the mall and we had measured what the lowest of concentration right there at the mall, did it for, did it for three years. Well, then we go ahead and we model the ring road and we model University and Veirs Mill and Georgia Avenue, add it on to that. We're double-counting. It's not -- what distinguishes the Wheaton area from a less-traveled area, it's those three roadways. Those are the defining areas that have 100,000 cars a day. We're modeling those. If we measured two and added it on, it's clearly unfair; it's double-counting, completely. So the process followed here of using regional data is done all the time. That's the standard procedure. Even for large industrial operations, that's the standard.

MR. GROSSMAN: What if you didn't add them together, you just did your model based on the specific mall area?

THE WITNESS: Well, if you had the data, you could do that. It probably, but you, it's still -- then you wouldn't model any of the cars. You wouldn't, you really

wouldn't model the cars, if you modeled the cars in -- well, the cars wouldn't be in queue then. You could, you could do that, but you would be, probably have similar concentrations in the end than we have right now because, once you take the cars away you're modeling, you account for that directly, you're going to have the conservative number.

MR. GROSSMAN: All right.

THE WITNESS: Now, a lot of discussion has come up, and this is important I think we spend a little bit of time on this, that -- originally when we started this project, actually in September when we had our meeting, the EPA standard for fine particulates was 15. That was the annual standard, and in December/January time frame they modified the standard to 12. So we were using a very conservative background value of 12.1 originally --

BY MR. GOECKE:

Q And that 15 to 12, that's micrograms per cubic meter?

A Per cubic meter on an annual basis.

Q On an annual basis. And that applies to how large of an area?

A That's, that's the national standard that applies to any ambient area in the country.

Q Yes.

A And basically, we met with County staff, and Parks

and Planning staff suggested, you know, you better refine your, your -- your background is not, is too high, first of all, and it's not consistent with the Washington Council of Governments, which is using 10.8. So we went back and reassessed and did the three-year running average and brought it up to 2012, and we came up with 10.8 also. And so we modified and refined our value to be more realistic and used 10.8.

So some of these, these other assumptions here we have -- I think we've discussed this probably enough -- we made a number of steps that acted to increase the conservatism. We did refine the background term.

And this is just showing an example -- I mean, this is the kind of information that's in our spreadsheets, the emission spreadsheets. This is showing the mall, that we are looking at the two, those two intersections, adding up the cars that are coming towards the south, subtracting the gas station-only operations, then multiplying times 90 percent -- this is how we assume that 90 percent of the vehicles coming down those roads are going to be going to the parking lots -- and did that morning and evening and took the higher of the two. These are all on our spreadsheets. This is nothing -- this has been available. The conservatism that we've put in here has been clearly documented.

Now, in terms of our mission in modeling this particular operation, we did a lot more than would be done for a gas station. First of all, I don't know of a gas station that's been modeled in this detail anywhere. It may be a record. It certainly would be for this area. Maybe California has done more on a few of those stations, but --

Q And why do you say that?

A Well, you don't usually model a gas station.

Q Why not?

A Because EPA and MDE know that the concentrations aren't high from any particular gas station. I mean, we're modeling a 12-million-gallon-a-year gas station here --

MR. SILVERMAN: I've got to object to that.

THE WITNESS: -- the impacts are --

MR. GROSSMAN: Hold on one second. Yes.

MR. SILVERMAN: That's hearsay. EPA and the states know? I mean, do you have a reference or is there --

THE WITNESS: I don't have a reference --

MR. GROSSMAN: Well, let's ask it this way: When you say that EPA knows that, are you saying that that's -- the practice of EPA is not to model gas stations? Is that what you're --

THE WITNESS: Well, what I'm referring to is the EPA certainly knows gas stations. They've been studying gas stations since the '80s, and they're well aware that those

sources are best evaluated on a source-category basis. So they install requirements like Stage I, Stage II canisters to control them, but my position is that the modelers at EPA certainly do -- and I can't give you a reference -- but the reason that they don't model or require permits is that gas stations do not put out a high level of air pollution. We showed it in this analysis here.

MS. ROSENFELD: And I join the objection --

MR. SILVERMAN: I really, I really, I think it's --

MS. ROSENFELD: -- he said that there's no source and no reference.

MR. GROSSMAN: I'm going to overrule that objection because he's essentially stating his expert opinion that -- his expert opinion is that gas stations do not, are not serious polluters in this sense and it's for that reason, based on his experience as an expert, that they're not individually modeled by the EPA. You can cross-examine him on the point if you want to challenge it, but that's his expert opinion based on his experience.

THE WITNESS: I also did the work for the agency back in the early '80s that evaluated gasoline marketing nationally and looked at the exposures and so forth. That's in the studies I mentioned earlier. So I do have some direct experience with it, but that's the reality. The gas

stations do not create high impacts as of 2013 for risk or for the standards and that's been shown through the model we've done here. But my point is, putting aside the fact they don't usually model gas stations, we've done a very extensive analysis here where we're modeling the warehouse parking lots, we're modeling the ring road, modeling the cars queuing to get their gasoline, we're modeling where they pump their gas, where they exit the gas station, enter the gas station, Georgia Avenue, Veirs Mill, and University. We're modeling all those things that had the background. So it's a very extensive analysis for a gas station, very atypical.

As we mentioned earlier, the east parking lot is a, is a parking garage. That's considered in our modeling as one of the sources.

BY MR. GOECKE:

Q I'm sorry. So that is considered or --

A That is considered. And then here's the loading dock again over here at the warehouse. We're treating our loading dock emissions as a centralized point source right here, heavy-duty and light-duty vehicle trucks, 10 of each per day. We have the filling operations for the underground tanks, that's modeled, as well as the vent emissions from the vent itself.

In all the cases that we're doing this analysis,

we're using the EPA standard emission factors based upon what's called AP 42. That's a standard EPA reference text. Also, we're following EPA procedures. We're running dispersion models in accordance with how EPA wants to have dispersion models run.

This is showing Georgia Avenue and University. We have free-flow traffic that goes through here based on the traffic counts, and we have the queuing areas, which we've identified in here, where we have cars that are at traffic lights. We're including both the queues as well as the free-flow traffic.

Now, queuing assumptions, as I mentioned, we've refined these as time has gone on. These are the numbers we're using right now in this column right here. So for one hour we're using 40 cars. The January testing showed 39 cars from Sterling, January of this year.

Q Yes.

A Eight-hour, we modeled 20. We're a little bit low. They had 32. For 24 hours we modeled 10, a little bit low; they had 18. For annual we modeled 10; they had 10. The weekend traffic put these numbers up a little bit, and if you consider the impacts of this, it makes a very small difference. There's no issue with eight- or 24-hour averages. If we scaled up by this amount, the analysis would go up by possibly a couple percent.

Q So let's back up a second. You said the weekend data affected your results. What days of the week did you count cars at Sterling?

A Wes Guckert's staff did counts on a Wednesday, I'm sorry, a Friday and a Saturday --

Q Okay.

A -- and the Saturday there's more, the queues are larger, and so we did get higher numbers. During the Friday was most similar to these numbers here, but my point is, these averaging times and the emissions and the queues are so small that even if we scaled up by a factor of two in here, it makes a very, very insignificant difference in the results.

Q Okay. So taking the Friday and Saturday car counts, how did you then compute the annual average?

