

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
:
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A hearing in the above-entitled matter was held on July 8, 2013, commencing at 9:30 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, 2nd Floor Council Hearing Room, Rockville, Maryland 20850
before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

For the Applicant:

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P R O C E E D I N G S

1 MR. GROSSMAN: This is the eighth 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 59-G-2.06 to
5 allow petitioner to construct and operate an automobile
6 filling station which would include 16 pumps. The subject
7 site is located at 11160 Veirs Mill Road, Silver Spring,
8 Maryland. That's Lot N, 631 Wheaton Plaza, Parcel 10, also
9 known as the Westfield Wheaton Mall, and is zoned C-2,
10 general commercial.

11 The hearing was begun on April 26, 2013, resumed
12 on May 1, May 6, May 23, June 4, June 17, and June 19, 2013.
13 It was noticed to resume again today. The next session has
14 been noticed for July -- for Thursday, July 11, in this
15 room, second floor OZAH hearing room, in this building, the
16 Council Office Building, at 9:30 a.m.

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

23 MR. SILVERMAN: Larry Silverman, Stop Costco Gas
24 Coalition.
25

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
David A. Sullivan				
By Mr. Goecke	40			
By Ms. Rosenfeld			68	

E X H I B I T S

Exhibit No.	Marked/Received
189(b)(i) Revised pages 2 and 3 of Exhibit 189(b)	37
195(a) Chapter 31B-Noise Control, Montgomery County Code	76
195(b) Excerpt from Title 3, Maryland Environmental Code	76
195(c) COMAR 26.02.03.01	76
196 Appendix X to Exhibit 15(a)	85
197 Page 21 of the LATR and PAMR guidelines	146

1 MS. CORDRY: Karen Cordry, KHCA.
2 MS. ROSENFELD: Michele Rosenfeld, KHCA.
3 MR. ADELMAN: Good morning, Mr. Grossman.
4 Dr. Mark Adelman for the Coalition.
5 MR. GOECKE: Michael Goecke for Costco.
6 MS. HARRIS: Pat Harris, Costco.
7 MR. BRANN: And Erich Brann for Costco.
8 MR. GROSSMAN: I noticed you've switched positions
9 on me. Was that to make sure that I was awake after my
10 holiday? Is that --
11 MS. ROSENFELD: For technical convenience, we're -
12 -
13 MR. GROSSMAN: I'm not sure that my right left
14 brain can adjust to this. I don't know. I mean --
15 MR. ADELMAN: Well, we're all disoriented right
16 now.
17 MS. HARRIS: We're having difficulties as well.
18 MR. GROSSMAN: -- time will tell. It'll be very
19 disorienting for me. All right. I have a few preliminary
20 matters. Is there anybody else in the audience who is here
21 who's not a witness to be called by one of the parties who
22 have spoken up already who wishes to be heard today?
23 (No audible response.)
24 MR. GROSSMAN: Seeing no hands, we'll proceed to
25 the preliminary matters. There were various e-mails

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1 exchanged and copied to the hearing participants and made a
2 part of the public record since the last hearing on June 19.
3 There were also some substantive filings. These e-mails and
4 filings are included in Exhibits 173, 174, and 178 through
5 194. I saw from a quick perusal of my e-mails from July 5th
6 this morning that there were some other things filed on
7 Friday, July 5, that are not yet exhibits in the record, but
8 anyway, the ones that are go through Exhibit 194. Some of
9 these exchanges concern the proposed pedestrian path which
10 has been tentatively modified since the opposition objected
11 to a three-foot wide path, and technical staff agreed with
12 that, according to the e-mail exchange. It now would not
13 extend as far along the southern ring road but would be five
14 feet wide for the portion that did extend.
15 At my request, the applicant has shared electronic
16 copies of the newly proposed configuration with the hearing
17 participants, although the actual physical plans have not
18 yet been filed because, I believe, they're still tentative.
19 KHCA has now filed a letter with technical staff, critiquing
20 the new proposal; that's Exhibit 192. Applicant responded
21 to that in Exhibit 194. The technical staff indicated it
22 will do a site examination to evaluate the situation. There
23 have been a number of filings in support of the application
24 -- Exhibits 183 through 186 -- and a discussion of possible
25 additional hearing dates. Applicant also filed a response,

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1 Exhibit 189(a), to KHCA's answer to my 20 questions, as well
2 as supplemental material supporting Mr. Sullivan's testimony
3 and that's in Exhibit 189(b) through (h) and Exhibit 193.
4 Exhibit 193 is the Washington Council of Governments report
5 on the PM 2.5 maintenance plan dated May 22, 2013.
6 Of course, receiving all of that stuff has made me
7 question whether I should ask questions anymore since I've
8 been barraged with so much additional material. I think all
9 I asked was what additional incremental increase in VOCs and
10 particulate matter would the proposed gas station produce,
11 but then I got a lot of material as a result. And I think
12 everybody should bear in mind, my report is not going to be
13 1,000 pages long, citing such things as Rebecca Abernathy's
14 145-page master's thesis discussing particulate matter in,
15 in Vancouver, and that's Exhibit 189(d), although I might
16 discuss some conclusions in the Zhu, Hinds, Kim & Sioutas
17 paper on the size distribution of ultrafine particles which,
18 according to them, has little or no impact at a distance of
19 90 meters from the freeway. That's Exhibit 189(c).
20 I'm not sure, but -- and I think these materials
21 are relevant. I'm not saying they shouldn't be filed. I'm
22 just saying that we should try to keep our eyes on the ball
23 here because the level of detail being supplied is going to
24 be beyond -- even though I may understand what's being filed
25 based on hearing this record, we want everybody to be able

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1 to understand what the analysis of this all is.
2 So let's try to make sure that we do address
3 central issues here, and I'm not saying that the materials
4 filed were not a central issue because certainly ultrafine
5 particles was a central issue raised by the opposition here,
6 but I just want to -- so I'm not really addressing so much
7 what was filed as just a hint to try to keep things on a
8 center keel here, as much as possible, in both direct and
9 cross-examination. I've been very broad in allowing
10 cross-examination and direct so that everybody can get their
11 say here, but in terms of accomplishing what you want to
12 accomplish, I think it's important that you stay centered on
13 this case.
14 Okay. And also I might mention, one other thing
15 that was filed here, the supplemental data, Mr. Sullivan's
16 Exhibit 189(b), I think it will be helpful if he went back
17 over that because I actually -- that should be one of the
18 more important documents here and I had great difficulty
19 understanding that particular document, although I
20 understood the other papers that were filed. So I do want
21 him to address that here. Even though he's supposed to be
22 in cross-examination mode right now, I would like that
23 additional filing to be addressed on a kind of circular
24 direct here, going back to direct again for that. Okay.
25 Anybody have an objection to that process?

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1 MS. ROSENFELD: No, no objection. I don't believe
2 I brought a copy of that with me today. Is it possible to
3 get copies so we can refer to it as he's questioned on it?
4 MR. GROSSMAN: I think that is possible.
5 MS. ROSENFELD: Is it lengthy?
6 MR. GROSSMAN: Is it lengthy? No, it was not
7 lengthy. Let's see.
8 MS. ROSENFELD: Or if it's on --
9 MR. GROSSMAN: It's, I think, 14 pages long with a
10 lot of diagrams on it. Anybody else have a copy they can --
11 MS. ROSENFELD: You know what? Maybe I do. Hold
12 on.
13 MR. GOECKE: Not an extra one.
14 MR. GROSSMAN: Okay.
15 MR. GOECKE: And I just want to make sure,
16 actually, Mr. Grossman, that we're, we're talking about the
17 same exhibit. Is it okay if I approach to take a look?
18 MR. GROSSMAN: Sure. It's entitled Supplemental
19 Data Regarding the Testimony of David Sullivan on June 17
20 and June 19 --
21 MR. GOECKE: Okay, great.
22 MR. GROSSMAN: -- and it, 2013, and it responds to
23 questions that I raised and others raised. There were many
24 other things filed, various studies and so on filed, which I
25 just mentioned, but --

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1 MR. GOECKE: And, Mr. Sullivan, you have a copy of
2 that on your computer as well?
3 MR. SULLIVAN: That's what I was just looking for.
4 I do. It didn't come up properly. Let me try again. Let
5 me get it up, and then we can switch --
6 MS. CORDRY: Okay, yes.
7 MR. SULLIVAN: -- switch the photo.
8 MS. ROSENFELD: Mr. Grossman, can I see the first
9 page of it?
10 MR. GROSSMAN: Certainly. Want to come up,
11 Michele?
12 MR. GOECKE: Is it closer to you, Michele?
13 MS. ROSENFELD: No. I have documentation of Slide
14 25. That's something different, isn't it?
15 MR. GOECKE: That's one of the attachments to
16 this.
17 MS. ROSENFELD: It is one of the attachments?
18 MR. GOECKE: Or unless that's what we gave you at
19 the last hearing. That might have been from the last
20 hearing, actually.
21 MS. ROSENFELD: That's from the last hearing.
22 MR. GOECKE: Yes, that's right.
23 MS. ROSENFELD: Okay. I apologize, Mr. Grossman.
24 I don't have a copy of that with me.
25 MR. GROSSMAN: All right. Perhaps if --

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1 MS. ROSENFELD: So if we could get a copy, but
2 certainly have no --
3 MR. GROSSMAN: -- my administrative staff is
4 monitoring, they can come in and I can give them my copy
5 which then can be further copied.
6 MS. ADELMAN: Could I have one also, Mr. Grossman?
7 I did not receive that.
8 MR. GROSSMAN: Certainly.
9 MS. ROSENFELD: And one for Mr. Cole as well --
10 MR. GROSSMAN: Okay.
11 MS. ROSENFELD: -- Dr. Cole.
12 MR. GROSSMAN: While we're cogitating that, has
13 any agreement been reached on additional dates?
14 MS. ROSENFELD: Mr. Grossman --
15 MR. GROSSMAN: Yes.
16 MS. ROSENFELD: -- KHCA had proffered some dates.
17 I think that --
18 MR. GROSSMAN: I saw that.
19 MS. ROSENFELD: -- one was not available for the
20 Coalition, one of the September dates. I'm amenable to any
21 of the proffered dates in September that Costco is --
22 MS. HARRIS: What I would suggest is -- there were
23 six dates proffered. After some exchange it was --
24 MR. GROSSMAN: Right.
25 MS. HARRIS: -- indicated that only four would be

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1 acceptable. I would proffer the first four and then we
2 would then identify two additional dates in October after
3 October 17th, I believe was your date, and so therefore I'd
4 suggest October 21 and 24.
5 MS. ADELMAN: But, Mr. Grossman --
6 MR. GROSSMAN: Yes.
7 MS. ADELMAN: -- Dr. Cole, with the Coalition, is
8 not available on the 12th of September.
9 MR. GROSSMAN: All right. Well, that's why I said
10 I was hoping that you folks would work this out off line, as
11 it were, and then we could talk about it at the hearing. I
12 mean, it's not an emergency that we need to have the dates
13 identified, but it would be nice if we could by, by the next
14 hearing date, which is Thursday. And then --
15 MS. ADELMAN: We just have to eliminate one of the
16 five remaining.
17 MR. GROSSMAN: Okay. So why don't you all discuss
18 that and figure out which dates are good for you --
19 MS. ADELMAN: Yes.
20 MR. GROSSMAN: -- and then we can send out a
21 notice, okay? All right. Now, I also, another item here, I
22 noticed in going over the testimony that Mr. Hurlocker
23 testified that the underground tanks would hold 90,000
24 gallons of fuel but the engineering report indicates 60,000
25 gallons. So I was just curious as to which is correct about

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1 that, Ms. Harris.
2 MS. HARRIS: I would need to go back and confer,
3 but my, I am fairly certain that it's the 90,000 that --
4 yes, it's the 90,000.
5 MR. GROSSMAN: Okay. Well, I take it then, then
6 it would not make any difference in the engineering
7 report --
8 MS. HARRIS: I don't --
9 MR. GROSSMAN: -- because the engineering -- take
10 a look back at the engineering report --
11 MS. HARRIS: I will.
12 MR. GROSSMAN: -- and see because that's my
13 recollection, is it said 60,000-gallon tanks. So --
14 MS. HARRIS: I will.
15 MR. GROSSMAN: -- just file something that
16 clarifies this on the record, okay?
17 MS. HARRIS: Okay.
18 MR. ADELMAN: Mr. Grossman, when you referred to
19 the engineering report, are you referring to Mr. Tucker's
20 report or Mr. --
21 MR. GROSSMAN: Mr. Duke's report, I think, I think
22 it was. I don't remember. I read it -- it's been at least
23 a week or two since I made this, I noticed this. So --
24 MR. ADELMAN: I'm sorry?
25 MR. GROSSMAN: -- I can't remember what the --

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1 let's see if we have an exhibit number here. I mean, I'm
2 pretty sure what I did was I just looked at electronic
3 copies of what I had. I don't see it. Well, if I had been
4 smart, I would have made a -- oh, here it is. Exhibit 13, I
5 think, is probably what I was looking at originally, and
6 then when I was going over the testimony, I noticed that was
7 not consistent with what Mr. Hurlocker testified. So see if
8 that's, my recollection is correct or that discrepancy
9 exists somewhere else. All right.

10 MR. ADELMAN: So that, excuse me again, that's the
11 overall engineering report?

12 MR. GROSSMAN: Yes, I believe. That's my
13 recollection of what I was looking at in the, in my
14 electronic copies. Okay. Any other preliminary or
15 procedural matters? We'll start from the left, as we, as we
16 usually do. Mr. Silverman?

17 MR. SILVERMAN: Yes, sir. You raised a question
18 about Sierra Club versus EPA, and you said in your e-mail
19 that we should be prepared to discuss it today, and I'm
20 prepared to discuss it and would like to make three quick
21 points about it.

22 MR. GROSSMAN: All right. Let's come back to
23 that.

24 MR. SILVERMAN: Yes.

25 MR. GROSSMAN: Any other preliminary matters?

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1 Anybody? Yes, Dr. Adelman.

2 MR. ADELMAN: The Coalition has two questions,
3 Mr. Grossman, procedural questions. The first goes to the
4 rules as to stipulating. If we choose to stipulate to
5 testimony of an expert witness, that must be done in advance
6 and preferably by notification to all parties by e-mail, is
7 that correct?

8 MR. GROSSMAN: Well, I can't recall if there's
9 something specific in the rules about stipulations. I don't
10 think there is. It would be a sensible way to do it, to --
11 if you're going to stipulate to something, let's have it
12 done in advance so that people don't waste a lot of time
13 preparing. So yes, I would say that would be a sensible way
14 to approach it. What do you -- do you have something in
15 mind, in particular?

16 MR. ADELMAN: Nothing, nothing specific at this
17 point. I'm so unclear about it. I wanted to define --

18 MR. GROSSMAN: Right.

19 MR. ADELMAN: -- the parameters. The second
20 aspect of the question is, is it possible to stipulate with
21 conditions, that is to say, to stipulate that one accepts
22 certain things and does not accept others, or is it an
23 all-or-nothing stipulation?

24 MR. GROSSMAN: No, no, there's nothing -- there's
25 nothing all or nothing. You can proffer whatever you want

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1 to agree to, and then if somebody has an objection to the
2 way you're formatting it or something, they'll object and
3 then I would rule on any objection, but there isn't any, any
4 requirement that you have to accept all of something as
5 opposed to portions of it.

6 MR. ADELMAN: So therefore I presume that all
7 parties and you must agree to a stipulation?

8 MR. GROSSMAN: I don't have to agree to --

9 MR. ADELMAN: Oh.

10 MR. GROSSMAN: -- a stipulation. It's a matter,
11 if the parties are agreeing to something as factually, some
12 stipulation as to facts, then the parties can agree to it.
13 If I think that it's irrelevant or immaterial or somehow a
14 violation of other rules of evidence, then I would so rule,
15 but I don't have to agree to a stipulation per se.

16 MR. ADELMAN: Okay. The second question I'm
17 probably going to need some help from you because I'm not
18 sure of the phrasing. So, first of all, is it permissible
19 to ask Ms. Harris a question that's not directly related to
20 matters that we're talking about today?

21 MR. GROSSMAN: You can ask Ms. Harris anything at
22 all at any time as long as it's not in the middle of the
23 hearing process that's going on. If you mean that -- off
24 line, you mean --

25 MR. ADELMAN: No. I mean --

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1 MR. GROSSMAN: -- or are you talking about in the
2 course of the hearing?

3 MR. ADELMAN: I mean, here, at this point.

4 MR. GROSSMAN: Well, we're a little bit more
5 relaxed. So if you have something that you feel should be
6 an exchange that should be made on the record, you know,
7 that's fine --

8 MR. ADELMAN: All right.

9 MR. GROSSMAN: -- we'll, as long as it stays
10 within reasonable bounds, we'll recognize it.

11 MR. ADELMAN: Fine. And the second half of it is
12 that I can't find a way to phrase this in one long sentence
13 without being absurdly complex; so can I break the one
14 question into three chunks so people can understand what I'm
15 asking?

16 MR. GROSSMAN: I would think that would be better
17 than one that's not understood, yes.

18 MR. ADELMAN: Okay, fine. Let me give this a
19 shot. Could Ms. Harris please clarify for the record
20 precisely how many parking spaces will be available to
21 Costco patrons if and when the store opens? And would she
22 specify the numbers for the parking lot and the parking
23 garage separately? And finally, can she clarify, if so,
24 that the numbers are -- that the numbers are those that are
25 based on a contractual agreement between Westfield and

1 Costco?
 2 MR. GROSSMAN: All right. Ms. Harris, do you want
 3 to respond to that? I think there's evidence on all these
 4 points. So I'm not sure -- I mean, the evidence,
 5 essentially, is what's going to control. Do you think
 6 there's a conflict in the evidence on this point?
 7 MR. ADELMAN: I'm, frankly, I'm preparing my
 8 testimony, which I want to be factually accurate, and I
 9 found that I can't find the numbers that I thought I knew.
 10 I have a stack of papers this high --
 11 MR. GROSSMAN: Right.
 12 MR. ADELMAN: -- I've gone through them. I can't
 13 find them in my notes or in a document. I'm sure they're
 14 there. I just don't know what they are. I mean, I
 15 remember, I believe, what they are, but --
 16 MR. GROSSMAN: Okay. I mean, when I have that
 17 kind of problem myself, I usually just try an electronic
 18 search through the transcript, put in something like parking
 19 space and search for it and then comes up with usually about
 20 the right area. That's one way to try it, but in terms of
 21 -- I don't know. Maybe Ms. Harris has those numbers off the
 22 top of her head. I --
 23 MS. HARRIS: Ms. Harris doesn't have them off the
 24 top of her head. I do recall that Dan Duke testified to
 25 that, at least, and -- at least the first question, and I

1 didn't get the second or third one. If you could repeat
 2 them.
 3 MR. ADELMAN: All right. I can -- would you like
 4 me to repeat them or --
 5 MS. HARRIS: How many parking spaces available to
 6 Costco, that was the first question.
 7 MR. ADELMAN: Costco patrons after the, if and
 8 when the gas station opens.
 9 MS. HARRIS: Yes.
 10 MR. ADELMAN: And the second aspect was, can you
 11 clarify how many spaces are in the parking lot and how many
 12 in the garage? And the third is, essentially, am I correct
 13 that that's a contractual matter between Westfield and
 14 Costco?
 15 MS. HARRIS: I believe Mr. Duke testified to the,
 16 or it may have been Mr. Guckert, but I thought Duke, as to
 17 the second question, and the third question I would need to
 18 check with Costco. I don't believe that's on the record.
 19 MR. GROSSMAN: Okay.
 20 MR. ADELMAN: So we --
 21 MR. GROSSMAN: I think she'll, Ms. Harris will get
 22 back to us with what --
 23 MR. ADELMAN: Excellent.
 24 MR. GROSSMAN: -- what she believes are the
 25 correct figures.

1 MR. ADELMAN: Excellent. That's fine. Thank you.
 2 MR. GROSSMAN: Okay. All right. Ms. Rosenfeld,
 3 did you have --
 4 MS. ROSENFELD: Yes, a couple of questions. Do,
 5 Pat, do you know when we would expect to get the revised
 6 documents?
 7 MR. GROSSMAN: You're talking about the new --
 8 MS. HARRIS: Which revised documents?
 9 MR. GROSSMAN: -- the plans regarding the
 10 pedestrian path and --
 11 MS. ROSENFELD: The pedestrian path, that's --
 12 MS. HARRIS: We're waiting for staff's --
 13 MS. ROSENFELD: Okay.
 14 MS. HARRIS: -- final acceptance of them, and then
 15 our plan was to then submit them formally.
 16 MS. ROSENFELD: All right. So --
 17 MS. HARRIS: And my understanding was that at
 18 least Ms. Kamen was out last week, and so I would hope that
 19 sometime this week we'll hear from staff, but I have not --
 20 MR. GROSSMAN: Right.
 21 MS. HARRIS: -- checked in with them.
 22 MR. GROSSMAN: I mean, I have some concern
 23 because, based on what you filed, Ms. Rosenfeld, you
 24 obviously challenge the proposed new path. And so, you
 25 know, I'm not sure where ultimately, where Westfield comes

1 down on what they're ultimately going to offer here, whether
 2 it's still going to be -- because I think that their, I
 3 would suppose, that their revision was an attempt to satisfy
 4 the concerns of the community about this.
 5 MS. ROSENFELD: Well, maybe I should clarify our
 6 position. To the extent that the path is reflected in the
 7 plan, that's a good thing. We think that the scope of the
 8 path is inadequate, that there should -- that it should be
 9 longer.
 10 MR. GROSSMAN: Right.
 11 MS. ROSENFELD: So I don't want you to be under
 12 the impression that we think that what's there should be
 13 removed.
 14 MR. GROSSMAN: You mean by what's there, you mean
 15 the newly proposed five-foot wide path that terminates --
 16 MS. ROSENFELD: The newly proposed five-foot path.
 17 MR. GROSSMAN: Right.
 18 MS. ROSENFELD: We're not saying that that
 19 component is inappropriate or should be deleted from the
 20 plan. Our comments were intended to reflect the idea that
 21 it's an improvement but it's still inadequate.
 22 MR. GROSSMAN: Well, in your mind, if the path
 23 were to extend further but the further extension along the
 24 southern ring road were only three feet wide, would that
 25 still be problematic in your mind?

