

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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

A hearing in the above-entitled matter was held on 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:

Patricia Harris, Esq.

Mike Goecke, Esq.

Lerch, Early & Brewer, Chartered

3 Bethesda Metro Center, Suite 460

Bethesda, Maryland 20814

For Kensington Heights Civic Association:

Michele Rosenfeld, Esq.

The Law Office of Michele Rosenfeld, LLC

11913 Ambleside Drive

Potomac, Maryland 20854

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Stephen Gang				
By Ms. Rosenthal:		11		141
By Dr. Adelman			100	
By Ms. Duckett:			109	
By Ms. Harris:				132
By Mr. Silverman				144
David A. Sullivan				
By Mr. Goecke:	153			

E X H I B I T S

Exhibit No.		Marked/Received
169	CD of highlighted sector plan	8
170	June 17, 2013, letter from Michele Rosenfeld to Renee Kamen	9
170(a)	Memorandum supporting June 17 Rosenfeld letter	81
171	Aerial photo from Case S-2794	142

P R O C E E D I N G S

1 MR. GROSSMAN: This is the sixth day of a public  
2 hearing in the matter of Costco Wholesale Corporation, Board  
3 of Appeals No. S-2863, OZAH No. 13-12, petition for a  
4 special exception pursuant to Zoning Ordinance Section  
5 59-G-2.06 to allow petitioner to construct and operate an  
6 automobile filling station which would include 16 pumps.  
7 The subject site is located at 11160 Veirs Mill Road, Silver  
8 Spring, Maryland. That's Lot N, 631 Wheaton Plaza, Parcel  
9 10, also known as the Westfield Wheaton Mall, and it's zoned  
10 C-2, general commercial. The hearing was begun on April  
11 26th, 2013, resumed on May 1, May 6, and May 23 and June 4,  
12 2013. It was noticed to resume again today. The next  
13 session will be -- has been noticed for Wednesday, June 19.  
14 That will take place in the seventh floor council hearing  
15 room in this building, COB, at 9:30 a.m.  
16 This hearing is conducted on behalf of the Board  
17 of Appeals. My name is Martin Grossman, Hearing Examiner,  
18 which means I will take evidence and write a report and  
19 recommendation to the Board of Appeals which will make the  
20 decision in this case. Will the parties identify  
21 themselves, please, for the record?  
22 MS. HARRIS: Good morning. Pat Harris --  
23 MR. GROSSMAN: Ms. Harris.  
24 MS. HARRIS: -- with Lerch, Early, & Brewer on  
25

1 behalf of the applicant, Costco.  
2 MR. GROSSMAN: All right.  
3 MR. GOECKE: Good morning. Mike Goecke, also on  
4 behalf of Costco.  
5 MS. CORDRY: Karen Cordry with the Kensington  
6 Heights Civic Association.  
7 MS. ROSENFELD: Michele Rosenfeld, counsel to  
8 Kensington Heights Civic Association.  
9 MR. SILVERMAN: Larry Silverman with Stop Costco  
10 Gas Coalition.  
11 DR. ADELMAN: And Dr. Mark Adelman for the SCGC.  
12 MR. GROSSMAN: All right.  
13 MS. ADELMAN: And Abigail Adelman, chair of  
14 Rockville Stop Costco Gas Coalition.  
15 MS. DUCKETT: Eleanor Duckett, Kensington View  
16 Civic Association.  
17 MR. GROSSMAN: Okay. Are there also others here  
18 who wish to be heard today?  
19 (No audible response.)  
20 MR. GROSSMAN: I see no, no other hands; so we  
21 will proceed with the usual cast of characters. All right.  
22 Let's first deal with a few preliminary matters before we  
23 resume with Mr. Gang's cross-examination. I wanted to  
24 mention on June 11 I sent an e-mail, which is now in the  
25 record as Exhibit 166, requesting a supplemental needs

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

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

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

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1 165 in the record; applicant's notice letter to technical  
2 staff regarding proposed plan changes, Exhibit 163; received  
3 an opposition letter from a Karen Richardson, Exhibit 164.  
4 And, also, I see that Ms. Harris's plan with wall detail has  
5 now been made Exhibit 168, and I believe there was some  
6 additional e-mail changes on Sunday and maybe this morning  
7 which have not yet gotten into the exhibit list. And I  
8 understand from Ms. Harris's e-mail that the parties --

9 MS. ROSENFELD: Excuse me.

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

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

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

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

19 MR. GROSSMAN: Okay.

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

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

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

3 MS. ROSENFELD: Yes, you did.

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

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

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

17 MS. HARRIS: Okay.

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

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

23 (Exhibit No. 169 was marked  
24 for identification.)

25 MR. ESHAVE: No.

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1 MR. GROSSMAN: All right.

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

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

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

12 MR. GROSSMAN: Okay.

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

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

19 (Exhibit No. 170 was marked  
20 for identification.)

21 MS. ROSENFELD: That is.

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

24 MS. HARRIS: No. Thank you.

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

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

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

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

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

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1 THE WITNESS: Right.  
2 MR. GROSSMAN: -- so we'll strike that portion of  
3 your answer, but let's --  
4 THE WITNESS: Right, and that's why I don't know  
5 how to answer that.  
6 MR. GROSSMAN: Well, I don't know that the  
7 question goes to why the wall was there, or proposed to be  
8 there, I should say. It goes to your evaluation of the  
9 wall's existence, if it is put there, in connection with  
10 sector plan compliance. So that's really the question.  
11 Does the, if the wall -- let's put it this way --  
12 THE WITNESS: Right.  
13 MR. GROSSMAN: -- if the wall is erected in the  
14 way it was originally proposed, without the extension, the  
15 40-some-odd-feet extension to it, would that be consistent  
16 with the sector plan or not?  
17 THE WITNESS: And the reason I don't know how to  
18 answer that, because there is no discussion about any  
19 additional wall. There's an existing forested buffer within  
20 that area. If the wall assists in the purpose of the  
21 buffer, forested buffer, then the answer would be yes, but  
22 there is no discussion about additional buffer requirements  
23 between existing Kensington Heights and the mall.  
24 MR. GROSSMAN: All right. And does that same  
25 answer apply to the wall if it is extended for the -- is

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

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1 MR. GROSSMAN: Okay.  
2 BY MS. ROSENFELD:  
3 Q I believe in your report you concluded or you  
4 stated that the overall square footage of the special  
5 exception area is 37,754 square feet, is that correct?  
6 A Yes, it is.  
7 Q And that is less than but close to an acre in  
8 size, is that correct?  
9 A It's less than an acre in size, yes.  
10 Q All right. I'd like to bring your attention back  
11 to the photographs which are Hearing Examiner's Exhibit No.  
12 160 that were introduced when you testified the last time.  
13 Do you have a copy of those?  
14 A Yes, I do.  
15 Q Okay. Would you look at Site No. 28, Montgomery  
16 Blair High School? Do you have that?  
17 A I have it in front of me.  
18 Q Okay. Do you know if a 37,754 square-foot gas  
19 station would fit at that location on, on the property  
20 that's shown with an existing gas station?  
21 A Can you rephrase the question, please?  
22 Q Do you know if the property that's shown as Site  
23 28 is more or less than an acre in size?  
24 A Do I know by fact, by record plat? The answer is  
25 I do not know.

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

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1 Q Do you know if the --

2 MR. GROSSMAN: Ms. Rosenfeld, let me interrupt

3 you. How would whether a wall can be accommodated on other

4 sites really impact on what I have to review here?

5 MS. ROSENFELD: To the extent that these locations

6 have been shown as corollary to the subject property. There

7 are two components to the gas station. One, of course, is

8 the fueling station itself, and where there are adjoining

9 residential properties, the zoning ordinance requires a

10 wall. So it's an integral component of what's required. I

11 believe and I expect to show that these sites are really

12 apples and oranges, that they don't accurately compare with

13 the subject property that's before you for consideration.

14 MR. GROSSMAN: You may proceed.

15 BY MS. ROSENFELD:

16 Q Site 30, do you know the square footage of either

17 of those sites?

18 A No, I do not.

19 Q And do you know if they could accommodate a wall?

20 A These I do not because I do not know the setbacks

21 off of Bel Pre Road.

22 Q Okay, thank you.

23 MR. SILVERMAN: Could the witness speak up? We're

24 having a little trouble hearing.

25 THE WITNESS: Sure, I'll be happy to speak up.

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1 MR. SILVERMAN: Thank you.

2 THE WITNESS: I'm trying a little change of pace

3 from last time.

4 BY MS. ROSENFELD:

5 Q And I have the same questions for Site 48 and 49

6 at Veirs Mill Road and Kensington Boulevard in Wheaton.

7 A Sure. I do not know the size of those parcels,

8 and a wall could be accommodated.

9 Q And Site No. 51, 20650 Frederick Road?

10 A Well, if you'll turn to the pictures on 51, you

11 can see there's a fence that's a wall that met the zoning

12 ordinance requirements. I do not know the size of -- I take

13 that back. Just curious. If you'll hold on for one second.

14 The parcel on 51 is 52,000 square feet.

15 Q And I have the same question for Sites 44 and 45

16 at Democracy Boulevard and Westlake.

17 A I'm sorry, 40 and 45 I do not know.

18 Q And do you know if it would accommodate a wall?

19 MR. SILVERMAN: Michele, could you speak closer to

20 the mike --

21 MS. ROSENFELD: Oh, sure.

22 MR. SILVERMAN: -- please?

23 THE WITNESS: Could it accommodate a wall?

24 MR. GROSSMAN: I don't know that the --

25 MR. SILVERMAN: That's the problem, the mike is

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1 not going to reach.

2 MR. GROSSMAN: Yes. The mike is not amplifying

3 your voice within the room --

4 MS. ROSENFELD: Okay.

5 MR. GROSSMAN: -- as far as I know. Is it?

6 COURT REPORTER: No.

7 THE WITNESS: Could it accommodate a wall on 44

8 and 45? The answer is yes.

9 BY MS. ROSENFELD:

10 Q And for Site 47 at Coddle Harbor Lane and Seven

11 Locks?

12 A Could it accommodate a wall? Yes.

13 Q And do you know the square footage of that

14 property?

15 A No, I do not.

16 Q And Site 36 at University Boulevard and Lexington

17 Street?

18 A Well, the picture shows a wall. So the answer is

19 yes, and I do not know the parcel size.

20 Q And I believe the final location is Site 43 at

21 Georgia Avenue and Blueridge, and there are two stations

22 there. Do you know the square footage at the property for

23 either of those stations?

24 A No, I do not.

25 Q And do you know if either one --

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1 A These, they have buildings as, you know, sitting

2 on the property lines. So, you know, in reference to the

3 wall that is being proposed at this filling, at the proposed

4 filling station, the answer is probably no on those because

5 there's another form of, of buffer in the context of where

6 they are.

7 Q Okay, thank you.

8 A You're welcome.

9 Q In evaluating the distance between the proposed

10 special exception and the nearest residences, did you take

11 into account the homes that had been approved under a

12 project known as Mount McComas?

13 A Sure.

14 Q And what is the distance?

15 A Sure. In my planning report, I think my planning

16 report had 20, and I think, you know, I had mentioned, you

17 know, if we count, there's eight. So the, I'm trying -- so

18 the answer is yes, in my planning report, it did account for

19 Mount McComas being approved.

20 Q And what is the distance to the nearest proposed

21 home in Mount McComas?

22 A I don't know that because I don't have the plans

23 in front of me.

24 Q Do you know if it's closer or more distant than

25 the existing homes, than the nearest existing home?

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

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1 MS. ROSENFELD: I'm not sure. His copy is not the  
2 same as mine.  
3 MR. GROSSMAN: I see.  
4 THE WITNESS: It is the same. It's just -- where  
5 are we? Right here?  
6 BY MS. ROSENFELD:  
7 Q Yes.  
8 A Okay, I got it. Thank you.  
9 Q All right.  
10 MR. GROSSMAN: So what page?  
11 MS. ROSENFELD: Page 8.  
12 THE WITNESS: It's the same place. It's just,  
13 fills it up, yes.  
14 MR. GROSSMAN: Yes, but I can't recall the page.  
15 MS. ROSENFELD: Page 8.  
16 MR. GROSSMAN: 8? Okay, thank you.  
17 THE WITNESS: Thank you.  
18 MR. SILVERMAN: Mr. Grossman? Excuse me, Mr. --  
19 MR. GROSSMAN: Yes.  
20 MR. SILVERMAN: Would you ask Mr. Gang to speak a  
21 little bit louder too? When the system is working, it cuts  
22 down on volume.  
23 MR. GROSSMAN: Okay, yes.  
24 MR. SILVERMAN: Thank you.  
25 MR. GROSSMAN: If you could keep your voice up,

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1 please.  
2 THE WITNESS: I'd be happy to.  
3 MR. GROSSMAN: Thank you.  
4 THE WITNESS: I will do my best.  
5 MR. GROSSMAN: We don't mind a change of pace but  
6 not a --  
7 THE WITNESS: I know.  
8 MR. GROSSMAN: -- not a change of volume.  
9 THE WITNESS: Okay, change of same volume. Could  
10 you please repeat your question?  
11 BY MS. ROSENFELD:  
12 Q Yes.  
13 DR. ADELMAN: Would you like the mike --  
14 THE WITNESS: No. I like to --  
15 MR. GROSSMAN: All right.  
16 BY MS. ROSENFELD:  
17 Q That unique quality that you referenced, it  
18 reflects a non-inherent characteristic of the gas station,  
19 doesn't it?  
20 A Yes, it does.  
21 Q Did you prepare a prior report in the case of  
22 Special Exception 2794?  
23 MR. GROSSMAN: That's the predecessor  
24 application --  
25 MS. ROSENFELD: Predecessor application.

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

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

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

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1 MR. GROSSMAN: You said in the minds of the  
2 parties at the time.  
3 THE WITNESS: Well, meaning Westfield also.  
4 MR. GROSSMAN: Right.  
5 THE WITNESS: So that is my understanding.  
6 MR. GROSSMAN: Your statement that this is the  
7 only feasible location was what the applicant and Westfield  
8 had represented to you?  
9 THE WITNESS: That is correct.  
10 MR. GROSSMAN: I see. Okay.  
11 BY MS. ROSENFELD:  
12 Q So is it fair to say that these feasibility  
13 limitations were contractual and not based on land use  
14 considerations?  
15 A Yes.  
16 Q And what information did you have when you relied  
17 on your conclusion that the only feasible location now is  
18 the current location?  
19 A One is the contractual, my understanding, the  
20 contractual obligations between the mall, the mall users and  
21 the requirements as imposed by the zoning text amendment.  
22 Q And have you reviewed those contractual agreements  
23 yourself?  
24 A No, I have not.  
25 Q And so who gave you the information regarding

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

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1 A On a normal weekday, and I think it was like  
2 17,500 on a weekend.  
3 Q I'm sorry, 17,500?  
4 A I think that's what he mentioned. He said there  
5 was a range depending upon the day or the week, and he did  
6 give a range.  
7 Q Does your report reflect a range?  
8 A Yes, it does.  
9 Q And can you show me where?  
10 A Sure, page 3, third paragraph.  
11 Q It says the mall parcel currently receives  
12 approximately 13,500 visitors a day on an average weekday,  
13 and in your prior report, you said 18,000 visitors a day  
14 during the week. Is it your testimony that 13,500  
15 represents a range?  
16 A It's my testimony that Mr. Agliata testified to  
17 what the actual ranges were and these fall within the ranges  
18 that he testified to.  
19 Q Does your report take into account this range,  
20 between 13,500 and 17,500 visitors per day?  
21 A I'm afraid I don't understand the question.  
22 Q In your report you're evaluating sector plan  
23 conformance and certain compatibility issues, and you say  
24 here that the mall parcel currently receives approximately  
25 13,500 visitors a day on an average weekday. Your prior

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

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

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

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

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

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

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

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

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1 MR. GROSSMAN: That might be easier for you.  
2 THE WITNESS: Yeah. Let's see. It's right, let  
3 me see, it's right there.  
4 MR. GROSSMAN: All right. Pointing at the western  
5 side, a little bit north of center on the west.  
6 THE WITNESS: Yeah. It's due west of where the  
7 Target loading area is. And the other two, there's two  
8 coming off of the Stephen Knolls School --  
9 MR. GROSSMAN: Okay. To the --  
10 THE WITNESS: -- just to the west of that.  
11 MR. GROSSMAN: And that's to the southeast of the  
12 mall.  
13 THE WITNESS: Right. And the third one, if you  
14 want to call it, in this area --  
15 MR. GROSSMAN: South, I guess on the south side of  
16 the mall.  
17 THE WITNESS: Yeah, is off of Toreno Court, if I  
18 got --  
19 MS. CORDRY: Torrance.  
20 THE WITNESS: Thank you, Torrance, which is right  
21 there.  
22 MR. GROSSMAN: Okay.  
23 THE WITNESS: Thank you.  
24 MR. GROSSMAN: You're welcome.  
25 BY MS. ROSENFELD:

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1 Q And if I were to draw your attention to the same  
2 exhibit, 102, do you see an open area directly to the south  
3 of the special exception location, south, just below the  
4 western side of the warehouse?  
5 A I do see it.  
6 MR. GROSSMAN: The Costco warehouse?  
7 MS. ROSENFELD: The Costco warehouse.  
8 BY MS. ROSENFELD:  
9 Q Do you see this open --  
10 A I do see that.  
11 Q And if I give you a chance to take a look at this,  
12 do you see --  
13 A Sure.  
14 Q -- any informal pedestrian pathway through there?  
15 MR. GROSSMAN: How do you mean by informal?  
16 BY MS. ROSENFELD:  
17 Q Do you see any indication of a pedestrian,  
18 informal pedestrian trail at that location?  
19 A On this aerial?  
20 Q Yes.  
21 A Yes, I do.  
22 Q Okay. And could you just show generally where you  
23 see -- can you describe it?  
24 A Sure. It runs in a north-south direction through  
25 the parcel, generally.

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1 Q And --  
2 MR. GROSSMAN: And comes in right south of the, of  
3 the Costco warehouse location?  
4 MS. ROSENFELD: Correct.  
5 MR. GROSSMAN: Okay, just in the corner of it.  
6 It's the, I guess it's the southwest corner --  
7 BY MS. ROSENFELD:  
8 Q And did you --  
9 MR. GROSSMAN: -- of the Costco warehouse.  
10 BY MS. ROSENFELD:  
11 Q And did you take that informal pedestrian path  
12 into consideration in your analysis of the sector plan?  
13 A I didn't prepare the sector plan. So --  
14 Q In your analysis of the project's conformance to  
15 sector plan goals.  
16 A Did I take that into consideration? Again, I  
17 don't know how to answer that. It's --  
18 MR. GROSSMAN: Well, it's a pretty straightforward  
19 question.  
20 THE WITNESS: But I --  
21 MR. GROSSMAN: Did you take into account, when you  
22 analyzed conformance with the sector plan, of the proposed  
23 plan, did you take into account what you have found to be an  
24 apparent informal pedestrian path just to the southeast  
25 corner of the Costco warehouse location?

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

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1 Q Which source? We've cited to several today.  
2 A Erich.  
3 Q Mr. Brann?  
4 A Yes.  
5 Q And do you know how many days a week the  
6 deliveries are expected to occur?  
7 A No, I do not.  
8 Q On page 17 of your report, you make a  
9 determination going to Section 59-G-1.21(a)(5) of the zoning  
10 ordinance relating to the economic value of surrounding  
11 properties, and you conclude that the special exception  
12 application -- I'm sorry. You rely on a report by Lipman,  
13 Frizzell & Mitchell to conclude that there will be no  
14 detrimental economic value, don't you? Is that correct?  
15 A Yes, it is.  
16 Q Did you make any independent evaluation as to  
17 impact on economic value?  
18 A No, I did not.  
19 Q Okay. So your conclusion relies on their report,  
20 is that --  
21 A Yes, it does.  
22 Q Okay. And going to Section 59-G-1.21(a)(6), also  
23 in your report, again on page 17, addresses issues of  
24 objectionable noise, vibrations, fumes, odors, dust,  
25 illumination, glare, or physical activity at the subject

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1 property, and you conclude that the proposed special  
2 exception will not cause any of these effects. Where did  
3 you reach that conclusion? What information did you use to  
4 rely on?  
5 A From our experts, our health experts.  
6 Q Your health expert. And can you identify which  
7 report that is in the record?  
8 A Can I get the list of exhibits, please? Thank  
9 you. Exhibit 15, environmental report/health report. I'll  
10 go through all of these with you.  
11 Q And did you make any independent analysis in  
12 reaching these conclusions?  
13 A No, I did not.  
14 Q And going to Section 59-G-1.21(a)(8) of the zoning  
15 code, which addresses findings relating to the health of  
16 residents, visitors, or workers in the area of the subject  
17 property, and you conclude that there will be no adverse  
18 effect on those populations, where did you -- what  
19 information did you rely on to reach that conclusion?  
20 A Same thing, my health experts.  
21 Q Your health experts. Can you identify where in  
22 the record Mr. Sullivan is identified as a health expert?  
23 A Well, again, I don't know who -- I don't remember  
24 who did the health report, but there are two reports. One  
25 was environmental, and the other was a health report.

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

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1 would be yes.

2 Q Okay. Have you reached any conclusions as to

3 traffic or pedestrian circulation or safety given -- at the

4 time that fuel tankers are unloading fuel?

5 MR. GROSSMAN: Now, just so we, I assume that

6 under the revised plans, the fuel tankers will be at a

7 slightly different location; that is, they'll be a few feet

8 to the east. Is that, are you assuming that or not,

9 Ms. Rosenfeld, in your question?

10 MS. ROSENFELD: I do assume that --

11 MR. GROSSMAN: Okay.

12 MS. ROSENFELD: -- but I'm not aware that that

13 plan is technically before us at this point in time.

14 MR. GROSSMAN: Well, that's a fair question. I

15 guess we have two proposed plans before us in that sense.

16 We have the next to the last plan and then the one that's

17 most recently proposed, which would have -- which would move

18 the refill location to the right. We haven't had technical

19 staff give their final opinion on the newly proposed

20 location, but it is before us because, if I understand

21 correctly, Ms. Harris, that is the plan that you are

22 proposing at this point, is the last one that you submitted,

23 correct?