A We considered, we looked at the amount of gasoline sold on a Friday and Saturday --

Q Yes.

A -- and it was typical of a Friday and Saturday; it was a typical range of what they usually sell, and we used that as an average. We figured five days would be at the Friday --

Q Okay.

A -- values, and two days being at the Saturday values.

Q So you took the Friday sampling to represent Monday through Friday?
A Correct.
Q And then you took the Saturday data to represent Saturday and Sunday?
A Yes.
Q And then you extrapolated that throughout the course of the year?
A Correct.
Q Okay.
A That correct.
Q And so is that why your annual average is consistent with your model assumptions, even though the eight-hour and 24-hour queuing data model assumptions are not consistent?
A Well, we made, I made these assumptions because I, as I mentioned, I agree with the community that our initial numbers were too low. And I made, I used some judgment and I estimated 40 and 10 here. I happened to get it right. There's some luck involved perhaps there, but it was an estimate and it ended up being pretty accurate. But I'm showing an example here that, if I scaled up the CO eight-hour -- right now we're at 28 percent of the standard; we're four times under the standard -- if we had used the 32 instead of 20, it would have been a factor of three under

the standard, so would have gone from 28 to 32 percent of the standard.
Q And when you say the standard, you're referring to what?
A The eight-hour carbon monoxide standard.
Q The National Ambient Air Quality Standard?
A Correct.
Q Okay.
A My last point is we could increase queuing assumptions fourfold above these values and it would not threaten any standard. The queuing emissions are very, very small.
Q And I'm sorry, Mr. Sullivan. Just to be clear, so the 28 percent and the 30 percent mean what? That means that the, you anticipate that the emissions will be at 28 percent of the standard or 28 percent below the standard, or what do they mean?
A In the first case, I'm saying, the way we modeled this --
Q Yes.
A -- using 20 cars in queue, the modeled value is 28 percent of the standard. It's, you know, 28 percent of the standard. It's almost four times below the standard where, if we use the updated queuing value, if we factored that in, we'd be at 32 percent of the standard; we'd be about three

times below the standard. Either way, we're far below the standard. I'm just saying that for these two categories, the updated data made a small difference in the results, but it was quite small.
Q Thank you.
MR. GROSSMAN: And the standard is the level at which, above which you would have a problem with emissions?
THE WITNESS: If you're over the standard, there would be a concern that you're above the standard, you may be having health effects.
MR. GROSSMAN: Okay. And are you --
MS. ROSENFELD: I'm sorry --
MR. GROSSMAN: -- adding this? This, I take it, is from the queuing results. So that's carbon monoxide. That's that first figure there --
THE WITNESS: Right.
MR. GROSSMAN: -- is carbon monoxide from queuing, and you're saying it's 32 percent. What about, do you then add in the amount of carbon monoxide from pumping and then add in the amount of carbon monoxide from venting?
THE WITNESS: This is total. This is including all sources.
MR. GROSSMAN: Oh, okay.
THE WITNESS: It goes from 28 to 32.
MR. GROSSMAN: Okay. Because your top part, I

thought, was the cars in the queue. I thought that's what these were referring to.
THE WITNESS: No. This is totals. I'm showing total --
MR. GROSSMAN: Okay.
THE WITNESS: -- the total effect down here. I'm sorry.
MR. GROSSMAN: Okay. All right.
THE WITNESS: Because queuing is a small source, even if you double it, it doesn't make a big difference in the ultimate result.
MR. GROSSMAN: Okay. I understand now.
MR. SILVERMAN: Mr. Grossman, I'm a little confused. I guess we can wait until cross-examination, but it's such a long wait. I wonder if I could just ask one question now, just --
MR. GROSSMAN: Go ahead.
MR. SILVERMAN: Thank you, because I think we're all confused here. When you say 28 percent of the standard and you're talking -- when you say all sources, you're talking about the queuing cars and the gas pumps and the tank emissions and so forth; the only thing -- the gas station itself and associated queuing is responsible for 28 percent?
THE WITNESS: It's the, all, the incremental gas

station -- I believe that includes background in that 32 percent. I can check on it, Mr. Silverman, if you'd like, but that's the total, as I recall. I'll double-check it. Okay. Let's see. Okay. In terms of carbon monoxide to closest home -- and let me use urban -- the standard is 10,000; the total modeled was, I'm showing here, 530; background, 1145. The model plus background is 1675. So it's, it would include both. It would include both. It includes background, and actually, this urban value is even lower than that.

BY MR. GOECKE:

Q What are you referring to, Mr. Sullivan?

A I'm referring, I'm looking at Table 1-12 in the --

Q From what?

A -- November 2012 report, November 19th, 2012 report.

MR. GROSSMAN: All right. Give me again, what was the standard?

THE WITNESS: The standard is, is 10,000.

MR. GROSSMAN: Ten thousand is the CO standard.

THE WITNESS: Correct.

MR. GROSSMAN: And you said that your figure showed what numbers then for your model?

THE WITNESS: I'm showing total modeled of 530 and

a background of 1145, and I'm showing a total here of 1675. So that's actually even less than 28 percent. That's more like 17 percent for the urban values.

MR. GROSSMAN: So where does the 32 percent come from?

THE WITNESS: Well, I'm trying to see. I mean, I may have used the -- it's 39 percent if I used the rural. We modeled two different ways, and I can, I can digress and talk about that, but modeled two different ways. The number I'm -- the 32 percent seems to be between the urban and the rural analysis. One way I'm coming up with a total of 39 percent. The other way, over here, I'm coming up with 17 percent.

MR. GROSSMAN: They still don't average out to --

THE WITNESS: They don't, they don't average out to 32, I agree. My point is, let's take the value shown for urban, which is most representative. If I -- the total modeled is 530, is what I show. The standard is 10,000. So I add the background, 1145, and come up with a number of 1675. It's about 17 percent of the standard. If I were to double the 530, it would go to about 1,000. I'd have about, approximately a 2,000 value. So it would go from about 17 to 20 percent. So those numbers are a little bit on the high side.

MR. SILVERMAN: So should we disregard the slide?

I, I'm really confused.

MS. CORDRY: Yes, I mean, are any of these numbers ones that are in his report anywhere? I mean, we're just sort of throwing out numbers at random here?

THE WITNESS: The numbers are in Table 1-12 of the report, and so --

MS. CORDRY: Okay. Well, then why don't we stick with those numbers then and --

THE WITNESS: Well, that's fine.

MR. GROSSMAN: All right. This is a slide that he's already produced. The question is, where did the numbers come from? And I agree with, with the comments that it -- it is somewhat concerning that, that those numbers don't seem to correspond to the numbers, the raw data that you're referencing now.

THE WITNESS: I can, I can double-check on that too, and I can --

MR. GROSSMAN: All right.

THE WITNESS: -- I can replicate it --

MR. GROSSMAN: All right.

THE WITNESS: -- or refer to Table -- I can make the point from Table 1-12 the same way. If you take, look at the urban values in the eight-hour CO column for home and you see the 530, scale it up by 32 over 20, and you'll see, you'll be about, about at 20 percent of the standard rather

than 17 percent of the standard.

MR. GROSSMAN: I understand. I still don't know where those numbers came from. So they must have come from somewhere because you put them up on your slide.

THE WITNESS: Agreed.