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1 MS. ROSENFELD: Well, I think from our point of
2 view that would be better than nothing but still doesn't
3 provide an adequate level of safety for the pedestrians
4 walking on the ring road.
5 MR. GROSSMAN: Because, according to what you
6 recited in your letter, the promise by Westfield to the
7 other Mr. Sullivan, I believe, or maybe to Mr. Leggett, was
8 that it would be a three-foot wide path, isn't that correct?
9 That was what the letter, the Westfield letter promised, was
10 for a three-foot wide path?
11 MS. ROSENFELD: That is correct, and at the time,
12 the gas station was proposed to be located in a very
13 different place from where it is.
14 MS. CORDRY: If I might supplement, that was a
15 proposal regardless of whether the gas -- or not a proposal.
16 That was a commitment regardless of whether the gas station
17 was there or not. Clearly, I think as we've been seeing,
18 the levels of traffic on that segment of the ring road will
19 be substantially different with the gas station than without
20 the gas station. So what happens if you had no gas station
21 but just the store and a three-foot path? You know, again,
22 it's not ideal, but it's a different question than what
23 you're facing here with a gas station proposal.
24 MR. GROSSMAN: Right, but I'm not, I'm not --
25 right now I'm not evaluating the merits of three feet versus

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1 five feet. I'm just trying to see if there is some middle
2 ground that would satisfy the community in the event that
3 the Board of Appeals were to grant the special exception,
4 because the special exception, once again, it's not -- I
5 mean, neither the Hearing Examiner nor the Board of Appeals,
6 in my opinion, can dictate to Westfield about this path. It
7 is outside of the special exception site plan area, and
8 Westfield is not an applicant here. So I think it would be
9 highly questionable as to whether or not there could be some
10 order regarding the pedestrian path.
11 So, you know, I recognize in the letter that there
12 was a promise regarding it, regardless of the special
13 exception, from Westfield, but you know, if in fact there's
14 some agreement by the parties that says this is going to be
15 part of what everybody's agreeing to, that's one thing, but
16 it's something else to expect a condition, if the special
17 exception is granted here, that would require it. So I just
18 think you all ought to know that.
19 MS. ROSENFELD: Is it your position that if the
20 path is reflected on the special exception site plan, that
21 it doesn't become binding --
22 MR. GROSSMAN: No. I'm just saying that if in
23 fact --
24 MS. ROSENFELD: -- to provide?
25 MR. GROSSMAN: -- if in fact -- I'm saying that

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1 parties can agree to something and it could be reflected in
2 the, in the special exception site plans but, as it
3 currently is, but there's a limit to the authority, I think,
4 of the Hearing Examiner and the Board of Appeals to direct
5 things from nonparties that are outside of the special
6 exception area. I have, I have supported conditions in the
7 past outside of a special exception area, when the owner of
8 the land agreed to it and wanted it, in order to improve
9 protections for that landowner or, you know, something they
10 felt was in their interest.
11 So that may well be the case here, and I suspect
12 it would be because I assume that Westfield would like to
13 have something that everybody's agreeable to, but I'm just
14 saying that, that you have to understand that there, as I
15 said, I think, in an e-mail to everybody, there's a limit to
16 what the authority is of the, in my opinion, of the Board of
17 Appeals and of the Hearing Examiner.
18 MS. ROSENFELD: I understand your statement that
19 the authority of the Board of Appeals to impose a condition
20 on a third party is a limitation, essentially a
21 jurisdictional limitation, I would say.
22 MR. GROSSMAN: Right.
23 MS. ROSENFELD: I don't understand you to be
24 saying, however, that the Board of Appeals can't, is not in
25 a position to consider pedestrian safety as it may be

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1 affected with or without a path; that --
2 MR. GROSSMAN: No, I'm not.
3 MS. ROSENFELD: -- that is, that's a factual
4 finding completely independent of the issue that you just
5 raised.
6 MR. GROSSMAN: Right, but what we've --
7 MS. ROSENFELD: Okay.
8 MR. GROSSMAN: -- been trying to do here, I think,
9 in this exchange about the pedestrian path is to arrive at
10 something that was, in case the special exception is
11 granted, something that is most beneficial to the community
12 and to Westfield and to the applicant here. So I think that
13 was the reason for this exercise. So, of course, now we
14 have a path that is wider but not as long, and I don't know
15 if --
16 MS. ROSENFELD: And until we see the final path,
17 it's hard to --
18 MR. GROSSMAN: Well, I know there's a final path.
19 I think it's a work in progress to the extent we have to
20 wait for technical staff to take a look again and see what
21 they think, and then we have to see what Westfield thinks it
22 can do consistent with its other needs. So it's somewhat up
23 in the air, but it would make sense if you all could consult
24 at the same time with technical staff -- I'm talking about
25 the community as well as the applicant and Westfield with

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1 technical staff -- and see if something can be -- I know you
2 had meetings, according to what technical staff said,
3 separately, but maybe if you all meet together. It's not
4 the kind of thing, I'm not in a position to be the mediator
5 here because I have to be the fact finder; so, but I do want
6 to encourage you to try to -- I always try to protect the
7 community as best I can, and I would like to do that here.
8 So, anyway, you all should consider that.
9 All right. Anything -- Ms. Rosenfeld, did you
10 have any other preliminary matters?
11 MS. ROSENFELD: No, Mr. Grossman. Thank you.
12 MR. GROSSMAN: Okay. Any other preliminary
13 matters before I turn back to Mr. Silverman's suggestion
14 that he wanted to make some points about the Sierra Club and
15 the EPA?
16 MR. GOECKE: Just one minor thing --
17 MR. GROSSMAN: Mr. Goecke.
18 MR. GOECKE: -- and we can get into it when
19 Mr. Sullivan begins to testify, but once we get to pages 2
20 and 3 of the slide presentation, we've actually made some
21 changes to it, and I have those revisions here that I'll
22 pass out as well.
23 MR. GROSSMAN: Okay, just to add more excitement
24 to the events.
25 MR. GOECKE: Just to keep the, keep everybody on

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1 their toes.
2 MR. GROSSMAN: Not enough that you confused me
3 about where you're sitting. You have to -- all right.
4 MR. GOECKE: That wasn't my choice.
5 MR. GROSSMAN: All right. Mr. Silverman.
6 MR. SILVERMAN: I will try to be brief. The
7 Sierra Club versus EPA is about prevention of significant
8 deterioration, which is a doctrine of EPA, and it also deals
9 with what is a significant increment. The issue of PSD and
10 a significant increment -- there's an acronym, SIL, and I
11 don't really know what it means -- it was brought up by
12 Mr. Sullivan. I think throughout his presentation he makes
13 the point that certain, a certain increase is not
14 significant based on EPA guidelines and rules, and I asked
15 him about those. And on page 94 of the transcript, he said
16 he -- his basis for saying that the particular increment was
17 not significant was the PSD rules, and I pointed out to him
18 that those rules, particularly with regard to significant
19 increments, were invalidated by the, by the Court of Appeals
20 here in D.C. So they're no longer applicable.
21 Now, really, the question of --
22 MR. GROSSMAN: Just so --
23 MR. SILVERMAN: Yes.
24 MR. GROSSMAN: -- we're clear for the record, it's
25 the U.S. Court of Appeals for the D.C. Circuit.

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1 MS. CORDRY: Yes.
2 MR. SILVERMAN: Thank you, yes.
3 MR. GROSSMAN: Yes. There is the D.C. Court of
4 Appeals too. Okay.
5 MR. SILVERMAN: I know that. I've been there,
6 yes, sir.
7 MR. GROSSMAN: Right.
8 MR. SILVERMAN: Really, the question of what, how
9 much more, how a small addition of pollution will affect
10 health is a health question, and I think the position of the
11 applicant has been, well, some of these health questions
12 have been resolved by the agency and we should just accept
13 the agency's findings. Well, in this case, the agency's
14 findings does not, no longer exists. You asked -- that's
15 point one. So that a basis -- now, he later said in his
16 testimony that he did not rely on that number, but you can
17 look at his charts and his, the whole tenor of his testimony
18 and make your own decision. I've made mine about that
19 question.
20 The second point is, it is true, as you suggest in
21 your question, that PSD and SIL, these various doctrines and
22 rules of EPA, do not decide this case and this case does not
23 qualify under those rules, it's not applicable, and that, I
24 would just say, is true of almost all the environmental
25 rules. I think Ms. Harris takes the position that if the

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1 state and federal environmental agencies have not forbidden
2 it, it must be safe, and we take just the opposite view:
3 that's not true; if they have not forbidden it, it's because
4 they don't have jurisdiction. And really, the only person,
5 the only agency, as far as I've been able to determine, with
6 the authority and responsibility for determining whether
7 this is a healthy situation or not is the agency you work
8 for. I haven't seen any other parties here.
9 MR. GROSSMAN: Well, but I don't operate in a
10 vacuum, and I rely on other agencies that determine
11 standards. I mean, a good example would be in stormwater
12 management. You know, I rely on what the state and county
13 sets up as standards for stormwater management, and I don't
14 set up conditions which are -- which violate those
15 standards, because I think that that would be overstepping
16 reasonable grounds for my, you know, establishing them.
17 MR. SILVERMAN: Well, I understand that, but I
18 think in this case of air pollution -- and we can talk about
19 stormwater another time -- but in the case of air pollution,
20 really, you don't have very much to go on. We'll talk about
21 air quality standards, which are highly generalized, but we
22 don't have -- and I put in the record and you've accepted in
23 the record a statement from the state, saying they really
24 don't, they're not guaranteeing safety when they, when they
25 -- they do regulate the air, but they don't guarantee

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1 safety, and they basically said that.
2 MR. GROSSMAN: Let me just stop you for a second.
3 MR. SILVERMAN: Yes.
4 MR. GROSSMAN: You say I have accepted in the
5 record. We allow in a lot of material. What weight it's
6 given and that part of the analysis for a weight-later
7 consideration, first, on the question of when it's moved,
8 when something is moved into evidence and then we will
9 evaluate whether or not it's admissible and then, if it is,
10 the weight it's to be given later on. So I just don't want
11 you to over anticipate what I've ruled on.
12 MR. SILVERMAN: Well, you've cautioned me. It
13 makes me think maybe we should bring the state in here and
14 let them say it directly. Do we have subpoena power here?
15 MR. GROSSMAN: There is subpoena power for things
16 within, within Maryland, but usually for, and there is
17 something in the rules about, for government officials, we
18 just ask them to attend if they're needed.
19 MR. SILVERMAN: All right. Let me say the third
20 thing. Even though most of the environmental laws do not
21 affect this case -- which, to me, as an environmental lawyer
22 and professor and so on, it makes it most interesting that
23 we're in new territory here. This is unregulated area, not
24 because it's not important, because just, they just don't
25 have jurisdiction for all kinds of reasons, just like, you

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1 know, they don't -- their jurisdiction over existing power
2 plants is a little bit loosey-goosey. Nonetheless, these
3 rules in these areas that do not cover us are helpful. I
4 mean, they provide useful guidance.
5 For example, prevention of significant
6 deterioration, the issue that it addresses is how do you
7 keep good air quality good without hurting the economy, and
8 there's a long history of policy making and investigation in
9 this area, and typically at a PSD analysis, you say, well,
10 this particular facility will use up one-third of our
11 available clean air, you know, get us a third closer to the
12 standard, 25 percent or 30 percent closer to the standard,
13 and it will create how many jobs, two, three, four, is that
14 a wise budgeting exercise. And again, just as an example,
15 that is the kind -- now, that's not a health issue. That's,
16 that's, I don't know, we haven't heard testimony about
17 economic development and planning, but if the plan has an
18 economic development or jobs component, it would be a way of
19 analyzing things.
20 Similarly -- and I'll stop with this point -- the
21 National Environmental Policy Act does not apply to
22 Maryland. It applies to federal agencies, but on the other
23 hand, we have 40 years of experience on, you know, how to
24 detect -- how to analyze projects before they're designed
25 and how to detect clinkers and projects which are dubious.

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1 Much of that science and law and policies were developed by
2 residents of Montgomery County, and I think it's probably
3 helpful in making, particularly, judgments about burden of
4 proof to look to that body of knowledge and say, well, do we
5 get any guidance there.
6 MR. GROSSMAN: Well, I'm not saying absolutely no.
7 I would say that it seems to me that your analysis has,
8 asking me to kind of sashay into economic policy making in a
9 way that is beyond the comprehension of what I do. I'm not
10 a policymaker here. I'm going to follow the policy as best
11 I can determine it as set up by the Council in its zoning
12 ordinance and that's --
13 MR. SILVERMAN: Well, I'm --
14 MR. GROSSMAN: -- that's the policy I'm going to
15 follow.
16 MR. SILVERMAN: I'm suggesting, I don't know
17 because we haven't had testimony yet, but I'm suggesting if
18 the plan has a need now to develop a component, then one way
19 to look at that is using some of the techniques developed by
20 PSD. I'm just saying the environmental laws are helpful
21 guidance, they shouldn't be -- just because they don't apply
22 directly doesn't mean they should be ignored. That's my --
23 MR. GROSSMAN: I'm not sure, but I guess --
24 MR. SILVERMAN: -- that's my point.
25 MR. GROSSMAN: -- I guess, in part, you're

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1 responding to -- I think I made an observation, I can't
2 recall for sure, but I assume I put it in an e-mail -- that
3 is that the citation of the Sierra Club case was problematic
4 because it was referring to a particular type of major
5 producer of pollutants. And, although -- unfortunately, the
6 case itself, when I read it, it only mentioned that once,
7 and so I think it -- and the rest of the discussion didn't
8 mention that, but it was, but everything, all of the
9 regulations were under a section that only applied to that
10 specifically defined kind of producer, and my question was,
11 are you suggesting that this proposed Costco gasoline
12 station falls into that definition of major producer of
13 these particular kinds of pollutants --
14 MR. SILVERMAN: No.
15 MR. GROSSMAN: -- and I take it the answer is no.
16 MR. SILVERMAN: No. No. I have to --
17 MR. GROSSMAN: So that case really doesn't apply
18 directly.
19 MR. SILVERMAN: I have to say I was very pleased
20 to get your question because I certainly ask people to read
21 abstruse legal documents and sometimes they do and sometimes
22 they don't, but you clearly did and I appreciate that, but I
23 just wanted to make the three points.
24 MR. GROSSMAN: Okay.
25 MR. SILVERMAN: When he raised it, it -- there's

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1 no, there's no federal or state law that really says this is
2 safe, and three, still you can get guidance from these --
3 MR. GROSSMAN: All right. Dr. Adelman, you
4 have --
5 MR. ADELMAN: Yes. Mr. Grossman, please stop me
6 if I'm going too far afield, but something you said about
7 stormwater management --
8 MR. GROSSMAN: Yes.
9 MR. ADELMAN: -- brought to mind for me an issue
10 that I've been wrestling with for some time, have in fact
11 had extensive discussions with planning staff about, and
12 that is the notion that if a regulation is in existence, for
13 example, the proper management of stormwater runoff --
14 MR. GROSSMAN: Right.
15 MR. ADELMAN: -- then planning staff must assume
16 that that regulation will be in effect. That is to say that
17 it is not in their bailiwick to decide whether they think
18 it's likely that the County will or will not enforce certain
19 guidelines.
20 MR. GROSSMAN: Well, that's correct. I mean, they
21 would -- I don't run the technical staff. It reports to --
22 MS. ADELMAN: Right.
23 MR. GROSSMAN: -- the Planning Board and the
24 Maryland-National Capital Park and Planning Commission, but
25 yes, I would assume that they're going to follow whatever

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1 the existent regulations are.
2 MR. ADELMAN: Well, I'm proceeding, and please
3 correct me if I'm wrong, that you would take the same
4 position about future impact, or maybe not, but my question
5 goes to the following: If, at the time these hearings are
6 being conducted --
7 MR. GROSSMAN: Yes.
8 MR. ADELMAN: -- there is evidence that a
9 particular system -- stormwater management, whatever, noise
10 abatement, et cetera -- is in fact not working, is that
11 within your sphere of judgment? In other words, I'm not
12 talking about a future situation but a current situation.
13 MR. GROSSMAN: Well, that's a bit too hypothetical
14 for me here because I don't want to be, as the saying goes,
15 hoisted on my own petard later if I --
16 MR. ADELMAN: Okay. All right.
17 MR. GROSSMAN: -- if I think that I have to --
18 MR. ADELMAN: All right.
19 MR. GROSSMAN: -- vary from this, but generally
20 speaking, I'm going to follow whatever the regulations are,
21 and even if they appear not to be working, I'm not a
22 policymaker here. I mean, when I cast my vote, I guess I
23 am, as a citizen, I'm that kind of a policymaker, but here I
24 am following whatever the Council policy is in Montgomery
25 County as established by its zoning ordinance and by other

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1 applicable county, state, and federal regulations. So I'm
2 not, I'm not -- that's not my job to make policy.
3 MR. ADELMAN: Right. I understand. So I'll leave
4 it at this: We do have a very specific point to make, and
5 we will make that in our testimony.
6 MR. GROSSMAN: Okay. All right. Are we ready to
7 move along? All right. So I think where we start up here
8 was asking Mr. Sullivan to clarify this, and maybe we'll,
9 since you need -- you still don't have copies, is that
10 correct?
11 MS. ROSENFELD: Right, correct.
12 MR. GROSSMAN: Okay. So let's take a five-minute
13 break. I'll run some --
14 MR. SILVERMAN: Can I get one too?
15 MR. GROSSMAN: Yes. How many do we need now? So
16 I see five hands. Okay. So we'll make at least six copies
17 of this. We'll take a five-minute break, and then everybody
18 will have a copy of it.
19 (Whereupon, a brief recess was taken.)
20 MR. GROSSMAN: All right. So we're back on the
21 record. I've made copies of Exhibit 189(b) for those who
22 didn't have it. Unfortunately, the pages are not numbered
23 in Exhibit 189(b). So now I've been handed some substitute
24 pages, and I guess we'll call those Exhibit 189(b)(1) or
25 (b)(i). And I would request that in the future that anybody

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1 who submits -- anybody who submits reports, please number
2 the pages. Okay. This will be Exhibit 189(b)(i), and
3 Mr. Goecke, what, which pages are these substituting for?
4 MR. GOECKE: 2 and 3 --
5 MR. GROSSMAN: Pages 2 and 3.
6 MR. GOECKE: -- was the unnumbered 189(b).
7 MR. GROSSMAN: Okay. Okay. So these are new, new
8 pages 2 and 3 for Exhibit 189(b).
9 MS. ADELMAN: Mr. Grossman --
10 MR. GROSSMAN: Yes, Ms. Adelman.
11 MS. ADELMAN: -- could I make a request that in
12 photographs such as this, especially when it's determined
13 wind direction south, that you have a north arrow as the
14 commonplace so you can --
15 MR. GROSSMAN: That would be --
16 MS. ADELMAN: -- orient yourself.
17 MR. GROSSMAN: That would be lovely, and in all
18 circumstances, I would request the same thing. And we
19 always hope that it's pointing up for north because --
20 MS. ADELMAN: Yes, we do.
21 MR. GROSSMAN: -- because hearing examiners are
22 easily disoriented, as is evidenced by your switch in
23 positions here. All right. So Exhibit 189(b)(i) will be
24 revised pages 2 and 3 of Exhibit 189(b).
25 (Exhibit No. 189(b)(i) was

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1 marked for identification.)
2 MS. CORDRY: Mr. Grossman, if I might ask a
3 question?
4 MR. GROSSMAN: Yes.
5 MS. CORDRY: I understood from when this was
6 distributed that a CD was going to be sent out with these
7 things which I don't believe -- was that sent?
8 MR. GOECKE: It was sent, yes.
9 MS. CORDRY: Okay, because I --
10 MS. ROSENFELD: It was?
11 MR. GROSSMAN: Yes. Did you receive it?
12 MS. CORDRY: No, I didn't get a copy. Did you get
13 a copy?
14 MS. ROSENFELD: I don't recall getting a copy,
15 but --
16 MS. CORDRY: Okay.
17 MR. GOECKE: You should have.
18 MS. ROSENFELD: Okay. If I did, I'll --
19 MS. CORDRY: Was there some other place where you
20 could download them or something like that, because I did
21 not --
22 MR. GOECKE: There was. We sent out -- I sent out
23 two different links with the information.
24 MS. CORDRY: Okay, because I didn't download them,
25 waiting for the CD, but I've never gotten that. So all

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1 right, I will --
2 MS. ROSENFELD: All right. I'll forward those
3 links if I have them.
4 MS. CORDRY: No, I should have the links at some
5 point, but I was hoping to get the CD because it's a lot
6 faster than trying to download the --
7 MS. ROSENFELD: If you could send Karen hard
8 copies when you send me the hard copies, as well.
9 MS. HARRIS: Yes. I mean, typically we've been
10 sending them to Eleanor Duckett, Michele --
11 MS. ROSENFELD: Right.
12 MS. HARRIS: -- Silverman, and Adelman --
13 MS. ROSENFELD: Yes.
14 MS. HARRIS: -- and thinking that, through
15 counsel, it would be distributed to everyone else.
16 MS. CORDRY: Okay. I thought I had also been on
17 the usual distribution list for CDs.
18 MS. HARRIS: No, you hadn't been, but we can
19 certainly add you.
20 MS. CORDRY: Please.
21 MR. GROSSMAN: All right. Well, if those
22 logistical things are worked out, so let's turn back to,
23 Mr. Sullivan is going to explain now Exhibit 189(b). I
24 don't know -- Mr. Goecke, did you want to lead him in
25 questioning about that?

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1 MR. GOECKE: Sure. Sure.
2 (Witness was previously sworn.)
3 DIRECT EXAMINATION (Resumed)
4 BY MR. GOECKE:
5 Q Mr. Sullivan, why don't you just tell us a bit
6 about what Exhibit 189(b) is, generally, and what you did in
7 producing it.
8 A That particular exhibit was done --
9 MR. GROSSMAN: By the way, I should remind you,
10 Mr. Sullivan, you're still under oath.
11 THE WITNESS: Yes, sir.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: And for the record, I'm David
14 Sullivan, Sullivan Environmental Consulting, Alexandria,
15 Virginia. The exhibit that you're referring to was done to
16 clarify. I attempted to clarify presentations I made on the
17 17th and 19th of June. That was the intention. For
18 example, I went to a flip chart and made some calculations.
19 I provided documentation so those could be evaluated and
20 reviewed independently.
21 Also, during that, those days of testimony,
22 Mr. Grossman did make the observation that none of the
23 charts or tables we've shown so far showed what the impacts
24 would be without including the contribution from along the
25 roadways going to the facility, and so the objective was to

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1 also show those tables, which I'll describe in some detail.
2 And, finally, those -- the request for certain backup
3 information that we referred to as the CD, which was
4 actually just computer files, that would enable the
5 Kensington Heights folks to evaluate what we've done, to get
6 the files and so forth and the backup information, that was
7 all included in this particular document.
8 So the intent was to clarify. I apologize for one
9 of these tables. It was, it was confusing and it was not
10 correct, and I can walk through that now. So, Mr. Grossman,
11 the fact that you were confused, there's a good reason for
12 that.
13 MR. GROSSMAN: Is a good sign?
14 THE WITNESS: Yeah, because I went in on the day
15 after the Fourth of July and I was confused initially
16 myself. So, again, I apologize to all involved. Should I
17 go to that particular table, Mr. Goecke?
18 BY MR. GOECKE:
19 Q Yes, let's do that.
20 A And I'm looking at the original version here, but
21 I'll walk you through this, and there's a supplement that
22 does show the corrections as well.
23 Q And so again, now we're on page 2 of Exhibit
24 189(b) and there's some charts here, and tell us what these
25 charts show.