24 MS. HARRIS: Correct.

25 MR. GROSSMAN: Okay. So it's conceivable that

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1 technical staff may have an objection which may influence

2 whether or not that ultimately becomes the plan that is

3 proposed, but right now I think we can work off the

4 assumption that that is the proposed plan by the applicant

5 based on what they say. You can certainly ask, if you want

6 to cover all the bases, you can ask the question for both of

7 those plans, the one immediately before that one since

8 that's --

9 MS. ROSENFELD: Well, Mr. Gang has testified that

10 on most of these issues, he has relied on the opinions of

11 other experts to make certain of his findings. And --

12 MR. GROSSMAN: Yes.

13 MS. ROSENFELD: -- the location of the tankers and

14 the relocated fuel tank pad and the issue of the bollards

15 and the chain are all issues that, I think, need to be

16 addressed by Mr. Duke from a technical perspective and/or

17 perhaps Mr. Guckert. I think it would be appropriate to

18 have their technical testimony before Mr. Gang speaks to the

19 revised plan.

20 MR. GROSSMAN: Well, I don't know that that's

21 necessary, but at this point, you can certainly ask the

22 witness what you asked, but I just wanted to make clear

23 which location you're talking about in your question.

24 That's all.

25 MS. ROSENFELD: My --

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1 MR. GROSSMAN: When you said, or you asked the

2 witness are you aware of where the fuel tankers would be --

3 MS. ROSENFELD: Right.

4 MR. GROSSMAN: -- when they are unloading their

5 fuel, I wasn't sure whether you were referring to under the

6 current proposed plan or under the one immediately before

7 it. I just want you to make sure that you're --

8 MS. ROSENFELD: Sure.

9 MR. GROSSMAN: -- that the witness understands

10 which location you're talking about.

11 MS. ROSENFELD: Mr. Grossman, I think what I'll do

12 is just strike that question in its entirety --

13 MR. GROSSMAN: Okay.

14 MS. ROSENFELD: -- and after we have more

15 technical testimony from the other experts on the new plan,

16 I'll recall Mr. Gang, if I think it's appropriate, on that

17 issue.

18 MR. GROSSMAN: Well, I leave it to you. I'm not

19 telling you you can't ask the question of this witness. I'm

20 just saying let's make sure we're clear as to which location

21 you're talking about in the question, that's all, if you

22 would.

23 MR. SILVERMAN: Sir, we can recall him on our

24 volition? So it's not dependent on Ms. Harris?

25 MR. GROSSMAN: You can recall Mr. Gang --

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1 MR. SILVERMAN: Yes.

2 MR. GROSSMAN: -- you're referring to?

3 MR. SILVERMAN: Yes.

4 MR. GROSSMAN: I suppose if it became necessary to

5 make Mr. Gang available, you know, we would do that, but I'm

6 not sure that that's the case. So I'm not going to, I'm not

7 going to say -- I mean, I want to give the parties some

8 leeway in terms of cross-examination since we have had a

9 plan change in the middle of a case somewhat, I would say,

10 in response to a concern raised by the questioning by the

11 opposition about the impacts on traffic within the parking

12 area.

13 So I presume, based on the nature of the change,

14 that it was to improve a situation, the potentially

15 problematic aspect of which was pointed out by the

16 opposition in its questioning. Whether that requires

17 further testimony from Mr. Gang, who said he based his

18 analysis on another expert, I don't know. So let's cross

19 that bridge when we come to it.

20 MS. ROSENFELD: Okay.

21 BY MS. ROSENFELD:

22 Q In your opinion, is the Costco warehouse a, quote,

23 structure or a, quote, building?

24 A Outside of my -- outside my realm of expertise.

25 MR. GROSSMAN: That's definitional. You're asking

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

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1 Q Do you analyze the traffic pattern from the Costco  
2 warehouse?  
3 A Not in my report.  
4 Q Or the loading docks?  
5 A Not in my report.  
6 Q And are you familiar with the tire service  
7 component of the warehouse?  
8 A Do I know where it's located?  
9 Q Yes.  
10 A Yes, I do.  
11 Q Okay. Are they located in the warehouse  
12 structure, in the warehouse building?  
13 A Yes, they are.  
14 Q And do you, in your report, analyze the traffic  
15 impact of the special exception in relation to the traffic  
16 from the tire service component of the warehouse?  
17 A In my report, no.  
18 Q I'd like to turn your attention to Exhibit No.  
19 121, which I believe is on a board. Let me see if I can  
20 find it.  
21 MR. GROSSMAN: It's an aerial photo of a portion  
22 of the Wheaton Mall site dated July 31, '06.  
23 MS. ROSENFELD: Do you know if that was on a  
24 board, Pat?  
25 MS. HARRIS: Which one?

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

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

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1 Q Okay. What firsthand knowledge do you have about  
2 the operations of the Montgomery Ward service center?  
3 A I've lived in the area 30 years. I've gone to  
4 this mall many times. So I'm very aware what's on that  
5 mall. So the answer is yes.  
6 Q Is the Montgomery Ward building closer or more  
7 distant to the southern boundary of the mall than the  
8 location of the proposed special exception?  
9 A Further away from the southern property line.  
10 Q And do you have any personal knowledge, on  
11 average, as to how many customers a day visited the service  
12 center?  
13 A I do not.  
14 Q Do you have any firsthand knowledge as to whether  
15 there were vehicular queues waiting for service on a regular  
16 basis?  
17 A I do not.  
18 Q Do you know what the hours of operation were for  
19 the service center?  
20 A I do not.  
21 Q Do you know how frequently supplies were delivered  
22 to the service center?  
23 A I do not.  
24 Q Were there ever fuel deliveries to the service  
25 center?

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

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

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

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1 legend on the right-hand side of that same page, that icon  
2 is reflected as local access to downtown core. Could you  
3 please explain in your opinion what that arrow represents?  
4 A Sure. It shows that there are a number of options  
5 to go from the Kensington Heights community to the yellow  
6 area, which is the redevelopment area for the, you know, for  
7 the downtown area.  
8 Q And in your opinion, does that reflect pedestrian  
9 access?  
10 A It could, I think, and as I mentioned, was, was,  
11 there are a number of choices. This is like a big bold  
12 arrow. There are no specifics saying this is down the  
13 street you need to go to. So you're shown, you know, the  
14 exhibit on Map 8 shows five arrows, and each of those arrows  
15 are saying I have a number of options: it could either be  
16 by car, it could be by bike, it could be by walking, it  
17 could be by -- it won't be by mass transit, but it could be.  
18 It says local access. So it's any one of these ways to get,  
19 you know, get to the area for redevelopment.  
20 Q On page 29 -- I'm going to give you a little, a  
21 little highlighter.  
22 A Okay.  
23 Q On page 29 under Connectivity, the second, third  
24 sentence says the Westfield Wheaton Mall will be integrated  
25 with the CBD through pedestrian connections and

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1 street-oriented uses along its edges. Would you highlight  
2 that and then please explain to me what in your opinion that  
3 means?  
4 A I'm sorry. I'm highlighting it in my book, or  
5 whose book?  
6 Q Actually, if you could highlight it in the  
7 official exhibit.  
8 MR. GROSSMAN: Well, no, let's not. Let's --  
9 first of all, what page are we looking at now?  
10 THE WITNESS: Twenty-nine.  
11 MS. ROSENFELD: We're on page 29.  
12 MR. GROSSMAN: All right. Let's not change any  
13 exhibits that we --  
14 MS. ROSENFELD: Okay.  
15 MR. GROSSMAN: -- have already got. What are you  
16 referencing here, what paragraph?  
17 MS. ROSENFELD: It's page 29 --  
18 MR. GROSSMAN: Okay.  
19 MS. ROSENFELD: -- under Connectivity --  
20 MR. GROSSMAN: All right.  
21 MS. ROSENFELD: -- and the third sentence,  
22 beginning with the Westfield Wheaton Mall.  
23 MR. GROSSMAN: Okay.  
24 MS. ROSENFELD: And if --  
25 MR. GROSSMAN: And what do you want him to

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1 emphasize?  
2 MS. ROSENFELD: I'd like him to highlight that  
3 sentence and then offer his opinion as to what that means.  
4 MR. GROSSMAN: All right. Well, let's not have  
5 him highlight it because I don't want to change an exhibit  
6 that we already have here. If you want to have that page  
7 submitted with highlighting on it as a new exhibit, you can  
8 do that, but let's -- so you want to know what this  
9 sentence, the Westfield Wheaton Mall will be integrated with  
10 the CBD through pedestrian connections and street-oriented  
11 uses along its edges?  
12 MS. ROSENFELD: That's correct.  
13 MR. GROSSMAN: Okay. What does --  
14 THE WITNESS: Sure. Sure. I would go to, you  
15 know, like the opening paragraph of this urban design.  
16 Third sentence says the Wheaton Urban Design Guidelines will  
17 be prepared to complement this plan, to provide additional,  
18 provide additional detail. If we go -- and this is, this is  
19 like the basic concept -- if we go to the urban design  
20 concept plans and we look at -- well, I'll go through each  
21 one of these things. We can almost go through any one of  
22 these pages in the beginning. They talk about the different  
23 types of connectivity. For example, we'll start on page 13,  
24 which is, I think, is the closest to the mall. They talk,  
25 they show -- they have, first of all, the first thing is

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1 major highways, which is identified also in this section  
2 where you talk about connectivity. The first sentence says  
3 Georgia Avenue, Veirs Mill, and University Boulevard will be  
4 boulevards to tie Wheaton together, and as was testified by  
5 Mr. Guckert, you know, there's 100,000 trips per day going  
6 through this area. Then -- I just heard people talking in  
7 the background. So I just want to make sure, if they want  
8 to talk --  
9 MR. GROSSMAN: No. Let's --  
10 THE WITNESS: -- I'll hold.  
11 MR. GROSSMAN: No, nobody's talking. Go ahead,  
12 sir.  
13 THE WITNESS: Okay. Then --  
14 MS. CORDRY: I'm sorry. Were you referring to  
15 page 13, though? I thought --  
16 THE WITNESS: 13 of the urban design guidelines.  
17 MS. CORDRY: Oh, of the urban design guidelines.  
18 THE WITNESS: Yeah, I'm sorry, because it  
19 references, this is like -- you know, sector plans give  
20 overall visions, and then as time goes on, they become much  
21 more specific. The specifics, as Ms. Rosenfeld identified,  
22 was the road, you know, the local access, you know, those  
23 big arrows. Then it starts talking about how you're going  
24 to integrate.  
25 Page 13 is a diagram which shows, which has the

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1 arrows, has the points, shows the street connections, shows  
 2 the sidewalk. So it does show specifically where those  
 3 connections to the mall should occur and what they, you know  
 4 -- and the design guidelines reference the building  
 5 setbacks, et cetera --  
 6 BY MS. ROSENFELD:  
 7 Q And do those, do those --  
 8 A -- so this becomes a lot more -- sorry.  
 9 Q Well, let me interrupt you for a minute. Where in  
 10 those, where in the page that you're referencing is it  
 11 talking about the southwestern quadrant of the mall parcel?  
 12 A If you look on page 5 --  
 13 Q Yes.  
 14 A -- I'm sorry, page 13, page 13 is Veirs Mill Road  
 15 running from the upper left to the lower right, has  
 16 University Boulevard in the lower right-hand corner --  
 17 MR. SILVERMAN: Excuse me. Mr. Grossman --  
 18 MR. GROSSMAN: Yes.  
 19 MR. SILVERMAN: -- last week we got handed the  
 20 design guidelines. Is that what you're referring to?  
 21 THE WITNESS: Yes, I am.  
 22 MR. GROSSMAN: That's what he's referring to.  
 23 That's what he said.  
 24 MR. SILVERMAN: We didn't get the whole document.  
 25 We just got pages.

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1 MS. CORDRY: Yes, that's not -- the only pages of  
 2 the design guidelines that are currently an exhibit are 7,  
 3 10, and 25. So we don't, we don't know what he's talking  
 4 about.  
 5 MR. GROSSMAN: All right. And so it appears,  
 6 Exhibit 151, design guidelines --  
 7 MS. HARRIS: Mr. Grossman, that's correct. We, in  
 8 connection --  
 9 MR. GROSSMAN: Right.  
 10 MS. HARRIS: -- with Mr. Gang's direct, we  
 11 submitted the relevant pages --  
 12 MR. GROSSMAN: Right.  
 13 MS. HARRIS: -- but I would note that these were  
 14 adopted by the Council, and we would request judicial notice  
 15 of the design guidelines.  
 16 MR. GROSSMAN: That's fair, but let's just, so  
 17 that people have an opportunity to know what he's saying  
 18 while he's talking about it, do we have other --  
 19 MS. HARRIS: I have just one copy. I can put it  
 20 up there.  
 21 MR. GROSSMAN: What page is it? What page were  
 22 you referencing?  
 23 THE WITNESS: Page 13.  
 24 MR. GROSSMAN: All right. Let's see if we have a  
 25 copy.

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1 MS. HARRIS: Michele, do you have a copy?  
 2 MS. ROSENFELD: I have a complete copy here.  
 3 MR. GROSSMAN: Let me see if I have another copy  
 4 here. I don't have a copy here of the design guidelines.  
 5 What pages are we going to be referencing?  
 6 THE WITNESS: Right now, I think only page 13 --  
 7 MR. GROSSMAN: Okay.  
 8 THE WITNESS: -- because this gets into the  
 9 details.  
 10 MS. ROSENFELD: Let me just ask one clarifying  
 11 question about page 13.  
 12 BY MS. ROSENFELD:  
 13 Q Does page 13 talk about the southern perimeter of  
 14 the ring road as it abuts the Kensington Heights community?  
 15 A Page 13? No, it does not.  
 16 MS. ROSENFELD: I have no questions on this page  
 17 13 of the design guidelines.  
 18 MR. GROSSMAN: All right. Does your answer  
 19 require something from page 13? Do you --  
 20 THE WITNESS: Yes, it does. Was her question --  
 21 MR. GROSSMAN: -- do you have page 13 in front of  
 22 you?  
 23 BY MS. ROSENFELD:  
 24 Q My question was, how does this sentence, the  
 25 Westfield Wheaton Mall will be integrated with the CBD

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1 through pedestrian connections and street-oriented uses  
 2 along its edges, relate to the graphic that's shown on page  
 3 28 --  
 4 A Sure, and all I'm saying --  
 5 Q -- of the Wheaton Sector Plan?  
 6 A The answer is, is page 28 is very diagrammatic at  
 7 this stage, basically gives the overall concept of how.  
 8 Page 13, as, you know, as identified --  
 9 MR. GROSSMAN: Page 13 of the design guidelines?  
 10 THE WITNESS: Of design guidelines. As identified  
 11 in the opening paragraph, the last sentence is the  
 12 guidelines will be more specific. Since we want to talk  
 13 about more specific issues, because we're at that stage, it  
 14 does talk about how that will occur. It shows the --  
 15 BY MS. ROSENFELD:  
 16 Q Along Veirs Mill Road?  
 17 A The entry -- the connections, which, which talks  
 18 about the Westfield connections, will be integrated with the  
 19 CBD, which is the central business district. The central  
 20 business district is along Veirs Mill Road. The core is  
 21 across the street, as well as all the other redevelopment  
 22 areas, as I talked about previously, is within that area,  
 23 and it's also the area highlighted in yellow on page 28. It  
 24 also, on page 28, it has the two red arrows, mall/core  
 25 connections, which are also very diagrammatic.

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

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

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

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

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1 MR. GROSSMAN: -- the, you know, the air pollution  
2 issues, but I'm just, and also the question of whether or  
3 not this is traffic-centric or vehicular-centric versus  
4 pedestrian, I understand those, but I'm not sure how your  
5 line of questioning actually pertains to something that I'd  
6 have to analyze.  
7 MS. ROSENFELD: Well, I certainly think that the  
8 pedestrian path, to the extent that it's offered, is being  
9 offered as a component of the special exception. It's an  
10 off-site design amenity associated with the special  
11 exception.  
12 MR. GROSSMAN: I understand that and I'm not  
13 criticizing having it in there. I'm just saying that you're  
14 going a step further and trying to analyze whether or not  
15 the, whether or not the gray arrows are supposed to indicate  
16 something to me that affects whether or not, or how I'd  
17 analyze the proposal for a gas station. I'm not sure I make  
18 that, quite that connection with regard to the pedestrian --  
19 MS. ROSENFELD: Well, let me state it another way.  
20 Depending on the ultimate design of the gas station  
21 itself --  
22 MR. GROSSMAN: Yes.  
23 MS. ROSENFELD: -- if it's location and size and  
24 operational features preclude future, the future ability to  
25 provide a pedestrian path, then that additionally would

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1 undermine the goals of the sector plan because it will be  
2 here on a long-term basis.  
3 MR. GROSSMAN: So if the, you're saying, if the  
4 gas station itself somehow precluded a pedestrian path?  
5 MS. ROSENFELD: Certainly. Certainly. It has  
6 long-term implications for the future development of this  
7 site --  
8 MR. GROSSMAN: All right. Okay.  
9 MS. ROSENFELD: -- and to the extent that it  
10 impacts on the long-term goals envisioned of this sector  
11 plan, I think it's highly relevant.  
12 MR. GROSSMAN: Okay. All right, thank you.  
13 BY MS. ROSENFELD:  
14 Q Would you please go to page 61 of the sector plan?  
15 A I'm there.  
16 Q And on that map, on the lower southern quadrant,  
17 southwestern quadrant of that map, there's a dashed green  
18 line. Do you see that line?  
19 A Yes, I do.  
20 Q And I believe you highlighted that in your  
21 previous -- in your exhibit, is that correct?  
22 A Yes, I did.  
23 Q And can you explain what that dashed green line  
24 signifies?  
25 A Signifies, well, one is, there is the major

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1 heading which says pedestrian connection. Then the dashed  
2 line with the star says proposed, then under that says not  
3 designated in the Master Plan of Highways; alignment to be  
4 determined during the development review process; these  
5 connections could be public or private.  
6 Q And does it contemplate that there would be a  
7 pedestrian connection? Do you know the name of that road?  
8 A Yeah.  
9 MR. GROSSMAN: Which road?  
10 MS. ROSENFELD: The one that has the dashed green  
11 arrow.  
12 THE WITNESS: Peregoy Drive. Peregoy Drive.  
13 BY MS. ROSENFELD:  
14 Q Peregoy Drive. So does this, Map 17, indicate  
15 that a pedestrian connection is contemplated somewhere in  
16 the area of Peregoy Drive to the mall?  
17 MR. GROSSMAN: When you say contemplated --  
18 THE WITNESS: Yeah. It's --  
19 MR. GROSSMAN: -- it uses the word proposed in  
20 the --  
21 BY MS. ROSENFELD:  
22 Q Proposed.  
23 A Yeah, it does show proposed.  
24 Q And the three straight green lines, undashed green  
25 lines that are indicated as existing, would those be the

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1 three pedestrian connections that you discussed earlier in  
2 your testimony?  
3 A Yes, they would be.  
4 Q And do you know where the terminus of the wall,  
5 the proposed wall, begins and ends in relationship to these  
6 existing and proposed pedestrian connections?  
7 A I know approximately.  
8 Q Do you know if it begins, is starting with the  
9 most northwestern quadrant? Would the wall preclude or  
10 block that existing pedestrian access?  
11 A No, it would not.  
12 Q And does the wall begin somewhere to the south of  
13 that pedestrian connection?  
14 A Which pedestrian connection?  
15 Q The one in the upper west, northwest corner.  
16 A I would estimate that it's halfway between the  
17 proposed and existing.  
18 Q Okay. And that it would continue along the  
19 perimeter of the ring road. And do you know where along the  
20 southwestern quadrant it would end?  
21 A It would end, let's see if I could -- do you see  
22 off of McComas Avenue, even though it's not labeled off of  
23 McComas Avenue, there are two streets going up with two  
24 little bulbs, one which is near Torrance Court -- I'm sorry,  
25 no. I'm saying the one on the right.

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1 Q Could you show on the aerial map which one you're  
2 looking at?  
3 A Sure. Let me just show you. Actually, it's  
4 probably easier to identify where the wall would  
5 approximately end.  
6 Q That would be terrific.  
7 A Okay. This is Exhibit, sorry if I don't see a  
8 number --  
9 MR. BRANN: 102.  
10 MR. GOECKE: Bottom left, 102.  
11 THE WITNESS: Oh, 102, thank you. Okay. The  
12 wall, the existing pathways, which you were, which we were  
13 talking about; this was the one which we were just  
14 mentioning. The wall --  
15 MR. GROSSMAN: You're indicating --  
16 BY MS. ROSENFELD:  
17 Q Which is just south of what street?  
18 MR. GROSSMAN: -- in the northwest --  
19 THE WITNESS: Northwest corner.  
20 MR. GROSSMAN: -- corner?  
21 THE WITNESS: The wall would end approximately due  
22 east of the tennis courts.  
23 BY MS. ROSENFELD:  
24 Q End or begin?  
25 A Let's say begin --

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

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

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1 understand. The wall does not extend all the way -- the  
2 proposed wall would not extend all the way up to the  
3 pedestrian path which is indicated as existing in the  
4 northwestern --  
5 THE WITNESS: Nowhere near.  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: All I'm saying is the wall --  
8 MR. GROSSMAN: It would --  
9 THE WITNESS: -- ends approximately right in that  
10 location, you know, halfway between.  
11 MR. GROSSMAN: Right.  
12 THE WITNESS: So --  
13 MR. GROSSMAN: But it would extend in that portion  
14 where it looks like with the dotted green in the  
15 southwestern corner where it says proposed pedestrian path,  
16 is that correct?  
17 THE WITNESS: Yes, there's a wall in that area.  
18 MR. GROSSMAN: Okay. And what you're suggesting  
19 is that if the pedestrian path in that area where it says  
20 proposed continued on, it would continue on along the  
21 southern ring road? Is that what you --  
22 THE WITNESS: That's what we -- right. I'm  
23 saying, just working with the topography, yeah, I would be  
24 working out with the appropriate parties on --  
25 MR. GROSSMAN: Okay.