MR. GROSSMAN: So when you get a break -- and maybe we'll take that break now --

MR. GOECKE: That's a good idea.

MR. GROSSMAN: -- you can figure out where those numbers came from. And it's about six minutes to 4:00. We'll come back at about 4 o'clock.

THE WITNESS: All right.

(Whereupon, a brief recess was taken.)

MR. GROSSMAN: Back on the record we go. And, Mr. Sullivan, were you able to figure out the discrepancy in the numbers?

THE WITNESS: I came closer. Basically, if you turn to page 112 of my November 2012 report and look at eight-hour carbon monoxide --

DR. ADELMAN: Could you say what exhibit number that is?

MR. GROSSMAN: 112, I think he said. Is that correct?

THE WITNESS: I don't know the exhibit number. It's my report, November 2012.

MS. CORDRY: November 19th, 2012?
THE WITNESS: November 19th, 2012.
MR. GOECKE: Yes, 15(a).
MR. GROSSMAN: 15(a).
DR. ADELMAN: Thank you.
THE WITNESS: And it's Table 1-12. It should be at page 67. And if you look at the carbon monoxide eight-hour, the bottom table, which says urban, and you look at the home, what I've done, I've replicated it. If I take the urban and rural and average those, initially it was about 28 percent for the standard, and after I adjusted the queue according to the 32 versus 20, it only went up to like 29 percent. It didn't go up to 32, but what I'd like to suggest, if you agree, is to give an updated version of this, showing the actual calculations in writing so it can be replicated.
MR. GROSSMAN: All right. Are you talking about doing that now or doing that --
THE WITNESS: When I, in our next -- the next hearing.
MR. GROSSMAN: Okay.
MR. GOECKE: We'll bring it on Wednesday.
MR. GROSSMAN: Well, make sure in advance of that, why don't you, Tuesday --
MR. GOECKE: Circulate it.

MR. GROSSMAN: -- circulate it by e-mail. Thank you.
MS. CORDRY: Thank you.
THE WITNESS: But the statement I made here still stands, that as shown in this slide plus the adjustment I just made, is that these queue assumptions could be increased fourfold or more and it still would not threaten standards. The queue is -- the queues are not a big source at this gas station, not 2013.
So background treatments, we have used 2009 to 2011 as a basis for our background with the exception of fine particulates for the annual value that changed. And so if it's less than an annual period, we took the highest value that occurred, Arlington, Beltsville or Rockville, and as I mentioned before, this is going to tend to overstate. It's designed by EPA to overstate.
BY MR. GOECKE:
Q And so let's clarify that. So you took the highest levels found at one of three different locations over a three-year period?
A Correct.
Q And then used those as the background level for your air modeling analysis here?
A For every, yes, for every, for every receptor maximum, we used that value. We've already mentioned that

Parks and Planning requested the change. We made the change, and the 10.8 is --
MR. SILVERMAN: I want to object to that. That's hearsay and we don't have any documentation of it, that Parks --
MR. GROSSMAN: What's hearsay, sir?
MR. SILVERMAN: -- that Parks and Planning said one thing or another.
MR. GROSSMAN: Well, he's saying Parks and -- Park and Planning requested a change. It would be, well --
MS. CORDRY: Well, that's what we're saying is hearsay.
MR. GROSSMAN: Well --
MR. SILVERMAN: I mean, do they have a letter or do they have some --
MR. GROSSMAN: It's -- all right. You know, it technically is hearsay if you are using it to prove the truth of what is asserted; that is, it's a statement made outside this room, offering to prove that they requested a change. However, let's find out if there's a, if they requested it by document or not. Did they give you an oral request to change it, or did they give you something in writing that said to change it?
THE WITNESS: We had a meeting on -- I could get, identify the date -- we had a meeting at Parks and Planning,

and it was done orally, as I recall.
MR. GROSSMAN: All right. You're shaking your head. Does that mean you don't like the idea that he got instructed orally, or you don't like the idea that it would be admitted?
MS. CORDRY: Well, I have a concern because Park and Planning had huge concerns with the EPA, I mean, with the environmental numbers here and --
MR. GROSSMAN: Now, that's hearsay.
MS. CORDRY: Well, no. I mean, no, no. No, that is in their -- no, no. That's in their staff report. The --
MR. GROSSMAN: You see --
MS. CORDRY: -- staff report makes very clear that they have enormous concerns with that, and --
MR. GROSSMAN: I understand. I understand.
MS. CORDRY: -- and the notion that he's saying that they told him to use less conservative things, maybe it's true, maybe it's not, maybe he misinterpreted. That's exactly the reason --
MR. GROSSMAN: Well, I don't know. He hasn't said that yet. He said that Park and Planning requested a change. I don't know what exactly they requested yet. I guess we're going to find that out. The reason I'm going to let him testify about it is, it's not -- I'm not really

considering it for the point of what Park and Planning said, because whatever Park and Planning's opinion is, is going to be, I'm going to take from their report, which is a formal document.

MS. CORDRY: Then what's --

MR. GROSSMAN: The reason I want to hear what he has to say is the reason he changed something. So it's a different kind of thing. I'm not, I'm not asking for it to be introduced for the purpose of saying what Park and Planning believes because I'm going to take that from the --

MS. CORDRY: Well, I guess the question is --

MR. GROSSMAN: -- from the thing, but it would be why did he make a change in something. Well, he's saying Park and Planning asked him to do it, and so for that purpose I'm going to allow it in. So what did Park and Planning tell you to do and why?

THE WITNESS: Park and Planning made the recommendation that we reconsider our background PM trend in annual value because the standard changed, number one; and, number two, they had made, they had made contact to Washington Council of Governments and were provided with this figure, Figure No. 31, I jump to here, that shows the trend in annual PM 2.5 concentrations, and by 2011 they're showing a 10.8 as the background and we were using 12.1.

MR. GROSSMAN: And who was it in Park and Planning

who told you to do that?

THE WITNESS: Amy Lindsey.

MR. GROSSMAN: Okay.

THE WITNESS: And as this slide --

MR. GROSSMAN: I don't know Amy Lindsey, who she is. Is there a particular part of Park and Planning she's in, because the person who is handling this is Renee Kamen. So I'm not sure --

MS. HARRIS: It was a meeting with Renee Kamen and Amy Lindsey, who's part of the Environmental Division.

MR. GROSSMAN: Okay. And so it was your understanding, at least, from this conversation that Park and Planning wanted you to use the revised standard which is more in the area of 10 rather than 12? Is that the idea?

THE WITNESS: That's correct. They felt we should be consistent where, with where the Washington Council of Governments was at, at -- they were at 10.8 in the most recent finding they've had, and they provided me this graph that shows the trend line of the concentrations dropping, steadily dropping as a function of time, from --

MR. GROSSMAN: And when you say they, you mean technical staff of the Maryland-National Capital Park and Planning Commission?

THE WITNESS: Yes, sir.

MR. GROSSMAN: Provided you with this diagram

that's on -- what slide is this? Thirty-one?

THE WITNESS: Slide 31.

MR. GROSSMAN: Okay.

THE WITNESS: And it goes from around the turn of the century to 2011.

MR. GROSSMAN: All right.