1 A Okay. This chart is very similar to what's in the
 2 November 2012 expert report, and basically, what we're
 3 looking at here is incremental gas station only, looking at
 4 volatile organic carbon concentrations, and the mostly
 5 relevant information is down at the bottom, the risk values.
 6 And if I look at the numbers showing 6.7 to the minus 7,
 7 that's .7 in a million, .08 in a million for the school, and
 8 .02 in a million for the pool, these are numbers including
 9 the cars coming to the gas station along the various
 10 roadways. The --

11 Q And so let's be clear about that. That number
 12 represents only the cars coming to the gas station?

13 A Represents everything. In other words, it
 14 represents the incremental risks from the gas station
 15 operations and it includes all the sources, including the
 16 cars coming along University, Veirs Mill, Georgia Avenue,
 17 and the ring road that is specifically going just to the gas
 18 station. They're included in those numbers.

19 Q And how do these numbers differ from what you
 20 presented before?

21 A These would be comparable. The numbers that are
 22 different are the ones in the row down below it which say
 23 Cancer Risk-Gas Station Only. This would be without the
 24 cars traveling on those roadways I just mentioned, taking
 25 that out of the risk calculations because of the fact that

1 if they don't build a Costco gas station, one can presume
 2 they'll build some other commercial facility, there's cars
 3 going to it as well.

4 For VOCs and the risks --

5 MR. SILVERMAN: I object because he's now
 6 presuming what's going to happen in the future. This site
 7 has been vacant for many years.

8 MR. GROSSMAN: Okay. Repeat the statement that
 9 you made that he objected to.

10 THE WITNESS: I said that we could presume that in
 11 the future, I don't know if I said may or could, there could
 12 be a commercial operation in this location that would have
 13 vehicles going to it much like the gas station would.

14 MR. GROSSMAN: All right. Well, there has been,
 15 there's been testimony here that, that if in fact this gas
 16 station were not placed on the site, that Westfield would
 17 lease this property out as also a pad site. So I don't
 18 think it's an illegitimate comparison for this witness to
 19 make, and so I'll overrule that objection.

20 MR. GOECKE: And in fact, Mr. Grossman, just to
 21 point out, I think this was in response to the hypothetical
 22 you had raised at the last hearing: assuming another pad
 23 site were to be installed, what would be the delta between
 24 the proposed gas station and this other hypothetical pad
 25 site?

1 MR. GROSSMAN: Right. Let me ask you a little bit
 2 about your notation, the method of notation there. For
 3 example, 6.70E-07, what does that E stand for?

4 THE WITNESS: It's scientific notation. So this
 5 would be 6.7 times 10 to the minus seven --

6 MR. GROSSMAN: Okay.

7 THE WITNESS: -- which again would be the same as
 8 .7 in a million --

9 MR. GROSSMAN: Okay.

10 THE WITNESS: -- risk. So the point I'm making,
 11 for volatile organic compounds and the risk assessment, it
 12 didn't make a great deal of difference for the closest home.
 13 It went -- we're talking about 6.3 versus 6.7 in a million,
 14 or .63 versus .67 in a million. For the school and the
 15 pool, the risks were already low. They did drop further on
 16 that basis, and --

17 MR. GROSSMAN: When you say they did drop further,
 18 you mean that if you don't include the approach roadways,
 19 that the risk is lower?

20 THE WITNESS: Is lowered, lowered, correct.

21 MR. GROSSMAN: Okay. Okay.

22 THE WITNESS: So that's the -- this is the answer,
 23 and again, this is with everything included in the column
 24 that says Cancer Risks, and the column that says Cancer
 25 Risk-Gas Station Only is without the approach roadways

1 included. So that would be the VOCs. Where it got, where
 2 it got confusing and where the data was, needed
 3 clarification was on fine particulate matter.

4 MR. GROSSMAN: All right. Well, hold on, before
 5 you get to there, a second. Sorry, I just want to make sure
 6 that --

7 MR. ADELMAN: Can you shrink that so we can see
 8 the whole --

9 THE WITNESS: Sure, make sure we can still read
 10 it. Is that enough?

11 MR. ADELMAN: Yes, once more, I think.

12 MR. GROSSMAN: All right. So this first chart on
 13 the top of page Exhibit 189(b)(i) is showing me the
 14 incremental cancer risk increase both with the gas station
 15 only and with everything included as separate, as separate
 16 rows?

17 THE WITNESS: That's correct.

18 MR. GROSSMAN: All right. And so to take an
 19 example here, the risk with everything included at the
 20 school is 7.96 times 10 to the minus eight what per what?

21 THE WITNESS: That's .08 in a million.

22 MR. GROSSMAN: Yes, .08 in a million. What does
 23 that -- in a million what?

24 THE WITNESS: Per million people --

25 MR. GROSSMAN: Okay.

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1 THE WITNESS: -- if they were exposed 70 years
2 24/7 to that concentration.
3 MR. GROSSMAN: All right. So -- because I don't
4 know that that's noted on the chart. I think that's why I
5 was confused. Exposure person 24/7 for 70 years?
6 THE WITNESS: Yes, sir.
7 MR. CHASE: Mr. Grossman --
8 MR. GROSSMAN: Yes, sir.
9 MR. CHASE: -- may I ask a question that I think
10 would clarify it?
11 MR. GROSSMAN: All right, sir. Well, identify
12 yourself for the record so the court reporter knows who's
13 speaking.
14 MR. CHASE: We have to prove this, but --
15 MR. GROSSMAN: Well, identify yourself for the
16 record. Sir --
17 MS. ADELMAN: It's Dr. Chase.
18 MR. GROSSMAN: Dr. Chase?
19 MS. CORDRY: Dr. Chase.
20 MR. CHASE: Yeah.
21 MR. GROSSMAN: You have to identify yourself for
22 the record so the court reporter knows who's speaking up.
23 MR. CHASE: Don't talk?
24 MR. GROSSMAN: Your name?
25 MR. GOECKE: Identify yourself. What's your name?

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1 MR. CHASE: Oh, I'm Dr. Chase, Ken Chase.
2 MR. GROSSMAN: All right.
3 MR. CHASE: 7.96E-08 in scientific notation to me
4 means 7.96 out of 100 million people.
5 THE WITNESS: Well, just in terms of numbers, it's
6 really 7 point -- it's .08 in a million. If we keep the
7 million as our, as our reference point, it's .08. You
8 divide by 100 to make it 10 to the minus six. In our
9 regular report, we showed per million, but in this case --
10 like I say, these tables are confusing -- we showed it in
11 scientific notation. We shouldn't have. It would have been
12 clearer in normal English --
13 MR. GROSSMAN: Right.
14 THE WITNESS: -- and it's not, but for the record
15 that's, again, just so it's very clear --
16 MR. GROSSMAN: So --
17 THE WITNESS: -- for the home, .08 in a million;
18 for the -- .7 in a million for the home, .08 in a million
19 for the school, and .02 -- .2 in a million for the pool.
20 MR. GROSSMAN: All right.
21 MS. ROSENFELD: What was that number for the pool
22 again?
23 THE WITNESS: 0.2. I'll make this a little bit
24 bigger because I'm having a hard time seeing it clearly.
25 MR. GROSSMAN: I think what I'm going to ask you

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1 to do -- I understand your concept, and if I understand
2 correctly, .08 essentially is a tenth of a person in a
3 million, is what you're saying. So --
4 THE WITNESS: Yes.
5 MR. GROSSMAN: -- one in 10 million, which I think
6 is what Dr. Chase was --
7 THE WITNESS: Correct, approximately.
8 MR. GROSSMAN: So one in 10 million of the people
9 exposed for 70 years 24/7 would be at risk for cancer or
10 would be a likely candidate for cancer as a result of this
11 exposure?
12 THE WITNESS: But just to clarify, I'm using the
13 EPA risk assessment paradigm, and it has -- as is stated in
14 EPA documents, it doesn't translate directly to cancer,
15 quote/unquote, cancer risk. It's used as a risk management
16 strategy. It has --
17 MR. GROSSMAN: Okay.
18 THE WITNESS: -- conservatism embedded into it --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- on cancer potency scores.
21 MR. GROSSMAN: All right. But what I'm going to
22 suggest is, since I think that -- in terms of understanding
23 what these charts mean, the use of the scientific notation
24 is confusing, and I'd like to see Exhibit 189(b)(i)
25 reproduced -- and we can call it a new Exhibit 189(b) double

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1 i -- without the scientific notation and stated rather in
2 terms of, you know, risks, either risks per million or
3 number of people per 10 million, whatever it is, and with
4 the qualification, if you have a qualification, just as the
5 one you just noted, Mr. Sullivan --
6 THE WITNESS: Uh-huh.
7 MR. GROSSMAN: -- then that should be noted on the
8 chart too, because I think this is a confusing chart as it
9 stands. But for purposes for today, I guess we can continue
10 on if you think that would be helpful or -- I think it would
11 be, I guess, prior to cross-examination to know what was
12 said here.
13 THE WITNESS: I think it would be helpful.
14 MR. GROSSMAN: All right. Okay. So then let's,
15 let's move down to your next chart.
16 THE WITNESS: Correct. Now, this, this, I have to
17 say, it was an embarrassing error, and I, again, I apologize
18 for this. I'm sure that folks have noticed that this has
19 the old -- this is PM 2.5, fine particulate matter, and it
20 has the old standard in here of 15 micrograms instead of 12,
21 and it has the old 2009-based background values in it. So
22 these, this chart I should have looked at much more
23 carefully. This should be 12s going across the bottom line,
24 and the actual, if you use the correct updated background,
25 the numbers are in the order of 10.8 to 10.9. The corrected

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1 version will clarify both of those, those issues.
2 But in terms of the question that was raised,
3 well, how much of the impacts are from the gas station
4 operations themselves versus vehicles getting to the gas
5 station, and in this case here, the incremental gas station
6 contribution is shown as .0023 micrograms per cubic meter to
7 the closest home as compared to the total modeling, which is
8 .005. So in answer to your question, you know, a lot of the
9 impacts are coming from other, from the transportation
10 sources getting there. I would like to clarify for the
11 record, however, that these incremental gas station numbers
12 are for the gas station itself, the queuing of the cars, the
13 enter/exit of the cars, and so forth. It does not include
14 the delivery trucks. Delivery trucks, of course, would come
15 to any commercial operation, but in terms of --
16 MR. GROSSMAN: You mean the fuel delivery trucks?
17 THE WITNESS: Fuel delivery trucks.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: But in terms of -- that can be
20 clarified in the next version that says, well, for example,
21 if they were included, the home would go from .002 to .003
22 and the school and pool would increase to .001 approximately
23 for each of them. So I can clarify that in the future
24 because generally the delivery trucks are embedded in the
25 roadway impacts. We pull them out for our tables and our

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1 report, but for this here we did not show the gas delivery
2 trucks in these numbers, and I would just clarify what those
3 numbers would be with them included.
4 MR. SILVERMAN: Can I just get some clarification?
5 MR. GROSSMAN: Hold on one second. I do want you
6 to also, when you do your 189(b) double i, to put units in
7 there. If it's micrograms per cubic meter, it should say it
8 on the chart somewhere. I don't, I don't see it on the
9 chart.
10 THE WITNESS: Agreed.
11 MR. GROSSMAN: That's why I didn't know what you
12 were referring to. All right. And, Mr. Silverman, what --
13 MR. SILVERMAN: How many delivery trucks are you
14 assuming per day?
15 THE WITNESS: Four delivery trucks per day.
16 MR. SILVERMAN: Four, okay.
17 MS. CORDRY: And just, you said fuel delivery
18 trucks. Other uses you would -- never mind. Other uses
19 wouldn't have fuel delivery trucks, but you were just
20 modeling if you --
21 THE WITNESS: Well, what I'm saying is the other
22 operations would have some kind of delivery trucks.
23 Presumably they could be diesel delivery trucks, maybe
24 they're not -- we're assuming for here that they would have
25 delivery trucks as well. What I'm saying is in the final,

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1 in the corrected version, is I can make that very clear,
2 with and without delivery trucks, what the numbers look
3 like, to make sure the record is clear.
4 MS. ROSENFELD: And how many.
5 MR. GROSSMAN: Correct.
6 THE WITNESS: It would be the same as we assumed
7 in our report. Our --
8 MR. GROSSMAN: And --
9 THE WITNESS: -- November 2012 report was four.
10 MR. GROSSMAN: Right, but bear in mind that you
11 know what you said a lot better than we know what you said.
12 So try not to make any assumptions about what we remember
13 from one chart to the next and make each chart
14 self-explanatory because, although some of us here may be
15 scientists, others are only wishful thinkers in that area.
16 So, also, what's the distinction in your chart,
17 your second chart here on the page, between incremental gas
18 station only and total modeled? Is that the same
19 distinction you're making above? What is the distinction it
20 goes to?
21 THE WITNESS: Correct. Let me just find the
22 numbers here. Well, for example, if I'm looking at the line
23 that says Incremental Gas Station Only under Fine
24 Particulates --
25 MR. GROSSMAN: Right.

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1 THE WITNESS: -- the .0023 micrograms per cubic
2 meter at the home, that's without delivery trucks, gasoline
3 delivery trucks, and it's without the approach roadways
4 being included --
5 MR. GROSSMAN: Okay.
6 THE WITNESS: -- Veirs Mill and Georgia Avenue and
7 so forth.
8 MR. GROSSMAN: And total modeled?
9 THE WITNESS: Totaled modeled is right in the line
10 below. Like .005 is the total modeled for the closest home.
11 MR. GROSSMAN: Yes, but total modeled includes the
12 delivery trucks and the roadways?
13 THE WITNESS: Yes, sir, it does.
14 MR. GROSSMAN: Okay. Okay. So, also, would you
15 note that? I mean, what you need, I guess, is a little key
16 on your table to describe what these labels stand for
17 because, while it's clear in your head, it's not clear in
18 ours unless you say it.
19 THE WITNESS: Agreed.
20 MR. SILVERMAN: Can I get one more clarification?
21 MR. GROSSMAN: Yes, Mr. Silverman.
22 MR. SILVERMAN: Does this include fast-food
23 restaurants too?
24 THE WITNESS: It does not.
25 MR. GROSSMAN: I think what he means, total

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1 modeled as it relates to what would be produced in relation
2 to the proposed gas station. So the gas station operation
3 itself, he has a line that is, presumably includes the
4 pumping and the people -- and the cars queued, and then
5 total modeled, it means the pumps, the queued cars, plus the
6 roadways and the fuel deliveries, correct?
7 THE WITNESS: Correct.
8 MS. ROSENFELD: And --
9 MR. GROSSMAN: All right. So that should be said
10 on the chart.
11 MS. ROSENFELD: And parking lots? Will the
12 parking lots be included?
13 THE WITNESS: Parking lots -- well, first of all,
14 PM annual is in the middle section of that table. That
15 would include the parking lots and other sources.
16 MS. ROSENFELD: The ones that you modeled.
17 THE WITNESS: Correct. The incremental gas
18 station shown on the far right would not include the
19 warehouse or the parking lots. It's incremental for the gas
20 station.
21 MS. ROSENFELD: Okay. Could you note under each
22 column which specific areas are included?
23 THE WITNESS: Sure.
24 MR. GROSSMAN: Or in some way, key it in some way
25 so we can understand.

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1 MS. ROSENFELD: Key it somehow, right.
2 MS. ADELMAN: And --
3 MR. GROSSMAN: Ms. Adelman.
4 MS. ADELMAN: -- Mr. Grossman, to complete this
5 documentation, we all know this, but could you note that
6 it's a PM 2.5 that we're modeling here, because there are
7 other --
8 MR. GROSSMAN: Okay.
9 MS. ADELMAN: -- PMs, like PM 10.
10 MR. GROSSMAN: Right. That's a good point as
11 well.
12 MS. ROSENFELD: And I have one more question. You
13 ran this under the urban standards. Could you also --
14 THE WITNESS: Correct.
15 MS. ROSENFELD: -- do an equivalent chart using
16 rural numbers?
17 THE WITNESS: I can.
18 MR. GROSSMAN: Well, let's put it this way: He's
19 entitled to put out the evidence that he wants to put out,
20 and I'm not going to ask him to create new evidence, citing
21 additional things. I just want to make sure that what he
22 has put out we can understand --
23 MS. ROSENFELD: But he has used --
24 MR. GROSSMAN: -- and I can analyze.
25 MS. ROSENFELD: But he has used rural numbers in

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1 other parts of his --
2 MS. CORDRY: In fact --
3 MR. GROSSMAN: But once again, I mean, he can if
4 he -- if the applicant wants to produce that piece of
5 evidence, they can. All I'm saying is, once they produce a
6 chart that shows me something, I want to understand what
7 it's showing.
8 MS. ROSENFELD: Well, then --
9 MS. CORDRY: Let me ask it a different way. Like,
10 for instance, Table 1.1-14 in your original report has a
11 whole series of rows and columns, breaking out these
12 different components. Is this simply a matter of taking
13 certain rows and adding them up on this particular chart?
14 THE WITNESS: That's correct. As you're moving --
15 MS. CORDRY: So that if we wanted to do a similar
16 thing for rural, we could add the same rows that you're
17 adding and come out to these kinds of, at least come out to
18 -- well, we should be able to come out to the same thing
19 because your, in other words, your chart has, say, Rows 1 to
20 10 and you're, in this incremental, you're using, say, Row
21 1, 3, 5 and 6, is that correct?
22 THE WITNESS: Correct, taking out roadways, for
23 example --
24 MS. CORDRY: Right.
25 THE WITNESS: -- taking out the ring road and

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1 roadways and re-computing --
2 MS. CORDRY: Right.
3 THE WITNESS: -- and so it can be done.
4 MS. CORDRY: So if you just tell us I'm using
5 Rows, my incremental over here is maybe Rows 1, 3, 5, and 6
6 and the total was 1 through 10, we can then do exactly the
7 same thing and take --
8 MR. GROSSMAN: I don't know if you can or you
9 can't. I mean, that'll, you can present it --
10 MS. CORDRY: But that's my question to him. Is
11 that what you're doing? You're simply taking specific rows
12 out of a table that's here that we could --
13 MR. GROSSMAN: When you say that's here, what are
14 you referring to?
15 MS. CORDRY: Table 1-14, which is in his November
16 report.
17 MR. GROSSMAN: Okay. I just want the record to be
18 clear what you're --
19 MS. CORDRY: Right. I'm sorry.
20 MR. GROSSMAN: You're looking at a computer, which
21 we all can't see.
22 MS. CORDRY: Right, and that was the question, but
23 Table 1-14 has --
24 MR. GROSSMAN: Okay.
25 MS. CORDRY: -- some number of rows and you could

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1 -- if what I understand you to be saying is you're simply
2 pulling out certain of those rows as is and adding them up
3 and coming to these numbers, then we can do the same thing
4 with the other, which is what you've testified the EPA says,
5 just using rural, we can do that for ourselves as well?
6 MR. GROSSMAN: Well, no, I'm not going to have him
7 answer that -- whether you can do it or not, you can't do
8 it, that's not really a clarification question as to what
9 he's put out.
10 MS. CORDRY: Well, it is a clarification question
11 if it's a question --
12 MR. GROSSMAN: Well, then you can ask it on
13 cross-examination, okay?
14 MS. CORDRY: Okay, fine. I'm just trying to
15 clarify what --
16 MR. GROSSMAN: Right.
17 MS. CORDRY: -- that chart comprises.
18 MS. ROSENFELD: And, Mr. Grossman, if I could ask
19 a different question. I'd like to ask the applicant
20 consider providing these numbers using the rural standards
21 as well.
22 MR. GROSSMAN: All right. Once again, that's up
23 to the applicant if he --
24 MS. ROSENFELD: I understand. For the record, I'm
25 making that request.

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1 MR. GROSSMAN: Right. All right. All right.
2 BY MR. GOECKE:
3 Q Mr. Sullivan, did you want to address that at all,
4 the urban versus rural?
5 A Well, my, as I stated earlier, the, the close-in
6 locations to the, to the gas station -- the home, closest
7 home, the school and the pool -- are very close; they're
8 adjacent to the mall property. And while we agree that
9 EPA's three-kilometer radius circle says it's rural for that
10 area, have modeled accordingly for the general area and
11 shown those results, for these close-in locations I don't
12 agree that the rural numbers are representative and so
13 that's why I used the urban values for the close-in three
14 receptors.
15 Q Thank you.
16 A All good points raised, and yes, we can clarify
17 which rows were used to make it easier to reconstruct, and
18 again, I apologize, that table was confusing.
19 The NO -- the CO and NOX are more straightforward,
20 more easier, and again, we're showing the situation, first
21 of all, for CO. And so without the, without the roadways
22 included, the incremental gas station only, without
23 roadways, I'm showing, for carbon monoxide, the closest home
24 being 128 micrograms per cubic meter versus 530 in total
25 modeled. In terms of the school, it's 14 micrograms versus

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1 606 total modeled, and for the pool, 58, total incremental
2 modeled, versus 565.
3 MR. GROSSMAN: Yes. Once again, you should use
4 the unit, specify the units that are being used for this.
5 THE WITNESS: All the helpful suggestions for the
6 previous slide --
7 MR. GROSSMAN: Right.
8 THE WITNESS: -- I'll put on this slide.
9 MR. GROSSMAN: Okay, thank you.
10 THE WITNESS: And that's really all -- that's,
11 that's really all I had on that. We will provide a version
12 of this that is in clear English that's readily
13 understandable.
14 MR. GROSSMAN: Okay. Were there any other things
15 in 189(b), you have other sections in here --
16 THE WITNESS: I do. How much of this did you want
17 to go through?
18 BY MR. GOECKE:
19 Q Well, let's just go through it quickly here. So
20 Section 2, you're referring to documentation of Slide 25
21 regarding queues and for calculations used during oral
22 presentation. What does the documentation of Slide 25 show?
23 A It's just showing the basis for the Slide 25 in
24 my, in the PowerPoint presentation. There was a request
25 made for backup information. That information was provided.