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

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

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

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

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

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1 understand which underline you're referring to here.  
2 MS. ROSENFELD: The first table on -- it's page 92  
3 of the sector plan. It's shown --  
4 MR. GROSSMAN: Yes.  
5 MS. ROSENFELD: -- as page 11 of Resolution No.  
6 17-313.  
7 MR. GROSSMAN: Right.  
8 MS. ROSENFELD: And the first table here  
9 specifically adds a shared, signed shared roadway or  
10 shared-use path for the southern edge of the ring road,  
11 listed as LB-3, which, on --  
12 MS. CORDRY: LB-5.  
13 MS. ROSENFELD: Oh, I'm sorry. It's LB-5, LB-5,  
14 which --  
15 MR. GROSSMAN: You mean where it says modify LB-5  
16 as follows, and then it --  
17 MS. ROSENFELD: That's correct, and it's --  
18 MR. GROSSMAN: Right.  
19 MS. ROSENFELD: -- and it's, it correlates to the  
20 chart and maps on page 66 and page 67 of the sector plan.  
21 MR. GROSSMAN: Okay. Hold on one second. So if I  
22 understand what you're getting at, when I look at LB-5 on  
23 page 67, which -- in other words, the table, Table 3 on page  
24 66 reflects the Council change.  
25 MS. ROSENFELD: It does reflect the Council

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

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

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1 I just wonder whether -- as I understood from an  
2 earlier question I asked the opposition back when we were in  
3 the auditorium, you do want a pedestrian path there, but if  
4 it were not possible to have a pedestrian path as wide as  
5 you would like it but it is possible to have one that's  
6 ADA-compliant along that ring road, are you perhaps making  
7 the perfect the enemy of the good here in your position if  
8 in fact the Board of Appeals ultimately would decide to  
9 approve this application but would be concerned about  
10 technical staff's recommendation against the pedestrian path  
11 based on your opposition? I just wonder whether or not --  
12 MS. ROSENFELD: No, I think you're overstating our  
13 position.  
14 MR. GROSSMAN: Okay.  
15 MS. ROSENFELD: Certainly a pedestrian path is  
16 preferable to no pedestrian path. It's our view that the  
17 pedestrian path is inadequate, and so for that and other  
18 circulation reasons, we think that the special exception  
19 should be denied. But if you're asking do we want --  
20 MR. GROSSMAN: No, I know you believe it should be  
21 denied, but I just wonder whether or not, if you happen to  
22 get a recommendation from technical staff -- they've already  
23 recommended denial in their ultimate -- if you were to get a  
24 recommendation from the technical staff against the  
25 pedestrian path that's recommended, in part, because you've

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1 opposed it on a safety ground, you know, I don't know what  
2 the Board of Appeals ultimately does. If it decides to  
3 grant the special exception, what happens to the pedestrian  
4 path?  
5 MS. ROSENFELD: It's our view that the pedestrian  
6 path that's been proffered is not safe in and of itself. We  
7 don't think it's adequate. If you're asking do we want to  
8 make the perfect the enemy of the good, no. A path is  
9 preferable to no path. We don't think that what's been  
10 proffered is adequate for a number of reasons, which are  
11 contained in that letter.  
12 MR. GROSSMAN: All right. I just want to raise  
13 the concern I have --  
14 MS. ROSENFELD: Yes.  
15 MR. GROSSMAN: -- about this. I understand the  
16 position of the opposition, you know, certainly the overall  
17 opposition to the gas station, but I don't know if every  
18 element of what you've suggested here is actually, depending  
19 on what the, what technical staff recommends here, is  
20 ultimately going to be forwarding the interest that you  
21 ultimately have, is all, and I just wanted the opposition to  
22 cogitate that, is all.  
23 MS. CORDRY: If I might say, in reading technical  
24 staff's letter, it did not appear to me that they were  
25 suggesting no path was the preferable option. It appeared

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1 to me they were suggesting the same thing we said, which  
2 was --  
3 MR. GROSSMAN: Technical staff's letter or you're  
4 talking about --  
5 MS. CORDRY: Or Renee Kamen's e-mail. In any  
6 case, I thought I read that to say the same point we were  
7 making, which was that they thought that three feet was not  
8 adequate to be a safe pedestrian path.  
9 MR. GROSSMAN: Yes, I thought that was -- that was  
10 their preliminary look at it, and I don't want to --  
11 MS. CORDRY: Right. I don't think either one of  
12 us suggested that zero was better than three or six.  
13 MR. GROSSMAN: Well, I don't know. If -- here's  
14 the point, though -- if in fact they decide that what's been  
15 suggested is sufficiently unsafe, maybe it is zero versus --  
16 you may end up with a no path and a Board of Appeals  
17 decision that is in favor of the gas station. I don't know.  
18 I have no idea what -- I'm just saying that when you make  
19 that argument, as I think you strongly have in the papers  
20 that Ms. Rosenfeld filed, and as I said, I just had a  
21 preliminary look at it because it just came in today, you do  
22 raise that issue. If that's what you want to raise, you are  
23 perfectly right and within your rights to raise it.  
24 MS. ROSENFELD: I appreciate your observations.  
25 MR. GROSSMAN: Okay.

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1 MS. ROSENFELD: We'll go back and revisit --  
2 MR. GROSSMAN: Okay.  
3 MS. ROSENFELD: -- our comments.  
4 BY MS. ROSENFELD:  
5 Q Mr. Gang, if you could please take a look at pages  
6 52 and 53 of the sector plan, and I believe you did have  
7 some discussion of this in your testimony, these  
8 site-specific recommendations. Looking at the, Figure 4 on  
9 page 52 along the southern boundary of the mall parcel, the  
10 lighter orange mall parcel, there's a segment along the  
11 southern boundary that's highlighted in a darker orange. Do  
12 you see that?  
13 A Do you mean the thin line --  
14 Q Yes.  
15 A -- which is identified as existing green buffer?  
16 Q Yes. Well, that was my question. Is that the  
17 existing green buffer as you understand it?  
18 A Yes, it is.  
19 Q Okay.  
20 MR. GROSSMAN: That's the way it's labeled on the,  
21 in the sector plan.  
22 MS. ROSENFELD: I overlooked that. You're  
23 correct.  
24 BY MS. ROSENFELD:  
25 Q Turning to page 55 of the sector plan, the top

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

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

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

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

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

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

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

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

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1 wall, fence, or whatever it is there, but I don't -- I'd  
2 have to look back at it.  
3 MS. ADELMAN: Well, you make a good point because  
4 the documents are inconsistent. At some points, they say  
5 six inches above; very specifically it's called out, and  
6 other times it isn't.  
7 MR. GROSSMAN: Okay.  
8 MS. ADELMAN: That's a good point.  
9 MR. GROSSMAN: Well, I don't want to make a point.  
10 I just don't, I just don't recall whether it is. I just --  
11 my recollection of the testimony was not that there was six  
12 inches' separation between the ground and the wall, fence,  
13 whatever you want, material, but --  
14 MS. ADELMAN: Well, the documents show that.  
15 MR. GROSSMAN: All right. I mean, I -- yes, it  
16 might make a difference in terms of maintenance. I'm not  
17 sure whether it makes a difference in terms of what the  
18 statute calls for, a fence or a wall, something providing  
19 screening. So they might be compliant -- if one of those is  
20 necessary, some sort of structure like that is necessary,  
21 then, then they may be compliant with it regardless of  
22 whether it's a wall or a fence. Mr. Silverman.  
23 MR. SILVERMAN: The issue, the wall, the reason  
24 for the wall is not just the statute. The statute talks  
25 about five feet. We're talking about -- we're talking about

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1 a much higher wall here, eight feet or 12 feet in some  
2 places. And I take it there was a reason for this  
3 additional screening, which, you know, if you went to the  
4 property, went to someone's bedroom, you would see the  
5 reason very quickly.  
6 MR. GROSSMAN: Well, the hearsay you objected  
7 to --  
8 MR. SILVERMAN: Yes.  
9 MR. GROSSMAN: -- before from the witness --  
10 MR. SILVERMAN: Yes.  
11 MR. GROSSMAN: -- suggested that it was a  
12 community request when there was a walk-along. I don't  
13 know. You'd probably know that answer better than I. It  
14 says not less than five feet in height. So I think from  
15 the, from the views that they showed a couple of weeks ago,  
16 the presently planned height would entirely screen a view of  
17 the station. Whether a lower height would entirely screen  
18 it I can't recall without looking back at those particular  
19 shots of what it would look like, but I just wanted you to  
20 all make sure you understood what the potential outcomes  
21 might be. So --  
22 MS. ROSENFELD: Mr. Grossman, I have --  
23 MR. GROSSMAN: Yes.  
24 MS. ROSENFELD: -- no further cross-examination at  
25 this time. I --

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1 MR. GROSSMAN: Okay.  
2 MS. ROSENFELD: -- do believe that there might be  
3 other community groups who --  
4 MR. GROSSMAN: Well, certainly.  
5 MS. ROSENFELD: -- have cross-examination.  
6 MR. GROSSMAN: Yes. Who wishes to take it for the  
7 Coalition?  
8 DR. ADELMAN: Yes.  
9 MR. SILVERMAN: Mr. Grossman --  
10 MR. GROSSMAN: Yes.  
11 MR. SILVERMAN: -- I think we both would, and we  
12 -- and I promise that after Dr. Adelman is finished, I will  
13 not ask any repetitive questions, but I have some questions  
14 somewhat different from his.  
15 MR. GROSSMAN: No. In fairness, we're allowing a  
16 lot of cross-examination here, and each group is allowed to  
17 have one questioner cross-examine. That's the general rule  
18 in any, in any court proceeding. You can't have multiple  
19 people from the same entity doing cross-examination. So you  
20 can choose one or the other.  
21 BY DR. ADELMAN:  
22 Q Mr. Gang, I believe you may have already answered  
23 this question, so if you'll excuse me. In your report on  
24 page 1, you say the subject property on which the filling  
25 station will be located consists of 37,754 square feet of

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1 area, et cetera. Am I, am I quoting your report correctly?  
2 A Yes, you are.  
3 Q In the most recent revision of this special  
4 exception plan that the applicant filed -- that's Exhibit  
5 148, which is this packet -- on page 2 of 2 there's a  
6 statement that the special exception area is 36,800 square  
7 feet, is that correct?  
8 A I don't have a copy of the plan in front of me.  
9 MR. GROSSMAN: You have a copy now, sir.  
10 BY DR. ADELMAN:  
11 Q Okay. It's in the lower right corner.  
12 MR. GROSSMAN: Actually, the full-size version of  
13 that, page 2, would be 152(b). You're looking at the 11 by  
14 17, but -- so we're going to look at the full-size version  
15 of that. All right. All right. And now what was your  
16 question, DR. ADELMAN, Dr. Adelman?  
17 BY DR. ADELMAN:  
18 Q The statement is, am I correct in saying that in  
19 the lower left corner of the second page, which is page 2  
20 of 2 --  
21 A Yes.  
22 Q -- it says the special exception area would be  
23 36,800 square feet; am I correct?  
24 A You are correct.  
25 Q Can you explain the apparent discrepancy as to the

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

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

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1 A I have not seen 3(a); so I can't answer that.  
2 Q Are you aware that the OZAH exhibit list includes,  
3 as Exhibit 15(b), a health report?  
4 A Yes, I am.  
5 Q Are you aware that the petitioner's statement,  
6 OZAH Exhibit 3(a), lists some 29 exhibits again, none of  
7 which are named health report?  
8 MR. GROSSMAN: He's already answered that  
9 question.  
10 DR. ADELMAN: It's a slightly different question  
11 than asking about the distinction between naming something  
12 health analysis versus health report.  
13 MR. GROSSMAN: What difference does it make?  
14 DR. ADELMAN: If you'll let me finish the next two  
15 questions, I think it will become obvious.  
16 MR. GROSSMAN: All right. Go ahead, sir.  
17 DR. ADELMAN: Thank you.  
18 BY DR. ADELMAN:  
19 Q Are you aware that the CD by which the applicant  
20 transmitted the digital filings, the digital versions of its  
21 filings, contains a file labeled ChaseCostcoReport  
22 11-19.PDF --  
23 A No, I --  
24 Q -- and that this report is what the OZAH exhibit  
25 list names as health report?

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

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1 understand.

2 DR. ADELMAN: Well, I'm not actually making a

3 distinction between health report and health analysis. I'm

4 attempting to establish, without testifying, that the

5 existing health report or analysis, whichever it is, is a

6 very brief letter which was not called out as an exhibit by

7 the applicant in its original filing --

8 MR. GROSSMAN: All right.

9 DR. ADELMAN: -- and that, without testifying, it

10 seems strange to me, given now the changes in the code that

11 were introduced by ZTA 12-07, which essentially spoke to

12 health, that that is the extent of the health report or

13 analysis or whatever you wish to call it.

14 MR. GROSSMAN: I mean, I'll let you proceed with

15 your next question about the neighborhood. I think I

16 understand -- I understand the point you're making. I don't

17 know why it was necessary to go into that distinction

18 between report and analysis, which was the essence of one of

19 your questions, but okay, go ahead, sir.

20 DR. ADELMAN: It was necessary because I don't

21 really know how to phrase the questions correctly. I'm

22 trying.

23 MR. GROSSMAN: All right. You're doing great,

24 though. Go ahead.

25 DR. ADELMAN: Okay. This microphone is not

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1 working properly. So it's --

2 MR. GROSSMAN: I think you're getting feedback,

3 but maybe that's because the speaker is too close to the

4 microphone or the device.

5 DR. ADELMAN: It's the same, it's the same place

6 that it's been placed every day.

7 MR. GROSSMAN: Has it? Was it?

8 DR. ADELMAN: Okay.

9 MR. GROSSMAN: All right.

10 BY DR. ADELMAN:

11 Q Can you hear me?

12 A I hear you perfectly. Can you hear me?

13 Q Yes. Right. Okay. We can move right along now.

14 A Right.

15 Q There has been extensive discussion of the

16 definition of neighborhood by various parties at the table.

17 In your definition of neighborhood or Applicant's definition

18 of neighborhood, has there been a discussion of the people,

19 persons in the neighborhood?

20 A Yes.

21 Q Could you tell me where?

22 A Sure. I think it's in my, was in my testimony as

23 well as my planning report. If you turn to Page No. -- I

24 think I would go to page 7, and this is in reference to the

25 way I defined neighborhood at our last public hearing; and,

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1 basically, the reason, you know, one of the reasons or many

2 reasons defined the Westfield District as a separate

3 neighborhood was, one is the average people per day, the

4 retail stores, which is vastly different than Kensington

5 Heights, it has office within it, the hours of operation

6 within the mall area, the lighting within the mall area, and

7 it continues on to the top of page 8.

8 MR. GROSSMAN: Gentlemen, please, go on with your

9 cross-examination.

10 BY DR. ADELMAN:

11 Q The people who attend meetings in the mall, shop

12 at stores in the mall, some of them come from the Kensington

13 Heights neighborhood, do they not?

14 A I would say that's a fair assumption. Do I know

15 that for a fact?

16 Q You don't know that for a fact?

17 A I would say it's a fair assumption they do attend

18 because it is their local shopping center and by

19 definitions.

20 Q Thank you.

21 DR. ADELMAN: We have no further questions.

22 MR. GROSSMAN: All right. How about from

23 Kensington View Civic Association -- any questions?

24 MS. DUCKETT: Yes, I have some questions, yes.

25 MR. GROSSMAN: All right.

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1 MS. DUCKETT: And I don't think they've been

2 covered yet, but you know, I couldn't hear --

3 MR. GROSSMAN: Okay. Give it a whirl,

4 Ms. Duckett.

5 MS. DUCKETT: -- everything. Yes.

6 BY MS. DUCKETT:

7 Q I have a question about something that, Mr. Gang,

8 you just said. You said the core area is where

9 redevelopment will occur when you were showing a map of

10 Veirs Mill Road.

11 A One of the four other districts. There are, there

12 are five districts within the sector plan. The core area is

13 one of the other districts. So there are other districts in

14 which redevelopment is planned for. All I was pointing out

15 to is the core area is the adjoining property off of Veirs

16 Mill Road which correlates to the map on page 28 --

17 Q Okay.

18 A -- Map No. 8.

19 MS. ROSENFELD: Of what? Page 28 of what

20 document?

21 THE WITNESS: The --

22 MR. GROSSMAN: Sector plan?

23 THE WITNESS: -- sector plan.

24 BY MS. DUCKETT:

25 Q Well, what did you base that on? Are there

1 current plans out there, or did you base it on what happened  
2 with the sector plan? I'm not sure what you based the --

3 A Sure. Sure, fair enough.

4 Q -- statement on.

5 A Yeah. If we go, if we turn to page 42 of the  
6 sector plan, labeled Districts --

7 Q Okay.

8 A -- in the right-hand corner, there are six colors  
9 identifying the five districts, which is an orange for the  
10 core, I would call it a very dark gray for price, a bluish  
11 purple for Blueridge, a red for Westfield, and a green for  
12 Kensington View/Wheaton Hills. Those are the five districts  
13 as identified on top of page 43, which says there are five  
14 districts, each with their distinct character. So that's  
15 how I came up with the districts.

16 Q Maybe I'm dense. I don't understand how that map  
17 shows where redevelopment will occur. Based on your  
18 statement, you said --

19 A Sure.

20 Q -- core area is where redevelopment will occur.

21 A Sure. We go to -- I want to go to some other  
22 exhibits. First, on the top of page 33, which says zoning  
23 recommendations are based on five goals, those are zoning  
24 recommendations. The first four are within the CBD, you  
25 know, the central business district, which are the Class A

1 A Well, it extends anywhere from, if I was to give  
2 it a boundary, the eastern boundary is generally along  
3 Amherst. When you get to the northeast corner, it goes on  
4 the other side of Amherst and Blueridge, it goes all the way  
5 over on the northern property to Grandview, also on the  
6 opposite side of Grandview near Kensington Boulevard, and  
7 then it extends, why don't we call it, westward towards  
8 where the entrance into the mall is. So it's the area which  
9 is labeled CR Zones.

10 Q So you're expecting that redevelopment will only  
11 occur where the, where the zoning changes have occurred?

12 A Do I expect that's the only place? No. I think  
13 if you go to the sector plan, the sector plan specifically  
14 talks about each of these districts and what is envisioned  
15 in reference to, you know, zoning regarding heights, FAR,  
16 which I identified, you know, what floor area ratio is, what  
17 the mix of uses are, and some of the parcels, you know, they  
18 say, conform to those specific zones. So I think the sector  
19 plan specifically talks about what is envisioned in each of  
20 those five, each of those five general districts and, also,  
21 parcel by parcel.

22 Q Okay. Is part of Westfield Mall rezoned as CR?

23 A Yes, it is.

24 Q And part of it isn't?

25 A That is correct.

1 office, the retail, the housing mixed with retail  
2 surrounding, also CBD, and the highest density is in the  
3 center of the CBD. Then we go to page 39, which is proposed  
4 zoning, CR zoning -- CR is commercial residential zoning --  
5 and that's where the highest densities are, if you turn to  
6 page 40, with the variety of proposed densities as within,  
7 within that area. And it goes --

8 Q Okay. Oh, I'm sorry.

9 MR. GROSSMAN: Let him finish.

10 THE WITNESS: Am I finished or --

11 MR. GROSSMAN: No, no.

12 BY MS. DUCKETT:

13 Q You could be.

14 A -- did I answer your question already? If I  
15 answered your question, I'll stop.

16 Q Well, when you said 39, you were answering -- you  
17 were saying that it was based on the zoning, is that  
18 correct, on the changed zoning, that you'd feel that's where  
19 redevelopment will occur?

20 A Should occur.

21 Q Should occur?

22 A Or could occur. It's where it's -- that's where  
23 it's envisioned within the sector plan, the areas in purple.

24 Q Okay. Now, all of those areas in purple, are they  
25 along Veirs Mill Road and University on that map, page 39?

1 Q Is all of Westfield Mall in the Westfield  
2 District?

3 A Is all of the Westfield Mall within the Westfield  
4 District? The answer is yes.

5 Q Yes?

6 A Yes.

7 Q Okay. On the sector plan on page 43, does it  
8 mention a vision for the Westfield District?

9 A If you're talking about a vision, there's a  
10 statement on the second sentence that says the Westfield  
11 District has the potential to evolve into a mixed-use  
12 district that enhances the mall as a retail destination. If  
13 that's what you're talking about --

14 Q Yes.

15 A -- the answer is yes.

16 MR. GROSSMAN: That's actually the third sentence.  
17 It's the second highlight.

18 THE WITNESS: I'm sorry. I, yeah, I -- correct.

19 BY MS. DUCKETT:

20 Q So that doesn't distinguish whether the area was  
21 rezoned or not rezoned --

22 A Yes, it does.

23 Q -- it just talks about the Westfield District?

24 A Sure. The rezoning, if you turn to page 38 and  
25 39, 38 shows where the existing zoning of the mall was, and

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1 it shows, prior to the sector plan, it shows the Westfield  
2 Mall completely being in the C-2 zone. Then if you turn to  
3 page 39, which we just talked about, it shows that portion  
4 of the Westfield Mall which got rezoned through the sector  
5 plan from C-2 to CR.  
6 Q Yes.  
7 MR. GROSSMAN: What are you getting at,  
8 Ms. Duckett? What's your point?  
9 MS. DUCKETT: I'm asking him, and it does --  
10 BY MS. DUCKETT:  
11 Q Does it distinguish, the sector plan distinguish  
12 between, when it talks about the Westfield District, talk  
13 about whether -- it's only talking about the rezoned portion  
14 or the portion that remained?  
15 A Sure. If you turn to page 53, 53 has specifically  
16 the area -- I'm sorry. If we go to page 52, 52 shows, first  
17 of all, the area which has been rezoned to CR and the  
18 specific recommendations for the density and the heights  
19 within the Westfield District. On page 53 are the bullet  
20 points which specifically describes the rezoning and  
21 confirming, you know, the second bullet point is confirming  
22 the existing C-2 for the remaining portion of the site. The  
23 first bullet point is where the CR zone is. The second  
24 bullet point is confirming the C-2 zone for the remainder of  
25 the property.