THE WITNESS: So, in terms of the treatment of background, as I mentioned before, EPA has a very specific procedure that's followed in dispersion modeling. The EPA has what's called the Guideline on Air Quality Modeling. It's the standard of care, basically. And the guideline specifies under what conditions you should model other sources, and they're referring to, all sources expected to cause a significant concentration gradient in the vicinity of the source or sources should be explicitly modeled. Now, we've done that. We've modeled all the major roadways. We've modeled the parking lots. We overstated the Costco warehouse. So we have done what EPA requires, and we followed their procedures. There are no significant gradients caused by more distant sources that we should be modeling here.

So this is the set of what was modeled explicitly. That takes care of EPA's requirements, in our judgment. And we pulled the data ourselves on Rockville, Beltsville, and Arlington, and these are three-year running averages. So,

you know, 2007 would be the average of 2005, '06, and '07, and we're showing the trends, the smooth trends of how, how concentration is dropping from, this case, from 2005 to 2012.

MR. GROSSMAN: For the record, you're talking about concentrations of fine particulate matter?

THE WITNESS: Correct.

MR. GROSSMAN: Okay.

THE WITNESS: The y-axis is showing micrograms per cubic meter. The x-axis is showing 2005 to 2012. I'm showing Arlington in green, Beltsville in red, and Rockville in blue.

BY MR. GOECKE:

Q And why these three locations, Mr. Sullivan?

A These are the closest regional stations available that have measured the fine particulate data. It makes a triangle, more or less, around the Wheaton area. We -- data has become available for 2013. The number is down around, around 10. We can have that data available in the future if that's required, but the trend is continuing to drop, and we just have three months into 2013.

This shows how the standard has changed. It was at 15. It's dropped down to 12, and the concentrations themselves are still trending downward. By --

MR. GROSSMAN: This is the EPA standard?

THE WITNESS: This is the EPA standard right here.
MR. GROSSMAN: Okay.
THE WITNESS: The annual PM 2.5 standard went from 15 down to 12 end of 2012. So if you extend these trend lines into 2014, even 2013, you find it's continuing to drop. Our projection is that by 2014, that the trend lines will be less than 10. Time will show if that's true or not, but the trend is certainly going in that direction.
MR. GROSSMAN: Well, Rockville seems to have taken a turn for the worst.
THE WITNESS: There, actually --
MS. CORDRY: And so had Beltsville.
THE WITNESS: -- it did, but you know, in that one time here, but you'll see it dropped after that point, and --
MS. CORDRY: No, we don't see.
MR. GROSSMAN: Well, I don't see it dropped after that point on the graph.
THE WITNESS: You don't, no. I'm saying in 2013. We only have the first quarter right now --
MR. GROSSMAN: I see.
THE WITNESS: -- but it has, it has dropped.
MR. GROSSMAN: Okay.
THE WITNESS: Beltsville had a slight uptake right here.

MR. GROSSMAN: Yes, I saw that.
THE WITNESS: Beltsville has three monitors. They have two what's called reference monitors and one that's called a TEOM. The TEOM is not, is not as definitive as the reference monitors. The TEOM was, in 2010 or '11, I think it was '11, one of these years it became way higher than the other two monitors, and Beltsville, this value is biased because of that particular monitor. If a, if two reference monitors are reading 8.4 and your TEOM is reading 11.3, which is what happened, you know there's something wrong with that sensor.
So, like I say, there's bias in this Beltsville number for certain, but the trend is going down, and looking at the car turnover rate, there's no reason why it won't continue to drop over time. But anything past this point, yes, except for the first quarter of 2013; we don't have the data yet.
MR. GROSSMAN: Okay.
MR. SILVERMAN: Could you spell TEOM?
MR. GROSSMAN: Spell the word TEOM you used.
THE WITNESS: T-E-O-M.
MR. GROSSMAN: Does that stand for something? Is it some kind of an acronym?
THE WITNESS: I'm sure it does. I don't remember what it stands for, sorry. And that's the trend line from

the Washington Council of Governments that I showed earlier.
DR. ADELMAN: Could you read that y-axis for me? I just can't see it.
THE WITNESS: This one right here, sir?
MR. GROSSMAN: No, the y-axis.
DR. ADELMAN: No, the y-axis.
THE WITNESS: Oh, y-axis, I'm sorry. Design value, micrograms per cubic meter.
DR. ADELMAN: No, I mean the numbers.
THE WITNESS: It's going from 10.0 to 18.0.
DR. ADELMAN: Oh.
THE WITNESS: The first value shown here is 17.3.
DR. ADELMAN: Thank you.
THE WITNESS: Uh-huh. Now, just to show another example, this is LA, but just to show that, yeah, trends have dropped from 2001. You can see, this is a national trend, the fact it's the fleet issue. EPA is addressing fine particulates, mostly through fleet changes in cars and controls, and you know, it's not a steady change all the time, you get some flattening and dropping, but the trend is going, going down and clearly moving in the right direction.
MR. GROSSMAN: I see Los Angeles at the top. Why do you say it's a national trend?
THE WITNESS: National trend because it's the same fleet of cars, basically, throughout the country and the

cars have to meet EPA requirements. So whether they be in Chicago, Los Angeles, or Washington, the amount of particulates emitted from the cars each year will tend to drop as the old cars find a junkyard and new cars are purchased.
MR. GROSSMAN: All right.
BY MR. GOECKE:
Q And what's the significance of Los Angeles?
A I just showed that as an example. We could have pulled other cities and shown those as well. Some of these changes are due to the fact that the clean diesel technology is taking over. Some is due to tailpipe technology.
MR. GROSSMAN: I see a straight line across there labeled, what's that say, 24-hour? What does that say?
THE WITNESS: This is showing the -- the 35 is the 24-hour fine particulate standard shown right here.
MR. GROSSMAN: So that's the standard?
THE WITNESS: Right, and showing that this is dropping down below the standard. That's a 24-hour, 98th percentile. That's how you judge the standard. That's dropped below. This is showing the annual average relative to the standard in green. They're right about at the standard -- in this case, in 2011.
MR. GROSSMAN: All right.
THE WITNESS: Now, in terms, in terms of all these

concentrations we're talking about, we all can agree on certain things. We all can agree that fine particulates, for example, aren't healthy, they're an air pollutant, you want to have them low, but it's very important to consider the dose. Air pollution does not create adverse health effects at all concentrations. So if a medical doctor gets up on the stand and says that fine particulates are bad, we agree. Fine particulates are not healthy, but it does matter what the dose is. And to give you an analogy, let's say we're talking about your home. If you have a water leak --

MS. ROSENFELD: Objection, Mr. Grossman. We're wandering beyond standards and what air quality standards have or have not been met and into the health consequences of air quality.

MR. GROSSMAN: Well, I'll allow him to elaborate to the extent it's within his purview. If he goes beyond it, you can object. Right now, he --

MS. ROSENFELD: I just did.

MR. GROSSMAN: I knew you were going to say that. He hasn't really said anything yet. He said, for example, in the home, and then you objected. So we don't know what he's about to say yet. Let's hear that and then you can raise your objection.

THE WITNESS: And in my practice I compare model

concentrations to national standards and, in that case, dose. And my point is, in this particular matter, it seems to me that the significance of dose has been underestimated, understated, and my point is dose is important. And the example I was going to give to try to make it more concrete is that if you have a water leak in your home, water leaks are bad. If your 50-gallon water tank ruptures, you know, Servpro is in, tearing up your carpets, ripping up your floors, but we're talking about fine particulates. In this example, we have shown that the concentrations from Costco are 1,000 times less than the standard.