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1 Q Okay.
2 MR. GROSSMAN: But what --
3 THE WITNESS: There was a question raised about
4 the --
5 MR. GROSSMAN: I see.
6 THE WITNESS: -- the queuing assumptions and what
7 assumptions made in the calculations, and the Excel, I
8 believe that was, Excel spreadsheet was provided that
9 provided the basis for our calculations for Slide 25.
10 MR. GROSSMAN: And when you're saying the attached
11 files for quantification of the extent of conservatism
12 embedded in the modeling analysis, you're not saying
13 attached to this document, 189(b)?
14 THE WITNESS: No. I had, that's attachment -- it
15 was a series of electronic files that were attached.
16 MR. GROSSMAN: Okay, but --
17 MR. GOECKE: And those attachments we did produce
18 too.
19 MR. GROSSMAN: Right, but, but -- okay, all right,
20 but it's not in Exhibit 189(b)?
21 THE WITNESS: No, it's not in my copy.
22 MR. GROSSMAN: Okay. So the attached is referring
23 to something else.
24 THE WITNESS: Electronic --
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: -- files.
2 MR. GOECKE: Correct. It --
3 MR. GROSSMAN: All right.
4 MR. GOECKE: -- would be 189(c) in this example,
5 Supplemental Materials, Section 2.0.
6 MR. GROSSMAN: Right. Okay. Section 3?
7 THE WITNESS: Section 3 provided some background
8 information relative to the question that, that Mr. Grossman
9 raised about providing some context for the particle counts,
10 you know, can we describe the particle counts from the gas
11 station compared to other locations. In this particular
12 section, I provided a reference with the intent of trying to
13 provide some clarification on that point. It's a rough
14 comparison, but it was able to show -- it's referring to
15 numbers in the order of hundreds per cubic centimeter as
16 compared to hundred of thousand for exposure near, in the
17 indoor environment and quite a bit higher counts, as well,
18 near major highways. The whole objective was to provide a
19 reference, provide some context. The opposition has the
20 opportunity to review that and come up with their own
21 conclusions as well.
22 MR. GROSSMAN: All right.
23 THE WITNESS: Section 4, I'm going to leave this
24 up to the lawyers in the room to sort this one out, the SIL
25 issue. I just was providing some quotes from the actual

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1 ruling, and from my non-lawyer's perspective, it certainly
2 did not -- I didn't read this as saying that SILs are no
3 longer operative. In fact, EPA -- and, in fact, the ruling
4 indicated that they were still operative.
5 So I think that needs to have maybe some legal
6 clarification, but from a technical point of view, my use of
7 the concept of significant impact levels was strictly to
8 provide a point of reference. So if EPA is taking the
9 position that 0.3 micrograms per cubic meter or fine
10 particulates is the threshold for significance versus
11 non-significance and if the gas station is 30 times under
12 that standard, that guideline, let's say, which they are,
13 then that provides the finder of fact with a reference point
14 of the significance versus non-significance of the impacts.
15 BY MR. GOECKE:
16 Q Okay. And then I believe you also provided some
17 articles that had been requested in the prior hearing, the
18 Abernathy fast-food article?
19 A That's correct.
20 MR. GROSSMAN: So hold on one second. So you're
21 saying that, that the section you're just discussing, you're
22 referring to the Sierra Club case? Is that what you're
23 saying?
24 THE WITNESS: Yes, sir.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: And specifically, I was referring to
2 the quote that states: Although the EPA asks us to vacate
3 and remand the parts of its ruling codifying SILs at
4 paragraph such and such, it requests that we let the
5 promulgation of SILs in another paragraph remain operative.
6 So that, to me, that was an indication as a non-lawyer that
7 EPA was not fully abandoning the SIL concept. It's an
8 important concept, and it's very much needed on air quality
9 regulation.
10 MS. CORDRY: I don't think that's what we actually
11 stated it was doing, but --
12 MR. GROSSMAN: All right.
13 MS. CORDRY: -- you can read the case yourself and
14 see what it actually says.
15 THE WITNESS: As I say, I'll leave it up to the
16 lawyers. There's plenty of lawyers in the room.
17 BY MR. GOECKE:
18 Q And then the next section of your report,
19 Mr. Sullivan, referring to the AERMOD files, so again, this
20 is supplemental data supporting the conclusions you had
21 reached and testified about in prior hearings, is that
22 correct?
23 A Correct. I mean, I think we're really referring
24 to Section 7 -- yeah, that would be Section 7, correct. I
25 was providing the files as requested, as was Section 8.

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1 MR. GOECKE: Excuse me, Mr. Grossman. I'd just
2 like to approach just again to make sure we're --
3 MR. GROSSMAN: Sure.
4 MR. GOECKE: -- talking about the same document.
5 THE WITNESS: The AERMOD, go to seven.
6 MR. GOECKE: Right, yeah.
7 MR. GROSSMAN: Really, you can't whisper to the
8 witness on the stand. So now state out loud what you just
9 whispered.
10 MR. GOECKE: What I just said to him was, he had
11 spoken a moment ago about the significant impact level
12 standards from the EPA case --
13 MR. GROSSMAN: Yes.
14 MR. GOECKE: -- and I think there might have been
15 some confusion in the room because it wasn't corresponding
16 to the document we had in front of us.
17 MR. GROSSMAN: Right.
18 MR. GOECKE: That's because he's reading from an
19 earlier draft of this document --
20 MR. GROSSMAN: I see.
21 MR. GOECKE: -- not from the document that was
22 submitted. So I'm not trying to be secretive. I'm just
23 trying to --
24 MR. GROSSMAN: I assumed you weren't. I just, for
25 the record, you have to -- you can't whisper to the witness

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1 on the stand.
2 MR. GOECKE: I understand. I understand.
3 MR. GROSSMAN: Okay.
4 MR. GOECKE: I'll go back to my chair.
5 MR. SILVERMAN: Do I understand this is not, this
6 is not the document he's testifying to, or -- I'm a little
7 confused. What are we doing?
8 MR. GOECKE: This is absolutely the document he's
9 testifying to.
10 MR. GROSSMAN: This being Exhibit 189(b).
11 MR. GOECKE: 189(b), that's right.
12 MR. GROSSMAN: Okay.
13 MR. SILVERMAN: He's adding commentary about
14 quotes that are presented here which are not presented here.
15 MR. GOECKE: Right.
16 MR. SILVERMAN: Okay.
17 MR. GOECKE: Right. He was responding to your
18 comments --
19 MR. SILVERMAN: Right.
20 MR. GOECKE: -- about the EPA case and that was,
21 as you now know, in an earlier draft of the document. It's
22 not in the official Exhibit 189(b). So for purposes of
23 clarity, we're trying to move forward.
24 MR. GROSSMAN: So Section 4 of the document that
25 is in, that's what he thought he was referring to --

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1 MR. GOECKE: That's right.
2 MR. GROSSMAN: -- and that, the Section 4 of the
3 document that is in does not refer to the, does not make a
4 reference to it? I thought maybe he was saying obliquely it
5 made a reference to it. Is that what he's saying or not at
6 all; it's just another section that doesn't exist anymore in
7 the documents?
8 MR. GOECKE: Correct, it's a section that does not
9 exist anymore. So --
10 MR. GROSSMAN: Okay. All right.
11 MR. GOECKE: -- so his commentary on the EPA case,
12 while helpful, is not --
13 MR. GROSSMAN: Okay.
14 MR. SILVERMAN: I'm glad you clarified that
15 because I was getting very confused.
16 BY MR. GOECKE:
17 Q Here's 189(b).
18 A Okay. Yeah, basically, I was -- I need to stay
19 away from the legal issues and stick with the technical
20 issues, and that SIL has a technical interface to it, but
21 it's a legal, legal question.
22 MR. GROSSMAN: All right. Anything else you want
23 to say about clarifying Exhibit 189(b)?
24 MR. GOECKE: No, thank you.
25 MR. GROSSMAN: Okay. All right. So I guess we're

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1 ready to resume Ms. Rosenfeld's cross-examination.
2 MR. SILVERMAN: I think that would be good, but I
3 would like to reserve the right to cross-examine on new
4 information.
5 MR. GOECKE: Of course.
6 MR. GROSSMAN: Absolutely.
7 MR. SILVERMAN: Thank you, which would include,
8 also, the Washington Council of Governments report that was
9 submitted.
10 MR. GROSSMAN: Yes, absolutely in fairness.
11 MR. SILVERMAN: Thank you.
12 MR. GROSSMAN: So you'll remind me of that when --
13 MR. SILVERMAN: I definitely will.
14 MR. GROSSMAN: I was assuming you would. All
15 right. Ms. Rosenfeld.
16 MS. ROSENFELD: Thank you.
17 CROSS-EXAMINATION (Resumed)
18 BY MS. ROSENFELD:
19 Q Good morning, Mr. Sullivan.
20 A Good morning.
21 Q Your November 2012 report includes a noise
22 analysis, doesn't it?
23 A Yes.
24 Q And have you filed any revisions to the noise
25 analysis since you submitted the November 2012 report?

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1 A Let me look at my -- I don't recall revising it,
2 but let me look at my, at my supplemental report in January.
3 I don't have that handy. I don't believe I have that one
4 handy. My testimony would be that I did update the noise
5 analysis in November of 2012 for the relocation of the gas
6 station. I --
7 Q But not --
8 A -- don't recall making changes since then.
9 Q Not since then. I didn't find any in here.
10 A Oh, good.
11 Q How many gallons of gasoline a year did you assume
12 would be sold at the -- let me start this: You did base
13 some of your modeling on noise analysis that you conducted
14 at the Sterling, Virginia, gas station, didn't you?
15 A We did do noise modeling at the Sterling gas
16 station as a reference point, to get an idea of the noise
17 levels from a similar type of gas station --
18 Q Okay.
19 A -- that's correct.
20 Q And how many gallons of gasoline a year did you
21 assume would be sold at the Sterling gas station?
22 A Well, we -- Sterling sold more. I think it was 30
23 percent more. I don't remember the exact number of gallons,
24 but there was no assumptions made. I mean, we basically, in
25 doing noise monitoring, we put a monitor over four different

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1 days and collected noise measurements for that particular
2 operation.
3 Q On page 8 of your report, you say the Costco
4 Sterling gas station is expected to sell 30 percent more
5 fuel than in Wheaton. How did you get that 30 percent
6 differential?
7 MR. GOECKE: I'm sorry. Which report are you
8 referring to?
9 MS. ROSENFELD: I'm referring to his November
10 19th, 2012, report, and I'm looking at page 8 of that
11 report.
12 MR. GOECKE: Thank you.
13 THE WITNESS: That information, as I recollect,
14 would have come from Costco.
15 BY MS. ROSENFELD:
16 Q In conducting your study, what did you assume to
17 be the maximum permissible noise level on the mall parcel?
18 A Well, in conducting the noise study, the noise
19 monitoring?
20 Q In your noise modeling.
21 A Well, we, at the time when we met with Parks and
22 Planning, we were discussing an LDN number, which is one of
23 the ways that they compute noise with a penalty for
24 nighttime operations, and at the time, we're talking about
25 65 decibels. Since then I do recognize that the levels, it

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1 depends upon whether it's residential or non-residential,
2 but they are, they're different than that and the new, the
3 most -- the current noise ordinance does not, does not
4 notice an LDN penalty included.
5 Q So did you understand it to be 65 decibels?
6 A For residential I understand it to be, during the
7 nighttime, 55 decibels.
8 Q Okay. Sixty-five during the day and 55 at night?
9 A For residential, correct.
10 Q And where did you derive those standards?
11 A County documents. I don't remember the exact
12 location.
13 Q Are you familiar with Montgomery County's noise
14 ordinance contained in Chapter 31B of the county code?
15 A I'd have to, I mean, I'm referring to -- I've read
16 about the 55 versus 65 and the 67 versus 62 for
17 non-residential. I don't, I can't remember the exact
18 citation for the county, but it's a county document.
19 Q Do you understand the mall parcel to be in a
20 non-residential area as defined under the county noise
21 ordinance?
22 A Do I understand the mall parcel? My
23 understanding, the mall itself is not a residential area.
24 Q Okay. And that the adjoining properties to the
25 south of the mall parcel are in a residential area?

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1 MR. GOECKE: I object. Is she asking about his
2 legal understanding or his methodology to establish noise
3 levels?
4 MR. GROSSMAN: Yes, that's fair. I think -- are
5 you asking what he used in reaching any conclusions he
6 reached, or are you asking -- I'm not sure what you're
7 asking.
8 MS. ROSENFELD: Well, in his analysis he concludes
9 that the noise levels emitted are not in violation of the
10 noise ordinance, and the noise ordinance makes a distinction
11 between noise that is transmitted from a non-residential
12 area to a residential area. So I'm just trying to get a
13 factual understanding of what his, what his modeling premise
14 was based upon.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: Well, the -- my, my understanding
17 was that the residential properties for the south and so
18 forth and Kensington Heights was residential properties.
19 The pool complex would be non-residential.
20 BY MS. ROSENFELD:
21 Q And was your noise modeling based on average noise
22 levels?
23 A It was based upon the peak traffic expected,
24 incremental traffic. It was looking at the number of cars
25 expected for the gas station operations. I mean, we did, we

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1 did include incremental impacts in there that were not
2 included in our background noise monitoring, which would
3 include Dick's Sporting Goods, the Costco warehouse, and the
4 cars going to the gas station specifically. That's what was
5 included in the modeling.
6 Q You reached certain numbers? You determined that
7 there were certain numbers that were lower than 65 and 55
8 decibels during the daytime and during the nighttime,
9 correct?
10 A Well, we computed model output with, with and
11 without the wall, which had acoustical properties. We
12 showed the results both ways.
13 Q Right. Is that number premised on an averaging of
14 noise levels?
15 A It's based upon the traffic counts which, as I
16 understood them, for Dick's and the warehouse would have
17 been peak.
18 Q So, in essence, you took what you considered to be
19 the peak-hour traffic and you ran that as a model and that
20 was --
21 A That's my recollection, yes.
22 Q Okay. Did you assume at any time that motor
23 vehicles are exempt from the noise ordinance, noise from
24 motor vehicles are exempt?
25 A I did not.

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1 Q In your report you --

2 MR. GROSSMAN: Let me ask you a question. What

3 are you referring to when you say that noise from motor

4 vehicles is exempt from the regulations? What regulation

5 are you referring to when you make that assumption?

6 MS. ROSENFELD: I'm referring to Montgomery

7 County's noise ordinance contained in Chapter 31B. I'm

8 referring to Maryland's environmental code, Sections 3-101

9 through 105 and --

10 MR. GROSSMAN: And what specific language in that,

11 in those provisions are you talking about?

12 MS. ROSENFELD: I have copies, and COMAR.

13 MR. GROSSMAN: Because I know that technical staff

14 does measure noise from motor vehicles as part of what it

15 does in assessing noise. So I'm not sure what you're

16 relying on.

17 MR. SILVERMAN: Speaking of noise, I wonder if we

18 could cut off the projector.

19 MR. GROSSMAN: Are we going to be using --

20 MS. ROSENFELD: I will not be using the projector

21 for this piece of my --

22 MR. GROSSMAN: All right.

23 MS. ROSENFELD: -- questioning.

24 MR. GROSSMAN: Mr. Goecke, do you mind if we cut

25 off the projector?

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1 MR. GOECKE: I don't mind at all.

2 MR. SILVERMAN: Thank you so much.

3 MR. GROSSMAN: Thank you very much. Don't trip on

4 there.

5 MS. ROSENFELD: Mr. Grossman, I'm handing you

6 three, three documents. The first are excerpts from Chapter

7 31B, Montgomery County's noise control law.

8 MR. GROSSMAN: All right.

9 MS. ROSENFELD: The second are excerpts from

10 Maryland's environmental code governing noise, noise

11 control.

12 MR. GROSSMAN: All right.

13 MS. ROSENFELD: And the final are excerpts from

14 COMAR, Maryland's code of regulations.

15 MR. GROSSMAN: Would you like me to mark these as

16 exhibits? Is that what you're --

17 MS. ROSENFELD: Sure.

18 MR. GROSSMAN: Okay. So we're up to Exhibit 194.

19 So Exhibit 195(a) is --

20 MS. ROSENFELD: And is that the Maryland Code, the

21 county code?

22 MR. GROSSMAN: No. That's Chapter 31B on noise

23 control from Montgomery County Code. That's 195(a). And

24 195(b) will be the excerpt from Section, or Title 3 on the

25 noise control from the state code. When we mark provisions

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1 of laws, it's just a matter of convenience having it in the

2 file but the real, the actual law is what would control,

3 obviously. All right. So 195(b) is a portion of Title 3,

4 Maryland Environmental Code. And 195(c) is COMAR

5 26.02.03.01, also relating to noise standards. Okay.

6 (Exhibit Nos. 195(a) through

7 195(c) were marked for

8 identification.)

9 MS. ROSENFELD: And, Mr. Grossman, just to orient

10 you to the regulatory scheme that I am using for my

11 cross-examination, if you look first at Chapter 31B, Noise

12 Control --

13 MR. GROSSMAN: Yes.

14 MS. ROSENFELD: -- there's a declaration of

15 policy, that the statute is provided to, among other things,

16 protect public health and welfare and to allow the peaceful

17 enjoyment of property.

18 MR. GROSSMAN: Right.

19 MS. ROSENFELD: It does contain the 65/55 decibel

20 limitations that Mr. Sullivan has testified to --

21 MR. GROSSMAN: Yes.

22 MS. ROSENFELD: -- and if you look at Section

23 31B-5(a)(3) --

24 MR. GROSSMAN: Okay.

25 MS. ROSENFELD: -- which is on the second to last

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1 page, it does say sound that crosses between residential and

2 non-residential noise areas must not exceed the levels set

3 forth in paragraph 1 for residential noise areas, which are

4 the same standards that I just mentioned.

5 MR. GROSSMAN: My understanding of that is that

6 the standard, whether it -- if it initiates from a

7 non-residential area, the standard, and it crosses to a

8 residential area, the standard is the residential standard.

9 MS. ROSENFELD: That's correct. That's correct.

10 MR. GROSSMAN: Right. Okay.

11 MS. ROSENFELD: And the state code under

12 legislative findings discusses the public health welfare

13 concerns --

14 MR. GROSSMAN: Yes.

15 MS. ROSENFELD: -- that prompted that statute.

16 Under 3-105 it does authorize local jurisdictions to adopt

17 noise control ordinances provided they are not less

18 stringent than the state code.

19 MR. GROSSMAN: Okay.

20 MS. ROSENFELD: And 3- --

21 MR. GROSSMAN: And do you contend that they are

22 less restrictive than the state code in this case?

23 MS. ROSENFELD: I have seen in the record the

24 suggestion that motor vehicle noise would not be subject to

25 Montgomery County's noise ordinance, and to the extent that

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1 there may be any doubt about that, under the reading of the
2 county code, I would like to submit to you that the state
3 code does explicitly regulate motor vehicle noise on private
4 property, and that is contained in COMAR --
5 MR. GROSSMAN: Okay.
6 MS. ROSENFELD: -- 26.02.03.02, which is --
7 MR. GROSSMAN: I thought it's 26.02.03.01 --
8 MS. ROSENFELD: Well, no, because --
9 MR. GROSSMAN: -- oh, but is there a .02 in there
10 too?
11 MS. ROSENFELD: -- it's contained in the
12 exemptions --
13 MR. GROSSMAN: I see.
14 MS. ROSENFELD: -- which is under .02,
15 Environmental Noise Standards.
16 MR. GROSSMAN: They have such a quaint way of
17 labeling these.
18 MS. ROSENFELD: Don't they? And those exemptions
19 are listed on page 4 of 5.
20 MR. GROSSMAN: All right.
21 MS. ROSENFELD: Exempt from the state noise
22 ordinance are motor vehicles on public roads; not exempt, of
23 course, would be motor vehicles on private roads.
24 MR. GROSSMAN: All right. Let me look for a
25 second.

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1 MS. ROSENFELD: It's on page 4 of 5 of the COMAR.
2 MR. GROSSMAN: Okay.
3 MS. ROSENFELD: And so I just wanted to clarify,
4 if there was any question in your mind as to whether or not
5 the 65/55 standards applied to noise emanating from the
6 noise parcel, from the mall parcel, and vehicular noise in
7 particular, it's my view that it's clearly governed by
8 county and state law.
9 MR. GROSSMAN: Okay. Well, actually, hadn't given
10 it any thought but I'm glad you brought that to my
11 attention. Now, is there -- you said that you were alerted
12 to this concern by something you read in the record. Where
13 was that in the record?
14 MS. ROSENFELD: I believe that it was in the staff
15 report, that they looked to staff guidelines on noise --
16 MR. GROSSMAN: Yes.
17 MS. ROSENFELD: -- rather than to the county code
18 to determine compliance with noise regulations.
19 MR. GROSSMAN: Really? Well, there are staff
20 guidelines, but my recollection of the guidelines, they
21 would -- I can't recall that statement in there, but I'll
22 take a look -- they, staff refers to usually guidelines they
23 have to measure the amount of impact of traffic noise, for
24 example, on a community that's being designed, and so
25 they'll, they'll look to their guidelines to make sure

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1 they're not being exceeded for the design of a community to
2 protect the people within the community and --
3 MS. ROSENFELD: And I --
4 MR. GROSSMAN: -- not the producers. The
5 community is not the producer of the noise; it's the
6 recipient of the noise.
7 MS. ROSENFELD: Yes.
8 MR. GROSSMAN: So, but let me see what they, so
9 maybe that's -- do you know the page that you're referring
10 to?
11 MS. ROSENFELD: I don't. I believe it was in Amy
12 Lindsey's report. And really, the point of this exercise is
13 that, to the extent that anybody would look to the
14 guidelines as being the governing legal standards, it's my
15 view that the governing legal standards are in the county
16 and state code. So --
17 MR. GROSSMAN: Okay. Well, I would think that,
18 yes, I would think that the county and state code would be
19 more, would control in the extent, to the extent that
20 there's a conflict --
21 MS. ROSENFELD: Yes, correct.
22 MR. GROSSMAN: -- I'm not sure there's a conflict,
23 but --
24 MS. ROSENFELD: And I'm not sure that there is --
25 MR. GROSSMAN: Okay.

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1 MS. ROSENFELD: -- but I didn't see any reference
2 anywhere else in the record to the county and state --
3 MR. GROSSMAN: Okay.
4 MS. ROSENFELD: -- standards, and so I want to
5 make sure that we're clear on that point.
6 MR. GROSSMAN: Okay.
7 BY MS. ROSENFELD:
8 Q In your November 19, 2012, report, would you
9 please look at the chart on page 107 titled TNM Model
10 Results Without Background?
11 MR. GROSSMAN: Do you happen to remember the --
12 Mr. Sullivan's November report is Exhibit, just so we make
13 sure that we're, Exhibit 15(a)? Is that what we're talking
14 about? Just want to make sure that we're correctly citing
15 some --
16 MS. ROSENFELD: 15(a), yes.
17 MR. GROSSMAN: Okay, thank you.
18 BY MS. ROSENFELD:
19 Q Mr. Sullivan, do you have that in front of you?
20 A I do.
21 Q Okay. What does TNM stand for?
22 A Traffic noise model.
23 Q And where are those standards contained? Where
24 are they derived from? Are they local standards?
25 A TNM is a noise model. It's not a standard.

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1 Q Okay. So it's a noise modeling system or --
2 A It's noise model software.
3 Q Okay. Who produces that software?
4 A It's the Highway -- the Highway Administration, as
5 I recall.
6 Q The Federal Highway Administration?
7 A That's my recollection, yes.
8 Q Okay. And do you know what the federal highway
9 traffic noise model studies are typically used for?
10 A They're used for more major roadways, would be my
11 expectation.
12 Q Are they used to, for example, determine whether
13 or not sound barriers are required in particular locations
14 next to federal highways?
15 A That certainly could be one of the uses.
16 Q Okay. And are the assumptions that you use -- let
17 me ask this question: Table 1-22, that summarizes your
18 estimated noise levels at, for this project, is that
19 correct?
20 A It is. It shows it for different receivers, which
21 are labeled on the left side of Table 1-22, and it shows the
22 results with no barrier, accounting for no reduction from
23 any kind of acoustic wall; then it shows what the reduction
24 would be, noise levels would be with an eight-foot acoustic
25 wall.