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1 Q Okay. On page 53, in the middle of the third  
2 paragraph, it says, however, the CR zones would not work  
3 effectively with the existing mall. Do you know why?  
4 A I'm sorry. You have to --  
5 Q 53.  
6 A Yes, I know. I'm sorry. Which sentence and which  
7 paragraph?  
8 Q It's in the --  
9 MR. GROSSMAN: Third paragraph, there's a sentence  
10 you highlighted.  
11 BY MS. DUCKETT:  
12 Q Third paragraph.  
13 MS. DUCKETT: Is this their highlighted version?  
14 MS. ROSENFELD: That's their highlighted.  
15 THE WITNESS: Oh, sorry.  
16 BY MS. DUCKETT:  
17 Q However, the CR zones would not work effectively  
18 with the existing mall.  
19 A I can't answer that, but --  
20 Q And it goes on to say the main mall portion of the  
21 property could be rezoned for mixed-use development as part  
22 of the comprehensive rewrite of the County's zoning  
23 ordinance underway --  
24 A Sure.  
25 Q -- at the time of plan adoption.

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1 A Sure. May I talk about the rezoning rewrite,  
2 because I thought we were not allowed to, but I'll be happy  
3 to address it because --  
4 MR. GROSSMAN: I'll let you answer her question.  
5 THE WITNESS: Sure. The rezoning rewrite is  
6 underway. The County, which was interesting, is, is,  
7 recently -- I'll just find out the --  
8 MR. GROSSMAN: While he's looking, Ms. Duckett,  
9 I'm not sure I understand what -- what are you trying to  
10 establish here?  
11 MS. DUCKETT: I'm trying to establish that the  
12 sector plan is stating that they could not rezone the whole  
13 mall, it wouldn't work effectively --  
14 MR. GROSSMAN: Right.  
15 MS. DUCKETT: -- and I could ask him would it make  
16 it a non-conforming use. It's also saying that this could  
17 change.  
18 THE WITNESS: Sure.  
19 MS. DUCKETT: Now, my other questions will be  
20 about the C-2 zoning itself, does it allow mixed-use in the  
21 current state that it is. I don't want to get into that  
22 rewrite because that's going to, that could change.  
23 MR. GROSSMAN: All right. You asked the question,  
24 though. That's --  
25 THE WITNESS: But you asked me --

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1 MR. GROSSMAN: -- so if you don't want to get into  
2 it, fine. So you withdraw your question?  
3 MS. DUCKETT: Not the zoning code rewrite itself  
4 because nobody knows what that will end up.  
5 MR. GROSSMAN: Well, anything could --  
6 THE WITNESS: Right, but what --  
7 MR. GROSSMAN: Hold on a second. The Council can  
8 change, the Council has the power to change the zoning if it  
9 votes to change zoning.  
10 MS. DUCKETT: That's right.  
11 MR. GROSSMAN: So we know things can change, and  
12 it can do it as part of the rewrite or not. So I --  
13 MS. DUCKETT: That's right. That's why I don't  
14 want to get into that.  
15 MR. GROSSMAN: -- I just don't understand. So  
16 what does this establish? What am I, what am I supposed  
17 to --  
18 MS. DUCKETT: Well --  
19 THE WITNESS: Oh --  
20 MR. GROSSMAN: -- what am I supposed to glean  
21 from, from --  
22 MS. DUCKETT: Let me --  
23 MR. GROSSMAN: -- your line of questioning? I  
24 just don't understand its relevance to this.  
25 BY MS. DUCKETT:

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

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

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

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

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1 A I don't know because it's related to the overall  
2 warehouse. So I don't know the answer to that.  
3 Q Okay. Does the zoning code define regional  
4 shopping malls by distance or by square footage?  
5 A The zoning ordinance? I do not know that.  
6 Q Well, I know that you said that malls have a  
7 25-mile radius, but when you look at 59-C-4.351 --  
8 (Discussion off the record.)  
9 BY MS. DUCKETT:  
10 Q A regional shopping center is defined as a  
11 shopping center comprised of a minimum of 600,000 gross  
12 leasable square feet and a minimum of 50 separate stores.  
13 Would you agree with that?  
14 A If you tell me that's what it says, I will agree.  
15 Q Well -- oh, that, that's the definition, but  
16 59-C-4.351 states, differentiated uses within the center  
17 that have more than 1.2 million square feet of retail space.  
18 Are you aware of that? Not offhand? You don't have the  
19 zoning code there, but --  
20 A No, I do not know that. No, I do not.  
21 Q -- uses are differentiated in that section --  
22 A Okay.  
23 Q -- of the code. So does the C-2 zone allow  
24 different uses for Metro station policy areas and/or  
25 regional malls other than C-2 zoned properties in the

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

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

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

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

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

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

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

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

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

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1 59-G-2.06(b)(2), which has to do with the buffer and ask you  
2 a number of questions related to that.  
3 A Sure.  
4 Q Does the special exception property abut a  
5 residential zone?  
6 A The special exception area does not abut a  
7 residential zone.  
8 Q And can you please describe the width of the  
9 forest buffer that adjoins the mall parcel to --  
10 A You mean along the whole periphery --  
11 Q Yes.  
12 A -- from, from north --  
13 Q Yes. Do you know the width, the range of widths?  
14 A You know, I don't remember, but it basically  
15 ranged, like, from 30 feet to 70 feet in wide with the  
16 widest point in the southwest corner of the mall of being  
17 approximately 190 feet. It ranged in vertical height from  
18 11 to 17 feet.  
19 Q And are there currently planted trees in that  
20 area? Is there currently landscaping existing within that  
21 buffer area?  
22 A Are there existing trees within that area? The --  
23 Q Yes.  
24 A -- answer is yes.  
25 Q Okay. And what is the topographical difference

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

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1 the plan on page 61?

2 A The specific connections, I would go to page 61.

3 Q And referring to aerial, which is Exhibit 102,

4 which we see, can you identify where the -- I believe there

5 are water towers immediately north of the Wheaton Mall

6 parcel.

7 A Yeah, I can do that.

8 MR. GROSSMAN: Well, we can see them on the --

9 MS. HARRIS: Okay.

10 THE WITNESS: Right.

11 MR. GROSSMAN: -- thing. They're almost central

12 on the diagram but due north. Is that what you're talking

13 about?

14 MS. HARRIS: Yes.

15 MR. GROSSMAN: Okay.

16 BY MS. HARRIS:

17 Q And then can you relate the location of those

18 water towers to the gray arrow that appears on page 28?

19 A Well, I think it goes right through the center of

20 the water towers.

21 Q And --

22 MR. SILVERMAN: Could you speak up?

23 THE WITNESS: I think it goes right through the

24 center of the water towers.

25 BY MS. HARRIS:

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1 Q And so the plan on page 28, what -- can you again

2 summarize what the purpose of it is?

3 A Again, it shows the overall concept of having

4 connectivity, conceptual connectivity from the adjoining

5 community, both inside and outside the sector plan area, to,

6 I'm going to call it, the core area, which is highlighted in

7 yellow.

8 Q And then if one were focusing on the specific

9 connections, it's correct that you would turn to page 61 to

10 see what those are intended to be?

11 A That would be correct.

12 Q You testified that the sector plan does not

13 recommend more gas stations. I believe this was in

14 recommendation to one of Ms. Rosenfeld's questions, is that

15 correct?

16 A That is correct.

17 Q And is there anything in the sector plan that

18 precludes gas stations?

19 A No, there is not.

20 Q There was some discussion about an informal

21 pedestrian path along Mount McComas that --

22 A Yes, there was.

23 Q And does that informal path currently connect to

24 the mall parcel, are you aware?

25 A I've walked it and I think it does connect to the

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1 mall parcel.

2 Q And is there an easement or any legal right for

3 that traversing of the mall parcel in that area that you're

4 aware of?

5 A I am not aware of any easement.

6 Q Referring back to page 61 again, in terms of the

7 existing and proposed pedestrian connections, is there one

8 shown for that informal path that currently exists?

9 A No, there is not.

10 Q Were you aware that the gas station, the existing

11 gas, the previously proposed special exception gas station

12 site, that that was within Costco's lease area of the mall

13 parcel?

14 A I was not aware of that.

15 Q Okay. Would it surprise you if I told you that it

16 was located within it?

17 A No, it would not.

18 MR. GROSSMAN: What difference does it make if it

19 would surprise him or not?

20 MS. HARRIS: It wouldn't.

21 BY MS. HARRIS:

22 Q Do you know where Costco's lease area is?

23 A Do I know specifically? No, I do not.

24 Q Okay. The bicycle path that shows on page 67 --

25 A Yes.

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1 Q -- and the chart on page 66, which is referred to

2 as LB-5 and it says that it, a signed shared roadway or a

3 shared-use path --

4 A Right.

5 Q -- can exist to accommodate bicycles --

6 A Right.

7 Q -- is there anything in your opinion, is the gas

8 station in any way precluding a signed shared roadway bike

9 path along the ring road?

10 A As -- identified as a Class 3, the answer is no.

11 Q And can you explain in a little more detail why

12 that, why you reached that conclusion?

13 A Sure. On the right-hand side, you know, there's a

14 Class 1, Class 2, Class 3. Class 1 is a bike lane,

15 completely separated from the street. A Class 2 is a

16 dedicated bike lane within the street; you've seen the bike

17 arrows. The Class 3 is a bike lane within the street. And

18 the reason I came to that conclusion is I've ridden my bike

19 around the ring road a number of times to see whether it

20 works or not, and the answer, it works. Matter of fact, I

21 feel safer in the ring road than the rest of Wheaton, mainly

22 because of the way it's set up.

23 MR. GROSSMAN: Well, hold on a second. I just

24 want to understand the class distinctions that you made.

25 You said a Class 1, is that a bike path?

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

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

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1 gas station would be memberships only but that was a  
2 non-inherent characteristic. In your opinion, is it an  
3 adverse non-inherent characteristic of the gas station that  
4 it's members only?  
5 A It does not have an adverse effect.  
6 Q It's just --  
7 A It's a -- I'll call it neutral or whatever, but it  
8 has no negative impact.  
9 Q Thank you. And then can you -- you're familiar  
10 with the originally proposed special exception, S, I believe  
11 it was, 2742 -- and can you please explain why the special  
12 exception, why that special exception was withdrawn and we,  
13 and Costco filed a new special exception application?  
14 A It was to conform to the setback requirements of  
15 the zone, new -- the zoning text amendment, which called for  
16 300-foot setbacks from certain types of uses.  
17 Q Thank you.  
18 MS. HARRIS: Just one moment. No other questions.  
19 MR. GROSSMAN: Any recross based solely on the  
20 questions asked on redirect? Ms. Rosenfeld?  
21 MS. ROSENFELD: Yes.  
22 RECROSS EXAMINATION  
23 BY MS. ROSENFELD:  
24 Q Mr. Gang, Ms. Harris asked about the prior special  
25 exception, SE-2794, and you had prepared a supplemental land

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

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1 MR. GROSSMAN: Okay.

2 BY MS. ROSENFELD:

3 Q And Ms. Harris mentioned a specific pedestrian

4 connection shown on page 61, Map 17, of the sector plan.

5 A Yes.

6 Q And I'm going to show you what had been marked in

7 Prior Special Exception Case SE-2794. Again, going to the

8 specifics -- and I will ask that this be marked as an

9 exhibit -- but can you take a look at the lower southwestern

10 quadrant of that map? Do you see --

11 MR. GROSSMAN: This will be, hold on, this will be

12 Exhibit -- find my exhibit list in this morass of paperwork

13 here, hold on -- 171. And 171 is an aerial photo, 8 and a

14 half by 11, from prior application --

15 MS. ROSENFELD: It was --

16 MR. GROSSMAN: Hold on -- S-2794.

17 (Exhibit No. 171 was marked

18 for identification.)

19 MS. ROSENFELD: And it was Exhibit 37(e) from that

20 case.

21 MR. GROSSMAN: Okay. Well, I'm not going to put

22 the second exhibit number in because we'll just confuse the

23 issue. So, okay, so what's your question of him?

24 BY MS. ROSENFELD:

25 Q And looking at the southwestern corner of that

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1 exhibit, do you see anything that would indicate a

2 pedestrian path connection as part of that special exception

3 application?

4 A Yes, I do.

5 Q And how would you recognize it?

6 A It's labeled --

7 Q And what does --

8 A -- as a four-foot wide pedestrian connection to

9 neighborhood per the master plan.

10 Q Okay, thank you. And there's no, just to clarify,

11 there's no such connection proposed in the current

12 application, is there?

13 A That is correct.

14 MS. ROSENFELD: Mr. Grossman, I have no further

15 questions.

16 MR. GROSSMAN: Okay. Does the Coalition have any

17 redirect --

18 MR. SILVERMAN: We do, just --

19 MR. GROSSMAN: -- recross, rather --

20 MR. SILVERMAN: Recross.

21 MR. GROSSMAN: -- based solely on the redirect?

22 MR. SILVERMAN: Based solely on the redirect.

23 BY MR. SILVERMAN:

24 Q You indicated, Mr. Gang, that there's an 11- to

25 17-foot topographic difference between the residence and the

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1 gas station?

2 A Within the general vicinity of the filling

3 station.

4 Q Now, how about if you were looking out the window

5 on the second floor of one of the homes, one of the

6 residential homes -- would there, what would be the

7 difference there?

8 A Sure. I would need to get Mr. Willard's plan

9 because he has the elevations, as you, you know, as I

10 mentioned during my original testimony, for, you know, the

11 view out from the second floor. I --

12 Q Well, when you said --

13 A -- don't have that information in front of me.

14 Q Well, when you said 11 to 17 feet, you were

15 talking about the difference between the street and the

16 residential areas and the, and the top of the hill?

17 A No, the existing -- along the existing grade along

18 the common property line. From the ring road to the

19 property line, abutting, you know, the Kensington Heights,

20 you know, those residences abutting Kensington Heights.

21 Q It's the property line. I understand it's the

22 property line, but the --

23 MR. GROSSMAN: It's ground level. Is that what

24 you're asking?

25 THE WITNESS: Ground level.

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1 MR. SILVERMAN: Yes.

2 BY MR. SILVERMAN:

3 Q It's --

4 A Yes.

5 Q -- ground level? Okay. Okay.

6 MR. GROSSMAN: Right.

7 BY MR. SILVERMAN:

8 Q And when you testified that a natural buffer would

9 be an effective screen, you were talking about an effective

10 screen from ground level, is that correct?

11 A No. The houses do fall off from even further

12 down, you know, the hill, from both the adjoining, the

13 southern and the eastern property line, and not only is

14 there an effective hardwood buffer, there's even some

15 evergreens along, you know, the common -- along the ring

16 road where the guardrail is.

17 Q When you say that the houses fall off, I assume

18 they fall off from some point. You mean some houses are

19 higher than other houses?

20 A The whole topography -- the whole watershed falls

21 away from the mall. The mall is almost like the high point.

22 The adjoining properties are much lower, and as, even as you

23 move further away from the mall, they even drop even

24 further.

25 Q But the ones that are closest, the residents that

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1 are highest, is there a 11- to 17-foot buffer there, or do  
2 you know?  
3 A If I had some plans in front of me, I could  
4 probably answer that very specifically.  
5 Q Well, do you have the plans here?  
6 A Yeah, I mean, there are plans here, and I'd be  
7 happy to answer that for you.  
8 Q Want to take a look?  
9 A I would love to.  
10 MR. BRANN: We don't have the full size of his  
11 plans. You still can --  
12 THE WITNESS: That's all right, whatever. I mean,  
13 if I could --  
14 MR. BRANN: And this is probably --  
15 THE WITNESS: -- if I can answer it -- you know  
16 what? There's no -- you don't have Mr. Willard's plans?  
17 MR. BRANN: We don't have his full plans, no.  
18 MS. HARRIS: Well, we have it somewhere.  
19 MR. GROSSMAN: What's the exhibit number? We can  
20 pull out the exhibit.  
21 MS. HARRIS: The exhibit may be on the most  
22 revised --  
23 MR. GROSSMAN: Were they part of this fat pack of  
24 11 by 17s in Exhibit 86(g)?  
25 MS. HARRIS: No. I think what, if I can --

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

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1 THE WITNESS: Okay. Can I borrow the most recent  
2 one, please?  
3 MS. HARRIS: Yes.  
4 MR. GROSSMAN: Yes, I think that is.  
5 MS. HARRIS: Was it Sheet No. 2?  
6 THE WITNESS: This is Sheet 2 of 3, Revision  
7 No. 7.  
8 MS. HARRIS: Okay. So that is the most recent.  
9 MR. GROSSMAN: Okay. And so --  
10 MR. GOECKE: It's Exhibit 152.  
11 MR. GROSSMAN: Yes, 152 -- 2? You said Sheet 2?  
12 Sheet 2?  
13 THE WITNESS: Sheet 2 of 3.  
14 MR. GROSSMAN: Yes, that's (b), 152(b).  
15 THE WITNESS: This is not marked yet as an  
16 exhibit.  
17 MR. GROSSMAN: No, but we have the exhibit here.  
18 THE WITNESS: May I write on this?  
19 MR. GROSSMAN: You may if you wish.  
20 THE WITNESS: Okay, because I just --  
21 MR. GROSSMAN: 152(b).  
22 THE WITNESS: This way, if I'm --  
23 MR. GROSSMAN: So if anybody else has cell phones,  
24 please have them turned off. Thank you.  
25 THE WITNESS: All right. Ready for my answer?

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

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1 there. Again, I think I've testified to, when I go out  
2 there, I can't see anything during -- I'm sorry. You know,  
3 generally, you know, during the six months when the  
4 vegetation is out, it is a generally forested buffer. Can  
5 you see through there? Yes, you know, you have to look  
6 through it. During the other six months, you do have  
7 understory, you know, both the woods, et cetera; there are  
8 some evergreens along the, you know, existing evergreens  
9 along the ring road. So I don't, I don't know for sure.  
10 Q Well, it would be --  
11 A I don't know. All I'm saying is --  
12 MR. GROSSMAN: Well, let me ask you this question:  
13 Can you see, in the present existing condition, with the  
14 present foresting, et cetera, can you see the rest of the  
15 mall? Can you see Costco's warehouse? Can you see other  
16 features on the mall from --  
17 THE WITNESS: Sure. Sure. If you were standing  
18 -- I mean, I'm going to do the closest single-families along  
19 Melvin Grove Court -- I was not able to see it, at least as  
20 I recollect. You can see them for some of the townhouses  
21 further east --  
22 MR. GROSSMAN: Okay.  
23 THE WITNESS: -- you know, which are not, you  
24 know, which are really not part of this viewshed, but you do  
25 see the Costco warehouse for the townhouses further to the

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1 east.  
2 MR. GROSSMAN: I guess the sense of my question  
3 is, would the gas station be, if erected as proposed and if  
4 there were no wall, would it be any more visible than the  
5 Costco warehouse to these homes?  
6 THE WITNESS: No, they would -- I mean, I think it  
7 would not. The Costco warehouse is higher, it's closer.  
8 The filling station is further back. Usually, you know,  
9 from a line of sight, when something is flat and further  
10 back and you're down low, you know, 17 or 18 feet --  
11 MR. GROSSMAN: Okay.  
12 THE WITNESS: -- you know, if you're down a street  
13 level, you don't see it.  
14 MR. GROSSMAN: Okay. Go ahead, Mr. Silverman.  
15 MR. SILVERMAN: Yes.  
16 BY MR. SILVERMAN:  
17 Q Now, what's the height of the trucks that go by?  
18 A I mean, most trucks are in the 13 to  
19 13-and-a-half-foot range. I don't know the answer to your  
20 -- you know, the exact height.  
21 Q All right. Have you checked, have you gone up to  
22 the second floor of any homes in Melvin Court to see what  
23 you could see?  
24 A I've not been invited.  
25 Q Well, that's a, that's a good answer. I think, I

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1 think we'll --  
2 A I was waiting for someone to invite me --  
3 Q Right.  
4 A -- you know, during all of these exhibits we  
5 presented, but --  
6 Q Right.  
7 MR. GROSSMAN: Anything else, Mr. Silverman?  
8 MR. SILVERMAN: No. I think we'll have testimony  
9 on what you can see and can't see, which I --  
10 MR. GROSSMAN: All right. Any recross from  
11 Kensington View Civic Association?  
12 MS. DUCKETT: No.  
13 MR. GROSSMAN: Okay. All right. Well, thank you.  
14 I think you've actually completed your testimony, Mr. Gang.  
15 THE WITNESS: Thank you.  
16 MR. GROSSMAN: Thank you very much. And so I  
17 guess we told them that we were going to be out of here at  
18 1:00. Hopefully they'll come here and do whatever they have  
19 to do within the period of time of lunch, and we'll plan on  
20 coming back here -- well, it's about seven minutes after  
21 1:00. So we'll come back here at 2 o'clock.  
22 MR. GOECKE: Great.  
23 MR. GROSSMAN: Does that sound about right to  
24 everybody?  
25 MR. SILVERMAN: Yes.

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1 MS. DUCKETT: Sounds good.  
2 MR. GROSSMAN: Okay. And we'll start out with --  
3 MR. GOECKE: Mr. Sullivan.  
4 MR. GROSSMAN: -- Mr. Sullivan.  
5 (Whereupon, at 1:07 p.m., a luncheon recess was  
6 taken.)  
7 MR. GROSSMAN: We are back on the record. Are you  
8 ready for our next witness?  
9 MR. GOECKE: Yes.  
10 MR. GROSSMAN: All right. Call your next witness,  
11 please.  
12 MR. GOECKE: Our next witness is David Sullivan,  
13 Mr. Grossman.  
14 MR. GROSSMAN: All right. Mr. Sullivan, will you  
15 raise your right hand, please?  
16 (Witness sworn.)  
17 MR. GROSSMAN: You may proceed.  
18 DIRECT EXAMINATION  
19 BY MR. GOECKE:  
20 Q Mr. Sullivan, I'd like to ask you some questions  
21 about the environmental analysis you did for the Costco  
22 proposed special exception, but first, would you please  
23 introduce yourself to Mr. Grossman and tell him where you  
24 work and what you do for a living?  
25 A Well, my name is David Sullivan, and I am

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1 president of Sullivan Environmental Consulting,  
2 Incorporated. We're in our 26th year of operation in  
3 Alexandria, Virginia. Our practice is limited to air  
4 quality-related issues, which includes meteorological data  
5 collection, air quality monitoring, air quality modeling  
6 analysis, noise, and odor. So that's the nature of our  
7 practice. We work for a range of clients, including the  
8 U.S. EPA, World Bank, environmental organizations, as well  
9 as state and federal agencies.  
10 MR. GROSSMAN: All right.  
11 BY MR. GOECKE:  
12 Q And going back to your education, where and when  
13 did you graduate from college and with what degree?  
14 A I was -- I had a B.S. degree in  
15 meteorology/oceanography from New York University in 1972  
16 and a master's degree in meteorology from Penn State  
17 University in '74. After that time I became certified when  
18 I was qualified to take the examination, certified by the  
19 American Meteorological Society as a certified consulting  
20 meteorologist. I was awarded that in 1980. I have been  
21 practicing as a certified meteorologist since that time. My  
22 practice has another CCM as well, Dennis Hlinka, who has  
23 about the same number years of experience as I do, about --  
24 I have 38 years of experience in air quality. He has about  
25 the same.