So my analogy of the 50-gallon water tank, if it was, you know, Costco, Costco would be a cup. This is six ounces. A cup is eight ounces. You have this much water. If that spilled on your floor, you could wipe it up. When we're talking about particulates relative to a standard, the standard -- the background is 10, is 10, and the modeling of Costco is .01, there is not a concern for fine particulates from Costco. Even though fine particulates are unhealthy, at that level, whether you're talking about ultrafines or just PM 2.5, you haven't achieved a dose that's unhealthy.

MS. ROSENFELD: And I renew my objection.

MR. GROSSMAN: Yes. I'm going to sustain it as far as the conclusion about whether or not it's unhealthy, but I'll overrule it to the extent the suggestion is that

it's a low amount compared to the standard. I mean, that's perfectly within his purview, but to the extent that it has a health aspect to it, the witness is not, does not claim to be qualified as a health expert. So I think it's a fair objection in that regard.

THE WITNESS: Well, as I'm saying here, EPA defines acceptable concentrations or dose with a reasonable margin of safety to protect the most sensitive members of the population, including asthmatics and children. The Clean Air Act specifically identifies them as sensitive subpopulations to be protected. So my point is, if the background is 10.8 and we go to 10.81, that's below the standard. If they're all to the standard, there is not a point of concern.

BY MR. GOECKE:

Q So is it your contention that the EPA standards take into consideration the health of the population?

A They do. They take into account the sensitive subjects. The asthmatics and the young children are the most susceptible, according to EPA's, you know, Clean Air Act.

Q And their standards are designed to protect those folks in the population?

A With an adequate margin -- with a reasonable margin of safety.

Q And that's based on the dose you were referring to a moment ago?

A Correct. My point is, to go from 10.80 to 10.81, according to EPA, that would not be a cause for concern.

Now, I'm not going to show all the plots and tables from my report, the November 2012 report, which was supplemented on January 16th of 2013. We have a lot of plots in there, and if you, anyone that wants -- if you want to see some of the plots, I'll be happy to put them up, but I'm showing a smaller subset in this presentation, and I'm basically showing what we're calling as the key locations. We're showing the closest home in Kensington Heights, and we're showing the Kenmont Swim & Tennis facility and the Stephen Knolls School because these are facilities that the neighborhood has expressed as being of concern. We've highlighted those in our report. I'm highlighting them here now.

MR. GROSSMAN: Now, are these concentration plots based on the model, or are these concentration plots based on actual tests in those areas?

THE WITNESS: Based upon the model.

MR. GROSSMAN: Okay. Were there any tests in those areas?

THE WITNESS: In terms of air quality testing?

MR. GROSSMAN: Yes.

THE WITNESS: There were no air quality measurements made in Kensington Heights --
MR. GROSSMAN: Okay. And what about --
THE WITNESS: -- or Wheaton Mall.
MR. GROSSMAN: -- the other places, Kenmont Swim Club or, or Stephen Knolls School?
THE WITNESS: There were no, there were no air quality measures taken at any of these locations.
MR. GROSSMAN: Okay.
BY MR. GOECKE:
Q And why didn't you take air measurements there?
A Well, I mean, we -- in order to take measurements for background, for example, to really have a definitive data set, you need three years of data, and it's not standard procedure to do so.
Q And by standard procedure, whose, what standard procedure?
A The EPA typically requires three years to assess background.
Q So you couldn't have gone out, taken a sample from these locations for purposes of the Costco study, and had data that was reliable under the EPA protocol?
A Correct. That's correct. So this summary table is showing the, it's showing the rural values at the pool, the school, and it's comparing the various standards we have

down in the bottom row. For example, carbon monoxide, one-hour maximum, the standard is 40,000.
MR. GROSSMAN: Why does it say rural concentrations? What does that mean?
THE WITNESS: Well, basically, when EPA has modeling, they refer to areas as being urban or rural, and it's not the same as common usage of the word. Rural will typically mean locations that have -- if you have lawns and you have driveways or you have your natural surfaces, that would be considered rural. Locations such as the mall, concrete and asphalt, and so forth, would be will be considered urban. And according to EPA's standard procedure, you look at a three-kilometer radius when you're making this definition. If you do that, it comes out as being rural, but if the concern is the closest home, the school, and the pool, they're right next to the mall, and so the preponderance of the flow is over urban conditions. Urban has greater dilution. So I'm showing urban here because for these receptors it's the most applicable, but when I do the overall concentration plots for the overall region, I'm using EPA's rural designations.
MR. GROSSMAN: Well, you said you're showing urban here, but it says up there you're showing rural.
THE WITNESS: Well, I, in this example here, I'm using the more conservative rural values.

MR. GROSSMAN: Okay.
THE WITNESS: Later on I show it both ways.
MR. GROSSMAN: Okay.
THE WITNESS: So I'm showing the pool and the school in these examples, and for example, carbon monoxide one-hour, the pool has 12,646. The standard is 40,000. All these numbers are below the standard. If I go to eight-hour, the highest one I'd see is 4500. Again, the standard is 10,000.
MR. GROSSMAN: Before you go on now, these numbers are based on the model of the background or the model of the background plus the proposed gas station?
THE WITNESS: It's the model of background plus the gas station --
MR. GROSSMAN: Okay.
THE WITNESS: -- plus everything we modeled exclusively. So it would be the ring road, Georgia Avenue, University, Veirs Mill, the parking lots for Costco, the queues, the various gas station sources, plus background.
MR. GROSSMAN: Okay.
THE WITNESS: Nitrogen oxide one-hour annual standard, it's a factor of two or so below the one-hour. It's quite a ways below the annual, in fact, shows seven or eight. PM 2.5 24-hour, EPA maintained the 35-microgram/cubic meter standard. It's under those values.

The contribution is fairly small, but it's, you know, these are the, these are the values. This is showing the background in this column, and the total is shown down here. And, lastly, PM 2.5 annual average, again, these rows are showing the contribution from the gas station sources, and here it's showing where we're at in terms of the overall values. So it's --
BY MR. GOECKE:
Q And --
MR. GROSSMAN: Wait a minute.
THE WITNESS: -- under the standard of 12.
BY MR. GOECKE:
Q And so --
MR. GROSSMAN: Now I'm a little confused here. The last column is what? It says background.
THE WITNESS: This, this includes the 10.8-microgram background right here. I just clarified that we used the updated background value.
MR. GROSSMAN: I see.
THE WITNESS: This row, the row right, the row -- the first row is showing the incremental concentrations from the Costco gas station to the pool and the school. Here's the background that applies to both of them. Then we're showing the totals, which include the background plus the modeling, in these two rows right here.