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1 MS. ROSENFELD: Mr. Grossman, I have, I have an
2 extra copy of the pages that I'll be asking him about --
3 MR. GROSSMAN: Oh, okay, that would be great.
4 MS. ROSENFELD: -- would that be helpful to you?
5 MR. GROSSMAN: Sure. Then I don't have to dig
6 through this carton to get them out.
7 MS. ROSENFELD: Do you guys need a copy?
8 MR. GOECKE: Yes, that would be great. Thank you.
9 MR. GROSSMAN: Is that my copy that --
10 BY MS. ROSENFELD:
11 Q Oh, no, no. I'm sorry. Mr. Sullivan --
12 A Oh.
13 Q -- that's for Mr. Grossman. You have your copy.
14 MR. GROSSMAN: You're trying to steal my copy,
15 right?
16 BY MS. ROSENFELD:
17 Q You have a copy.
18 A I've seen it before.
19 Q You have the, the copy.
20 MS. ROSENFELD: Okay. So I'm looking right now at
21 the chart on page 107, I believe, hang on, 107, and I
22 believe Mr. Sullivan just testified that that summarizes his
23 findings on noise.
24 BY MS. ROSENFELD:
25 Q And you said that it shows noise levels at certain

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1 receivers. Are those receivers shown on page 105 under
2 Figure 1-37?
3 A That's correct.
4 Q They would be the yellow dots on that page?
5 A Yes.
6 Q Are the assumptions that you made in coming up
7 with your conclusions in Table 1-22, are they included in
8 Appendix X of your study?
9 A I want to confirm the appendix numbering system.
10 Actually, the version of the report -- I don't have the
11 appendices in this version of my report in front of me. So
12 I can't answer your question.
13 MS. ROSENFELD: Mr. Grossman, if I may approach?
14 MR. GROSSMAN: Certainly.
15 BY MS. ROSENFELD:
16 Q I'm going to show you a copy of a document that's
17 titled Appendix X: TNM Noise Model Runs 2012. If you could
18 let me know, please, if that's --
19 A Thank you.
20 Q -- the appendix that contains the modeling
21 information for your noise conclusions.
22 A Yes, this is the noise modeling from my report,
23 November 2012 report.
24 Q Okay. There are a couple of charts in here.
25 There's one on page 359 and one on page 364 of Appendix X.

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1 Can you just explain to me the difference between these two
2 charts?
3 A I'm going to need to get some reading glasses.
4 This is pretty hard to read.
5 MR. GROSSMAN: So what am I comparing? Which
6 pages am I, charts am I comparing?
7 MS. ROSENFELD: 359.
8 MR. GROSSMAN: Okay.
9 MS. ROSENFELD: And 364.
10 MR. GROSSMAN: Okay.
11 MS. ROSENFELD: Mr. Grossman --
12 MR. GROSSMAN: Yes.
13 MS. ROSENFELD: -- we probably should give this an
14 exhibit number.
15 MR. GROSSMAN: Okay. This will be Exhibit 196,
16 and this is -- is this the entire Appendix X, by the way?
17 MS. ROSENFELD: This is the entire Appendix X --
18 MR. GROSSMAN: Okay. So --
19 MS. ROSENFELD: -- that I'm aware of.
20 MR. GROSSMAN: -- Appendix X to Exhibit 15(a), did
21 we say?
22 MS. ROSENFELD: Yes.
23 MR. GROSSMAN: 15(a), Sullivan Environmental
24 Report.
25 (Exhibit No. 196 was marked

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1 for identification.)
2 THE WITNESS: So you're referring to the run that
3 starts on page 359 as one of them and the other one that
4 starts on page 363?
5 BY MS. ROSENFELD:
6 Q 364.
7 A 364, okay. The -- what was your question again?
8 I'm sorry.
9 Q It looks to me like the data in this, in these two
10 charts is the same. Why are there two? What's the
11 difference?
12 A Well, the first page, showing the vehicles, is the
13 same -- looks, appears to be the same, looking at the
14 numbers. If you turn to the next page, 360, and also to
15 365, one thing you'll notice that is different is the height
16 term, where on page 360, look at the bottom of the page
17 where the headers are --
18 Q Yes.
19 A -- and go one, two, three, four, five, six headers
20 from the left. You see Height at Point, and you're seeing
21 zeros at that location --
22 Q Yes.
23 A -- for those, and on page 365 you're seeing 2.44,
24 which is presumably the height of the acoustic wall.
25 Q Okay. So the --

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1 MR. GROSSMAN: That's the bottom chart on page
2 365?
3 THE WITNESS: Correct.
4 BY MS. ROSENFELD:
5 Q So page 355 is the modeling for the acoustic wall,
6 and page 360 is without the wall, right?
7 A That's my interpretation, yes.
8 Q Okay. Did you create this document?
9 A One of -- a modeler that works for me created the
10 document. So I did not run the noise model.
11 Q Okay. If you look at the numbers on the chart on
12 page 359, for example, where it says Automobiles and then it
13 runs a certain, certain numbers under V, and then you go to
14 Trucks and it runs a certain number under V, it looks to me
15 like the numbers, the data that was entered on Chart 359 is
16 the same as the data that was entered on Chart 364. Can you
17 -- would you corroborate that if it's your reading of that
18 chart?
19 A Well, correct. I mean, if the objective is to
20 compare the noise levels with and without the acoustic wall,
21 you'd want to have the same traffic counts on both runs.
22 Q Okay. So any modifications that would be applied
23 to the chart on 359 would equally apply to the chart on 365,
24 correct? If you were to make any changes to the data, you
25 would make it equally on both sides?

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1 A Well, I mean, clearly, I did describe the fact
2 that the height for the acoustic barrier would be different,
3 but you're asking beyond that particular change?
4 Q No. No, just -- that answered my question.
5 MR. GROSSMAN: Did you turn it on so --
6 MS. CORDRY: I had to turn on my computer, but
7 it's hooked into his computer. So -- I was going to try to
8 show the chart up here on the screen for everybody, but --
9 MR. GROSSMAN: I see.
10 MS. CORDRY: -- but he's got the connection
11 modeled into his computer.
12 MR. GROSSMAN: I thought you were just trying to
13 irritate Mr. Silverman with the noise.
14 MS. CORDRY: No. No. I was actually -- then I
15 was trying to turn this back off again so that it would not
16 irritate Mr. Silverman.
17 MR. GROSSMAN: Ms. Rosenfeld, let me interrupt for
18 a second just to ask, is it KHCA's contention that the
19 proposed gas station will create a noise level that will
20 exceed the county standards?
21 MS. ROSENFELD: It is.
22 MR. GROSSMAN: And you have evidence to that
23 effect?
24 MS. ROSENFELD: I do and I think it's in
25 Mr. Sullivan's report.

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1 MR. GROSSMAN: Okay. Go ahead.
2 BY MS. ROSENFELD:
3 Q Mr. Sullivan, if we go to page 360, if you look,
4 there is a column four columns from the left. It says
5 Impact Criteria and says dBA and there's a number 66 that
6 run the full length of that chart. Could you tell me what
7 that 66 stands for?
8 A You're on page 360?
9 Q On page 360.
10 MR. GROSSMAN: That's the top chart, right?
11 MS. ROSENFELD: The top chart.
12 THE WITNESS: As I say, I've not run, I did not
13 particularly run this model. I can't verify what the 66
14 pertains to specifically.
15 BY MS. ROSENFELD:
16 Q You don't know what that means?
17 A I'm saying I did not run the model. So I do not
18 know -- I don't know this output, I mean, but I can
19 certainly get you an answer for that. I'm not going to
20 speculate.
21 MR. GROSSMAN: It's labeled -- well, it looks like
22 it's right between the dBA and dB.
23 THE WITNESS: It's confusing the way this is
24 printed out to really tell which column goes with which.
25 MR. GROSSMAN: But assuming it's -- well, whether

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1 it's one or the other, I --
2 MS. ROSENFELD: Well, it's --
3 MR. GROSSMAN: -- one's decibels and one's
4 average.
5 MS. ROSENFELD: It's within a --
6 MR. GROSSMAN: It's some reference for decibels.
7 Is that --
8 MS. ROSENFELD: It's within a column that says
9 dBA.
10 MR. GROSSMAN: Okay. Yes, it gets -- you can't
11 see the line, but I think you're right, yes. It's hard to
12 see the line on my printout, but --
13 MS. ROSENFELD: There is a line.
14 MR. GROSSMAN: -- I think that's correct. It's in
15 the, it's in the dBA column.
16 THE WITNESS: I see there's a dBA column. What
17 I'm saying is I can't, while I sit here today, tell you what
18 that column particularly refers to.
19 BY MS. ROSENFELD:
20 Q You're talking about what that number stands for,
21 okay.
22 A I can certainly find out, but I'm saying, as I sit
23 here today, I do not know.
24 Q Okay.
25 MR. GROSSMAN: The heading on that column, the

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1 whole series of columns there, is Input Sound Levels and
2 Criteria. Do you know what that is supposed to mean?
3 THE WITNESS: It could be referring to the
4 strength of the noise signal from the cars themselves as an
5 input, automatic input that goes into this model. In other
6 words, it may be an embedded default that's in the model,
7 that the 66 -- and I'm speculating -- could be the starting
8 point of the noise source. It's not the output from the
9 model. It's not the noise levels at the receptors.
10 MR. GROSSMAN: Okay.
11 BY MS. ROSENFELD:
12 Q And you know that -- oh, because it says inputs,
13 not outputs. Okay.
14 MR. GROSSMAN: Right.
15 BY MS. ROSENFELD:
16 Q But you don't know where that number was derived
17 from?
18 A I've speculated, which I probably shouldn't do,
19 that it's probably an internal default to the model --
20 Q Okay.
21 A -- but I would have to confirm that.
22 MR. GROSSMAN: And right under that it says Impact
23 Criteria, and do you have an opinion as to what that
24 reference is?
25 THE WITNESS: I do not. That certainly would not

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1 be referring to any of the criteria that Ms. Rosenfeld has
2 described in terms of noise levels and acceptable noise
3 levels.
4 MR. GROSSMAN: Unless you determine that 66, being
5 one over the 65 that's permitted in the daytime, was the
6 outer limit. I don't know. I mean, I'm just, once again, I
7 -- I guess we ought to get --
8 MS. ROSENFELD: Well, I'll accept Mr. Sullivan's
9 testimony that he doesn't know what that number means.
10 MR. GROSSMAN: Okay.
11 BY MS. ROSENFELD:
12 Q If we could look at page 359. Under, on that
13 chart there are four different areas, presumably of the mall
14 parcel. One is called Q-U-E, which I assume are the queues.
15 Do you know if that's the queues within the special
16 exception area or not?
17 A That's the max one-hour queue for the gas station.
18 Q And the parking lot would be which parking lot?
19 A The parking lot would be to the, to the western
20 parking lot, and then the parking garage would be to the
21 east.
22 Q Okay. And then the ring road is also -- I'm
23 sorry. You said the first parking lot was to the west and
24 the second is to the east?
25 A The parking lot is to the west, and the parking

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1 garage is to the east.
2 Q Okay. And if you look under the column -- the
3 broad heading is Segment. Under that there are subheadings:
4 Autos, Trucks, Trucks, Buses, and Motorcycles. Do you see
5 those?
6 A I do.
7 Q And under there at Point 1 -- there are different
8 points that are identified; 40, 40, 40, 40 under vehicles
9 slash hour. What does that 40 represent?
10 A Vehicles per hour. The input is vehicles per hour
11 going through a queue.
12 MR. GROSSMAN: What's the difference between an M
13 truck and an H truck?
14 THE WITNESS: Medium-duty vehicle versus
15 heavy-duty vehicle --
16 MR. GROSSMAN: Okay.
17 THE WITNESS: -- is my expectation.
18 MR. GROSSMAN: Okay.
19 BY MS. ROSENFELD:
20 Q And parking lot vehicles per hour, you're assuming
21 307 --
22 A Correct.
23 Q -- vehicles at each -- is that at each of those
24 four points?
25 A We're assuming that it's 307 vehicles going into

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1 the parking lot per hour, and the garage would have 258.
2 It's assumed throughput through those operations.
3 Q So under the que, it wouldn't be 40 plus 40 plus
4 40 plus 40; it's just 40?
5 A We're assuming there's 40 cars queuing -- that are
6 traveling at a certain rate of speed.
7 Q At an average hour, okay.
8 A At four kilometers per hour. So there's 40 cars
9 -- this is hypothetical, obviously; they're not, they're
10 not, they're mostly standing there and they're moving up
11 once in a while -- but it's assuming 40 vehicles going at
12 four kilometers per hour.
13 Q And a total of 307 in the parking lot. So if I
14 cross out the bottom three 307s, it doesn't change, change
15 anything, correct?
16 A Correct, it doesn't change anything, no.
17 Q Okay. And the ring road, you're assuming 65
18 autos?
19 A Sixty-five would be the incremental increase on
20 the ring road.
21 Q And the parking garage would be 256?
22 A Right.
23 Q Okay. And then the same analysis would hold true
24 for the trucks? You're assuming one per hour, MT trucks?
25 A Correct.

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1 Q And HT trucks, one per hour?
2 A We're showing, we're showing one of each here. It
3 didn't, it doesn't really specifically call it delivery
4 trucks in here. There's like one every four hours, but
5 basically for the que, the 40 cars is really what drives the
6 queue, that that's what's in the queue specifically.
7 Q Okay. So if I'm reading the que column, the que
8 row across, you're assuming 40 cars, one medium-duty truck,
9 one heavy-duty truck, one bus, and one motorcycle in any
10 average hour?
11 A Well, yeah. Again, as I mentioned, I can answer
12 any questions you want on this particular model, but I'll
13 need to -- if you have very detailed questions, I'll have to
14 get back to you on it, but in terms if you want me to
15 speculate, there likely was maybe a minimum required. So
16 one medium truck, one heavy-duty truck, one bus, as inputted
17 in here, would be additive for the queue to the 40 vehicles
18 that we are assuming. So basically, on the que, the 40
19 vehicles going at four kilometers an hour is what matters.
20 That's what, that's what would be happening here --
21 Q Okay.
22 A -- anything else included would be conservatism.
23 Q And you're assuming the ring road, 65, and parking
24 garage, 256, is that correct? I'm --
25 A Correct.

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1 Q -- talking about vehicles. Okay.
2 A That is correct.
3 Q And one truck, one -- okay. So those numbers just
4 carry all the way across. All right. And your mileage, I
5 think you said you're assuming that in the queue the
6 vehicles are moving an average of four miles per hour?
7 A Four kilometers per hour.
8 Q Oh, four kilometers. How many miles an hour is
9 that?
10 A Approximately two.
11 MS. ADELMAN: Three.
12 THE WITNESS: Three.
13 MS. CORDRY: Two-and-a-half.
14 THE WITNESS: Two-and-a-half.
15 MS. ROSENFELD: I'd like the expert to answer the
16 question, please. If the audience could refrain.
17 MR. GROSSMAN: We're all experts because we've all
18 been in traffic at three miles an hour. So we -- yes, okay.
19 MS. CORDRY: Well, a kilometer is .625 miles.
20 MR. GROSSMAN: Yes. We'll --
21 THE WITNESS: Well, it's approximately, it's
22 between two and three miles an hour.
23 MR. GROSSMAN: Right.
24 BY MS. ROSENFELD:
25 Q And in the parking lot you're assuming that

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1 traffic is moving at 48 kilometers an hour?
2 A Correct.
3 Q And how many miles an hour would that be?
4 A Let me tell you, I'm going to get my calculator
5 rather than guess at all these numbers.
6 Q Okay.
7 A Approximately 30 miles an hour.
8 Q Thirty miles an hour through the parking lot,
9 okay. And --
10 A But to clarify, I mean, we -- this is a
11 conservative assumption. We don't expect they're going 30
12 miles an hour through the parking lot, but they'll generate
13 more noise at that level, and it's acting to conservatively
14 represent the study.
15 Q Do vehicles make more noise when they're driving
16 at an even speed, or do they make more noise when they're
17 going from a stopped point to an accelerated --
18 A This model doesn't --
19 Q -- to accelerate?
20 A My understanding, this model doesn't consider, in
21 these analyses, acceleration going on. It would be a
22 running speed.
23 Q But just as a general principle, do they make more
24 noise when they're at a constant speed, or do they make more
25 noise as they're accelerating?

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1 A They could make more noise when accelerating.
2 Q Okay. And so, for example, going from stopped to
3 a moving could be louder?
4 A You said going from stopped to accelerating. I'm
5 saying, yes, I assume, sure, it could be louder.
6 MR. GROSSMAN: What about from, from a speed to
7 decelerating -- is that lower or is that higher?
8 THE WITNESS: Depends if they have good brakes or
9 not, I suppose, but I don't think -- generally, if they, you
10 didn't have squeaky brakes, it'd be, it'd be, wouldn't be
11 more.
12 BY MS. ROSENFELD:
13 Q Okay. And under the parking garage, the 32
14 kilometers per hour, could you tell me how many miles that
15 is per hour?
16 A Approximately 20 --
17 Q Okay.
18 A -- the same response as before, that's a
19 conservative representation. We don't think they're going
20 20 miles an hour really in a parking garage.
21 Q And on the same page there are a series of points,
22 Point 1 through 21, and when I went through that list,
23 Points 15 and 16 are not included. Do you know why they
24 might have been omitted?
25 A I don't recall. I could certainly find out.

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1 Q And you testified earlier --
2 MR. GROSSMAN: While you're on the point, for some
3 reason Points 3 and 4 are out of order but they're there.
4 It goes --
5 THE WITNESS: That's correct.
6 MR. GROSSMAN: I guess it's because it's in the
7 queue. Is that --
8 THE WITNESS: Three and four are not, they're not
9 in numerical order, is your --
10 MR. GROSSMAN: Right.
11 THE WITNESS: -- is your point, that's correct.
12 MR. GROSSMAN: Right. But I notice that she's
13 correct that it appears that 15 and 16 are just not there at
14 all.
15 BY MS. ROSENFELD:
16 Q You note in your report that you took noise
17 readings at Sterling in August of 2011, is that correct?
18 A We --
19 Q Did you --
20 A Wait. We took noise readings during the summer
21 and in the winter --
22 Q Okay.
23 A -- is my recollection, and they're in our November
24 2012 report.
25 Q Okay. Did you use any of the noise data that you

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1 derived from those actual noise readings in your traffic
2 noise model analysis?
3 A No. We presented -- we did take the information
4 as Parks and Planning staff asked us to do, the measured
5 value from Sterling. They wanted us to show an idea on a
6 figure what those values were, but in terms of the modeling
7 at the Wheaton Mall, it was based upon background
8 measurements taken in the neighborhood and modeling of the
9 sources at the, at the mall itself.
10 Q And so you're talking about the noise readings
11 that you took in the Kensington neighborhood in September of
12 2011?
13 A (No audible response.)
14 Q Are those readings modeled in this chart on page
15 359?
16 A The background was added, was additive to the
17 results of the modeling.
18 Q Where were those numbers added?
19 A It would have been done in a, in spreadsheet form,
20 is my recollection.
21 Q Was that spreadsheet included in your November
22 2012 report?
23 A I believe so. I'd have -- I can't confirm that as
24 I sit here today.
25 Q Okay. If it was, I'd appreciate it if you would

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1 provide me with a copy. I didn't see it in either the
2 report or the appendices.
3 A So just to clarify, you did not see the processing
4 of the model output where we added in background?
5 Q I don't think I did. I might not have recognized
6 it, but I don't recall having seen it. Aside from the
7 actual noise readings taken from the Kensington
8 neighborhood, did you use any other actual noise readings or
9 actual noise data in the traffic noise model analysis?
10 A The noise data we used was background from
11 Kensington Heights.
12 Q Just that, okay. When you model vehicular noise,
13 is there a linear correlation between the number of vehicles
14 and the amount of noise?
15 A Well, the model certainly is evaluating the noise
16 levels based upon its reference noise strength levels and
17 the number of vehicles. I don't, I don't recall the
18 relationship that it used in the model, but it's certainly
19 contained in the documentation for the model.
20 Q So if, for example, you have 50 cars and they
21 create a decibel level of 30 and you then have 100 cars, you
22 don't know if the correlating, corollary noise level would
23 be 60 decibels? Do you have any sense for scale?
24 A I'm saying the model is internally doing those
25 calculations. I don't recall the function it used, if it's

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1 linear or non-linear, but that's automatically generated by
2 the model itself.
3 Q Would you provide me with that formula?
4 A So just to be clear, you would like to know the
5 function used in the traffic noise model that accounts for
6 the number of vehicles and how that, what the relationship
7 of that function is?
8 Q That's correct.
9 MR. GROSSMAN: Is that retrievable from the model?
10 THE WITNESS: Yeah, we can try to do it.
11 MR. GROSSMAN: Okay.
12 BY MS. ROSENFELD:
13 Q As a general concept, does it matter what mix of
14 vehicles you have? For example, if you have 50 automobiles,
15 do they generate the same noise as 25 automobiles and 25
16 trucks, large trucks, semi?
17 A They would not, no. I mean, presumably trucks
18 would generate more noise, or a bus, than a car would.
19 Q On page 8 of your November 2012 report, which I
20 just handed out, you state you take a five dBA, decibel,
21 credit because of a, quote, line-of-sight break.
22 A Which page are you referring to?
23 MR. GROSSMAN: Page 8, did you say?
24 MS. ROSENFELD: Page 8. It's the handout of his
25 November, the excerpts.

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1 BY MS. ROSENFELD:
2 Q Page 8 of your November 2012 report. The third
3 bullet on page 8 at the very bottom, you say: Similarly,
4 the noise modeling at Sterling was on a relatively flat
5 ground without a line-of-sight break that occurs at the
6 residential areas in Wheaton. The line-of-sight break
7 reduces noise impacts by five decibels per the county noise
8 guidelines, which is accounted for in the modeling but not
9 in the directly measured noise data at the Costco gas
10 station. What does that mean? What is a line-of-sight
11 break?
12 A If you have terrain -- if you have a hillside,
13 like you do in Kensington Heights, for the source, there's
14 not a direct -- you can't see, for example, visually from
15 the source of the noise to the receptor of the noise your
16 line-of-sight break. In accordance to the -- I'm referring
17 to the guidelines here of the County. They show a five
18 decibel credit. In terms of the model, you know, the model
19 -- we didn't use that in the modeling. The modeling, we
20 indicated the height of the acoustic wall and it would
21 compute the credits, and they were approximately three or
22 four, maybe five in some cases, reduction.
23 Q And so the line-of-sight break that you're talking
24 about here is a drop in terrain, is that --
25 A Correct.

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1 Q Would a line-of-sight break also include a wall?
2 A There already is a line-of-sight break --
3 Q Yes.
4 A -- and of course, the wall would be, creates
5 another line-of-sight break. You could interpret it that
6 way, but it also has acoustic properties which are designed
7 to attenuate the noise and reduce them.
8 Q And would that line-of-sight-break analysis apply
9 to houses that have two or three stories that would be at
10 the same level as the noise source?
11 A Well, if you had a two-level home, it would have a
12 different line-of-sight geometry than the ground -- the
13 second floor would be different geometry than the
14 ground-level floor.
15 Q So would you expect that that five decibel credit
16 would apply at that location?
17 A I expect that it would with the acoustic wall in
18 place.
19 Q But without the wall it would not, that five point
20 credit would not apply, is that correct?
21 A Right now the wall is not in place --
22 Q Yes.
23 A -- and any noise from the ring road would not,
24 potentially would not have a line-of-sight break for some
25 homes on the second floor.