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1 MR. GROSSMAN: All right.  
2 BY MR. GOECKE:  
3 Q And you've been a certified meteorologist for 37  
4 years, you said, or 38 years?  
5 A I've been a, I've been -- my experience goes back  
6 38 years --  
7 Q Yes.  
8 A -- I've been certified for 33 years.  
9 Q Okay. And when you become a certified  
10 meteorologist, how long is the certification good for?  
11 A It's lifetime. Well, it's lifetime. Of course,  
12 there can be, it requires certain, upholding certain  
13 standards. So there's a requirement for ethics, competency  
14 and, you know, good behavior. I mean, it is not, it's not  
15 -- you could have it revoked for not following those  
16 requirements.  
17 Q And as a meteorologist, have you been trained in  
18 air dispersion modeling?  
19 A Yes, I have.  
20 Q And have you actually employed those skills in the  
21 course of your years as a meteorologist?  
22 A Many times.  
23 Q Have you been trained in air quality modeling and  
24 analysis?  
25 A Rephrase. The last question I thought you asked

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1 me was air quality modeling.  
2 Q The first one was dispersion modeling.  
3 A Yes. They're, they're, I consider them  
4 synonymous --  
5 Q Okay.  
6 A -- so the answer is yes.  
7 Q Okay. Have you been trained in doing noise  
8 analysis?  
9 A Yes.  
10 Q What about odor analysis?  
11 A I have conducted a number of odor analysis, yes.  
12 Q Yes.  
13 MR. GROSSMAN: Well, he asked you if you were  
14 trained in it.  
15 THE WITNESS: Trained. I haven't gone -- I didn't  
16 study it in school, no --  
17 BY MR. GOECKE:  
18 Q Yes.  
19 A -- in that context.  
20 Q And in the course of your career as a  
21 meteorologist, have you actually conducted noise analysis?  
22 A I have.  
23 Q How many?  
24 A Two or three.  
25 Q Yes. And what about odor?

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1 A About the same number.  
2 Q Yes. Have you ever testified as an expert before?  
3 A Yes.  
4 Q And where have you testified as an expert?  
5 A I've testified as an expert about 20 times,  
6 federal court, district court, and sometimes at hearings.  
7 MR. GROSSMAN: Expert in what?  
8 THE WITNESS: Expert in meteorology and  
9 oceanography, I'm sorry, meteorology and air quality  
10 analysis.  
11 BY MR. GOECKE:  
12 Q Have you ever conducted air quality analysis to  
13 assess levels of toxic air pollutants?  
14 A Yes, I have.  
15 Q And can you tell us a bit about your experience in  
16 that field?  
17 A Back in the early '80s, I worked for EPA as a  
18 contractor and that was a time when EPA was trying to  
19 determine how they were going to regulate toxic air  
20 pollution. Toxic pollution are things other than  
21 particulate matter, ozone, what they call, like, criteria  
22 pollutants. And at that time, I worked for a company called  
23 Versar -- they're in Springfield, Virginia -- and I was the  
24 principal investigator for air quality on EPA's integrated  
25 environmental management project and that study conducted

1 many of the early phases of what -- it ended up becoming  
 2 EPA's policies and procedures in air toxics, including two  
 3 studies that are fairly well-known. One is the called the  
 4 six-month study or air toxics. The other is called the  
 5 35-county study of air toxics. The first was national in  
 6 scope, all counties in the United States. The second  
 7 focused on the most significant 35 counties. I served as  
 8 principal investigator on both those, those projects and  
 9 also worked for EPA on their urban-scale projects throughout  
 10 the United States, including Baltimore, Philadelphia,  
 11 Charleston, West Virginia, and other places. We would study  
 12 the entire metropolitan area, all the inventory sources of  
 13 air toxics, all of the, what we call, area source, including  
 14 gasoline marketing, mobile sources, dry cleaners, and things  
 15 like that, and those studies were helpful to the EPA in  
 16 developing their policies to address toxic air pollution.

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

19 A I have.

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

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

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

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

10 A Yes, I am.

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

13 MR. GOECKE: Sure. Let me rephrase.

14 BY MR. GOECKE:

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

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

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

25 A Yes.

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

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

22 Q Thank you.

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

1 modeling and analysis, noise and odor analysis --

2 MR. GROSSMAN: Hold on a second.

3 MR. GOECKE: Sure.

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

5 MR. GOECKE: Air quality modeling.

6 MR. GROSSMAN: Okay.

7 MR. GOECKE: And analysis.

8 MR. GROSSMAN: And?

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

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

16 MR. GOECKE: Thank you.

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

19 THE WITNESS: Air quality monitoring and  
 20 meteorological monitoring.

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

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1 fairly stated?

2 MR. GOECKE: I think it was just -- so

3 meteorology, I agree with number one. I agree with number

4 two, air quality modeling and analysis, number two.

5 MR. GROSSMAN: Right.

6 MR. GOECKE: Number three -- I guess it's actually

7 3(a) and 3(b) -- noise, (a); and 3(b), odor analysis.

8 MR. GROSSMAN: All right.

9 MR. GOECKE: And then, four, determining exposure,

10 potential exposure.

11 MR. GROSSMAN: To toxic chemicals, I think you

12 have.

13 MR. GOECKE: To toxic chemicals, and I think five

14 and six are redundant then.

15 MR. GROSSMAN: All right. Before I open this

16 voir dire to further questioning, you mentioned that your

17 certificate is good upon good behavior. With some

18 hesitation I ask, what constitutes bad behavior for a

19 meteorologist?

20 THE WITNESS: Bad behavior would include dishonest

21 consulting practice, taking advantage of your clients --

22 MR. GROSSMAN: Okay.

23 THE WITNESS: -- fraudulent work, things of that

24 nature.

25 MR. GROSSMAN: All right. Questions from the

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1 opposition regarding this gentleman's credentials for the

2 expertise that he has been offered for?

3 MS. ROSENFELD: You mentioned you had done two or

4 three studies on noise. Can you tell me what projects those

5 were?

6 THE WITNESS: I did a study in the county

7 involving a trash-transfer facility and conducted an odor

8 analysis for that particular study. We have done some odor

9 analysis involving pesticide work; as part of our research

10 activities on pesticide emission rates, have evaluated

11 dilution ratios in that context. And, of course, the third

12 example would be the project we did here at the Sterling gas

13 station locally.

14 MR. GROSSMAN: I might mention that Mr. Sullivan's

15 résumé is included as Exhibit 17(f), F as in Frank, and he

16 does include a list of areas in which he's testified as well

17 as publications and presentations.

18 MS. ROSENFELD: And on the issue of noise, can you

19 tell me what projects those were?

20 THE WITNESS: We worked on a project at a nearby

21 computer facility that is part of the Internet system where

22 they have a number of chillers and so forth on their

23 rooftops and at ground level, and it was a study of the

24 noise in terms of monitoring the noise levels by frequency

25 as well as conducting noise modeling with a SoundPLAN noise

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1 model. That's an example, and of course, we did noise

2 modeling for this study, as well as noise monitoring at the

3 Sterling facility.

4 MS. ROSENFELD: And did you say you did or did not

5 have training on noise issues?

6 THE WITNESS: Well, I haven't had formal training

7 in noise issues, but I'm certainly qualified to use the

8 equipment that I've used. And my staff has conducted noise

9 modeling on my behalf, and they have extensive training in

10 modeling in general and had no difficulty in running the

11 noise models.

12 MS. ROSENFELD: Is it your staff then who's been

13 trained in noise modeling?

14 THE WITNESS: We have not had formal training in

15 noise modeling.

16 MR. GROSSMAN: We, meaning you?

17 THE WITNESS: Myself included.

18 MR. GROSSMAN: Okay.

19 MS. ROSENFELD: Okay. Have you ever testified as

20 an expert on noise?

21 THE WITNESS: I have not.

22 MS. ROSENFELD: And with respect to odor, you

23 mentioned three projects, one of which was at Sterling. Do

24 you have specific training in odor analysis?

25 THE WITNESS: Well, much of odor analysis involves

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1 modeling dilution ratios, and I have extensive training in

2 doing dilution ratios. The other part of odor monitoring is

3 collecting samples and sending the samples off to an odor

4 laboratory, and I have extensive experience in conducting

5 many research studies that involve sampling of pollution.

6 MS. ROSENFELD: And so the analysis of the samples

7 is done by a third party?

8 THE WITNESS: Correct. It's done by a laboratory.

9 MS. ROSENFELD: Mr. Grossman, I would accept

10 Mr. Sullivan as an expert on the air quality modeling and

11 analysis topics that were listed initially, and --

12 MR. GROSSMAN: Presumably, meteorology as well.

13 MS. ROSENFELD: Meteorology, air quality modeling

14 and analysis, those. I think there were about six different

15 categories.

16 MR. GROSSMAN: Determining potential exposure to

17 toxic chemicals.

18 MS. ROSENFELD: That's correct, monitoring of air

19 quality.

20 MR. GROSSMAN: Monitoring, okay.

21 MS. ROSENFELD: Meteorological monitoring --

22 MR. GROSSMAN: Right.

23 MS. ROSENFELD: -- and on odor, and we would

24 object to him as an expert on noise --

25 MR. GROSSMAN: Okay.

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

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

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

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

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

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

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

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

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

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

10 MR. GROSSMAN: Okay.

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

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

23 THE WITNESS: If all else is equal --

24 MR. GROSSMAN: Yes.

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

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

3 MR. GROSSMAN: Okay.

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

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

9 THE WITNESS: There's the Arid Permeator. There's  
10 also the fact, maybe a little bit more difficult to

11 quantify, but unlike many gas stations, Costco has a  
12 full-time attendant that's outside with people that are  
13 pumping the gas. So if they have a small, a small spill,  
14 they can respond more quickly, which would tend to have, you  
15 know, a minor effect on further reducing emissions per  
16 gallon sold --

17 MR. GROSSMAN: Okay.

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

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

24 THE WITNESS: That's correct.

25 MR. GROSSMAN: Okay. There were any number of

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

5 MR. GOECKE: Thank you.

6 BY MR. GOECKE:

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

10 A There is not.

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

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

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

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

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1 if they're above or below the standard. If they're above  
2 the standard, they'll install more controls to get below the  
3 standard. That's how the air emission business works, but  
4 if there's no standard, it would have to be arbitrary  
5 because there's no basis on a quantifiable benchmark for a  
6 decision.  
7 MR. SILVERMAN: I would just renew the objection.  
8 First of all, there's no permit in this case. I don't quite  
9 understand the relevance.  
10 MR. GROSSMAN: Well, by permit, I think he means  
11 by a grant of an authority. In this case, the grant of  
12 authority would be a special exception, and the question  
13 I --  
14 MR. SILVERMAN: That's not what I understood, sir.  
15 MR. GROSSMAN: Oh, then did I misunderstand what  
16 you said?  
17 THE WITNESS: No, I was -- no, you did not. I  
18 mean, I was referring to any decision made at the county,  
19 state, or federal level on ultrafine particles, as an  
20 example, that doesn't have a standard would, by definition,  
21 be arbitrary.  
22 MR. GROSSMAN: All right. Let's move to something  
23 else.  
24 MR. GOECKE: Okay.  
25 BY MR. GOECKE:

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1 Q And then, finally, would the gas station actually  
2 be a very small part of the air quality problem as contended  
3 by Costco? And I believe what Mr. Grossman is asking, in  
4 contributing to the air pollution in the area generally, is  
5 the Costco contribution going to be --  
6 MR. GROSSMAN: Right, and include in that answer  
7 not just the volume of gas being pumped but the impact of  
8 queuing vehicles -- and in this case that's part of the  
9 business model for Costco gas as we understand it, that they  
10 have queuing vehicles to, at the pumps -- and the fact that  
11 there will be a significant amount of time during the day  
12 that fuel tanks are pumping, I mean, fuel trucks are pumping  
13 gasoline into tanks, underground tanks. So that's the  
14 overall question.  
15 THE WITNESS: Well, the gas station operations, of  
16 course, will emit volatile organics -- that's associated  
17 with the gasoline pumping process and the delivery process  
18 -- as will, any gas station will do that. This gas station  
19 is larger than most; so it will have somewhat more of those.  
20 The queuing of the cars, you know, if we're talking  
21 about the 1970s or '60s, that would be a big source.  
22 Queuing of cars in 2013 or 2014, when this station is built,  
23 is a very tiny source. It can be quantified, there are  
24 emission factors for it, we've modeled it in great detail,  
25 and I can give you some reference points later, but it's a

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1 very small source.  
2 MR. GROSSMAN: Even if they're continually idling  
3 while they're waiting?  
4 THE WITNESS: Correct.  
5 MR. GROSSMAN: Okay.  
6 THE WITNESS: As of -- you know, we're talking  
7 about fleet mix in 2013. The EPA has made tremendous  
8 advancements in tailpipe control technology, and the cars of  
9 today are so different than the cars that, you know, I  
10 learned to drive how many years ago and that needs to be  
11 considered in making -- many, this queue has been discussed  
12 for two to three years now, and I've said this every time I  
13 had an opportunity, that the emissions are very, very small.  
14 That statement still is true.  
15 MR. GROSSMAN: And what about the deliveries to  
16 the fuel tanks from the trucks?  
17 THE WITNESS: They, of course, they do, they do  
18 add to some volatile organic emissions. We have quantified  
19 all those emissions, the delivery of the gas trucks, the  
20 fueling, the minor spills, the more major spills, looked  
21 into the tailpipe exhaust, cars driving there, and the  
22 comparison to the national standards shows they're well  
23 within the standards. And looking at risk assessment,  
24 cancer risk assessment and compare it to any guidelines that  
25 exist, it's low; it's at de minimis or lower levels. So

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1 there is no, there's no basis in fact to conclude that the  
2 operation of this gas station will cause a health problem.  
3 MR. GROSSMAN: Will cause a health problem in the  
4 immediate vicinity? You said it won't cause a health  
5 problem.  
6 THE WITNESS: It won't cause a health problem in  
7 the immediate vicinity of the gas station, which was  
8 evaluated in great detail; and, frankly, will tend to  
9 reduce, to some extent, the regional emissions because --  
10 MS. ROSENFELD: Objection. I don't believe that  
11 Mr. Sullivan was qualified as an expert on health. He was  
12 qualified for purposes of air quality and air emissions and  
13 air modeling --  
14 MR. GROSSMAN: All right.  
15 MS. ROSENFELD: -- but not as an expert in what  
16 effect it would have on the health of individuals.  
17 MR. GROSSMAN: Yes, I should -- air quality is  
18 what I'm really talking about.  
19 THE WITNESS: Well, if I could clarify, I'm not a  
20 health expert --  
21 MR. GROSSMAN: Right.  
22 THE WITNESS: -- and I can fully agree to that,  
23 but I don't have to be a health expert to determine that the  
24 standard -- we're below the standards, Costco is below the  
25 national standards, which are set by health experts. In

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1 doing risk assessment, I'm using EPA cancer potency scores  
2 from their experts, but my modeling doesn't require  
3 expertise --  
4 MR. GROSSMAN: Okay.  
5 THE WITNESS: -- in health to make that  
6 assessment.  
7 MR. GROSSMAN: All right.  
8 MR. GOECKE: Okay.  
9 BY MR. GOECKE:  
10 Q And, Mr. Sullivan, let's turn now to your  
11 PowerPoint presentation, which, again --  
12 MR. GROSSMAN: Well, he didn't quite finish my  
13 question. So if you want to, since we're, since you have  
14 started down that road a bit --  
15 MR. GOECKE: Sure.  
16 MR. GROSSMAN: -- let's go back for a second to  
17 what part the gas station plan would play in the, in the  
18 overall pollution of the atmosphere in the area. That is,  
19 assuming that this gas station were approved and operated  
20 fully as it is proposed, is there a way to determine what  
21 proportion of air pollutants would be caused, let's call  
22 them dangerous air pollutants, would be caused by this gas  
23 station versus the overall area level of pollutants?  
24 THE WITNESS: Yes. Yes, we can, and our analysis  
25 did that assessment for each criteria pollutant. And what

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1 we've discussed the most so far on this matter has been fine  
2 particulates. So if we use that as an example, fine  
3 particulate modeling of this facility shows, even if we  
4 scale up for the most recent mobile source emission model,  
5 the annual concentration at the maximum location is about  
6 .01 micrograms per cubic meter. The background  
7 concentration as of 2013 is approximately 10 and change,  
8 10.8 micrograms per cubic meter; so it's approximately  
9 thousandths. So Costco's contribution at the most effective  
10 location is approximately one thousandths of the background.  
11 MR. GROSSMAN: What about what's been called in  
12 this case ultra -- I presume what you're talking about is PM  
13 sub 2.5?  
14 THE WITNESS: Correct.  
15 MR. GROSSMAN: What about what has been  
16 characterized as ultrafine particulate matter -- did you do  
17 any analysis of that?  
18 THE WITNESS: We certainly looked into the  
19 literature on that topic. Where there's no standard, we  
20 can't compare our numbers, but I can say that if a facility  
21 has a maximum impact for PM 2.5 or less or .01 micrograms  
22 per cubic meter, you would not find any regulator in the  
23 United States at the state or federal level that would have  
24 a concern about ultrafine particles.  
25 MR. GROSSMAN: Which is to say --

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1 MS. ROSENFELD: Could he repeat that?  
2 MR. SILVERMAN: Yes. He's --  
3 MR. GROSSMAN: His statement was you would not  
4 find any regulator in the United States, given his findings  
5 about fine particles of PM 2.5, that would find a problem  
6 with the volume of ultrafine particles likely to be admitted  
7 here, emitted here. Is that --  
8 THE WITNESS: Correct.  
9 MR. GROSSMAN: -- a fair summary of it? Can I ask  
10 you to divorce that from what you think other people might  
11 find and tell me what, in your expert opinion, you would be  
12 able to opine would be the likely level of ultrafine  
13 particles emitted by this proposed gas station given your  
14 findings about the likely level of PM 2.5 particles?  
15 THE WITNESS: I can probably best answer it on a  
16 relative basis rather than give you particle counts. The  
17 issue is, if you were concerned about ultrafine particles in  
18 the Wheaton area, your concern is more regional. It's a  
19 regional issue. A lot of the fine particles are created in  
20 the atmosphere from the gases, a lot of it from mobile  
21 source emissions that cook over time and transform into  
22 particles. That study -- the literature clearly shows that  
23 that's a major factor that affects air pollution in any  
24 metropolitan area, including, including here, and the  
25 contribution from Costco to that is clearly trivial.

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1 The other issue is, if you are concerned --  
2 MR. GROSSMAN: By Costco, you mean the Costco gas  
3 station proposed?  
4 THE WITNESS: Correct, the incremental source from  
5 Costco gas station. The other issue to consider, if you  
6 want to put it in context, is that, as, as my reports have  
7 shown, that the indoor -- or, actually, my PowerPoints have  
8 shown -- the indoor contribution from ultrafine particles  
9 and from fast food restaurants is much higher than you  
10 typically see, even if you're near a freeway. Inside your  
11 home, if you're frying onions and frying chicken and using  
12 incense and burning candles and, heaven forbid, smoking,  
13 you're going to have a lot higher particle counts than  
14 you're going to get in the typical ambient air.  
15 MR. GROSSMAN: I don't want to jump too far ahead  
16 of what you planned, Mr. Goecke. Are you going to also  
17 address the assertion by the opposition about micro-areas of  
18 exposure, in other words, areas that they suggested that  
19 could be higher than other areas based on this, this -- I  
20 don't know how you propose to proceed, but that was one of  
21 the --  
22 MR. GOECKE: One of the questions that you had  
23 addressed to us or to the other side?  
24 MR. GROSSMAN: Well, no, I had addressed it to the  
25 other side --

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1 MR. GOECKE: Yes.  
2 MR. GROSSMAN: -- but it is a question that I want  
3 to know if you're going to have this gentleman testifying  
4 about.  
5 MR. GOECKE: I don't think we have slides that  
6 specifically address that, but I think that we're -- we  
7 probably could get to that.  
8 MR. GROSSMAN: Well, I'll leave that up to you --  
9 MR. GOECKE: Yes.  
10 MR. GROSSMAN: -- as you want to get into that.  
11 There was another point in my Question 13 --  
12 THE WITNESS: Mr. Grossman, I could answer  
13 that --  
14 MR. GROSSMAN: Oh, okay. Go ahead.  
15 THE WITNESS: -- I could address it, if you want  
16 me to, now --  
17 MR. GROSSMAN: Go ahead.  
18 BY MR. GOECKE:  
19 Q Sure.  
20 A -- in some context.  
21 Q Please.  
22 A The concept of the personal cloud that was brought  
23 up by Dr. Dyson --  
24 MR. GROSSMAN: Yes.  
25 THE WITNESS: -- I agree, that is, that happens.