MR. GROSSMAN: I see, okay.
THE WITNESS: The standards are all down here. So the PM 2.5 annual comes the closest to the standard. You know, we're at -- with this rural one, we're at around 11, right here. It's very small for the urban, but the standard is 12. It's less than the standard. The contribution is relatively small even in the rural approach.
So the main point is, it's not threatening any of these standards. If you look at these values down here relative to the standards, it's not close. It is closer here, but the contribution is very small --
MR. GROSSMAN: All right. By --
THE WITNESS: -- it's the background that's high.
MR. GROSSMAN: Okay. So by here, you're referring to the last column, which, which shows the particulate matter, the fine particulate matter annual average?
THE WITNESS: Correct.
MR. GROSSMAN: And your point is that it is close but not over the standard, including when you include the background, but if you take the gas station contribution by itself, which is the first two rows --
THE WITNESS: Correct.
MR. GROSSMAN: -- and this is Slide 36 --
THE WITNESS: Right.
MR. GROSSMAN: -- that contribution is very

small --
THE WITNESS: Correct.
MR. GROSSMAN: -- .13 and .18?
THE WITNESS: And this is run in the rural mode, which really is more conservative. It's a very conservative way to present the data because these locations are right next to the mall --
MR. GROSSMAN: Okay.
THE WITNESS: -- very close.
BY MR. GOECKE:
Q And just for the record, if you could just walk us through what the standard is and how it compares to the highest level that you found for each of the contaminants that you analyzed.
A And I'll focus on the bottom three rows of Exhibit, page, rather, 36.
Q Okay.
A For carbon monoxide one-hour maximum, the school and the pool both were under 15,000 micrograms per cubic meter. The standard is 40,000.
Q And, again, those levels beneath 15,000 include what exactly?
A This includes all the gas station-related sources, the cars traveling to get to the gas station by the roadways, would include idling at the gas station, travel on

the ring road, Veirs Mill, University, and Georgia Avenue.
Q It doesn't include background?
A And it includes the background of 1488.
Q Thank you.
A For carbon monoxide eight-hour, the standard is 10,000; highest values are in the range of 4500 to 4700 micrograms per cubic meter. It's based upon a background of 1145 micrograms per cubic meter, again, relative to a 10,000-microgram-per-cubic-meter standard.
Q So it's less than half of the EPA standard?
A Correct.
Q Okay.
A NO2 one-hour is approximately, well, a little less than half of the standard. The standard is 190. The pool is showing 82 micrograms per cubic meter. The school is showing 91 micrograms per cubic meter with a background of 28.
Q And, again, that includes all the same activities at the proposed Costco site that you referenced a minute ago?
A Correct. These numbers include all the modeling of all the sources. This isn't just incremental Costco. This is incremental Costco plus all the traffic around the area as well.
NO2 annual average --

MR. GROSSMAN: Wait a minute. Now you got me again. I thought that the final column, for example, if we're talking about particulate matter, was the Costco gas station contribution. Now you're telling me that those top two rows are not just the Costco gas station contribution model but include other things.
THE WITNESS: It does. It's the modeling of all the roadways and all the sources plus background. Well, this is not the background. This is modeling -- this is directly from the model, all these values.
MR. GROSSMAN: All right. So the model values you're talking about for pool and school of .13 and .18 for fine particulates, that's PM 2.5 --
THE WITNESS: Right.
MR. GROSSMAN: -- includes not just the anticipated pollution from the gas station but also the traffic generated, I take it, by the gas station as well as other things?
THE WITNESS: All traffic on Georgia Avenue, Veirs Mill, University. This is the total modeling.
MR. GROSSMAN: And then background includes -- if that includes all the traffic for Veirs Mill and University and so on, what does background include? Doesn't background also include that?
THE WITNESS: Well, background is the regional

background that we're adding on to everything we modeled. If you recall, I mentioned that EPA's methodology requires the adding on the regional background.

MR. GROSSMAN: The regional, okay.

THE WITNESS: So we conservatively take the high values, add those in, and this includes everything else that was modeled --

MR. GROSSMAN: Okay.

THE WITNESS: -- including the Costco gas station.

MR. GROSSMAN: Okay.

BY MR. GOECKE:

Q And that background, again, that comes from the three sources: Arlington, Beltsville, and Rockville. Is that correct?

A The three monitoring locations, correct.

Q Three --

MR. GROSSMAN: The background does?

THE WITNESS: Correct.

BY MR. GOECKE:

Q The background comes from those three monitoring locations. And those, and they -- do they take samples at those three locations?

A They, yes, they monitor there all the time.

Q Okay. And then they used those monitoring results to establish what the background level is for this area?

A That's what we -- we based our background based upon the state's monitoring data that's been collected at those three locations, two of which are monitored by the Maryland Department of the Environment and one in Arlington, which was monitored by the Virginia Department of Environmental Quality.

So we got about to NO2 annual average. Again, the modeling of all the sources, we're showing a six and an eight, a background of 6.8; totals shown of 13 to 15 or so micrograms relative to a 100-microgram-per-cubic-meter standard. And finally, for PM 2.5 24-hour, the total modeling for the school and the pool with background and all the sources, 28.6 and 28.7 relative to a 35 standard. And finally, the PM 2.5 annual average, with background and all sources included, I was showing 10.9 to 11.0 and that again is based upon a background of 10.8.

MR. GROSSMAN: I notice you don't show the volatile organic compounds in this chart.

THE WITNESS: Correct.

MR. GROSSMAN: Is there a particular reason for that?

THE WITNESS: There's no standard.

MR. GROSSMAN: Okay.

THE WITNESS: In the report we show, we show risk relative -- we show risk later on, too, in terms of risk per

million, which is the standard way to show it, and we can compare that to the California reportable level of 10 as a benchmark, but there's no National Ambient Air Quality Standard for VOCs in terms of specific toxics we're looking at here.

MR. GROSSMAN: Okay.

THE WITNESS: So now we're looking at the annual average concentrations, and we did it both ways here. We used urban and rural, but the main point to make here -- and I want to focus now on the urban, which is the more applicable for these three receptors -- is that we're showing in blue existing sources, and green -- it's hard to see it, it's small -- is the pipeline, which would be, at this point in time we did these, these would be Dick's and it would be Costco's warehouse, which hadn't opened, and the incremental would be the Costco gas station. You can't see the other values because the blue is dominating here.

BY MR. GOECKE:

Q Is the existing another way of saying background?

A Existing is background plus modeling of existing sources, you know, the Veirs Mill and Georgia Avenue and so forth. The point, we talk a lot about fine particulates. The issue is a regional issue. It's a Wheaton issue, to some extent, because of the traffic that's there, but it's really not an incremental Costco issue. It's a very small

addition, and also, it's -- the numbers now are less than the standard.

Q And so the red sliver at the top of each of those, those bars represents what exactly?

A That would be the gas, incremental gas station sources. This is the party we're talking about right here, the Costco gas station. The green would have been, at this point in time, the Costco warehouse and that would have included Dick's. The blue is, again, it's going to be background plus the modeling of existing sources.

Q And these would be in terms of exposures to whom?

A This would be the exposure at the closest home --

Q Yes.

A -- in Kensington Heights, the school, as well as the Kenmont pool.

Q And so even when you add the emissions from the Costco operations and the mall and you add it to the background level, it still is falling below the annual particulate standard?

A Correct. The main point of this slide is, most of the activity is from existing sources. The contribution from the pipeline and the incremental sources is a very small contribution --

Q Yes.

A -- and they're all below the standard. And we

have this for each of the pollutants. This is showing eight-hour CO. You can see them a little bit better here because they're more defined. You see the background in blue. This is urban. I'm looking at Slide 38, and it's showing micrograms per cubic meter on the y-axis; again, the home, the school, and the pool; and you find that the concentration is well under the standard. The contribution of incremental is 7.12 percent for home, .74 percent for the school, and 3.2 percent for the pool. This does not show levels of concern relative to the standards. Doing an assessment for the Clean Air Act, getting a permit for an industry, if you show values like this, that's considered acceptable.