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1 Q Does a solid wall have different noise-dampening
2 qualities than a wall with breaks in it?
3 A I would expect where the points of the breaks are
4 you'd have different properties in a solid wall. We didn't
5 model any breaks in the wall.
6 Q I'd like you to turn to page 105 of your report,
7 Figure 1-37, and there are 16 yellow dots identified as
8 Noise Receivers on that graph that we just talked about, and
9 you did say you took actual noise readings at those
10 locations, correct?
11 A Not at all of those locations, no. We took, we
12 took noise readings, background readings in selected spots
13 in the Kensington Heights neighborhood in relatively close
14 proximity to the proposed gas station.
15 Q Did you take noise readings at any of the 16
16 points?
17 A It's documented in the report that we produced,
18 and it shows the exact location of the points. Our position
19 is that those background values are representative of the
20 neighborhood exposures.
21 MR. GROSSMAN: Well, I'm not sure I understand.
22 She asked if you took measurements on the points, and you
23 said the background values are reflective of the
24 neighborhood. I'm not sure I understand that as an answer.
25 THE WITNESS: We didn't take a reading at each one

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1 of these 16 points for background --
2 MR. GROSSMAN: But you did it at selected points
3 or --
4 THE WITNESS: We went to multiple locations in the
5 neighborhood, which is specified in our report, and we
6 collected background noise measurements at those locations.
7 MR. GROSSMAN: But not at the ones that are marked
8 as Noise Receivers?
9 THE WITNESS: No. We took background measurements
10 at locations that in our judgment were representative of
11 background noise levels in the community.
12 MR. GROSSMAN: What does the label Noise Receivers
13 mean?
14 THE WITNESS: It simply means that in the model
15 you need to give it a location where you want it to compute
16 what the noise level would be from the sources you're
17 specifically modeling.
18 MR. GROSSMAN: The terms Noise Receivers are the
19 modeling points for where you would assume the noise would
20 be received?
21 THE WITNESS: Correct.
22 MR. GROSSMAN: But not the points at which you
23 actually took measurements?
24 THE WITNESS: That's correct. They're --
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: -- two separate issues. Background
2 needs to be added --
3 MR. GROSSMAN: Right.
4 THE WITNESS: -- to the specific noise from the
5 source that we modeled --
6 MR. GROSSMAN: Right.
7 THE WITNESS: -- but you would not need to have
8 background at every one of those locations.
9 MR. GROSSMAN: I understand. Okay.
10 BY MS. ROSENFELD:
11 Q And you have a blue rectangle listed here called
12 Queue Source. Is that the -- that's just the queuing area,
13 or is that the entire special exception area?
14 A It would be the queuing area.
15 Q And, again, just to be clear, the noise values
16 that you associated with the queue source are derived solely
17 from the federal modeling standards and not from any actual
18 noise meter readings from Sterling, correct?
19 A You said federal noise standards. You mean the --
20 Q Your TMA, the modeling that you did in your
21 traffic --
22 A Well, just to be clear, the --
23 Q -- I keep forgetting the name, the traffic --
24 A The TNM model. We used --
25 Q TMA.

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1 A -- the TNM model to model the incremental sources
2 of noise beyond which would have been captured in the
3 background monitoring in Kensington Heights --
4 Q Okay.
5 A -- then the results from the noise model was
6 additive to the results in the background.
7 Q All right. So the noise values that you allocate
8 to the queue source came from your traffic noise modeling,
9 correct?
10 A That's correct. The contribution from the queue
11 sources, that blue triangle, onto these receptors, which are
12 called noise receivers, that was based upon the TNM model.
13 Q And the noise values that you associated with the
14 ring road came from your traffic noise model?
15 A Correct, and data that was available on the
16 incremental increase in vehicles.
17 Q Okay. And same thing for the parking lots,
18 correct?
19 A That's correct. Those are the sources that we
20 modeled with the TNM model.
21 MR. GROSSMAN: So what are the sources for the
22 background noise that you did measure?
23 THE WITNESS: It would be the, it would be the
24 mall itself, ring road traffic, the 639 or so cars traveling
25 the ring road per hour; it would be the general traffic

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1 noise from Georgia Avenue and the other sources of noise in
2 the community, but it was measuring the status quo prior to
3 the construction of the Costco warehouse or the Costco, of
4 course, gas station.
5 MR. GROSSMAN: All right. But what I don't
6 understand is the ring road is included in the model. So is
7 that not double-counting the ring road?
8 THE WITNESS: No. It's adding on, I mean, it's
9 adding -- it's adding, in this case, 65 additional cars --
10 MR. GROSSMAN: I see.
11 THE WITNESS: -- associated with the gas station
12 operations. It's being added on to the ring road because
13 the ring road traffic before that was captured through the
14 background noise monitoring.
15 MR. GROSSMAN: I see. So the modeling is to
16 capture the addition of the gas station, the queue, the ring
17 road, whatever it would add on to the background that you
18 actually measured?
19 THE WITNESS: The gas station and the -- in this
20 case, it was showing the parking lot going to, going to the
21 Costco gas station as well.
22 MR. GROSSMAN: So I'm not sure I understand how it
23 all fits together with the Sterling, the measurements at
24 Sterling. I guess those, the measurements at Sterling
25 generated the information by which you could put into the

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1 model? Is that --

2 THE WITNESS: No. Sterling was just done for

3 perspective, to get an idea at an existing gas station with

4 a similar design --

5 MR. GROSSMAN: I see.

6 THE WITNESS: -- albeit one that sold more

7 gasoline, what kind of noise level were we seeing there. It

8 was done strictly for perspective purposes --

9 MR. GROSSMAN: Okay.

10 THE WITNESS: -- it didn't enter into the modeling

11 any more than it did perhaps for confirmation purposes.

12 MR. GROSSMAN: Okay, thank you.

13 BY MS. ROSENFELD:

14 Q And so your traffic noise model really takes a

15 snapshot, doesn't it, of a particular point in time? It's

16 not an averaging over a period of time; it's these numbers,

17 this many vehicles at the location at a particular point in

18 time?

19 MR. GROSSMAN: When you said these numbers, what

20 are you referring to?

21 MS. ROSENFELD: I'm sorry, the numbers on page 359

22 of Appendix X.

23 MR. GROSSMAN: Okay.

24 THE WITNESS: It's modeling the noise levels for

25 what's shown, you know, 40 cars in the queue, in the parking

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1 lots, and so forth. That's what it's modeling.

2 BY MS. ROSENFELD:

3 Q Under this modeling application, the predicted

4 noise levels will remain constant during the 15-and-a-half

5 hours that the station is open, is that correct? It

6 doesn't --

7 A Well, it's based upon -- like, the parking lot

8 numbers you're seeing here are based upon peak-hour values.

9 So we're assuming these numbers are held constant. We're

10 not saying that they will be constant all the time because

11 it could be quite a bit less than this.

12 MR. GROSSMAN: So this is a worst-case scenario,

13 in effect, a 40-queue --

14 THE WITNESS: Correct.

15 MR. GROSSMAN: -- 40 queued in the --

16 THE WITNESS: That's the maximum queuing.

17 MR. GROSSMAN: Okay.

18 BY MS. ROSENFELD:

19 Q You've stated often that you used conservative

20 assumptions in your air quality modeling. Did you do the

21 same here?

22 A Well, that was certainly our objective. For

23 example, I mentioned the fact that the vehicles are going at

24 a faster speed in this noise model than they actually would

25 be. The 48 kilometers an hour for the parking lot and so

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1 forth, that clearly is an overstatement.

2 Q And if I total the number of vehicles in Appendix

3 X at page 359 on the ring road, for example, it looks to me

4 like there's a total of 69 vehicles, is that correct?

5 A You're referring to page 359?

6 Q Yes.

7 A I'm seeing 65 vehicles. So --

8 Q Okay.

9 A -- you're referring to --

10 Q I think it says 65 autos, and then if you read

11 across, one --

12 A Oh, and the trucks.

13 Q -- truck, one MT truck, one HT truck, one bus, one

14 motorcycle, correct?

15 A That would be 69, correct.

16 Q Okay. And so if you increase the number of

17 vehicles in that assumption, the noise levels would increase

18 as well, correct?

19 A They would.

20 Q Are you an expert in traffic modeling or traffic

21 analysis?

22 A As I've mentioned, it came up earlier in the

23 discussion, I have certainly conducted noise monitoring for

24 projects. I do not consider myself an expert in noise

25 modeling. I have done -- I've certainly overseen people

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1 doing it, but I'm not claiming that to be my specific area

2 of expertise.

3 Q And you drew your numbers from Mr. Guckert's

4 report? Is that, where did you get the -- where did you get

5 the number 69 vehicles?

6 A That was from Mr. Guckert's report.

7 Q On page 13 of Mr. Guckert's traffic analysis -- I

8 apologize. One second. Page 26 of Mr. Guckert's traffic

9 analysis, Hearing Examiner Exhibit No. 11(a), page 26,

10 Mr. Guckert projected that the morning weekday peak hour,

11 they were doing an estimated 323 vehicles driving east and

12 west on the ring road near the special exception entrance,

13 but you didn't base your noise model on 323 vehicles, did

14 you?

15 A Well, can I first see the document you're

16 referring to?

17 Q Oh, of course.

18 A Thank you.

19 MR. GROSSMAN: Thank you.

20 MS. ROSENFELD: Yes.

21 MR. GOECKE: So this is for the total peak-hour

22 traffic volumes?

23 MS. ROSENFELD: That's correct.

24 MR. GOECKE: Not the incremental?

25 MS. ROSENFELD: Not the incremental.

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1 BY MS. ROSENFELD:
2 Q If you --
3 A Well, we -- okay. I'm sorry. What was your
4 question?
5 Q No, go ahead.
6 A We, of course, didn't model the total, total
7 traffic on the ring road. The ring road has on the order
8 of, I think on the order of over 600 cars. The ring road
9 does have traffic. We modeled the incremental contribution.
10 Q And yet the noise ordinance doesn't distinguish
11 between incremental and non-incremental. It simply says
12 that the noise levels --
13 A But the background -- the background noise
14 measurements that we collected would have been monitoring
15 traffic from the ring road, the mall parking lots, traffic
16 from Georgia Avenue, and the rest of the locations. We're
17 modeling incremental 69 more vehicles.
18 Q And so you are basing your background noise on the
19 noise meter readings that you took on September 6th of 2011
20 in the Kensington neighborhood?
21 A That's correct.
22 Q Okay. Going back again to page 359 of Appendix X,
23 your noise assumptions presume along the ring road one
24 medium truck and one heavy-duty truck. Are you aware that
25 the ring road serves as a delivery route to multiple retail

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1 stores immediately surrounding the special exception?
2 A Well, we are, but the point, the point was we
3 monitored -- we measured background levels that would have
4 included normal operation of the ring road. That was done
5 before. So --
6 Q Was your modeling done before or after the
7 warehouse was opened?
8 A Well, that's the one issue I guess you're getting
9 at. Our modeling was done before the warehouse opened, and
10 I can see that those particular vehicles would not be
11 included in here. They are for the parking lots and the
12 parking garage. They are not, they are not for the ring
13 road.
14 Q Do you know the average number of trucks that
15 deliver goods to the Costco warehouse on a daily basis?
16 A It would be -- the average is 10 medium-duty
17 vehicles and 10 heavy-duty vehicles.
18 Q And where do you get that number from?
19 A That number was provided by Costco. That's
20 included in our November 2012 report.
21 Q And if there were actually more, more vehicles
22 than that, the noise values would increase, is that correct?
23 A To some degree, they would. They would, sure.
24 Q And those tractor-trailer deliveries are not
25 factored into your noise assumptions, correct?

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1 A Those particular, but the 10 -- you're talking
2 about one delivery approximately per hour. So it's not, for
3 example, that it's going to have a heavy weighting on the
4 value. You referred to heavy-duty. There's 10 per day out
5 of a 15-hour operational workday.
6 Q Ten medium-duty and 10 heavy-duty?
7 A Correct.
8 Q Per day?
9 A That's, that's the data we're given by Costco,
10 that's correct.
11 Q The tractor-trailers that are making deliveries to
12 the Costco warehouse have to go through a fairly intricate
13 set of maneuvers in order to enter and leave the loading
14 dock. So it's not simply a pass-by drive. Did you factor
15 any additional noise resulting from that extended driving
16 adjacent to the gas station?
17 MR. GOECKE: I object to the characterization of
18 intricate maneuvers. I'm not sure what she means by that.
19 MR. GROSSMAN: Well, the question really is, is
20 there evidence in the record or that you can proffer will be
21 in the record that will show intricate maneuvering, as you
22 put it, and I --
23 MS. ROSENFELD: I can proffer that the applicant's
24 truck turning radius, which, if it is not yet in the record,
25 will be introduced through KHCA, shows that you don't simply

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1 pull in and pull out. There are several.
2 MR. GROSSMAN: So they'll have to, in other words,
3 the trucks will have to maneuver in and back and --
4 MS. ROSENFELD: Correct.
5 MR. GROSSMAN: -- maneuver around?
6 MS. ROSENFELD: Right. They just don't pull in
7 and stop.
8 MR. GROSSMAN: So, okay, I think the general sense
9 of the question is permissible.
10 THE WITNESS: I'm sorry, just repeat the question.
11 BY MS. ROSENFELD:
12 Q Did you use any kind of increase noise factor
13 because of the -- associated with the amount of time that it
14 takes for the Costco warehouse delivery trucks to park at
15 the loading dock?
16 A We did not.
17 Q Okay. Did you build in any assumptions associated
18 with typical loading dock noises, such as opening and
19 shutting warehouse doors?
20 A We did not, no.
21 Q Or noise from dollies or pallets while products
22 are being off-loaded from trucks?
23 A Well, which operation are you referring to at the
24 mall? Are you referring just to Costco or in general?
25 Q I'm talking now specifically to Costco.

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1 MR. GROSSMAN: Costco warehouse.
2 THE WITNESS: Costco warehouse.
3 BY MS. ROSENFELD:
4 Q Costco warehouse.
5 A We did not.
6 MR. GROSSMAN: Ms. Rosenfeld, the noise standards
7 you referenced, they're average noise levels as opposed to
8 impact noise levels?
9 MS. ROSENFELD: I think that they're impact noise
10 levels, but in this --
11 MR. GROSSMAN: I'm talking about the regulations
12 that you've placed in the record as --
13 MS. ROSENFELD: The regulations would be -- for
14 example, a slamming door I don't think would necessarily
15 create a violation, but if over a period of time, which
16 could be as short as several minutes or longer, the noise
17 exceeds the 55 or the 65, then yes, that would, in my
18 view --
19 MR. GROSSMAN: Well, I think --
20 MS. ROSENFELD: -- be a violation.
21 MR. GROSSMAN: My recollection is there are two
22 different kinds of decibel ratings you can have: a decibel
23 average rating and you can have this instantaneous decibel
24 rating.
25 MS. ROSENFELD: Correct.

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1 MR. GROSSMAN: So I'm asking you if the
2 regulations in your understanding are addressed to average
3 decibel ratings or to instantaneous decibel ratings.
4 MS. ROSENFELD: With respect to the vehicle noise,
5 I believe it's an average.
6 MR. GROSSMAN: Okay. Well, with respect to any of
7 these regulations that you've cited.
8 MS. CORDRY: Well, there is a definition of an
9 impulsive noise, for instance, a short burst of an
10 acoustical energy --
11 MR. GROSSMAN: Yes.
12 MS. CORDRY: -- which I think would be more
13 characteristic of a door slamming open and slamming shut,
14 for instance, which is, a person must not cause or permit
15 the emission of a prominent discrete tone or impulsive
16 noise, for instance, is part of the regulation.
17 MR. GROSSMAN: To exceed what?
18 MS. CORDRY: That exceeds those 65 and 55 decibel
19 levels. It exceeds the level at the location on a receiving
20 property where noise from the source is greatest.
21 MR. GROSSMAN: Cite me to the specific regulation
22 you're reading from.
23 MS. CORDRY: Okay. This is in --
24 MS. ROSENFELD: County code.
25 MS. CORDRY: -- the county code.

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1 MR. GROSSMAN: Okay.
2 MS. CORDRY: There is 31B-5, which talks about
3 the, B-5(a), which talks about the maximum allowable noise
4 levels --
5 MR. GROSSMAN: Okay.
6 MS. CORDRY: -- which I'm trying to read through
7 at the moment. The point that I made about the impulsive
8 noise is in the definitions. 31B-2 is the definition of an
9 impulsive noise, and of course, there's also the definition,
10 generally, of course, of a noise disturbance, which is just
11 a more subjective sort of concern.
12 THE WITNESS: It has to have a field crest factor
13 of 10 decibels, though, correct? I mean, it has, it has to
14 go -- to be qualified as an impulsive noise, it has to go
15 above the normal levels by a large amount, by 10 decibels.
16 MS. CORDRY: Having walked by the loading docks
17 when those doors are slamming shut, yes.
18 MR. GROSSMAN: No, no, no, you can't testify.
19 MS. CORDRY: I understand, but the question is,
20 could it be that, and you know, yes.
21 MR. GROSSMAN: No, just trying to analyze the
22 legal position.
23 MS. CORDRY: The point is we haven't measured that
24 possibility at all, is the question here.
25 MR. GROSSMAN: No, no, no. Let's --

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1 MS. ROSENFELD: If --
2 MR. GROSSMAN: Hold on one second. I just want to
3 understand what the regulation is regulating. The dBA
4 measurement, the A-weighting network of sound level, is that
5 what's regulated by the 65 and 55 terms? Maximum allowed,
6 that's the, that's the dBA rating --
7 MS. CORDRY: Right.
8 MR. GROSSMAN: -- correct?
9 MS. ROSENFELD: Yes.
10 MS. CORDRY: 31B-5(a)(2) states: A person must
11 not cause or permit the emission of a prominent discrete
12 tone or impulsive noise that exceeds a level, at the
13 location on a receiving property where noise from the source
14 is greatest, that is five decibels lower than the level set
15 in paragraph (1). So it appears that --
16 MR. GROSSMAN: All right. Hold on a second. Let
17 me look at something. Let me look. Hold on. But now --
18 MS. CORDRY: And if you, just one, if you proceed
19 down into the examples --
20 MR. GROSSMAN: Yes.
21 MS. CORDRY: -- (c)(4) is loading, unloading,
22 opening, closing, or otherwise handling containers, building
23 materials, construction equipment, or similar objects.
24 MR. GROSSMAN: Right, but here's my concern: What
25 we'll presumably be regulating here is the amount of noise

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1 -- I won't say regulating, is the wrong word -- analyzing
2 the amount of noise, incremental noise, that is, an overall
3 noise that's produced by the proposed Costco gas station.
4 We're not trying to regulate impulsive noise that might be
5 produced by a truck unloading at the Costco warehouse. The
6 only question that relates to that is whether or not that
7 average of that noise over the time period involved plus the
8 Costco gas station exceeds the limit --
9 MS. CORDRY: Right.
10 MR. GROSSMAN: -- because I'm not here -- Costco
11 warehouse is not before me as an issue I'm controlling.
12 MS. CORDRY: We understand.
13 MR. GROSSMAN: So I'm just trying to --
14 MS. CORDRY: Right.
15 MR. GROSSMAN: -- properly put this in the right
16 framework from what I'm trying to, what I'm supposed to
17 consider. So if I understand the way the regulations are
18 written, there may be controls on impulsive noise but that
19 doesn't directly bear on us here. The only question we have
20 with regard to extra noise produced by the warehouse is
21 whether, when you add that extra noise produced by the
22 warehouse on an average to the average noise that's going to
23 be produced by the gas station, whether that will exceed the
24 55 and 65 decibel limits.
25 MS. CORDRY: Right.

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1 MS. ROSENFELD: That's --
2 MR. GROSSMAN: Is that a fair characterization?
3 MS. ROSENFELD: That's correct. That's correct.
4 MR. GROSSMAN: Okay.
5 MS. ROSENFELD: And so I'm trying to determine how
6 much of this noise, these noise -- how many of these noise
7 sources that were, came into effect after the modeling done,
8 was done --
9 MR. GROSSMAN: Right.
10 MS. ROSENFELD: -- had in fact been --
11 MR. GROSSMAN: Right. Thus far --
12 MS. ROSENFELD: -- addressed.
13 MR. GROSSMAN: -- assuming that, you know, there
14 are those additional factors that weren't in that original
15 model, so far, as I understand it, the expert has testified
16 that that, because it's only a brief amount of time that
17 these, that is, 10 or so trucks, 10 or 15 trucks, whatever
18 it is, over the day, approximately one, one and a half per
19 hour, that would be a small increment, if I understood your
20 testimony, Mr. Sullivan, on an average in terms of decibel
21 levels. Is that --
22 THE WITNESS: That's correct.
23 MR. GROSSMAN: Okay. That's --
24 MS. ROSENFELD: Now, if --
25 THE WITNESS: The impulse noise over the course of

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1 an hour would be minor, and as stated, the gas station
2 really doesn't tend to have impact noises.
3 MR. GROSSMAN: Right, because I just don't want us
4 to be confused about --
5 MS. ROSENFELD: But my --
6 MR. GROSSMAN: -- impact, you know, how I factor
7 in impact noises because, apparently, that would be a,
8 according to this witness, that would be a small element
9 here. And you had indicated earlier that his figures -- and
10 now I've been in suspense for too long -- you have to tell
11 me where it is in his figures that shows that he's going to
12 exceed, that this Costco gas station will exceed the
13 permitted noise levels.
14 MS. ROSENFELD: There is several more areas of
15 questioning, and --
16 MR. GROSSMAN: Okay.
17 MS. ROSENFELD: -- my, I think, once I'm finished,
18 you'll understand that --
19 MR. GROSSMAN: Okay.
20 MS. ROSENFELD: -- he has significantly
21 underrepresented the noise levels.
22 MR. GROSSMAN: Fair enough, I'll hold my suspense.
23 Let's talk for a second about what --
24 MS. ROSENFELD: To that -- go ahead.
25 MR. GROSSMAN: I don't know what's a convenient

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1 break time for you. I realize I didn't give people the
2 normal morning break here. So how much -- what's a
3 convenient break time for you here?
4 MS. ROSENFELD: Hang on one second. Let me just
5 pull my questions.
6 MR. GROSSMAN: Because I guess I would just
7 combine the two and have a lunch break. So --
8 MS. ROSENFELD: I would say maybe another half
9 hour or so. I mean, I'm happy to keep going.
10 MR. GROSSMAN: All right. Can we all hold out?
11 (No audible response.)
12 MR. GROSSMAN: All right. Keep going.
13 MR. GOECKE: Is that just for noise or is that
14 total?
15 MS. ROSENFELD: Just for noise, but it was an
16 optimistic question.
17 MR. GROSSMAN: All right.
18 BY MS. ROSENFELD:
19 Q With respect to the noise associated with the
20 loading dock, if the numbers that you've given, 10 large
21 trucks and 10 medium trucks arriving per day, turns out to
22 be significantly higher so that the loading dock noise is an
23 ongoing event --
24 A What do you mean by ongoing event?
25 Q Meaning that throughout the day, on a constant

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1 basis, there is noise associated with the loading dock.
2 Shouldn't that noise be factored into your model?
3 A I would say, ideally, yes, it'd be useful to
4 consider all background sources. I don't disagree with
5 that.
6 Q I proffer that the evidence in this case has shown
7 or will show that a meaningful percentage of the
8 tractor-trailers that deliver products to the warehouse have
9 a refrigeration unit that generates noise independent of the
10 truck's engine. Have you factored that noise into your
11 model?
12 A As I've mentioned in previous testimony, I did not
13 include the delivery trucks to the Costco warehouse.
14 Q After the warehouse was opened, Mr. Guckert
15 conducted a study of actual traffic along the ring road, and
16 I have excerpts from that report.
17 MR. GROSSMAN: Thank you.
18 BY MS. ROSENFELD:
19 Q In Mr. Guckert's May 10th supplemental traffic
20 analysis, which is Exhibit 128, I believe, in the zoning
21 hearing record, he conducted actual traffic counts at
22 various locations along the ring road. There's two in
23 particular that I'd like to bring to your attention. One
24 would be Location No. 5; the other would be Location No. 6,
25 both shown on page 2 of Mr. Guckert's report. If you go to

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1 the next page, which is identified as page 20, that's
2 Location 5 and that was taken on a Saturday, and if you look
3 at the bottom, it says: Peak hour, 11:15 to 12:15, with
4 total trips of 410 vehicles.
5 A I see that.
6 Q Did you update your report to reflect these higher
7 peak-hour numbers?
8 A Well, actually, the modeling that we did had more
9 cars than that in terms of the air quality modeling, had
10 more cars than 410. If your question is --
11 Q But I'm not asking --
12 A No, I have not updated --
13 Q I'm not asking about your air quality.
14 A I have not updated the noise report.
15 Q And if I refer you to Location 6, which is
16 reflected on page 24, again, on a Saturday, the peak hour at
17 that location, 604 vehicles along the ring road.
18 A Okay.
19 Q Okay. And these --
20 MR. GROSSMAN: Ms. Rosenfeld, refresh my
21 recollection about the prior statistics that, that
22 Mr. Guckert had along the ring road prior to the opening of
23 the Costco warehouse. Do you recall what the equivalent
24 was?
25 MS. ROSENFELD: I believe I just gave you that

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1 handout. It was, yes, I gave you his page 26 of Exhibit
2 11(a), and the totals are shown in the circular insert, and
3 if you give me a moment, I did add them up. According to my
4 calculations, the morning peak hour was 323 vehicles and the
5 evening peak hour was 442. That was before he took the
6 actual counts after the warehouse opened.
7 MR. GROSSMAN: So you're saying that the counts
8 have increased from those figures --
9 MS. ROSENFELD: To the figures that are
10 contained --
11 MR. GROSSMAN: -- to 4, I can't read this, 410 and
12 604?
13 MS. ROSENFELD: That's correct.
14 BY MS. ROSENFELD:
15 Q So if you were to rerun your model with these
16 numbers, I'm assuming your projected noise readings would be
17 higher than they are now, is that correct?
18 A Well, it depends. I mean, at this point, Costco
19 is open; the warehouse is operational. That could be easily
20 measured, what the background is. And do I expect it to be
21 significantly higher? I don't, but that's an easily
22 identified thing. You wouldn't have to model anything to
23 identify that.
24 Q You conducted actual noise readings at Sterling,
25 Virginia, did you not?