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

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

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

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1 2.5 right next to the HOT lanes of 395. They didn't see a  
 2 violation. Right next to the roadway, exactly in maybe, in  
 3 the breakdown lane, it may be above the standard. By the  
 4 time you go to ambient air locations, the standards were --  
 5 even in that setting, those cars were not hitting those PM  
 6 2.5 levels.  
 7 So, clearly, we were not in a position to run  
 8 MOVES. We wanted to run it, we tried very hard to run it,  
 9 but frankly, it's not being run now except that one case,  
 10 and the transition didn't happen until March 2nd, 2013.  
 11 Modeling was long done way before that time. I'll, in my,  
 12 in my testimony, I'll describe the significance of it. We  
 13 -- even our reports say, well, if we had used MOVES, based  
 14 on the literature, would have had some higher numbers, not  
 15 much higher, but we can show it, you know, I can describe  
 16 that in greater detail.  
 17 MR. GROSSMAN: All right. All right. Just one  
 18 last question. I notice you have a club-like device on the  
 19 counter there. That's not to control unruly hearing  
 20 examiners, is it?  
 21 THE WITNESS: No, sir. No, sir, but it would be  
 22 effective for that. We'll talk about this later. This is a  
 23 sonic anemometer.  
 24 MR. GROSSMAN: All right.  
 25 BY MR. GOECKE:

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1 Q And we'll get to that later, correct?  
 2 A Yes.  
 3 MR. GROSSMAN: Okay.  
 4 MR. GOECKE: Okay.  
 5 MR. GROSSMAN: All right.  
 6 MR. GOECKE: You're going to put me out a job.  
 7 BY MR. GOECKE:  
 8 Q All right. Let's move on to the PowerPoint  
 9 presentation, Mr. Sullivan.  
 10 A My PowerPoint basically summarizes the work we've  
 11 done on this project. I can't say it covers every single  
 12 thing we've done, but it certainly covers the, the high  
 13 points of what the work that's gone into this since  
 14 September of 2010. I'm going to start with the conclusions  
 15 and then work my way backwards.  
 16 Q Please do.  
 17 MR. GROSSMAN: Okay.  
 18 THE WITNESS: The most important point is, based  
 19 upon standard EPA methods, air quality impacts are far below  
 20 all EPA National Ambient Air Quality Standards. That's the  
 21 benchmark used to evaluate air quality projects. Are they  
 22 above or below the standards? If you're below the  
 23 standards, you're below the standards.  
 24 BY MR. GOECKE:  
 25 Q And that's the EPA National Ambient Air Quality

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1 Standards, those are the benchmark?  
 2 A Correct.  
 3 Q And why are they the benchmark?  
 4 A Those, those are the national standards that apply  
 5 throughout the United States, including Maryland, designed  
 6 to be protective of public health, with a reasonable margin  
 7 of safety, including for asthmatics and at-risk individuals.  
 8 MR. GROSSMAN: Now, when you say below, use the  
 9 term below, I take it you mean are less than the toxic  
 10 level?  
 11 THE WITNESS: Less than the threshold as defined  
 12 by the National Ambient Air Quality Standards, correct.  
 13 MR. GROSSMAN: The thresholds being above the  
 14 level it would be adverse; is that what you're saying?  
 15 THE WITNESS: Well --  
 16 MR. GROSSMAN: Well, let me put it differently.  
 17 When you say below, it means you are, you're on the better  
 18 side of the breakdown rather than on the worse side?  
 19 THE WITNESS: That's correct.  
 20 MR. GROSSMAN: Okay.  
 21 THE WITNESS: If the standard is 12 and you're at  
 22 10.8, you're in the speed limit --  
 23 MR. GROSSMAN: Right. Okay.  
 24 THE WITNESS: -- you're under the level.  
 25 MR. GROSSMAN: I just want to make sure the record

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1 was clear that you weren't saying it's worse than; you were  
 2 saying it's better than, right, when you say below?  
 3 THE WITNESS: Thank you. Yes --  
 4 MR. GROSSMAN: Okay.  
 5 THE WITNESS: -- that's what I was saying.  
 6 MR. GROSSMAN: All right.  
 7 THE WITNESS: And I would want to say that --  
 8 let's just say for the sake of argument you're at 12.1 and  
 9 the standard is 12. Does that mean individuals are at risk?  
 10 The answer is, very unlikely that would be the case because  
 11 the standards are built with a margin of safety. So if you  
 12 walk onto an elevator, it may say no more than 2,000 pounds,  
 13 but if you're at 2,001, that cable is not going to break,  
 14 and the EPA has the same kind of a philosophy. They build  
 15 in a margin of safety, which is required by the Clean Air  
 16 Act.  
 17 MR. GROSSMAN: Did you also compare to standards  
 18 from the World Health Organization?  
 19 THE WITNESS: We did not, but we certainly can.  
 20 MR. GROSSMAN: Okay.  
 21 THE WITNESS: Those standards don't have  
 22 applicability in the U.S., but I can discuss that further if  
 23 you'd like.  
 24 MR. GROSSMAN: Do you know if the projected  
 25 impacts, air quality impacts here would be below the World

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

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

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

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1 the gas fumes. And we conducted that analysis in Sterling,  
2 and -- where they did not even have an Arid Permeator -- and  
3 based upon that analysis, we, I expect that it would be  
4 fairly rare there would be detectable odors beyond the ring  
5 road.  
6 BY MR. GOECKE:  
7 Q Would the green screen wall that's been proposed,  
8 would that affect the traveled odor at all?  
9 A I would say no, not significantly.  
10 Q No. What about the wooded terrain in between the  
11 ring road and the residential neighborhood?  
12 A Like I mentioned before, it could produce a small  
13 amount of additional dilution, maybe 10 or 15 percent, not  
14 on a big factor. But the big factor is, the Arid Permeator  
15 approximately reduces the emissions of odoriferous chemicals  
16 by about a factor of two. So when we were at the Sterling  
17 station, we were at about 320 feet. That's the furthest.  
18 We could smell odor at one point 320 feet from the pumping  
19 area, but if you applied that, reduced emissions by a factor  
20 of two, which is the same thing as a dilution factor of two,  
21 we couldn't smell anything and did it repeatedly. That was  
22 -- in the winter, that was that study. In the summer we did  
23 a study, and the furthest that we could detect the odors was  
24 73 feet. That was also -- and Sterling did not have an Arid  
25 Permeator.

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

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

14 A Correct.

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

21 MR. GOECKE: Yes.

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

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

1 before I can respond.

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

3 MR. GOECKE: He saw you coming.

4 MR. GROSSMAN: All right. Well --

5 MR. GOECKE: Thank you.

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

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

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

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

1 process.

2 MR. GROSSMAN: Okay.

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

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

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

15 MR. GROSSMAN: Okay.

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

22 MR. GROSSMAN: Okay.

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

25 MR. GROSSMAN: Okay, thank you.

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

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

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

21 BY MR. GOECKE:

22 Q And this is Slide 6.

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

1 3-million-gallon-per-year gas station, and the green is  
 2 Costco, and I'm just projecting from 2013. I'm showing that  
 3 going forward to 2020. This slide, the assumptions are  
 4 defined and we're describing how controls have changed over  
 5 time. If you go, and if you go back, even on a  
 6 1-and-a-half million dollar, 1-and-a-half-million-gallon gas  
 7 station, back in the mid, early 1990s, you would have  
 8 similar emissions as Costco would have when it opens now.  
 9 If you go to a 3-million-gallon-per-year gas station, that  
 10 goes back to, let's say, the early, the early 2000 time  
 11 frame, and back in time, emissions were a lot higher than  
 12 they are today. And to further make that point, when I say  
 13 it's not unprecedented, this is showing when Costco opens.  
 14 This is assuming 2013, but you can see if you go across --  
 15 you know, the late, maybe the mid to late 1980s, the  
 16 1-and-a-half-million-gallon gas station; around the  
 17 mid-1990s, mid to late 1990s for the 3-million -- that,  
 18 yeah, it's a big gas station, but compared to the trend  
 19 lines, where things have been and where things are going,  
 20 it's not so large. And this is projecting to 2020, and as  
 21 you can see, with that projection, if I go back, now it's  
 22 more like the 2005 or so for the 3-million gas station and  
 23 late 1990s for the 1-and-a-half. So my point again is, it's  
 24 not unprecedented; yes, it's a large station, but if you  
 25 consider the controls that are in place and will be in

1 place, it's definitely not unprecedented.

2 Q And so, Mr. Sullivan, we're on Slide 8 now, and I  
 3 just want to point out in your chart, the green line that  
 4 shows the proposed Wheaton Costco station, it continues to  
 5 decrease after it begins, so that by the year 2020, which is  
 6 the last year on your chart, the gap between a  
 7 1-and-a-half-million-gallon station and the Costco proposed  
 8 station continues to narrow. Why do you have that there and  
 9 how can you be so sure about that?

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

13 Q And when you say the canisters, you mean?

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

21 Q Thank you.

22 A This is just doing a comparison where on the left  
 23 I'm showing, this is showing a 1-and-a-half-million-gallon-  
 24 per-year gas station in terms of gasoline sold, and here's  
 25 12 million. So it's certainly, in terms of sales, it's a

1 much larger gas station than your typical gas station is.  
 2 But if we compare your typical gas station to, well, where  
 3 would we be in terms of emissions, well, if I had a  
 4 12-million-gallon-a-year gas station without the Permeator,  
 5 it would be about -- this would be eight times higher than  
 6 your typical gas station. But with Wheaton, with the Arid  
 7 Permeator, it's approximately five times larger in 2013, and  
 8 if I extend it to 2025 compared to today's, it will be on  
 9 the order of two, two-and-a-half times larger. That's  
 10 really just for perspective.

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

20 Q And where did you get this data from?

21 A That was from the EPA Web page --

22 Q Yes.

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

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1 applicable national and state standards and guidelines, and  
2 these are the chemicals that were evaluated: fine  
3 particulates, carbon monoxide, nitrogen dioxide, and  
4 volatile organic compounds.  
5 Q Why did you analyze those particular chemicals?  
6 A The first three have National Ambient Air Quality  
7 Standards that we could have compared it to, and VOCs were  
8 done to support a risk assessment for cancer effects.  
9 Q Are these contaminants known to be associated with  
10 gas stations?  
11 A They are. I mean, particulate matters, as I  
12 mentioned, is not particularly a trademark pollutant of gas  
13 stations, not usually the primary focus, like it has been  
14 here. Volatile organic carbon compounds are generally  
15 what's emphasized at gas stations in review. So it's an air  
16 quality analysis, and also, odor and noise impacts were  
17 evaluated.  
18 Q Are there any other contaminants or toxics  
19 associated with gas stations that you did not analyze?  
20 A Well, we certainly didn't analyze all of the  
21 particulate species that are emitted or all of the organic  
22 chemicals that are emitted from, from gas station  
23 operations. In terms of risk, we evaluated all of the  
24 volatile organic compounds that had quantifiable  
25 EPA-approved cancer potency scores as contained in the EPA

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1 IRIS, I-R-I-S, database, those four of them. Those were all  
2 considered in here.  
3 So in terms of how we got to we are right now, we  
4 conducted our first environmental report -- I believe this  
5 was the first -- in July of 2012. Between that point in  
6 time and September, Kensington Heights hired a consultant,  
7 Dr. Henry Cole; that, you know, he and I have met and worked  
8 together to some capacity on a protocol. And Dr. Cole,  
9 Dennis Hlinka from my staff, and myself collaborated on a  
10 protocol to model the Costco operations.  
11 I want to say that the final report shows the  
12 modeling of Costco sources based upon that consensus  
13 approach. I'm not going to put words in Dr. Cole's mouth.  
14 He doesn't agree with everything that's in the analysis. I  
15 understand that and we can discuss in a few minutes where we  
16 diverged, but in terms of how to model Costco sources,  
17 whether it be the queuing, the gasoline marketing and so  
18 forth, we met, discussed different ways to proceed. My  
19 opinion is we had consensus on those aspects.  
20 Interpretations do differ, there's no question,  
21 and you'll hear, you'll hear some conflicting testimony, I  
22 expect, but the basis for identifying the concentrations  
23 produced from the gas station operations is based upon  
24 running the EPA AERMOD dispersion model in a manner that  
25 followed the protocol that we jointly developed.

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1 Q And that meeting in September of 2012, that was a  
2 face-to-face meeting?  
3 A It was a face-to-face meeting. It involved  
4 Dr. Cole, CCM Dennis Hlinka, myself, Erich Brann, Howard  
5 Nussbaum, and Mr. Silverman.  
6 MR. GROSSMAN: Is that Dr. Cole at counsel table?  
7 MR. SILVERMAN: This is Dr. Henry Cole, sir.  
8 MR. GROSSMAN: Hello, Dr. Cole.  
9 MR. COLE: Hello.  
10 THE WITNESS: Now, I, I certainly had hoped that  
11 we would come to this proceeding with consensus on how to  
12 determine the concentrations, and my feeling was -- and I  
13 had made this statement at the County Council -- if we could  
14 do that, the process would be much easier for the finder of  
15 fact -- in this case, Mr. Grossman.  
16 We don't have full consensus in terms of the  
17 meaning of the results. I'll let Dr. Cole speak for himself  
18 in terms of how he ran the model, but I will say that we are  
19 at the point now where the Hearing Examiner can just look at  
20 the results and say I concur with the standards, now I see  
21 you have consensus. We don't have consensus. We tried, and  
22 I could describe the process at some point, but we didn't  
23 quite get there. I think we all made an honest effort to do  
24 so. We don't have consensus. And I guess I should say that  
25 I've done this sort of a project, this is my fourth or fifth

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1 one of these in the last 10 years, and each of the other  
2 times I worked as a consultant to the community. And in  
3 that context, the first step that I, that I would do every  
4 time was to meet with their consultants and their management  
5 and to see if we could have an agreement on three points.  
6 If we could agree on these three points --  
7 MS. ROSENFELD: Objection, Mr. Grossman. I truly  
8 don't see the relevance of this to the standards or the  
9 modeling or today's proceeding.  
10 MR. GROSSMAN: All right. I would tend to agree.  
11 I guess what he's trying to say is how he ordinarily reaches  
12 consensus, and it's --  
13 MS. ROSENFELD: Which hasn't occurred here. So I  
14 really don't see the relevance.  
15 MR. GROSSMAN: I'll let him testify as to it for  
16 whatever weight it's worth.  
17 THE WITNESS: Well, I think it might be helpful in  
18 the context that the way the process generally works is the  
19 consultants get together and they agree, number one, we'll  
20 follow EPA standard methods -- EPA has a guideline of how to  
21 run the models -- Point No. 2, got to meet, you have to meet  
22 the national standards; Point No. 3, both sides live with  
23 the results. We didn't achieve that, and I think in  
24 fairness, I don't think that the opposition fully agreed  
25 that the EPA standards were protective -- I mean, that's

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1 come out during discussion -- and nor did they agree to the  
2 EPA methodology, and we can discuss that further. Dr. Cole  
3 had a number of things he wanted the, Costco to do that are  
4 very non-standard, and you know, so we could not get there.  
5 Everyone went in good faith, but we didn't quite make it.  
6 MR. GROSSMAN: Okay.  
7 BY MR. GOECKE:  
8 Q Slide 15.  
9 A On Slide 15, one of the areas we differed in quite  
10 a bit was the interpretation of fine particulates. Our  
11 position is, even applying a scale up to the MOVES model,  
12 the modeling of Costco's particulate emissions is 30 times  
13 lower, 30 times lower than what EPA defines as  
14 insignificant. EPA defines significance for incremental  
15 emissions. It's .3 on an annual basis. Costco is at .01.  
16 So my position is, if you're 30 times less in significance,  
17 it's clear you don't have a problem. Dr. Cole will testify  
18 about ultrafine particulates. He doesn't agree. I respect  
19 his opinion, but I don't agree with it.  
20 Secondly, this is the other major point we didn't  
21 agree upon, was how to treat background. When you do  
22 dispersion modeling, you're modeling certain sources.  
23 You're not modeling an entire county. You're not modeling  
24 Northern Virginia and D.C. and so forth. The normal  
25 procedure that EPA follows is you model your facility and

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1 you add to that a conservative representation of all other  
2 sources. They have a procedure to do that. Using available  
3 regional-measured data, you add the highest values on to  
4 what you're modeling. That's the standard procedure.  
5 Q So let's be clear about that. You say you use the  
6 highest average background concentrations from a particular  
7 county or particular -- what's the region?  
8 A Representative data for the region. So let's say  
9 it's carbon monoxide, eight-hour standard --  
10 Q Right.  
11 A -- you would look at the last three years of data,  
12 and we looked at Beltsville, Rockville, and Arlington, and  
13 we took the highest eight-hour CO concentration that  
14 occurred in any one of those locations over the three years  
15 and we added that to all our modeled values. That is EPA  
16 standard guideline approach.  
17 Dr. Cole requested we more broadly model the mall  
18 sources and, I'm not sure, maybe beyond, maybe some of the  
19 local gas stations to get a more direct indication of their  
20 contribution to Kensington Heights and other places. That's  
21 not standard. We didn't agree to do that part, but  
22 certainly --  
23 MR. GROSSMAN: Why not? It does seem like a  
24 reasonable suggestion, to use a mall model. I'm not quite  
25 sure, why would you not at least take a look at that, how

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1 that measured out?  
2 THE WITNESS: Well, what they're referring to is  
3 if you looked at each loading dock and all the delivery  
4 trucks that go to the mall, looked at all of the restaurant  
5 exhausts and evaluate those, too, and then what about the  
6 gas stations that are not too far away and the fast food  
7 restaurants on the other side of the street. There's no  
8 defined ending to that kind of an approach, and in fact, in  
9 the end we did model all the loading docks. And ultimately  
10 I can describe, but a factor I think was missed during the  
11 review is that we built in tremendous embedded conservatism  
12 that overstated the impacts from the mall anyway, and I can  
13 describe that in detail.  
14 MR. GROSSMAN: Okay.  
15 THE WITNESS: The way we modeled Costco had a  
16 large amount of overstatement in it for the loading dock,  
17 clean diesels, and other factors. So, but the point is  
18 that, respect the right for the opposition to have their own  
19 interpretation of this, use their own background, do their  
20 own interpretation of fine particulates. My point is that  
21 the modeling was based upon a consensus approach and how to  
22 model Costco, and we did our very best to put all the  
23 suggestions in for Costco. And we'll get into methodology.  
24 Now, this is still related to the meeting we had  
25 in terms of trying to achieve consensus, and I'm going to

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1 describe here the changes that we made and the agreements  
2 that we made to do additional analysis based upon meeting  
3 with Dr. Cole. First, Dr. Cole had the suggestion that we  
4 use minute-resolved meteorological data rather than  
5 hourly-resolved data. We thought that was a good idea. We  
6 agreed. We did that. It didn't make a big difference in  
7 results but that was a good suggestion.  
8 The second suggestion, Dr. Cole was concerned  
9 about the issue of the hill behind the gas station that goes  
10 towards Kensington Heights, and the agreement was we would  
11 run a model that could do terrain analysis called CALPUFF --  
12 it's a higher level model than AERMOD that we used generally  
13 -- and CALPUFF can determine wind fields, where the wind  
14 will tend to go, much more accurately. So we ran, we ran  
15 that particular model as requested. I can say that the  
16 results of the CALPUFF looked very, very similar to AERMOD.  
17 We did not see a significant difference with the results,  
18 but we ran it --  
19 MR. GROSSMAN: Is this the model that you ran  
20 where you said that the heat difference probably negated the  
21 terrain effects?  
22 THE WITNESS: That was monitoring.  
23 MR. GROSSMAN: Okay.  
24 THE WITNESS: We'll get to that, but this is --  
25 MR. GROSSMAN: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 BY MR. GOECKE:

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

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

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

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

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

1 impact.

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

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

14 THE WITNESS: Fifty-eight.

15 MR. SILVERMAN: Thank you.

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

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

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

22 MR. GROSSMAN: That was my understanding.

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

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

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1 THE WITNESS: The only, the only text change was  
2 the -- it's like in here, I showed in red -- I added the  
3 line in red to try to clarify it, but I don't believe any  
4 slides have been modified except some clarifying clauses  
5 added to make it more readable.  
6 MS. ROSENFELD: And I believe there might have  
7 been clarifying clauses on earlier slides referencing  
8 Dr. Cole perhaps. Was there additional text?  
9 THE WITNESS: There could be. Do you want me to  
10 go back to the beginning and look?  
11 MS. CORDRY: Excuse me. Are we going to get an  
12 exhibit that actually has this being shown?  
13 MS. ROSENFELD: I thought we would have everything  
14 in advance.  
15 MR. GROSSMAN: Yes, I think that's fair --  
16 MR. GOECKE: If there are differences --  
17 MR. GROSSMAN: -- but if he did add, if it's just  
18 clarifying, but I'm going to let you raise that on  
19 cross-examination on any --  
20 MS. ROSENFELD: Okay.  
21 MR. GROSSMAN: -- rather than making him go back  
22 to each slide now --  
23 MS. ROSENFELD: Okay.  
24 MR. GROSSMAN: -- on cross-examination you can  
25 raise any changes that were made.