NO2, again, we're looking at annual in this example, but we're showing urban on the left, rural on the right. They're low in both cases, dominated again by the background existing sources. And the incremental sources, again, are a small contributor, much like the other.

Q And what is the percentage contribution from the Costco operations?

A The school, the incremental -- the home, rather, I'm sorry, is 1.18 percent. The incremental contribution to the school, incremental Costco gas station, is .06 percent, and the pool is .30 percent contribution.

Q Yes. And that's under the urban concentration --

A Correct --

Q -- on Slide 39?

A -- slightly different for the rural, and it goes from -- for example, the home, we went from being 1.12 percent to 2.02 percent.

Q And can you explain again why it's higher on the rural concentration slide?

A Under the rural mode of the model, your dispersion is less. There's less dilution from the atmosphere, so higher concentrations, but as we'll show when we have time, when we get to the point of looking at the terrain analysis, the mall is a very warm source compared to the surroundings. Hotter has greater heat capacity; it has greater mixing potential to dilute pollutants into the surrounding land, and that's why the urban coefficients very much apply under that circumstance. But either way, it's well under the standards, but they're lower with the urban.

MR. GROSSMAN: Leave that. I'm just looking on page 12 of the technical staff report; that's Exhibit 70. Here's the first paragraph: Staff reviewed three of the six pollutants associated with automobile idling or mobile sources since the anticipated queues of vehicles waiting to purchase gas are not typical of a gas station. Staff reviewed CO, PM 2.5, and O2 and found that while the CO emissions are well below the NAAQS standards for the maximum

one-hour standard, they will create a CO hot spot similar to those created at intersections. However, unlike an intersection hot spot, which dissipates over a wider area, the hot spot created with this gas station will not dissipate as quickly and will be a true hot spot, circular in nature, centered around the area that is associated with the queuing. And I'll get to the next paragraph in a second. Would you respond to that?

THE WITNESS: Yes. I mean, I testified during the hearing, Parks and Planning, that that statement was incorrect, that this particular area, with the asphalt, concrete, and all of the structures present at that location, it was an urban-type land use, it would have had greater dilution than a rural area would have, and that the statement really was not, was just not on target, it was incorrect.

MR. GROSSMAN: Do you know what the source of that conclusion was? They said see Attachment 8. Oh, I don't have the attachments here, but we do have them in this. Attachment 8 -- and this is from Amy Lindsey, who apparently must have been the one to reach that conclusion -- according to what Ms. Lindsey says in here, she looks at the eight-hour CO concentrations and comes to this conclusion. Did you look over Ms. Lindsey's report, this Attachment 8 to the staff report?

THE WITNESS: Yes, I did.

MR. GROSSMAN: Okay. And so where did she go wrong?

THE WITNESS: Well, I mean, if you look at this Slide 38, going back to eight-hour carbon monoxide --

MR. GROSSMAN: Yes.

THE WITNESS: -- what she was, I believe, referring to, you see that, first of all, it is an urban setting and she, when we -- Ms. Lindsey, during her testimony, did indicate that she did not have experience with this, with that sort of designation, urban/rural, and didn't have a lot of modeling experience. The issue was, when she said it was a hot spot for CO, showed the concentration is, you know, at 20 percent of the standard. It's nowhere the -- it's five times less than the standard is, and there's far less than the CO concentrations along Georgia Avenue and other locations with heavy traffic. So her statement just was in conflict with the actual evidence.

MR. GROSSMAN: All right. The next paragraph on paragraph 12 of the staff report says: Additionally, the proposed gas station will create a hot spot in NO2 emissions, and even though the incremental addition will dissipate across a small area, it could be a cause for concern of the nearest residents. The nearest residents will be directly impacted by the CO and NO2 emissions, and

then she goes back to Attachment 8. The proposed gas station, therefore, will bring emissions directly into a neighborhood, and these emissions will not dissipate as they would along a transportation corridor. Can you respond to that?

THE WITNESS: I mean, it's just, it's just incorrect. In terms of if you're looking at the gas station property and look at the flow towards the neighborhood, down the hill towards Kensington Heights, first of all, it's traveling past a forested or wooded area that I mentioned would create, I didn't say a lot, but 10 or 15 percent further dilution, and that can be justified by the literature. So it would have more dilution, and plus, on its way down there, while it's traveling over the mall property, it would be getting an enhanced mixing because of the fact that that surface is so much warmer and more thermal than the natural surface. The model doesn't, has not even quite taken full credit for that. So her comment was, with all due respect, was confused and was not consistent with the, with the evidence at hand.

MR. GROSSMAN: All right.

BY MR. GOECKE:

Q Is this sort of like you were talking about dose before and Ms. Lindsey is saying that there's going to be an exposure to the neighborhood but it's --

A Well, that, that's a good point because, in looking at the NO2 again, when she brought that up as a concern, and we have a value way down here -- I mean, I'm looking at Slide 39, looking at the closest home, the urban concentrations -- and the value is substantially less than 20. The standard is 100, and the incremental is a little sliver. So to conclude that the gas station is causing a point of concern for that home relative to established standards just is, is not correct.

Q Would the incremental contribution from Costco create a hot spot?

A No.

Q What's a hot spot?

A Well, a hot spot is defined several different ways, but it's a lot of times defined in transportation planning as an area from traffic creates a hot spot, like the HOT lanes on 395 or major construction projects. Also, it's used sometimes in the context of air toxics for an area that has particularly high levels of concentrations, such as near maybe a particular chemical factory. But in this context, nothing happening at this Costco gas station can be construed as any kind of a hot spot.

Q Maybe it makes sense now to talk about your terrain study.

A We can.

MR. GOECKE: How long are we going to go today, Mr. Grossman?

MR. GROSSMAN: Well, we usually aim for 5 o'clock. Is there --

THE WITNESS: We have no time.

BY MR. GOECKE:

Q Then we probably shouldn't start this.

A Yeah. That's going to take more than 10 minutes.

Q Yes.

A Well, should I just continue with the current slide set?

Q Let's go back to Slide 39, I think we're on.

MR. GROSSMAN: Sure.

THE WITNESS: Okay.

MR. GROSSMAN: I mean, how much longer do you anticipate Mr. Sullivan's testimony will be?

MR. GOECKE: Overall?

MR. GROSSMAN: Yes.

MR. GOECKE: On direct, we are more than halfway through the slide presentation. So what time did we begin? 1:15. We've gone --

MS. CORDRY: He didn't start until 2:00.

MS. HARRIS: I thought you started at 2:00.

MR. GOECKE: We started at 2:00, I'm sorry. So we've gone for a little under three hours. I don't think

it'll take another three hours, but I would think it's going to take at least another hour and a half.

MR. GROSSMAN: We can't squeeze him in in the next 10 minutes, in other words?

MR. GOECKE: We cannot. We cannot.

THE WITNESS: I have to talk very, very fast.

MR. GOECKE: It gets even more confusing if we go that fast.

MR. GROSSMAN: All right. All right then, yes, let him continue on until 5:00.

BY MR. GOECKE:

Q Let's talk about noise.