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1 A Yes.
2 Q And you took those readings at three different
3 locations, correct?
4 A At least three different locations, yes.
5 Q And you called them Locations 1, 2, and 3, is that
6 correct?
7 A Can you refer which page you're referring to,
8 please?
9 Q Yes. I'm looking at page 164 of your November 19,
10 2012, report.
11 A Okay.
12 MS. ROSENFELD: Mr. Grossman, do you have that?
13 MR. GROSSMAN: Let's see. Oh, I don't have it
14 out, and so --
15 MS. ROSENFELD: I do have a handout I can give
16 you. I can tell you --
17 MR. GROSSMAN: Okay.
18 MS. ROSENFELD: -- I've made some personal
19 notations on it, which I'll be happy to point out to you,
20 and this is some excerpts from Mr. --
21 MR. GROSSMAN: Thank you.
22 MS. ROSENFELD: -- Sullivan's report.
23 BY MS. ROSENFELD:
24 Q All right. If we take a look at page 181 of this
25 document, there's a graphic, a map that shows where you take

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1 these noise meter readings. Whoops, where's mine?
2 A You're referring now to Wheaton, Kensington
3 Heights, not --
4 Q I apologize. Hold on one second.
5 A You're correct, this is Wheaton. Okay. I'll
6 start with my Wheaton questions.
7 MS. ROSENFELD: Mr. Grossman, these are the pages
8 that relate to the noise readings that were taken at
9 Wheaton --
10 MR. GROSSMAN: Right.
11 MS. ROSENFELD: -- in Kensington.
12 BY MS. ROSENFELD:
13 Q And this is the data that formulated the basis for
14 your background noise level, is that correct?
15 A Which page are you on now? I'm sorry.
16 Q Just generally. Let me start again. Just
17 generally, the noise meter analysis that you took in
18 September of 2011, September 6th, 2011, this was the noise,
19 the actual noise reading that formed the basis for your
20 background assumptions, is that correct?
21 A You're referring to noise monitoring in Kensington
22 Heights, correct?
23 Q Yes, I am.
24 A Okay, yes.
25 Q Does your document say page 180? I'm thinking

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1 I've --
2 MR. GROSSMAN: Mine says page 164.
3 MS. ROSENFELD: Okay. I think I gave away all of
4 my copies.
5 MR. ADELMAN: 181.
6 MS. ADELMAN: 181.
7 MR. ADELMAN: 181.
8 BY MS. ROSENFELD:
9 Q Is the first page of the document that you have
10 page 180?
11 A 164.
12 Q Yes. Okay.
13 MR. GROSSMAN: And mine is page 164 also.
14 MR. GOECKE: Mine too.
15 MS. ROSENFELD: All right. Hang on. I think I
16 gave away all of my copies. I apologize, Mr. Grossman.
17 MR. GROSSMAN: No problem.
18 MS. ROSENFELD: I'm good. I apologize --
19 MR. GROSSMAN: Okay, good.
20 MS. ROSENFELD: -- I have too many papers here.
21 MR. GROSSMAN: Yes, we all have that problem.
22 BY MS. ROSENFELD:
23 Q Okay. We're back to Sterling. All right.
24 MR. GROSSMAN: Are you back to Sterling? I
25 thought we were at Wheaton.

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1 MS. ROSENFELD: Do you have a document that starts
2 page 164?
3 MR. GROSSMAN: I do. Is that Wheaton or Sterling?
4 MS. ROSENFELD: Yes, that is Sterling. 164 are
5 the readings at Sterling.
6 MR. GROSSMAN: Okay.
7 BY MS. ROSENFELD:
8 Q Mr. Sullivan, is your starting page 164?
9 A Yes.
10 Q Okay. And these are the readings from Sterling,
11 am I correct? Yes. Okay. If you look at page 165, you
12 have three locations where you took actual readings, is that
13 correct?
14 A That's correct.
15 Q What are the noise sources associated with the
16 Sterling gas station?
17 A Well, I mean, there's several. One, of course,
18 would be the cars entering and exiting the gas station.
19 There also were, fairly close to Location No. 1 shown on
20 Figure 2-20, there was noise associated with people entering
21 their cars, putting away the carts from shopping, as well
22 as, you know, some noise measured from the warehouse itself.
23 Q And is it located anywhere near the loading docks
24 at Sterling?
25 A Yeah, I don't, I don't recall where the loading

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1 dock is at Sterling. I don't remember.
2 Q And where did you consider to be the primary noise
3 source?
4 A Well, you can see by how we placed our monitoring
5 locations. We were trying to emphasize the gas station
6 marketing area, the gas sales area, and we put monitors on
7 either side of it. Location No., No. 3 is shown to the
8 northwest, and Location Nos. 1 and 2, to the southeast.
9 Q In your report you indicated Sterling Location No.
10 1 was 78 meters from, I'm assuming -- would that be 78
11 meters from the center of the queuing area?
12 A From the edge of the gas marketing area, is my
13 recollection.
14 Q And where is the edge of the gas marketing area on
15 this diagram?
16 A You can notice a white rectangle shown where the
17 gas sales takes place at Sterling. It would be
18 approximately from the edge of that area to the location of
19 Point No. 1.
20 Q If the top of the page were north, is it the area
21 at the very south of the canopy?
22 A That would be the closest area -- and all my
23 figures are, just to be clear, are oriented north; north is
24 up, to make that clear -- but it would be the closest point,
25 which would be in the southern, southeast corner perhaps of

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1 the, the area.
2 Q Okay. And then the Location No. 2 is 30 meters.
3 I calculated that to be approximately 98 feet. Would you
4 agree?
5 A Sounds right.
6 Q And then Location No. 3 is behind the queues, is
7 that correct?
8 A It's to the northwest of the queues.
9 Q Northwest, okay. Do you know the distance from
10 the sales area at Wheaton to the property line, the
11 residential property line between the mall parcel and the
12 homes?
13 A I have computed the number. It's -- off the top
14 of my head, I don't remember exactly. It's something less
15 than 300 feet.
16 Q Okay. Did you take any readings at Sterling that
17 would correlate to the closest residential line at Wheaton?
18 A Really couldn't, couldn't do that, considering the
19 orientation there. We had, we had tree covered to the
20 south, as you can see, and it was not -- I really couldn't
21 get an unobstructed view. Going further to the southeast,
22 we did not. We had two downwind locations shown as Points
23 No. 1 and 2.
24 Q Is there a way for you to extrapolate the noise
25 readings from any of these three monitors to the nearest

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1 property line on the Wheaton Mall parcel?
2 A Not directly because, as we discussed earlier, the
3 tree coverage is different between the two and there's a
4 break in the line of site in Wheaton that there's not in
5 Sterling. So you -- once we went past the monitoring
6 locations on 1 and 2 and further southeast, you really, that
7 wasn't directly applicable.
8 Q Are the findings --
9 MS. ROSENFELD: I apologize, Mr. Grossman.
10 I've --
11 MR. GROSSMAN: We all have the same paper
12 problems. So we are --
13 MS. ROSENFELD: I have --
14 MR. GROSSMAN: -- we're empathetic.
15 BY MS. ROSENFELD:
16 Q Are the results of your noise data analysis at
17 Sterling contained in Figure 2-21 on page 166 of your
18 report?
19 A This is showing a printout, I mean, is showing a
20 plot of the results we had, yes.
21 Q Correct. And can you describe what -- on the
22 left-hand side, where it says Location No. 1, what is the
23 average noise level at that location?
24 A You're referring to Point No. 1 for the further
25 away location?

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1 Q Okay. And --
2 A It's not directly specified here. Well, actually,
3 Point No. 1, which is -- Point No., Point No. 2 at 98 feet
4 is specified.
5 Q In looking at the graph that you show on page 166
6 under Location No. 1, is there a significant percentage of
7 noise that exceeds 65 dBA?
8 A Well, the average is certainly around 60 or less.
9 There are some, there are some spikes, which I indicated the
10 delivery truck -- I did indicate that on there -- that went
11 right past the noise meter, like were directly in front of
12 the noise meter.
13 Q Your times shown are on the 24-hour clock. My
14 understanding is that you took these readings from 1:19 to
15 2:50 on that afternoon, is that correct?
16 A It would be from --
17 Q At Location No. 1.
18 A -- 1:19 p.m. to approximately 3:20 p.m.
19 Q Okay. And then you moved the monitor over to
20 Location No. 2 at 3:20, is that correct?
21 A That's correct.
22 Q And what is the average decibel level?
23 A It's on the order of 68 decibels.
24 Q And so that is above 65 dBA, is that correct?
25 A Well, that is but that's very close to the gas

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1 station sources themselves and traffic within this Costco
2 parking lot. We're right in the Costco parking lot,
3 essentially.
4 Q But you don't know how that distance correlates to
5 the distance at the residential property line in Wheaton, do
6 you?
7 A Well, as I said, as I testified, you can't
8 directly extrapolate because the location in Wheaton has a
9 break in line of sight associated with terrain change and
10 different tree cover than you have here. All this data is
11 showing as an operational unit of Costco that does sell 30
12 percent more gasoline than Wheaton does, it's showing what
13 kind of levels is seen within the parking lot area itself
14 and that's really all. It gives you a point of reference,
15 but it's not --
16 Q Is there any limit, is there --
17 A -- applicable to residential areas.
18 Q Is there any limit on the volume of gas that could
19 potentially be sold at the Wheaton gas station?
20 A I can't answer that question.
21 Q Okay. You noted in your report on page 164 that
22 the noise readings at Location No. 2 had, quote, lower
23 variability and higher values. What does lower variability
24 mean?
25 A Ordinarily, if you look at the plot, it's obvious

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1 that there's more wiggle at Location No. 1 than the
2 variability we're seeing at Location No. 2. We didn't
3 really explain, you know, the basis for it, but there
4 clearly was a greater variability at Location No. 1.
5 Q So said another way, it got louder?
6 A No, I'm not saying that at all. I'm saying
7 there's more variability at that location, No. 1. I do
8 know, because I was there, that that was quite close to
9 where the carts, the cart corals they have, and people put
10 their carts in there and the cart would go in, and you could
11 hear it; it was quite close to the monitor. There was also
12 activity at the portion of the warehouse that's in the
13 southern portion of the warehouse, fairly close to Location
14 No. 1, and we were in pretty close proximity to that
15 location. We heard some of that noise.
16 Q So lower variability means it's more of a
17 continuous noise; is that what that means?
18 A That would be correct.
19 Q Okay. And when you say higher values, that
20 translates to louder?
21 A It was louder at, well, close to Location No. 2
22 than it was at Location No. 1.
23 Q On page 164 of your report, you say the noise got
24 louder in part because the noise monitor was moved closer to
25 the source and because of steadier rush-hour volume later in

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1 the day.
2 A Right.
3 Q That means --
4 A Seems, that's --
5 Q -- more cars, so it's noisier; is that, is that a
6 fair statement?
7 A Well, it's certainly fair to say if there's more
8 cars, you'd expect it to be noisier.
9 Q What's the busiest day for gasoline sales at
10 Sterling?
11 A I don't, I don't recall seeing that, looking at
12 that particular number. I mean, I would, if I was going to
13 speculate, I would expect a Saturday.
14 Q And the second busiest day?
15 A I'm not going to speculate on that.
16 Q Okay. But do you have any idea what the two
17 busiest days for gasoline sales are projected to be at
18 Wheaton?
19 A I rather not speculate. That's --
20 Q Okay.
21 A -- something else somebody else can testify to.
22 Q Would it surprise you if I told you that testimony
23 earlier said that sales were highest on a Saturday to
24 Sunday?
25 A That wouldn't surprise me.

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1 Q Okay.
2 MS. ROSENFELD: Mr. Grossman, I'll ask you to take
3 judicial notice of the fact that August 22nd was a Monday,
4 August 22nd, 2011, was a Monday.
5 MR. GROSSMAN: Well, I can't take judicial notice,
6 but I can take official notice --
7 MS. ROSENFELD: You can take official notice?
8 MR. GROSSMAN: -- if that's true. I haven't -- I
9 don't have a calendar in front of me, but I guess your
10 opponents will check that out if it's --
11 MS. ROSENFELD: I'm sure they will.
12 BY MS. ROSENFELD:
13 Q And you also took readings on August 24th, 2011,
14 is that correct?
15 A I'm just taking some notes here. One second,
16 please. I'm sorry. I didn't hear you.
17 Q You also took readings on August 24th, 2011, is
18 that correct?
19 A August 24th? We did.
20 MS. ROSENFELD: And that, I will ask that you take
21 official notice, was a Wednesday.
22 BY MS. ROSENFELD:
23 Q So the noise --
24 MR. GROSSMAN: I'm sorry. And what day was that?
25 MS. ROSENFELD: August 24th, 2011.

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1 MR. GROSSMAN: August 24th? Okay.
2 BY MS. ROSENFELD:
3 Q So the noise readings that you took at Sterling
4 really don't necessarily reflect the volume of traffic in
5 the queues that would be projected at the Wheaton station on
6 an average Saturday or Sunday, does it?
7 MR. GOECKE: Objection. He already testified he
8 doesn't know what the average queues are going to be on a
9 given day.
10 MR. GROSSMAN: But I think he can answer, that
11 would not necessarily reflect. Then he can answer.
12 THE WITNESS: Well --
13 MR. GROSSMAN: He can qualify it if he wants to.
14 I'll overrule the objection.
15 MS. ROSENFELD: I'll ask a different question.
16 BY MS. ROSENFELD:
17 Q Did you --
18 MR. GROSSMAN: Well, let him --
19 MS. ROSENFELD: Oh, sorry.
20 MR. GROSSMAN: I overruled the objection. So let
21 him answer.
22 THE WITNESS: We did look at the gasoline sales on
23 each day we were at Sterling, and my recollection is they
24 were typical. They were representative of typical gas
25 sales.

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1 BY MS. ROSENFELD:
2 Q For a Monday?
3 A I'm saying typical, not for any particular day of
4 the week. They were typical sales. They were not, they
5 were not upper bound. They were not low. They were
6 typical.
7 Q Do you have that data in your report?
8 A I'd have to check. We certainly have the data in
9 our files.
10 Q Would you provide that to me, please?
11 A Sure.
12 Q Did you count the number of vehicles that entered
13 and left the Sterling station --
14 A We did not.
15 Q -- on either Monday or Wednesday?
16 A We did not because we had gas sales data.
17 MR. GROSSMAN: But I'm not sure I understand,
18 Ms. Rosenfeld. What's -- he testified earlier that this is
19 just for some comparison purpose but his projections are
20 based, for Wheaton, are based on background, actual noise
21 measurements made at Wheaton combined with the modeling at
22 Wheaton. So why should we give exercise, one way or
23 another, about what happened at Sterling?
24 MS. ROSENFELD: Because to the extent that he has
25 provided this data as corroborating --

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1 MR. GROSSMAN: I don't know that he's -- he hasn't
2 said that it's corroborating. He said it's just for
3 comparison purposes. I'm not sure what the -- I'm not sure
4 what I can conclude from Sterling. He said that it's
5 different where they measured it: in the parking lot rather
6 than in the residential areas. I'm not sure what I can
7 really conclude from the data from Sterling in this case. I
8 think there's other things that, from Sterling, that may
9 have some impact. I don't know about the noise.
10 MS. ROSENFELD: Well, I agree with you. I think
11 that the data that's in here really is not germane. It was
12 not included in his modeling. To the extent that it's in
13 here to suggest that the noise levels at Wheaton would be in
14 compliance with state and county law, I think it's
15 inappropriate and, frankly, not probative of that issue.
16 So --
17 MR. GROSSMAN: I wouldn't call it inappropriate.
18 I'm just not sure it's probative. I --
19 MS. ROSENFELD: Not probative of that issue.
20 MR. GROSSMAN: -- so I don't know what I can
21 conclude from it. I think I would be more inclined to rely
22 on the background measurements that he took at, in Wheaton,
23 plus the modeling from Wheaton, would seem to me to be,
24 given the different geographical setup and all those other
25 things, would seem to me to be a more reliable source. I

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1 don't know that anybody -- do you disagree with that,
2 Mr. Goecke?
3 MR. GOECKE: No. I think this would be a good
4 opportunity to stop talking about Sterling, actually.
5 MR. GROSSMAN: Well, that wasn't exactly what I
6 asked you, but do you agree with what I have suggested?
7 MR. GOECKE: I agree with what you said, yes.
8 MR. GROSSMAN: Okay. All right.
9 MS. ROSENFELD: And I have one final set of
10 questions, and they do go to the Kensington readings. I
11 have another handout that starts on page 180.
12 MR. GROSSMAN: Okay.
13 MS. ROSENFELD: And I think I might have handed
14 this out to some people already. Yes or no?
15 THE WITNESS: Thank you.
16 MR. GROSSMAN: Thanks.
17 BY MS. ROSENFELD:
18 Q Mr. Sullivan, when you conduct noise readings, did
19 you conduct these under the standards that are imposed by
20 the noise model?
21 A The noise model doesn't impose standards.
22 Q What protocol did you use?
23 A The noise model doesn't include standards. We
24 used A-weighting non-impact noise monitoring, is what we,
25 what we did.

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1 Q Okay. What effect does wind have on noise
2 readings?
3 A Well, a strong wind can certainly increase the
4 noise levels.
5 Q Increase?
6 A It can.
7 Q Okay. And what effect does precipitation have on
8 noise readings?
9 A Well, of course, rain does make noise, and we were
10 trying to work around, as you can see here, on these days
11 because there was some intermittent rain.
12 Q And you took these noise readings on September 6th
13 of 2011, is that correct?
14 A Correct.
15 Q And what day of the week was that?
16 A I don't remember.
17 Q I'll proffer that it was a Tuesday. I will also
18 proffer that it was on the day after Labor Day. And are you
19 aware of the fact that in doing transportation analysis, at
20 least, the transportation guidelines do not allow traffic
21 readings the day after a federal holiday, the presumption, I
22 think, being that traffic volumes are unreliable on that
23 day?
24 A Well, those requirements don't apply, of course,
25 in this case. I do not know if the traffic counts are

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1 unreliable the day after Labor Day.
2 Q Okay.
3 MS. ROSENFELD: Mr. Grossman, I would like to
4 submit into the record a copy of page 21 of the Local Area
5 Transportation Review and Policy Area Mobility Review
6 guidelines.
7 MR. GROSSMAN: Okay. Thank you.
8 MS. ROSENFELD: And I do recognize that this is
9 not a traffic study per se, but given the fact that this
10 noise model is --
11 MR. GROSSMAN: All right. We'll make this Exhibit
12 197.
13 MS. ROSENFELD: -- intended, at least in part, to
14 measure background vehicular noise, I know that traffic
15 counts should not be taken on federal and/or state and/or
16 county holidays, on the day before or after federal
17 holidays.
18 MR. GROSSMAN: All right. So LATR and PAMR
19 guidelines, page 21, Exhibit 197.
20 (Exhibit No. 197 was marked
21 for identification.)
22 THE WITNESS: Where's that quote, Ms. Rosenfeld?
23 BY MS. ROSENFELD:
24 Q Excuse me?
25 A Where's the quote on page 21?

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1 Q It is the, under No. 3 --
2 A Okay, thank you.
3 Q -- it's in the second full paragraph of No. 3.
4 A Okay.
5 Q And in your --
6 MR. GOECKE: And this is for, I'm sorry, this is
7 for traffic counts or for noise studies?
8 MS. ROSENFELD: For traffic counts.
9 BY MS. ROSENFELD:
10 Q Mr. Sullivan, you did rely on Mr. Guckert's
11 traffic counts, did you not, in developing some of your
12 noise analysis, is that correct?
13 A That's correct.
14 Q Okay. If I look at page 180, it appears that you
15 conducted noise readings at three separate locations, is
16 that correct?
17 A You're referring now -- you're still referring to
18 Wheaton?
19 Q I'm now referring to Kensington, that's correct --
20 A Kensington, sorry.
21 Q -- the Kensington background noise study.
22 A That's correct.
23 Q And if I go to page 181, there's three monitors, I
24 believe -- No. 1, No. 2, and No. 3 -- is that correct? Are
25 those the locations where you took your noise readings?