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1 MS. ROSENFELD: Well, it would be helpful if we  
2 had a copy of what's being shown here because I don't have  
3 a --  
4 MR. GROSSMAN: Yes. Is that available?  
5 THE WITNESS: I can use -- I can see if I can find  
6 the one that doesn't have the clarifying clauses in it. It  
7 makes it more readable, but --  
8 MR. GROSSMAN: Well, did you remove any language?  
9 THE WITNESS: No.  
10 MR. GROSSMAN: Okay. So why don't we do it --  
11 MS. ROSENFELD: If we could have a copy e-mailed?  
12 MR. GROSSMAN: -- let's just go through his, what  
13 he's got now, and for anything that's added on that creates  
14 any confusion, you can stop us and --  
15 MS. ROSENFELD: If they could certainly e-mail a  
16 copy to us at the close of today's hearing --  
17 MR. GROSSMAN: Certainly.  
18 MR. GOECKE: Absolutely.  
19 MR. GROSSMAN: Okay, yes.  
20 MS. ROSENFELD: -- so we can see it before next --  
21 MR. GROSSMAN: Yes, but if there's any problem, as  
22 you go along -- if it's just added-on clarification and  
23 nothing changed or, you know, removed, then it seems to me  
24 that it ought to be okay for him to go forward with this.  
25 MS. ROSENFELD: Just for purposes of us

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1 understanding his testimony --  
2 MR. GROSSMAN: Sure.  
3 MS. ROSENFELD: -- and cross-examination --  
4 MR. GROSSMAN: Absolutely.  
5 MS. ROSENFELD: -- it's helpful to see it.  
6 THE WITNESS: Yeah. I added, I added the red  
7 because I thought it might make it -- added additional  
8 information to be helpful. I didn't, I wasn't trying to  
9 make it difficult, but that was the reason why I made those  
10 changes.  
11 We've talked a bit about the EPA conservative  
12 background method. I think it might be helpful to put that  
13 in context. You know, there's 8100 receptors in this model.  
14 That means there's 8100 places that the model is estimating  
15 concentration. And in every one of those 8100 places --  
16 let's use CO eight-hour, as an example -- it's assuming that  
17 the worst-case measured air pollution in the region happened  
18 the same time that receptor happened to have its highest  
19 concentration.  
20 So this is the highest over three years. So if  
21 you think of the math on that, basically -- I'll get a new  
22 page here -- trust my math on this, there's 195 -- 1,095  
23 eight-hour periods per year, okay, and there's three years  
24 being evaluated. We're assuming that, okay, once out of all  
25 this number, so out of about 3,000 possible numbers,

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1 possible time periods, we're assuming that the worst-case  
2 hour, worst eight hours for that receptor, let's say it's  
3 the closest home, let's say it happened in June 5th, 2007,  
4 first eight hours of the day, we're assuming that's exactly  
5 the same time that the worst case occurred at the monitor.  
6 Now, what are the odds of that happening? Well, the odds  
7 are -- do the math. It's about one in 10 million. If you  
8 assume they're independent, which is a reasonable  
9 assumption, one in 10 million. We've seen that happen 8100  
10 times. So is it conservative? Yes.  
11 If we were to model the entire county, would we  
12 get a lower answer? The answer is yes, we would. If we  
13 could model every gas station and every road, every  
14 driveway, and every source of pollution, which we can't, but  
15 if we could, you'd have a lower concentration because  
16 there's inherent conservatism in EPA's approach.  
17 The EPA recognizes that you can't go out and  
18 monitor for every gas station or specialty, every factory  
19 that's built. They can't go out and do three years' worth  
20 of monitoring to get background. So they have a  
21 conservative approach that overstates -- and everybody knows  
22 it overstates -- but it avoids the problem of what do you  
23 do. Do you make an applicant get three years' worth of  
24 measured data before they do anything? Well, the answer is  
25 they don't have people routinely do that. They use regional

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1 available data so that decisions can be made in a  
2 conservative way, but you know, it's manageable, it works.  
3 You can't use a short data set to try to evaluate these kind  
4 of background values. It's not stable enough to give you  
5 reliable data.  
6 And, frankly, the question has come up, well, what  
7 if we put, had put monitors at the mall and we had measured  
8 what the lowest of concentration right there at the mall,  
9 did it for, did it for three years. Well, then we go ahead  
10 and we model the ring road and we model University and Veirs  
11 Mill and Georgia Avenue, add it on to that. We're  
12 double-counting. It's not -- what distinguishes the Wheaton  
13 area from a less-traveled area, it's those three roadways.  
14 Those are the defining areas that have 100,000 cars a day.  
15 We're modeling those. If we measured two and added it on,  
16 it's clearly unfair; it's double-counting, completely. So  
17 the process followed here of using regional data is done all  
18 the time. That's the standard procedure. Even for large  
19 industrial operations, that's the standard.  
20 MR. GROSSMAN: What if you didn't add them  
21 together, you just did your model based on the specific mall  
22 area?  
23 THE WITNESS: Well, if you had the data, you could  
24 do that. It probably, but you, it's still -- then you  
25 wouldn't model any of the cars. You wouldn't, you really

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1 wouldn't model the cars, if you modeled the cars in -- well,  
2 the cars wouldn't be in queue then. You could, you could do  
3 that, but you would be, probably have similar concentrations  
4 in the end than we have right now because, once you take the  
5 cars away you're modeling, you account for that directly,  
6 you're going to have the conservative number.  
7 MR. GROSSMAN: All right.  
8 THE WITNESS: Now, a lot of discussion has come  
9 up, and this is important I think we spend a little bit of  
10 time on this, that -- originally when we started this  
11 project, actually in September when we had our meeting, the  
12 EPA standard for fine particulates was 15. That was the  
13 annual standard, and in December/January time frame they  
14 modified the standard to 12. So we were using a very  
15 conservative background value of 12.1 originally --  
16 BY MR. GOECKE:  
17 Q And that 15 to 12, that's micrograms per cubic  
18 meter?  
19 A Per cubic meter on an annual basis.  
20 Q On an annual basis. And that applies to how large  
21 of an area?  
22 A That's, that's the national standard that applies  
23 to any ambient area in the country.  
24 Q Yes.  
25 A And basically, we met with County staff, and Parks

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1 and Planning staff suggested, you know, you better refine  
2 your, your -- your background is not, is too high, first of  
3 all, and it's not consistent with the Washington Council of  
4 Governments, which is using 10.8. So we went back and  
5 reassessed and did the three-year running average and  
6 brought it up to 2012, and we came up with 10.8 also. And  
7 so we modified and refined our value to be more realistic  
8 and used 10.8.  
9 So some of these, these other assumptions here we  
10 have -- I think we've discussed this probably enough -- we  
11 made a number of steps that acted to increase the  
12 conservatism. We did refine the background term.  
13 And this is just showing an example -- I mean,  
14 this is the kind of information that's in our spreadsheets,  
15 the emission spreadsheets. This is showing the mall, that  
16 we are looking at the two, those two intersections, adding  
17 up the cars that are coming towards the south, subtracting  
18 the gas station-only operations, then multiplying times 90  
19 percent -- this is how we assume that 90 percent of the  
20 vehicles coming down those roads are going to be going to  
21 the parking lots -- and did that morning and evening and  
22 took the higher of the two. These are all on our  
23 spreadsheets. This is nothing -- this has been available.  
24 The conservatism that we've put in here has been clearly  
25 documented.

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1 Now, in terms of our mission in modeling this  
2 particular operation, we did a lot more than would be done  
3 for a gas station. First of all, I don't know of a gas  
4 station that's been modeled in this detail anywhere. It may  
5 be a record. It certainly would be for this area. Maybe  
6 California has done more on a few of those stations, but --  
7 Q And why do you say that?  
8 A Well, you don't usually model a gas station.  
9 Q Why not?  
10 A Because EPA and MDE know that the concentrations  
11 aren't high from any particular gas station. I mean, we're  
12 modeling a 12-million-gallon-a-year gas station here --  
13 MR. SILVERMAN: I've got to object to that.  
14 THE WITNESS: -- the impacts are --  
15 MR. GROSSMAN: Hold on one second. Yes.  
16 MR. SILVERMAN: That's hearsay. EPA and the  
17 states know? I mean, do you have a reference or is there --  
18 THE WITNESS: I don't have a reference --  
19 MR. GROSSMAN: Well, let's ask it this way: When  
20 you say that EPA knows that, are you saying that that's --  
21 the practice of EPA is not to model gas stations? Is that  
22 what you're --  
23 THE WITNESS: Well, what I'm referring to is the  
24 EPA certainly knows gas stations. They've been studying gas  
25 stations since the '80s, and they're well aware that those

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

8 MS. ROSENFELD: And I join the objection --  
9 MR. SILVERMAN: I really, I really, I think  
10 it's --  
11 MS. ROSENFELD: -- he said that there's no source  
12 and no reference.  
13 MR. GROSSMAN: I'm going to overrule that  
14 objection because he's essentially stating his expert  
15 opinion that -- his expert opinion is that gas stations do  
16 not, are not serious polluters in this sense and it's for  
17 that reason, based on his experience as an expert, that  
18 they're not individually modeled by the EPA. You can  
19 cross-examine him on the point if you want to challenge it,  
20 but that's his expert opinion based on his experience.  
21 THE WITNESS: I also did the work for the agency  
22 back in the early '80s that evaluated gasoline marketing  
23 nationally and looked at the exposures and so forth. That's  
24 in the studies I mentioned earlier. So I do have some  
25 direct experience with it, but that's the reality. The gas

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

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

16 BY MR. GOECKE:  
17 Q I'm sorry. So that is considered or --  
18 A That is considered. And then here's the loading  
19 dock again over here at the warehouse. We're treating our  
20 loading dock emissions as a centralized point source right  
21 here, heavy-duty and light-duty vehicle trucks, 10 of each  
22 per day. We have the filling operations for the underground  
23 tanks, that's modeled, as well as the vent emissions from  
24 the vent itself.  
25 In all the cases that we're doing this analysis,

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

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

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

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

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1 Q So let's back up a second. You said the weekend  
2 data affected your results. What days of the week did you  
3 count cars at Sterling?  
4 A Wes Guckert's staff did counts on a Wednesday, I'm  
5 sorry, a Friday and a Saturday --  
6 Q Okay.  
7 A -- and the Saturday there's more, the queues are  
8 larger, and so we did get higher numbers. During the Friday  
9 was most similar to these numbers here, but my point is,  
10 these averaging times and the emissions and the queues are  
11 so small that even if we scaled up by a factor of two in  
12 here, it makes a very, very insignificant difference in the  
13 results.  
14 Q Okay. So taking the Friday and Saturday car  
15 counts, how did you then compute the annual average?  
16 A We considered, we looked at the amount of gasoline  
17 sold on a Friday and Saturday --  
18 Q Yes.  
19 A -- and it was typical of a Friday and Saturday; it  
20 was a typical range of what they usually sell, and we used  
21 that as an average. We figured five days would be at the  
22 Friday --  
23 Q Okay.  
24 A -- values, and two days being at the Saturday  
25 values.

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

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

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

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

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1 station -- I believe that includes background in that 32  
2 percent. I can check on it, Mr. Silverman, if you'd like,  
3 but that's the total, as I recall. I'll double-check it.  
4 Okay. Let's see. Okay. In terms of carbon monoxide to  
5 closest home -- and let me use urban -- the standard is  
6 10,000; the total modeled was, I'm showing here, 530;  
7 background, 1145. The model plus background is 1675. So  
8 it's, it would include both. It would include both. It  
9 includes background, and actually, this urban value is even  
10 lower than that.  
11 BY MR. GOECKE:  
12 Q What are you referring to, Mr. Sullivan?  
13 A I'm referring, I'm looking at Table 1-12 in  
14 the --  
15 Q From what?  
16 A -- November 2012 report, November 19th, 2012  
17 report.  
18 MR. GROSSMAN: All right. Give me again, what was  
19 the standard?  
20 THE WITNESS: The standard is, is 10,000.  
21 MR. GROSSMAN: Ten thousand is the CO standard.  
22 THE WITNESS: Correct.  
23 MR. GROSSMAN: And you said that your figure  
24 showed what numbers then for your model?  
25 THE WITNESS: I'm showing total modeled of 530 and

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1 a background of 1145, and I'm showing a total here of 1675.  
2 So that's actually even less than 28 percent. That's more  
3 like 17 percent for the urban values.  
4 MR. GROSSMAN: So where does the 32 percent come  
5 from?  
6 THE WITNESS: Well, I'm trying to see. I mean, I  
7 may have used the -- it's 39 percent if I used the rural.  
8 We modeled two different ways, and I can, I can digress and  
9 talk about that, but modeled two different ways. The number  
10 I'm -- the 32 percent seems to be between the urban and the  
11 rural analysis. One way I'm coming up with a total of 39  
12 percent. The other way, over here, I'm coming up with 17  
13 percent.  
14 MR. GROSSMAN: They still don't average out to --  
15 THE WITNESS: They don't, they don't average out  
16 to 32, I agree. My point is, let's take the value shown for  
17 urban, which is most representative. If I -- the total  
18 modeled is 530, is what I show. The standard is 10,000. So  
19 I add the background, 1145, and come up with a number of  
20 1675. It's about 17 percent of the standard. If I were to  
21 double the 530, it would go to about 1,000. I'd have about,  
22 approximately a 2,000 value. So it would go from about 17  
23 to 20 percent. So those numbers are a little bit on the  
24 high side.  
25 MR. SILVERMAN: So should we disregard the slide?

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1 I, I'm really confused.  
2 MS. CORDRY: Yes, I mean, are any of these numbers  
3 ones that are in his report anywhere? I mean, we're just  
4 sort of throwing out numbers at random here?  
5 THE WITNESS: The numbers are in Table 1-12 of the  
6 report, and so --  
7 MS. CORDRY: Okay. Well, then why don't we stick  
8 with those numbers then and --  
9 THE WITNESS: Well, that's fine.  
10 MR. GROSSMAN: All right. This is a slide that  
11 he's already produced. The question is, where did the  
12 numbers come from? And I agree with, with the comments that  
13 it -- it is somewhat concerning that, that those numbers  
14 don't seem to correspond to the numbers, the raw data that  
15 you're referencing now.  
16 THE WITNESS: I can, I can double-check on that  
17 too, and I can --  
18 MR. GROSSMAN: All right.  
19 THE WITNESS: -- I can replicate it --  
20 MR. GROSSMAN: All right.  
21 THE WITNESS: -- or refer to Table -- I can make  
22 the point from Table 1-12 the same way. If you take, look  
23 at the urban values in the eight-hour CO column for home and  
24 you see the 530, scale it up by 32 over 20, and you'll see,  
25 you'll be about, about at 20 percent of the standard rather

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1 than 17 percent of the standard.  
2 MR. GROSSMAN: I understand. I still don't know  
3 where those numbers came from. So they must have come from  
4 somewhere because you put them up on your slide.  
5 THE WITNESS: Agreed.  
6 MR. GROSSMAN: So when you get a break -- and  
7 maybe we'll take that break now --  
8 MR. GOECKE: That's a good idea.  
9 MR. GROSSMAN: -- you can figure out where those  
10 numbers came from. And it's about six minutes to 4:00.  
11 We'll come back at about 4 o'clock.  
12 THE WITNESS: All right.  
13 (Whereupon, a brief recess was taken.)  
14 MR. GROSSMAN: Back on the record we go. And,  
15 Mr. Sullivan, were you able to figure out the discrepancy in  
16 the numbers?  
17 THE WITNESS: I came closer. Basically, if you  
18 turn to page 112 of my November 2012 report and look at  
19 eight-hour carbon monoxide --  
20 DR. ADELMAN: Could you say what exhibit number  
21 that is?  
22 MR. GROSSMAN: 112, I think he said. Is that  
23 correct?  
24 THE WITNESS: I don't know the exhibit number.  
25 It's my report, November 2012.

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1 MS. CORDRY: November 19th, 2012?  
2 THE WITNESS: November 19th, 2012.  
3 MR. GOECKE: Yes, 15(a).  
4 MR. GROSSMAN: 15(a).  
5 DR. ADELMAN: Thank you.  
6 THE WITNESS: And it's Table 1-12. It should be  
7 at page 67. And if you look at the carbon monoxide  
8 eight-hour, the bottom table, which says urban, and you look  
9 at the home, what I've done, I've replicated it. If I take  
10 the urban and rural and average those, initially it was  
11 about 28 percent for the standard, and after I adjusted the  
12 queue according to the 32 versus 20, it only went up to like  
13 29 percent. It didn't go up to 32, but what I'd like to  
14 suggest, if you agree, is to give an updated version of  
15 this, showing the actual calculations in writing so it can  
16 be replicated.  
17 MR. GROSSMAN: All right. Are you talking about  
18 doing that now or doing that --  
19 THE WITNESS: When I, in our next -- the next  
20 hearing.  
21 MR. GROSSMAN: Okay.  
22 MR. GOECKE: We'll bring it on Wednesday.  
23 MR. GROSSMAN: Well, make sure in advance of that,  
24 why don't you, Tuesday --  
25 MR. GOECKE: Circulate it.

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1 MR. GROSSMAN: -- circulate it by e-mail. Thank  
2 you.  
3 MS. CORDRY: Thank you.  
4 THE WITNESS: But the statement I made here still  
5 stands, that as shown in this slide plus the adjustment I  
6 just made, is that these queue assumptions could be  
7 increased fourfold or more and it still would not threaten  
8 standards. The queue is -- the queues are not a big source  
9 at this gas station, not 2013.  
10 So background treatments, we have used 2009 to  
11 2011 as a basis for our background with the exception of  
12 fine particulates for the annual value that changed. And so  
13 if it's less than an annual period, we took the highest  
14 value that occurred, Arlington, Beltsville or Rockville, and  
15 as I mentioned before, this is going to tend to overstate.  
16 It's designed by EPA to overstate.  
17 BY MR. GOECKE:  
18 Q And so let's clarify that. So you took the  
19 highest levels found at one of three different locations  
20 over a three-year period?  
21 A Correct.  
22 Q And then used those as the background level for  
23 your air modeling analysis here?  
24 A For every, yes, for every, for every receptor  
25 maximum, we used that value. We've already mentioned that

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

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

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1 considering it for the point of what Park and Planning said,  
2 because whatever Park and Planning's opinion is, is going to  
3 be, I'm going to take from their report, which is a formal  
4 document.  
5 MS. CORDRY: Then what's --  
6 MR. GROSSMAN: The reason I want to hear what he  
7 has to say is the reason he changed something. So it's a  
8 different kind of thing. I'm not, I'm not asking for it to  
9 be introduced for the purpose of saying what Park and  
10 Planning believes because I'm going to take that from the --  
11 MS. CORDRY: Well, I guess the question is --  
12 MR. GROSSMAN: -- from the thing, but it would be  
13 why did he make a change in something. Well, he's saying  
14 Park and Planning asked him to do it, and so for that  
15 purpose I'm going to allow it in. So what did Park and  
16 Planning tell you to do and why?  
17 THE WITNESS: Park and Planning made the  
18 recommendation that we reconsider our background PM trend in  
19 annual value because the standard changed, number one; and,  
20 number two, they had made, they had made contact to  
21 Washington Council of Governments and were provided with  
22 this figure, Figure No. 31, I jump to here, that shows the  
23 trend in annual PM 2.5 concentrations, and by 2011 they're  
24 showing a 10.8 as the background and we were using 12.1.  
25 MR. GROSSMAN: And who was it in Park and Planning

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1 who told you to do that?  
2 THE WITNESS: Amy Lindsey.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: And as this slide --  
5 MR. GROSSMAN: I don't know Amy Lindsey, who she  
6 is. Is there a particular part of Park and Planning she's  
7 in, because the person who is handling this is Renee Kamen.  
8 So I'm not sure --  
9 MS. HARRIS: It was a meeting with Renee Kamen and  
10 Amy Lindsey, who's part of the Environmental Division.  
11 MR. GROSSMAN: Okay. And so it was your  
12 understanding, at least, from this conversation that Park  
13 and Planning wanted you to use the revised standard which is  
14 more in the area of 10 rather than 12? Is that the idea?  
15 THE WITNESS: That's correct. They felt we should  
16 be consistent where, with where the Washington Council of  
17 Governments was at, at -- they were at 10.8 in the most  
18 recent finding they've had, and they provided me this graph  
19 that shows the trend line of the concentrations dropping,  
20 steadily dropping as a function of time, from --  
21 MR. GROSSMAN: And when you say they, you mean  
22 technical staff of the Maryland-National Capital Park and  
23 Planning Commission?  
24 THE WITNESS: Yes, sir.  
25 MR. GROSSMAN: Provided you with this diagram

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1 that's on -- what slide is this? Thirty-one?  
2 THE WITNESS: Slide 31.  
3 MR. GROSSMAN: Okay.  
4 THE WITNESS: And it goes from around the turn of  
5 the century to 2011.  
6 MR. GROSSMAN: All right.  
7 THE WITNESS: So, in terms of the treatment of  
8 background, as I mentioned before, EPA has a very specific  
9 procedure that's followed in dispersion modeling. The EPA  
10 has what's called the Guideline on Air Quality Modeling.  
11 It's the standard of care, basically. And the guideline  
12 specifies under what conditions you should model other  
13 sources, and they're referring to, all sources expected to  
14 cause a significant concentration gradient in the vicinity  
15 of the source or sources should be explicitly modeled. Now,  
16 we've done that. We've modeled all the major roadways.  
17 We've modeled the parking lots. We overstated the Costco  
18 warehouse. So we have done what EPA requires, and we  
19 followed their procedures. There are no significant  
20 gradients caused by more distant sources that we should be  
21 modeling here.  
22 So this is the set of what was modeled explicitly.  
23 That takes care of EPA's requirements, in our judgment. And  
24 we pulled the data ourselves on Rockville, Beltsville, and  
25 Arlington, and these are three-year running averages. So,

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1 you know, 2007 would be the average of 2005, '06, and '07,  
2 and we're showing the trends, the smooth trends of how, how  
3 concentration is dropping from, this case, from 2005 to  
4 2012.  
5 MR. GROSSMAN: For the record, you're talking  
6 about concentrations of fine particulate matter?  
7 THE WITNESS: Correct.  
8 MR. GROSSMAN: Okay.  
9 THE WITNESS: The y-axis is showing micrograms per  
10 cubic meter. The x-axis is showing 2005 to 2012. I'm  
11 showing Arlington in green, Beltsville in red, and Rockville  
12 in blue.  
13 BY MR. GOECKE:  
14 Q And why these three locations, Mr. Sullivan?  
15 A These are the closest regional stations available  
16 that have measured the fine particulate data. It makes a  
17 triangle, more or less, around the Wheaton area. We -- data  
18 has become available for 2013. The number is down around,  
19 around 10. We can have that data available in the future if  
20 that's required, but the trend is continuing to drop, and we  
21 just have three months into 2013.  
22 This shows how the standard has changed. It was  
23 at 15. It's dropped down to 12, and the concentrations  
24 themselves are still trending downward. By --  
25 MR. GROSSMAN: This is the EPA standard?

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1 THE WITNESS: This is the EPA standard right here.  
2 MR. GROSSMAN: Okay.  
3 THE WITNESS: The annual PM 2.5 standard went from  
4 15 down to 12 end of 2012. So if you extend these trend  
5 lines into 2014, even 2013, you find it's continuing to  
6 drop. Our projection is that by 2014, that the trend lines  
7 will be less than 10. Time will show if that's true or not,  
8 but the trend is certainly going in that direction.  
9 MR. GROSSMAN: Well, Rockville seems to have taken  
10 a turn for the worst.  
11 THE WITNESS: There, actually --  
12 MS. CORDRY: And so had Beltsville.  
13 THE WITNESS: -- it did, but you know, in that one  
14 time here, but you'll see it dropped after that point,  
15 and --  
16 MS. CORDRY: No, we don't see.  
17 MR. GROSSMAN: Well, I don't see it dropped after  
18 that point on the graph.  
19 THE WITNESS: You don't, no. I'm saying in 2013.  
20 We only have the first quarter right now --  
21 MR. GROSSMAN: I see.  
22 THE WITNESS: -- but it has, it has dropped.  
23 MR. GROSSMAN: Okay.  
24 THE WITNESS: Beltsville had a slight uptake right  
25 here.