A Okay. In terms of noise, we did two things. One is we did noise monitoring at the Sterling gas station to get an indication of a very similar gas station what the noise levels were and also did modeling of the noise levels. As a summary here, we showed that the noise levels were below the County ordinance, weren't particularly high. The maximum modeled value was, on an average day/night value, with a nighttime penalty, was 54.3 decibels. The ordinance, you know, was, I guess, 65. Now, the more recent ordinance that we saw, it does show, if it's a, a residential area, 65/daytime, 55/nighttime. It's below those values. And for like the pool, which is non-residential, it was 67 to 62 decibels, and it's below that as well.

So basically, we show with the modeling that the values are in range, including after making the relocation for the gas station. And from modeling the, all of the incremental sources, modeling Dick's, modeling Costco's warehouse, and the gas station operations, adding that onto background, we found values that were below the County ordinance level.

Q And how did you go about modeling the noise levels?

A Used a traffic noise model and set it up such that we would -- dealt with queuing based upon using a two-and-a-half-mile-an-hour traffic speed, and we dealt with the ring road, we conservatively did that at 30 miles an hour to get more, relatively more noise, and had parking lots covered, as well, in that particular model. The actual contribution above background was, was quite small. It was not a large contribution. And we showed the results with and without the inclusion of the acoustic wall, which has been termed now a screening wall, but it does have acoustic properties which will reduce noise levels.

Q And so what do these levels show us? Is this with the acoustic wall or without?

A This, this, the maximum would be -- I believe this is without, and the staff asked us to do what's called LDN, which has a penalty of, a decibel penalty of, I believe it's

five decibels during the nighttime hours of 10:00 to 7:00, I believe is the time period. We did the LDNs as requested, and again, it came out to be under the standards.

Q So the 54.3 decibel level, that's the highest level that you modeled?

A Correct, and I can show the values. I have them in -- let's see here. Maybe I don't have them in here. I just have a summary slide. We certainly, if we need to get back to it next time, we have the report, we can go through and show the modeling of isolines. I don't have them in the particular display. Noise ended up being such a low impact -- and County staff actually did agree that it was a low impact -- we didn't put a lot of slides in here, but we certainly can present more on Wednesday if that would be helpful.

Q So, but according to this summary, even without the green screen or acoustic wall, your modeling shows that the noise levels will be below the County ordinance levels?

A Correct.

Q Okay.

A For odors we, we, as I mentioned, we did odor testing at the Sterling facility and we did odor background sampling at Kensington Heights. The values were not all that different once you get an approximately 2 or 300 feet from the Sterling fueling area, more on line with the

distance of the homes in Kensington Heights. The values aren't all that particularly different based on the odor lab's analysis.

I was at the study. I can tell, yes, sometimes at Sterling we did smell gasoline odors, we did, particularly in one instance in the wintertime, but that station, again, did not have vent control, and you know, if we did have vent control, we would not have smelled any odors at the 300-foot level. We'll show values later that the distances from the pumping area to the closest home is on the order of about 290 feet if you just measure it off with a map. It's a little bit closer to the three entry ports to the underground tanks, probably 230 to 270 or 80 feet or so, but what we're finding with Sterling and once we applied a twofold dilution factor, we were not finding odors at that distance, and that's based upon the wintertime, and we had, we had greater odors in the summer. In the summertime, the study we did then, we found, again, at about, you know, 70 feet or so, we were not detecting odors. Better dispersion conditions were there, less odors.

MR. GROSSMAN: Now, you actually did some testing there and sent it over to a lab, is that correct?

THE WITNESS: We tested with a bag sample, sent it to a lab, and used the field olfactometer, which allows us to dilute and see what dilution we need to not detect the

odor.

MR. GROSSMAN: Now, with the noise measurement, was that totally modeling?

THE WITNESS: No. We monitored the noise levels at Sterling --

MR. GROSSMAN: Sterling? Okay.

THE WITNESS: -- and could then compare it to the modeling we did for the Wheaton gas station. They were corroborative --

MR. GROSSMAN: Okay.

THE WITNESS: -- they were similar magnitudes.

Now, as I mentioned earlier, now, Wheaton will have odor control which will greatly reduce the odors, and as the -- in the next two to three years, Maryland expects to remove what's called the incompatibility period. Right now, some of the cars have on-board canisters, some do not, and what's called Stage II, which has the vapors from the cargo back into the underground tank, there's an incompatibility penalty that we put in our calculations. In about two or three years, when they remove the Stage II and especially as time goes on, as the fleet turns over, we would expect a 4x reduction in odor compared to what we would have measured in Sterling for two reasons. One is due to the vent, the vent control, the second being due to the predominance of on-board canisters.

So, in summary, for odors we do not -- we expect any odors past the ring road to be rare. I'm not saying it's not, it won't happen. It could happen, rare, and in two, three, four years, it would become more rare over time. As the canister technology takes over, the penalty with Stage II incompatibility goes away; the odor control will be stronger over time, better control.

This is just showing some perspective on where the vents are located and the three ports to fill the underground tanks. I show the closest home is here. We're showing the distance as --

MR. GROSSMAN: Here being due south of this site.

THE WITNESS: Yes, I'm sorry. Due south was the closest residence.

BY MR. GOECKE:

Q And this is Slide 43.

A Correct.

Q The pumping area is, again, 290 feet. The vent is 270 feet, and the fill, anywhere between 230 and 260. And, again, for perspective, in Sterling, at 317 feet away, we would, we had detectability in one sample and at two dilutions there was no detectability. That's why we do not expect to have odors here except on rare occasions, and it should improve over time.

This is showing us we did the analysis in Sterling

and distances that we used, and this is showing us what's called the hedonic scale. That scale goes from minus 10 to plus 10. Minus 10 is the worst odor you could imagine. Ten is the best perfume you can buy. Zero is in the middle. Zero is neutral. And we found on the hedonic scale, it was on the order of minus .2 to minus 1.2 for the gas station. It was fairly similar in Kensington Heights. There's a lot of -- obviously, there's a lot of traffic there as well. So, yeah, it was, it was similar. The data is in our reports.

MR. GOECKE: And I think this may be a good point to break, Mr. Grossman.

MR. GROSSMAN: All right. So our next session is on Wednesday, the 19th of June. Don't forget, it's upstairs, seventh floor, council hearing room. Go up to the seventh -- for those of you who have not been there, go up to the seventh floor elevator and make a right turn, and when you get to the window, stop, make a sharp left, and there's a door there. You enter in that door, and once again, we're at 9:30. Do we have any other matters that, of an administrative sort, that we need to talk about? Ms. Harris, any --

MS. HARRIS: There's a screen in that room, I believe, correct, or should we just make sure we bring all the equipment up?

MR. GROSSMAN: Let's bring the equipment. I think that my administrative staff is going to store some stuff for you --

MS. HARRIS: Yes. Okay.

MR. GROSSMAN: -- but there is a screen there. I don't know how it functions or if it functions at this point because I don't use that room for hearings or for the council in general. Any other administrative matters that anybody has?

(No audible response.)

MR. GROSSMAN: Seeing no hands, we are adjourned until June 19th.

(Whereupon, at 5:02 p.m., the hearing was concluded.)

C E R T I F I C A T E

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

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

By:

Wendy Campos, Transcriber

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