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1 A That's correct.
2 Q And if I go to page 182, there is a chart that
3 shows the results of your readings, is that correct?
4 A That is correct.
5 Q Now, on page 180, the second full paragraph under
6 2.3.4, you say: Figures 2-31 and 2-32 show the three
7 locations where the noise meter was recorded from 3:46 to
8 5:58 p.m. on September 16, 2011. Did you record noise for
9 that full duration of time?
10 A We did not.
11 Q And if you go to page 182, does it show the
12 duration of time that was actually recorded?
13 A You're referring to -- I see text boxes that show
14 that. Are you referring to the information you've added?
15 Q Within the black confines of the text box, there
16 are times noted, again, on a 24-hour clock --
17 A Right.
18 Q -- is that correct?
19 A Well, we are showing, we are showing that, yes.
20 We're showing from 15:46 through 17:11, we're showing
21 readings during that period of time.
22 Q Is that really through 17:11, or is it 15:46
23 through 16:02?
24 A I'd have to see the raw data to double-check that,
25 but of course, the labeling here does say 3:46 p.m., which

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1 would be 15:46, through 17:11 p.m.
2 Q And does that 17:11 start under Location 2, or is
3 that a continuation of Location 1?
4 A Oh, I see. I'm sorry. Thank you for the
5 clarification. No, Location No. 1 would be 3:46 through
6 4:02.
7 MS. ROSENFELD: And for the record, Mr. Grossman,
8 the times listed in the red text boxes on the bottom of page
9 182, I did add that --
10 MR. GROSSMAN: Okay.
11 MS. ROSENFELD: -- because I have a hard time
12 reading the 24-hour clock.
13 BY MS. ROSENFELD:
14 Q And so at Location No. 1 what was the total amount
15 of time that you recorded noise?
16 A Well, 17 minutes, and the reason, I described
17 earlier, is we were working around rain events and did not
18 want to bias it with rain events, and so I did limit our
19 opportunities that particular day.
20 Q And at Location No. 2 how long did you take noise
21 readings?
22 A Ten minutes.
23 Q And at Location No. 3?
24 MR. GOECKE: I'm sorry to interrupt, but can you
25 give us a copy of what you're talking about?

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1 MS. ROSENFELD: Oh, I'm sorry. I thought I --
2 MR. GOECKE: It's all right.
3 MS. ROSENFELD: -- had given you one.
4 MR. GOECKE: Thank you.
5 BY MS. ROSENFELD:
6 Q And at Location No. 3?
7 A Ten minutes.
8 Q Okay. And so what was the total amount of time on
9 Tuesday, September 6th, that you recorded noise readings in
10 the Kensington neighborhood?
11 A Would be 37 minutes.
12 Q And based on that 37-minute reading, you then
13 extrapolated the total background noise within the
14 Kensington neighborhood, is that correct?
15 A Well, we, by looking at the data, with the three
16 different data points, we concluded that it was, they were
17 representative of typical conditions. Yes, I agree, it'd be
18 ideally great to have more data than that, but the day we
19 were there we did have limited opportunity because of
20 precipitation events which were intermittent.
21 Q And that was the only day, September 6th of 2011,
22 you could conduct a noise study in the neighborhood?
23 A No. I mean, this is the date that we did conduct
24 the noise study, and as I mentioned, there were breaks due
25 to precipitation events.

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1 Q And in your -- I'm going back just for a moment to
2 your modeling, your traffic noise model -- you did not
3 include any idling of trucks on the ring road in that
4 analysis, did you?
5 MR. GROSSMAN: When you say idling of trucks on
6 the ring road, you mean the trucks from the Costco
7 warehouse?
8 MS. ROSENFELD: From the warehouse or any other,
9 any other idling trucks.
10 MS. CORDRY: Any trucks.
11 THE WITNESS: That are parked, idling on --
12 MS. ROSENFELD: I proffer that we'll have
13 testimony on this point. I just want to clarify whether or
14 not it was included in his modeling.
15 THE WITNESS: I did not assume that any trucks
16 were idling on the ring road.
17 BY MS. ROSENFELD:
18 Q Did you assume any trucks would be idling in the
19 parking lot?
20 A No. As I showed -- we went through the data
21 earlier -- I showed that the vehicles that we assumed in the
22 parking lots, as well as the ring road, we did not assume
23 idling trucks.
24 MS. ROSENFELD: I think I have one more, if you'll
25 indulge me.

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1 MR. GROSSMAN: Sure.
2 BY MS. ROSENFELD:
3 Q Do you recall if you used 13.9 as the number of
4 gallons sold at the Sterling gas station?
5 MR. GROSSMAN: Thirteen point nine million?
6 MS. ROSENFELD: Million gallons.
7 THE WITNESS: I believe that's correct. I don't
8 know for sure.
9 BY MS. ROSENFELD:
10 Q And 12 million gallons for Wheaton?
11 A That's correct.
12 Q What is the percentage differential between 12 and
13 13.9?
14 A I could calculate it.
15 Q Would you, please?
16 MR. GROSSMAN: Thirteen percent, I'm guessing.
17 THE WITNESS: Sixteen percent.
18 BY MS. ROSENFELD:
19 Q Not 30?
20 A Sixteen percent is not 30.
21 Q Okay. So your assumption that there's 30 percent
22 more gas that would be pumped at --
23 A Well, that was stated --
24 Q -- Sterling is an overstatement, is that correct?
25 A Well, that was not -- that is an overstatement,

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1 but it was not, was not used in calculations. It was
2 showing the preliminary parts of the report based upon
3 information I had received, but it was not used in
4 calculations at all.
5 MS. ROSENFELD: Thank you, Mr. Grossman. I have
6 no further questions.
7 MR. GROSSMAN: All right. So I take it from
8 hearing your cross-examination that your, your point is, as
9 far as noise, that the noise measurements made of background
10 are not fully indicative of the actual situation now since
11 they didn't measure the situation following the
12 establishment of the Costco warehouse operation in the
13 neighborhood or the impacts of that on the neighborhood and
14 that the measuring period done was selected on a day when
15 traffic would logically be lower the day after a holiday and
16 that the number of data points was too low to be reliable;
17 is that a fair summary of your, your point?
18 MS. ROSENFELD: That's a fair summary. I think
19 that the background data in the Kensington neighborhood is
20 just not statistically sustainable. It's too short a period
21 of time, too few dates, too few points, and a date that
22 can't be reliably assumed to be representative of peak-hour
23 traffic and that the numbers contained in the traffic noise
24 model itself for the background on the mall is
25 underrepresented, both in terms of pure numbers, both

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1 frankly before as well as after the warehouse was built, and
2 that the numbers simply do not reflect an accurate
3 simulation of noise levels.
4 MR. GROSSMAN: Okay. I understand. Okay.
5 MS. ROSENFELD: One -- and most significantly, we
6 have absolutely no data that shows what the noise levels are
7 at the property line. Oh, no further question just on
8 noise.
9 MR. GROSSMAN: You said no data showing what the
10 levels are at the property line. The noise measurement
11 locations in the neighborhood at Wheaton were made --
12 MS. CORDRY: On page 181.
13 MR. GROSSMAN: I'm looking at it now. So they
14 were -- well, I guess your point there is that they're
15 beyond the property line; they're not at the property line,
16 right.
17 MS. ROSENFELD: Which page are you looking at,
18 Mr. Grossman?
19 MR. GROSSMAN: I was looking at page 181, Figure
20 2-31.
21 MS. ROSENFELD: The noise at page 181 is simply
22 the background noise.
23 MS. CORDRY: Right, but that's the point, it
24 was --
25 MR. GROSSMAN: Right. I think that was the point

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1 that --
2 MS. ROSENFELD: Right.
3 MR. GROSSMAN: -- Ms. Cordry was making --
4 MS. ROSENFELD: Yes.
5 MR. GROSSMAN: -- that the measurements were not
6 made at the property line, which I think may be actually
7 included as the location for measurements in the, in the
8 noise --
9 MS. ROSENFELD: I don't think you have any, any
10 data that shows what the background noise is at the property
11 line, either background or modeled, either one.
12 MR. GROSSMAN: Hold on one second, folks, if you
13 would. All right. So I guess it's a good time to break for
14 lunch, and --
15 MR. SILVERMAN: Can I raise one thing?
16 MR. GROSSMAN: Pardon me, sir?
17 MR. SILVERMAN: One question --
18 MR. GROSSMAN: Yes, sir.
19 MR. SILVERMAN: -- for procedural. In general,
20 how many bites at the apple does a party get? I mean, if
21 for some reason they decide, well, maybe we weren't strong
22 on this point, can they just keep coming back and bolstering
23 what they do? Is there an end to it?
24 MR. GROSSMAN: Well, this case is somewhat unusual
25 in that it goes on for an extended period of time, and so

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1 ordinarily the hearing day would be the hearing day. Here
2 there's an opportunity, in fairness, for people to come back
3 and still cross-examine at a later date since this case is
4 going to go on apparently into October. So I'd say it'd be
5 less of a reason to cut them off if they were to do
6 additional measurements now because there would be an
7 opportunity for you to rebut it and to cross-examine on it.
8 So --
9 MR. SILVERMAN: Well, there is a resource issue --
10 MS. CORDRY: Yes.
11 MR. SILVERMAN: -- which we feel more keenly than
12 the other side, but --
13 MR. GROSSMAN: I understand.
14 MS. CORDRY: Yes. Is there a point at which --
15 MR. GROSSMAN: There's a point at which --
16 MS. CORDRY: -- we have to prepare over and over
17 and over again for each witness, and Your Honor, this, it is
18 getting beyond the point of difficulty, into almost sheer
19 impossibility to be able to -- I mean, we're already going
20 to need to obviously come back when he revises his report
21 yet again, to fix all the issues that --
22 MR. GROSSMAN: We don't know what, if anything, is
23 going to be done. That's --
24 MS. CORDRY: Well, there's all the corrections to
25 that sheet.

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1 MR. GROSSMAN: Okay, yes. No, that, that's
2 something else, but many of the changes that have been a
3 concern to you have been changes that have been brought
4 about as a result of an -- to improve the potential
5 situation. So I'm not going to --
6 MS. CORDRY: But --
7 MR. GROSSMAN: -- I'm not going to take that as a,
8 as a valid complaint --
9 MS. CORDRY: Well, an applicant --
10 MR. GROSSMAN: -- changes to make, but this is a
11 different kind of change.
12 MS. CORDRY: But we would point out, these issues
13 were raised with Park and Planning staff and presumably
14 raised with the applicant back in January. The fact that we
15 are now in the middle of July and having to correct their
16 application for flaws that should be apparent on their face
17 from day one is, it's really a question of -- it's not a
18 question of our improving these things. It's a question
19 of --
20 MR. GROSSMAN: No. I'm talking about -- when I
21 say improving, I was thinking about the pedestrian path
22 issues.
23 MS. CORDRY: Well, we haven't yet, we haven't
24 improved. We're still not back to where we were in January.
25 The path that's being proposed is still not what was

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1 proposed in January. So we aren't improving. We're still
2 mitigating to the extent to which we have lost ground since
3 January.
4 MR. GROSSMAN: All right.
5 MR. SILVERMAN: Just on the resource issue, I
6 mean, keep in mind, it's been years. We have really not
7 been very secretive about our objections.
8 MR. GROSSMAN: No, you haven't been quiet about
9 your objections.
10 MR. SILVERMAN: No, and we haven't been quiet
11 before this began. So --
12 MR. GROSSMAN: Right.
13 MR. SILVERMAN: -- I mean, at some point -- it's
14 very difficult for a group of citizens to, you know, muster
15 the resources to get the quality of cross-examination as you
16 just heard. It's really hard in resource terms. At what
17 point do you just say, cut, you've had your shot, now I'll
18 just decide the case on the basis of burden of proof and the
19 law?
20 MR. GROSSMAN: Well, I understand your point, and
21 I'm not going to say yet, until I hear that there have been
22 some changes proffered, whether or not I would say no, you
23 can't change it anymore; so -- but I hear you. I understand
24 the difficulty. Any response to all of that, Mr. Goecke?
25 MR. GOECKE: Not at this time, no.

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1 MR. GROSSMAN: Okay. All right. So let's break
2 for lunch here. What time shall we come back? Let's say --
3 it's 1 o'clock. 1:45?
4 MS. ADELMAN: Sure, that's fine.
5 MR. GROSSMAN: All right. Adjourned until 1:45.
6 (Whereupon, at 1:00 p.m., a luncheon recess was
7 taken.)
8 MR. GROSSMAN: All right. We're back on the
9 record. Let me mention that Ms. Rosenfeld stopped by my
10 office, said she was not feeling well, and so I asked her to
11 check with Applicant's counsel and see if we could work
12 something out so we could proceed in her absence; if not,
13 you know, we would have to adjourn. So what, what has
14 transpired?
15 MR. SHEVEIKO: Well, we talked it over --
16 MS. CORDRY: Yes. State who you are on the
17 record.
18 MR. SHEVEIKO: Yeah, Danila Sheveiko, president,
19 Kensington Heights Civic Association. We talked it over,
20 and with Michele out of commission for the rest of the day,
21 we think it would be best to adjourn, and if she is not
22 feeling better by Thursday, we will have Karen Cordry
23 continue the cross-examination, and we feel like adjournment
24 is the best way to proceed right now.
25 MR. GROSSMAN: All right. Ms. Harris.

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1 MS. HARRIS: That's different than my
2 understanding based on my direct conversation with
3 Ms. Rosenfeld who indicated that this afternoon either
4 Ms. Cordry could continue with cross-examination and/or we
5 could put on a new witness, and she didn't feel like it was
6 necessary for her to be there. We can't do the latter, but
7 we had agreed -- and I told Michele this -- for Ms. Cordry
8 to conduct the, continue the cross-examination of
9 Mr. Sullivan.
10 MR. SHEVEIKO: Well, this is not --
11 MS. ADELMAN: Well --
12 MR. GROSSMAN: Mr. Sheveiko.
13 MS. ADELMAN: -- this is not what we understood --
14 MR. GROSSMAN: Ms. Adelman.
15 MS. ADELMAN: -- and in deference to Ms. Harris,
16 we did not know that Michele had spoken to Ms. Harris, but
17 the opposition parties feel that it would be prejudicial to
18 our counsel if she were not here to conduct the remains of
19 the cross and --
20 MR. CHASE: Can't Mr. Silverman or Karen step in?
21 MS. CORDRY: Well, let me clarify.
22 MR. GROSSMAN: Well, hold on one second.
23 Dr. Chase --
24 MR. CHASE: I'm sorry.
25 MS. CORDRY: Let me clarify. Michele came to me

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1 and indicated she was feeling very badly and needed to leave
2 and go to the hospital.
3 MR. GROSSMAN: Right.
4 MS. CORDRY: We were trying to figure out if there
5 was something there. I said I could try and step in. After
6 that I talked some more to everyone here, and the Coalition
7 and, I believe, Ms. Duckett --
8 MS. DUCKETT: Eleanor Duckett.
9 MS. CORDRY: -- would also state that on their
10 discussion -- this had no reflection on you -- but we really
11 feel (a) our counsel is prejudiced by not being here during
12 the cross-examination, (b) we feel prejudiced, (c) we don't
13 think there's anybody here who can assist you in the way
14 that you assist Michele. They do not feel that it would be
15 appropriate to go forward at this point.
16 We have discussed, I will step in and, you know,
17 take over on Thursday if need be, if she is not able to
18 resume, so we were not taking any more time than that. But
19 this is obviously the heart of our case, and we're getting
20 to the heart of the questioning here, and I think, although
21 I've certainly talked with Michele and we've worked on these
22 things, I was not prepared to do, you know, first chair here
23 or to do this level of questioning and so forth --
24 MR. GROSSMAN: Right.
25 MS. CORDRY: -- and again, I would say, if we were

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1 going to wrap up, it would be one thing, but we're clearly
2 not at that position at this point.
3 MS. HARRIS: Mr. Grossman, may --
4 MR. GROSSMAN: Ms. Harris.
5 MS. HARRIS: -- may I suggest one thing and then
6 make a comment?
7 MR. GROSSMAN: Sure.
8 MS. HARRIS: Mr. Silverman earlier had indicated
9 that he had further questions of Mr. Sullivan. So in, so
10 perhaps we -- and I understand what you're saying --
11 MS. CORDRY: Right, yes.
12 MS. HARRIS: -- and I think we accept that, but
13 certainly I think we could go forward with Mr. Silverman's
14 cross and then maybe stop for the day. I would also note,
15 though, that this delay has repercussions just in terms of
16 what Mr., Dr. Chase was telling me. As things get pushed
17 back, he's not available at the end of the month, but we'll
18 deal with things, you know, day by day, as we have been.
19 MR. GROSSMAN: Right. I mean, I don't think that
20 we can proceed against the wishes of the Kensington Heights
21 Civic Association. It's not really the -- it's not really
22 the Coalition or other opposition, but Kensington Heights
23 Civic Association has the right to say, at this point, that
24 they would object to proceeding without their attorney --
25 MR. GOECKE: Right.

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1 MR. GROSSMAN: -- and I'd have to recognize that.
2 MR. GOECKE: We agree.
3 MR. GROSSMAN: So, Mr. Sheveiko, what do you feel
4 about having Mr. Silverman proceed with his
5 cross-examination now in Ms. Rosenfeld's absence, or do you
6 feel that you'd have to adjourn now?
7 MR. SHEVEIKO: Well, Mr. Silverman, that would be
8 a Coalition question.
9 MR. GROSSMAN: No, I know that would be. That
10 would be -- what I'm saying is, a statement was made that it
11 would be prejudicial to Ms. Rosenfeld if she didn't hear
12 what was going on. I'm just saying, if -- is there any
13 objection to just allowing Mr. Silverman to complete his
14 questions on behalf of the Kensington Heights Civic -- let
15 me rephrase that. Is there any objection by Kensington
16 Heights Civic Association to Mr. Silverman completing his
17 questions and --
18 MR. SILVERMAN: Could we caucus on that?
19 MS. CORDRY: Could we take two minutes and just
20 caucus and be right back in?
21 MR. SHEVEIKO: Yeah, could we get 30 seconds on
22 this?
23 MR. GROSSMAN: Sure.
24 MS. CORDRY: Thank you.
25 (Discussion off the record.)

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1 MR. GROSSMAN: All right. All right.
2 Mr. Sheveiko.
3 MR. SHEVEIKO: We, we would like an adjournment.
4 I think it would be best in the interest of all parties and
5 to avoid any confusion with rotating the cross-examinations,
6 and it's really just three hours, and this, this, these
7 hearings are going to go on for a long time, and we think
8 it's best to just adjourn today.
9 MR. GROSSMAN: Okay. Well, I don't know what you
10 mean by rotating them. We were just talking about
11 Mr. Silverman doing his.
12 MR. SHEVEIKO: Right, but he was, he was, you
13 know, following Michele, and so -- with a different line of
14 questioning -- so for various tactical reasons, we've
15 decided that adjournment would be best.
16 MR. GROSSMAN: Ms. Adelman, did you want to be
17 heard?
18 MS. ADELMAN: Well, yes. The Coalition supports
19 that, but Mr. Silverman could state --
20 MR. SILVERMAN: I was actually hoping to ask
21 questions because I was expecting to --
22 MR. GROSSMAN: Oh, no, we know better than that,
23 Mr. Silverman. Come on now.
24 MR. SILVERMAN: I was expecting Michele to cover a
25 lot of it. Also, some of the new material here is -- and it

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1 is new material, and it was adjusted in the course of our
2 discussion. I'm not sure it would --
3 MR. GROSSMAN: Okay.
4 MR. SILVERMAN: -- clarify things. There are just
5 a few issues that I would like to take up, but I think, I
6 think, I'd rather -- I feel like we have an all-star team.
7 I don't want to be playing without all of our members, if we
8 can help it.
9 MR. GROSSMAN: Okay. Okay. I think you have an
10 all-star team too --
11 MR. SILVERMAN: Yes.
12 MR. GROSSMAN: -- but in any event, it's really
13 Kensington Heights Civic Association's call --
14 MR. SILVERMAN: Yes.
15 MR. GROSSMAN: -- on this because they're the only
16 ones really to have the authority to raise the objection --
17 MR. SILVERMAN: Right. I will do --
18 MR. GROSSMAN: -- without their counsel, but --
19 MR. SILVERMAN: -- what I'm instructed, yes.
20 MR. GROSSMAN: Okay. I will sustain your
21 objection, if that's what you call it. We really can't
22 proceed without Ms. Rosenfeld, and so -- at this point. And
23 we'll come back on, on Thursday, same, same place, July 11,
24 and also at 9:30. And could I ask that, at least a day in
25 advance of that, if not by tomorrow, that you have the

1 revised --
 2 MR. GOECKE: 189 --
 3 MR. GROSSMAN: -- Exhibit 189(b) --
 4 MR. GOECKE: -- (b)(2).
 5 MR. GROSSMAN: -- double i, yes --
 6 MR. GOECKE: Yes.
 7 MR. GROSSMAN: -- so that everybody can proceed
 8 with that. Yes, sir.
 9 MR. COLE: A point of special privilege --
 10 MS. ADELMAN: Dr. Cole. Dr. Cole.
 11 MR. COLE: Henry Cole.
 12 MR. GROSSMAN: Dr. Cole, yes, identify --
 13 MR. COLE: I need a disk that has an appendix on
 14 it from the November 12th report. There were two
 15 appendices, and one was online, which I have; the other one
 16 I realized that I don't have and would very much like to
 17 receive it.
 18 THE WITNESS: What is the appendix number?
 19 MR. COLE: I think it's AD. It's the second one
 20 that's very large and it's on a disk.
 21 MR. GROSSMAN: For the November 12th report?
 22 MR. COLE: Yeah.
 23 THE WITNESS: Okay.
 24 MR. COLE: Thank you.
 25 THE WITNESS: Uh-huh.

1 MR. GROSSMAN: All right. And when do you need
 2 that by, Dr. Cole?
 3 MS. ADELMAN: A month ago.
 4 MR. GROSSMAN: Yesterday, is that, or you would
 5 ask me tomorrow if it -- all right. So, yes, if you can
 6 supply that --
 7 THE WITNESS: I will.
 8 MR. GROSSMAN: -- Mr. Sullivan. All right. Is
 9 there anything else that we need to take up? Don't forget,
 10 also, during our interregnum here, if you guys can all get
 11 together and discuss dates so that we can --
 12 MS. CORDRY: We can do that before we leave, I
 13 think.
 14 MR. GROSSMAN: -- agree on a whole new set of
 15 dates. I think we probably ought to set up six dates just
 16 in case; however, I'm perfectly happy to have it finished in
 17 one more day if you can all do it. All right. Anything
 18 else?
 19 MR. GOECKE: No.
 20 MR. GROSSMAN: All right. Then we are adjourned
 21 until Thursday at 9:30.
 22 (Whereupon, at 2:04 p.m., the hearing was
 23 adjourned.)
 24
 25

C E R T I F I C A T E

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

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

By:

Wendy Campos, Transcriber

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