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

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

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1 cars have to meet EPA requirements. So whether they be in  
2 Chicago, Los Angeles, or Washington, the amount of  
3 particulates emitted from the cars each year will tend to  
4 drop as the old cars find a junkyard and new cars are  
5 purchased.  
6 MR. GROSSMAN: All right.  
7 BY MR. GOECKE:  
8 Q And what's the significance of Los Angeles?  
9 A I just showed that as an example. We could have  
10 pulled other cities and shown those as well. Some of these  
11 changes are due to the fact that the clean diesel technology  
12 is taking over. Some is due to tailpipe technology.  
13 MR. GROSSMAN: I see a straight line across there  
14 labeled, what's that say, 24-hour? What does that say?  
15 THE WITNESS: This is showing the -- the 35 is the  
16 24-hour fine particulate standard shown right here.  
17 MR. GROSSMAN: So that's the standard?  
18 THE WITNESS: Right, and showing that this is  
19 dropping down below the standard. That's a 24-hour, 98th  
20 percentile. That's how you judge the standard. That's  
21 dropped below. This is showing the annual average relative  
22 to the standard in green. They're right about at the  
23 standard -- in this case, in 2011.  
24 MR. GROSSMAN: All right.  
25 THE WITNESS: Now, in terms, in terms of all these

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1 concentrations we're talking about, we all can agree on  
2 certain things. We all can agree that fine particulates,  
3 for example, aren't healthy, they're an air pollutant, you  
4 want to have them low, but it's very important to consider  
5 the dose. Air pollution does not create adverse health  
6 effects at all concentrations. So if a medical doctor gets  
7 up on the stand and says that fine particulates are bad, we  
8 agree. Fine particulates are not healthy, but it does  
9 matter what the dose is. And to give you an analogy, let's  
10 say we're talking about your home. If you have a water  
11 leak --  
12 MS. ROSENFELD: Objection, Mr. Grossman. We're  
13 wandering beyond standards and what air quality standards  
14 have or have not been met and into the health consequences  
15 of air quality.  
16 MR. GROSSMAN: Well, I'll allow him to elaborate  
17 to the extent it's within his purview. If he goes beyond  
18 it, you can object. Right now, he --  
19 MS. ROSENFELD: I just did.  
20 MR. GROSSMAN: I knew you were going to say that.  
21 He hasn't really said anything yet. He said, for example,  
22 in the home, and then you objected. So we don't know what  
23 he's about to say yet. Let's hear that and then you can  
24 raise your objection.  
25 THE WITNESS: And in my practice I compare model

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1 concentrations to national standards and, in that case,  
2 dose. And my point is, in this particular matter, it seems  
3 to me that the significance of dose has been underestimated,  
4 understated, and my point is dose is important. And the  
5 example I was going to give to try to make it more concrete  
6 is that if you have a water leak in your home, water leaks  
7 are bad. If your 50-gallon water tank ruptures, you know,  
8 Servpro is in, tearing up your carpets, ripping up your  
9 floors, but we're talking about fine particulates. In this  
10 example, we have shown that the concentrations from Costco  
11 are 1,000 times less than the standard.  
12 So my analogy of the 50-gallon water tank, if it  
13 was, you know, Costco, Costco would be a cup. This is six  
14 ounces. A cup is eight ounces. You have this much water.  
15 If that spilled on your floor, you could wipe it up. When  
16 we're talking about particulates relative to a standard, the  
17 standard -- the background is 10, is 10, and the modeling of  
18 Costco is .01, there is not a concern for fine particulates  
19 from Costco. Even though fine particulates are unhealthy,  
20 at that level, whether you're talking about ultrafines or  
21 just PM 2.5, you haven't achieved a dose that's unhealthy.  
22 MS. ROSENFELD: And I renew my objection.  
23 MR. GROSSMAN: Yes. I'm going to sustain it as  
24 far as the conclusion about whether or not it's unhealthy,  
25 but I'll overrule it to the extent the suggestion is that

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1 it's a low amount compared to the standard. I mean, that's  
2 perfectly within his purview, but to the extent that it has  
3 a health aspect to it, the witness is not, does not claim to  
4 be qualified as a health expert. So I think it's a fair  
5 objection in that regard.  
6 THE WITNESS: Well, as I'm saying here, EPA  
7 defines acceptable concentrations or dose with a reasonable  
8 margin of safety to protect the most sensitive members of  
9 the population, including asthmatics and children. The  
10 Clean Air Act specifically identifies them as sensitive  
11 subpopulations to be protected. So my point is, if the  
12 background is 10.8 and we go to 10.81, that's below the  
13 standard. If they're all to the standard, there is not a  
14 point of concern.  
15 BY MR. GOECKE:  
16 Q So is it your contention that the EPA standards  
17 take into consideration the health of the population?  
18 A They do. They take into account the sensitive  
19 subjects. The asthmatics and the young children are the  
20 most susceptible, according to EPA's, you know, Clean Air  
21 Act.  
22 Q And their standards are designed to protect those  
23 folks in the population?  
24 A With an adequate margin -- with a reasonable  
25 margin of safety.

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1 Q And that's based on the dose you were referring to  
2 a moment ago?  
3 A Correct. My point is, to go from 10.80 to 10.81,  
4 according to EPA, that would not be a cause for concern.  
5 Now, I'm not going to show all the plots and  
6 tables from my report, the November 2012 report, which was  
7 supplemented on January 16th of 2013. We have a lot of  
8 plots in there, and if you, anyone that wants -- if you want  
9 to see some of the plots, I'll be happy to put them up, but  
10 I'm showing a smaller subset in this presentation, and I'm  
11 basically showing what we're calling as the key locations.  
12 We're showing the closest home in Kensington Heights, and  
13 we're showing the Kenmont Swim & Tennis facility and the  
14 Stephen Knolls School because these are facilities that the  
15 neighborhood has expressed as being of concern. We've  
16 highlighted those in our report. I'm highlighting them here  
17 now.  
18 MR. GROSSMAN: Now, are these concentration plots  
19 based on the model, or are these concentration plots based  
20 on actual tests in those areas?  
21 THE WITNESS: Based upon the model.  
22 MR. GROSSMAN: Okay. Were there any tests in  
23 those areas?  
24 THE WITNESS: In terms of air quality testing?  
25 MR. GROSSMAN: Yes.

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

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

1 MR. GROSSMAN: Okay.  
 2 THE WITNESS: Later on I show it both ways.  
 3 MR. GROSSMAN: Okay.  
 4 THE WITNESS: So I'm showing the pool and the  
 5 school in these examples, and for example, carbon monoxide  
 6 one-hour, the pool has 12,646. The standard is 40,000. All  
 7 these numbers are below the standard. If I go to  
 8 eight-hour, the highest one I'd see is 4500. Again, the  
 9 standard is 10,000.  
 10 MR. GROSSMAN: Before you go on now, these numbers  
 11 are based on the model of the background or the model of the  
 12 background plus the proposed gas station?  
 13 THE WITNESS: It's the model of background plus  
 14 the gas station --  
 15 MR. GROSSMAN: Okay.  
 16 THE WITNESS: -- plus everything we modeled  
 17 exclusively. So it would be the ring road, Georgia Avenue,  
 18 University, Veirs Mill, the parking lots for Costco, the  
 19 queues, the various gas station sources, plus background.  
 20 MR. GROSSMAN: Okay.  
 21 THE WITNESS: Nitrogen oxide one-hour annual  
 22 standard, it's a factor of two or so below the one-hour.  
 23 It's quite a ways below the annual, in fact, shows seven or  
 24 eight. PM 2.5 24-hour, EPA maintained the  
 25 35-microgram/cubic meter standard. It's under those values.

1 The contribution is fairly small, but it's, you know, these  
 2 are the, these are the values. This is showing the  
 3 background in this column, and the total is shown down here.  
 4 And, lastly, PM 2.5 annual average, again, these rows are  
 5 showing the contribution from the gas station sources, and  
 6 here it's showing where we're at in terms of the overall  
 7 values. So it's --  
 8 BY MR. GOECKE:  
 9 Q And --  
 10 MR. GROSSMAN: Wait a minute.  
 11 THE WITNESS: -- under the standard of 12.  
 12 BY MR. GOECKE:  
 13 Q And so --  
 14 MR. GROSSMAN: Now I'm a little confused here.  
 15 The last column is what? It says background.  
 16 THE WITNESS: This, this includes the  
 17 10.8-microgram background right here. I just clarified that  
 18 we used the updated background value.  
 19 MR. GROSSMAN: I see.  
 20 THE WITNESS: This row, the row right, the row --  
 21 the first row is showing the incremental concentrations from  
 22 the Costco gas station to the pool and the school. Here's  
 23 the background that applies to both of them. Then we're  
 24 showing the totals, which include the background plus the  
 25 modeling, in these two rows right here.

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

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

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1 the ring road, Veirs Mill, University, and Georgia Avenue.  
2 Q It doesn't include background?  
3 A And it includes the background of 1488.  
4 Q Thank you.  
5 A For carbon monoxide eight-hour, the standard is  
6 10,000; highest values are in the range of 4500 to 4700  
7 micrograms per cubic meter. It's based upon a background of  
8 1145 micrograms per cubic meter, again, relative to a  
9 10,000-microgram-per-cubic-meter standard.  
10 Q So it's less than half of the EPA standard?  
11 A Correct.  
12 Q Okay.  
13 A NO2 one-hour is approximately, well, a little less  
14 than half of the standard. The standard is 190. The pool  
15 is showing 82 micrograms per cubic meter. The school is  
16 showing 91 micrograms per cubic meter with a background of  
17 28.  
18 Q And, again, that includes all the same activities  
19 at the proposed Costco site that you referenced a minute  
20 ago?  
21 A Correct. These numbers include all the modeling  
22 of all the sources. This isn't just incremental Costco.  
23 This is incremental Costco plus all the traffic around the  
24 area as well.  
25 NO2 annual average --

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

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1 background that we're adding on to everything we modeled.  
2 If you recall, I mentioned that EPA's methodology requires  
3 the adding on the regional background.  
4 MR. GROSSMAN: The regional, okay.  
5 THE WITNESS: So we conservatively take the high  
6 values, add those in, and this includes everything else that  
7 was modeled --  
8 MR. GROSSMAN: Okay.  
9 THE WITNESS: -- including the Costco gas station.  
10 MR. GROSSMAN: Okay.  
11 BY MR. GOECKE:  
12 Q And that background, again, that comes from the  
13 three sources: Arlington, Beltsville, and Rockville. Is  
14 that correct?  
15 A The three monitoring locations, correct.  
16 Q Three --  
17 MR. GROSSMAN: The background does?  
18 THE WITNESS: Correct.  
19 BY MR. GOECKE:  
20 Q The background comes from those three monitoring  
21 locations. And those, and they -- do they take samples at  
22 those three locations?  
23 A They, yes, they monitor there all the time.  
24 Q Okay. And then they used those monitoring results  
25 to establish what the background level is for this area?

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1 A That's what we -- we based our background based  
2 upon the state's monitoring data that's been collected at  
3 those three locations, two of which are monitored by the  
4 Maryland Department of the Environment and one in Arlington,  
5 which was monitored by the Virginia Department of  
6 Environmental Quality.  
7 So we got about to NO2 annual average. Again, the  
8 modeling of all the sources, we're showing a six and an  
9 eight, a background of 6.8; totals shown of 13 to 15 or so  
10 micrograms relative to a 100-microgram-per-cubic-meter  
11 standard. And finally, for PM 2.5 24-hour, the total  
12 modeling for the school and the pool with background and all  
13 the sources, 28.6 and 28.7 relative to a 35 standard. And  
14 finally, the PM 2.5 annual average, with background and all  
15 sources included, I was showing 10.9 to 11.0 and that again  
16 is based upon a background of 10.8.  
17 MR. GROSSMAN: I notice you don't show the  
18 volatile organic compounds in this chart.  
19 THE WITNESS: Correct.  
20 MR. GROSSMAN: Is there a particular reason for  
21 that?  
22 THE WITNESS: There's no standard.  
23 MR. GROSSMAN: Okay.  
24 THE WITNESS: In the report we show, we show risk  
25 relative -- we show risk later on, too, in terms of risk per

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1 million, which is the standard way to show it, and we can  
2 compare that to the California reportable level of 10 as a  
3 benchmark, but there's no National Ambient Air Quality  
4 Standard for VOCs in terms of specific toxics we're looking  
5 at here.  
6 MR. GROSSMAN: Okay.  
7 THE WITNESS: So now we're looking at the annual  
8 average concentrations, and we did it both ways here. We  
9 used urban and rural, but the main point to make here -- and  
10 I want to focus now on the urban, which is the more  
11 applicable for these three receptors -- is that we're  
12 showing in blue existing sources, and green -- it's hard to  
13 see it, it's small -- is the pipeline, which would be, at  
14 this point in time we did these, these would be Dick's and  
15 it would be Costco's warehouse, which hadn't opened, and the  
16 incremental would be the Costco gas station. You can't see  
17 the other values because the blue is dominating here.  
18 BY MR. GOECKE:  
19 Q Is the existing another way of saying background?  
20 A Existing is background plus modeling of existing  
21 sources, you know, the Veirs Mill and Georgia Avenue and so  
22 forth. The point, we talk a lot about fine particulates.  
23 The issue is a regional issue. It's a Wheaton issue, to  
24 some extent, because of the traffic that's there, but it's  
25 really not an incremental Costco issue. It's a very small

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1 addition, and also, it's -- the numbers now are less than  
2 the standard.  
3 Q And so the red sliver at the top of each of those,  
4 those bars represents what exactly?  
5 A That would be the gas, incremental gas station  
6 sources. This is the party we're talking about right here,  
7 the Costco gas station. The green would have been, at this  
8 point in time, the Costco warehouse and that would have  
9 included Dick's. The blue is, again, it's going to be  
10 background plus the modeling of existing sources.  
11 Q And these would be in terms of exposures to whom?  
12 A This would be the exposure at the closest home --  
13 Q Yes.  
14 A -- in Kensington Heights, the school, as well as  
15 the Kenmont pool.  
16 Q And so even when you add the emissions from the  
17 Costco operations and the mall and you add it to the  
18 background level, it still is falling below the annual  
19 particulate standard?  
20 A Correct. The main point of this slide is, most of  
21 the activity is from existing sources. The contribution  
22 from the pipeline and the incremental sources is a very  
23 small contribution --  
24 Q Yes.  
25 A -- and they're all below the standard. And we

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

14 NO<sub>2</sub>, again, we're looking at annual in this  
15 example, but we're showing urban on the left, rural on the  
16 right. They're low in both cases, dominated again by the  
17 background existing sources. And the incremental sources,  
18 again, are a small contributor, much like the other.

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

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

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

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1 A Correct --

2 Q -- on Slide 39?

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

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

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

18 MR. GROSSMAN: Leave that. I'm just looking on  
19 page 12 of the technical staff report; that's Exhibit 70.  
20 Here's the first paragraph: Staff reviewed three of the six  
21 pollutants associated with automobile idling or mobile  
22 sources since the anticipated queues of vehicles waiting to  
23 purchase gas are not typical of a gas station. Staff  
24 reviewed CO, PM 2.5, and O<sub>2</sub> and found that while the CO  
25 emissions are well below the NAAQS standards for the maximum

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

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

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

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1 THE WITNESS: Yes, I did.

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

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

6 MR. GROSSMAN: Yes.

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

19 MR. GROSSMAN: All right. The next paragraph on  
20 paragraph 12 of the staff report says: Additionally, the  
21 proposed gas station will create a hot spot in NO<sub>2</sub>  
22 emissions, and even though the incremental addition will  
23 dissipate across a small area, it could be a cause for  
24 concern of the nearest residents. The nearest residents  
25 will be directly impacted by the CO and NO<sub>2</sub> emissions, and

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

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

21 MR. GROSSMAN: All right.

22 BY MR. GOECKE:

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

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

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

12 A No.

13 Q What's a hot spot?

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

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

25 A We can.

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

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

5 THE WITNESS: We have no time.

6 BY MR. GOECKE:

7 Q Then we probably shouldn't start this.

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

9 Q Yes.

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

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

13 MR. GROSSMAN: Sure.

14 THE WITNESS: Okay.

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

17 MR. GOECKE: Overall?

18 MR. GROSSMAN: Yes.

19 MR. GOECKE: On direct, we are more than halfway  
20 through the slide presentation. So what time did we begin?  
21 1:15. We've gone --

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

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

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

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

3 MR. GROSSMAN: We can't squeeze him in in the next  
4 10 minutes, in other words?

5 MR. GOECKE: We cannot. We cannot.

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

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

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

11 BY MR. GOECKE:

12 Q Let's talk about noise.

13 A Okay. In terms of noise, we did two things. One  
14 is we did noise monitoring at the Sterling gas station to  
15 get an indication of a very similar gas station what the  
16 noise levels were and also did modeling of the noise levels.

17 As a summary here, we showed that the noise levels were  
18 below the County ordinance, weren't particularly high. The  
19 maximum modeled value was, on an average day/night value,  
20 with a nighttime penalty, was 54.3 decibels. The ordinance,  
21 you know, was, I guess, 65. Now, the more recent ordinance  
22 that we saw, it does show, if it's a, a residential area,  
23 65/daytime, 55/nighttime. It's below those values. And for  
24 like the pool, which is non-residential, it was 67 to 62  
25 decibels, and it's below that as well.

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

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

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

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

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

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

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

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

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

19 A Correct.

20 Q Okay.

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

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

4 I was at the study. I can tell, yes, sometimes at  
5 Sterling we did smell gasoline odors, we did, particularly  
6 in one instance in the wintertime, but that station, again,  
7 did not have vent control, and you know, if we did have vent  
8 control, we would not have smelled any odors at the 300-foot  
9 level. We'll show values later that the distances from the  
10 pumping area to the closest home is on the order of about  
11 290 feet if you just measure it off with a map. It's a  
12 little bit closer to the three entry ports to the  
13 underground tanks, probably 230 to 270 or 80 feet or so, but  
14 what we're finding with Sterling and once we applied a  
15 twofold dilution factor, we were not finding odors at that  
16 distance, and that's based upon the wintertime, and we had,  
17 we had greater odors in the summer. In the summertime, the  
18 study we did then, we found, again, at about, you know, 70  
19 feet or so, we were not detecting odors. Better dispersion  
20 conditions were there, less odors.

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

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

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1 odor.

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

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

6 MR. GROSSMAN: Sterling? Okay.

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

10 MR. GROSSMAN: Okay.

11 THE WITNESS: -- they were similar magnitudes.

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

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1 So, in summary, for odors we do not -- we expect  
2 any odors past the ring road to be rare. I'm not saying  
3 it's not, it won't happen. It could happen, rare, and in  
4 two, three, four years, it would become more rare over time.  
5 As the canister technology takes over, the penalty with  
6 Stage II incompatibility goes away; the odor control will be  
7 stronger over time, better control.  
8 This is just showing some perspective on where the  
9 vents are located and the three ports to fill the  
10 underground tanks. I show the closest home is here. We're  
11 showing the distance as --  
12 MR. GROSSMAN: Here being due south of this site.  
13 THE WITNESS: Yes, I'm sorry. Due south was the  
14 closest residence.  
15 BY MR. GOECKE:  
16 Q And this is Slide 43.  
17 A Correct.  
18 Q The pumping area is, again, 290 feet. The vent is  
19 270 feet, and the fill, anywhere between 230 and 260. And,  
20 again, for perspective, in Sterling, at 317 feet away, we  
21 would, we had detectability in one sample and at two  
22 dilutions there was no detectability. That's why we do not  
23 expect to have odors here except on rare occasions, and it  
24 should improve over time.  
25 This is showing us we did the analysis in Sterling

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1 and distances that we used, and this is showing us what's  
2 called the hedonic scale. That scale goes from minus 10 to  
3 plus 10. Minus 10 is the worst odor you could imagine. Ten  
4 is the best perfume you can buy. Zero is in the middle.  
5 Zero is neutral. And we found on the hedonic scale, it was  
6 on the order of minus .2 to minus 1.2 for the gas station.  
7 It was fairly similar in Kensington Heights. There's a lot  
8 of -- obviously, there's a lot of traffic there as well.  
9 So, yeah, it was, it was similar. The data is in our  
10 reports.  
11 MR. GOECKE: And I think this may be a good point  
12 to break, Mr. Grossman.  
13 MR. GROSSMAN: All right. So our next session is  
14 on Wednesday, the 19th of June. Don't forget, it's  
15 upstairs, seventh floor, council hearing room. Go up to the  
16 seventh -- for those of you who have not been there, go up  
17 to the seventh floor elevator and make a right turn, and  
18 when you get to the window, stop, make a sharp left, and  
19 there's a door there. You enter in that door, and once  
20 again, we're at 9:30. Do we have any other matters that, of  
21 an administrative sort, that we need to talk about?  
22 Ms. Harris, any --  
23 MS. HARRIS: There's a screen in that room, I  
24 believe, correct, or should we just make sure we bring all  
25 the equipment up?

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1 MR. GROSSMAN: Let's bring the equipment. I think  
2 that my administrative staff is going to store some stuff  
3 for you --  
4 MS. HARRIS: Yes. Okay.  
5 MR. GROSSMAN: -- but there is a screen there. I  
6 don't know how it functions or if it functions at this point  
7 because I don't use that room for hearings or for the  
8 council in general. Any other administrative matters that  
9 anybody has?  
10 (No audible response.)  
11 MR. GROSSMAN: Seeing no hands, we are adjourned  
12 until June 19th.  
13 (Whereupon, at 5:02 p.m., the hearing was  
14 concluded.)  
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**C E R T I F I C A T E**  
DEPOSITION SERVICES, INC., hereby certifies that  
the attached pages represent an accurate transcript of the  
electronic sound recording of the proceedings before the  
Office of Zoning and Administrative Hearings for Montgomery  
County in the matter of:  
Petition of Costco Wholesale Corporation  
Special Exception No. S-2863  
OZAH No. 13-12  
  
By:  
  
Wendy Campos, Transcriber

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