

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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

A hearing in the above-entitled matter was held on

September 23, 2013, commencing at 9:38 a.m. in the Rita

Davidson Memorial Hearing Room, 100 Maryland Avenue,

Rockville, Maryland.

Martin L. Grossman

Hearing Examiner

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A P P E A R A N C E S

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C O N T E N T S

Witnesses:

DirectCrossRedirectRecross

Karen Cordry

9/207

Diane Cameron

179

By Ms. Harris

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By Ms. Cordry

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By Ms. Adelman

201

By Ms. Harris

201

E X H I B I T S

Exhibit No.

Marked/Received

290

7/20/12 memorandum from Jeff Ziance, legislative attorney to County Council re proposed ZTA 12-07

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P R O C E E D I N G S

1MR. GROSSMAN: Okay. This is the 15th day of the

2public hearing in the matter of Costco Wholesale

3Corporation, Board of Appeals No. S-2863, OZAH No. 13-12, a

4petition for special exception pursuant to Zoning Ordinance

5Section 59-G-2.06. to allow petitioners to construct and

6operate an automobile filling station which would include 16

7pumps. The subject site is located at 11160 Veirs Mill

8Road, Silver Spring, Maryland, Lot N, 631 Wheaton Plaza,

9Parcel 10, also known as the Westfield Wheaton Mall, and is

10zoned C-2, which is general commercial.

11The hearing was begun on April 26, 2013, resumed

12on May 1, May 6, May 23, June 4, June 17, June 19, July 8,

13July 30, July 31, August 2, September 9, September 16,

14September 20, and now it's September 23. It is noticed to

15resume again today. The next session has been noticed for

16Thursday, October 17, here in the second floor OZAH Board of

17Appeals hearing room in the Council office building at 9:30

18a.m.

19This hearing is conducted on behalf of the Board

20of Appeals. My name is Martin Grossman. I'm the Hearing

21Examiner, which means I will take evidence here and write a

22report and recommendations to the Board of Appeals which

23will make the decision in the case. Will the parties

24identify themselves for the record, please?

25

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1MR. BRANN: Erich Brann for Costco. Good morning.

2MS. HARRIS: Good morning. Pat Harris.

3MR. GOECKE: Mike Goecke for Costco.

4MS. DUCKETT: Eleanor Duckett, Kensington View

5Civic Association.

6MS. ADELMAN: Abigail Adelman, Stop Costco Gas

7Coalition.

8MS. SHEARD: Virginia Sheard, Kensington View.

9MR. GROSSMAN: All right.

10MS. CORDRY: And I would note I am here on behalf

11of Kensington Heights Civic Association. Our attorney,

12Michele Rosenfeld, had some issues come up that she wanted

13to deal with today and we decided I could hold my own

14probably, so she will not be here today.

15MR. GROSSMAN: I have no doubt about that, Ms.

16Cordry. Name yourself for the record.

17MS. CORDRY: Karen Cordry.

18MR. GROSSMAN: Okay.

19MS. CORDRY: And I would just hopefully reserve

20the right to perhaps raise a question or two, my own

21objection if something comes up.

22MR. GROSSMAN: Absolutely you have that right.

23MS. CORDRY: Thank you.

24MR. GROSSMAN: Okay. Let's see if I have any -- I

25don't really have much in the way of preliminary matters

<p style="text-align: right;">Page 6</p> <p>1 since we met last Friday. I didn't notice any particularly 2 significant e-mail exchanges or filings other than the fact 3 that Mr. Mulreavy is not going to be here today as I 4 understand it, so our two witnesses will be Ms. Cordry and 5 Ms. Cameron. 6 MS. CORDRY: That's correct. 7 MR. GROSSMAN: All right. Do we know what time 8 Ms. Cameron is scheduled to arrive? 9 MS. ADELMAN: Well, I'm going to, I plan to call 10 her at noon -- 11 MR. GROSSMAN: Okay. 12 MS. ADELMAN: -- and let her know what we think, 13 what would happen. 14 MR. GROSSMAN: All right. 15 MS. ADELMAN: And so she'll be available in the 16 afternoon. 17 MR. GROSSMAN: All right. And we will be 18 terminating today at around 4:45. Okay. Any other 19 preliminary matters, Ms. Harris? 20 MS. HARRIS: Yes, Mr. Grossman. I, based on the 21 witness list that the opponents have provided, I believe 22 there were at least 23 witnesses and as you know we have 23 four hearing days scheduled and I don't like to bring this 24 up, but in fact it looks like we are going to need more 25 hearing dates, I prefer to get them scheduled now as opposed</p>	<p style="text-align: right;">Page 8</p> <p>1 be -- that would not be so much as the matter of, you know, 2 ruling out farther down the list. There might be some 3 rearranging at that point since we've told them quite a few 4 times, so -- 5 MR. GROSSMAN: All right. 6 MS. CORDRY: -- I don't think anyone is holding 7 dates for us anymore. 8 MR. GROSSMAN: All right. All right. Anything 9 else, any other preliminary matters from the applicant? 10 Anything from his Duckett? 11 MS. HARRIS: No. 12 MR. GROSSMAN: Do you have any preliminary 13 matters? 14 MS. DUCKETT: No. Thank you. 15 MR. GROSSMAN: All right. 16 MR. BRANN: No, sir. 17 MS. CORDRY: No, sir. 18 MR. GROSSMAN: Okay. All right. Then I guess we 19 will turn directly to Ms. Cordry as the first witness for 20 the opposition. Ms. Cordry, would you state your full name 21 for the record as the witness? 22 MS. CORDRY: My name is Karen Cordry. 23 MR. GROSSMAN: And your address? 24 MS. CORDRY: 10705 Torrance Drive, Silver Spring, 25 Maryland 20902.</p>
<p style="text-align: right;">Page 7</p> <p>1 to scrambling at the end of October to do, so. 2 MR. GROSSMAN: I would agree. So I would think 3 that after today, since we have a significant hiatus, I 4 would ask the parties to communicate and figure out days 5 that are agreeable in November and if we need them, we'll 6 have them, and we can send out a notice. 7 MS. CORDRY: Yes. I would say we do plan, we've 8 certainly planned to have a regrouping meeting going over a 9 list, looking at times and so forth, so that's something we 10 have on our calendar. So, yes, we will be getting back with 11 you on that. 12 MR. GROSSMAN: All right. So let's say sometime 13 next week hopefully get together and figure something out 14 because we want to give, send out if we have to send it out, 15 30 days notice, so -- 16 MS. CORDRY: Okay. That would be, we'd be just 17 looking at dates. I mean it's possible between now and 18 October 17th we might rearrange the order to some degree or 19 something like that well in advance, but that would not 20 necessarily impact on how many days we would have, but -- 21 MS. HARRIS: Well, given that there are 23 people 22 on the list, we would request that at least two weeks prior 23 to October 17th we have a sense of the order, at least the 24 order for the first two or three days. 25 MS. CORDRY: Yes. Yes. Yes. I think that would</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. GROSSMAN: Would you raise your right hand 2 please? 3 (Witness sworn.) 4 MR. GROSSMAN: All right. You may proceed. 5 MS. CORDRY: My name is Karen Cordry. I am and I 6 have been the treasurer for the Kensington Heights Civic 7 Association throughout this period, actually for quite a few 8 years before that. I seem to be treasurer for life, 9 although that may be changing, thankfully. I have certainly 10 been treasurer throughout the whole time period when this 11 exception has been pending. 12 As such, I have been involved with the decision- 13 making process of KHCA throughout this period since we were 14 informed about the station being proposed in early 2010. 15 KHCA has voted on a number of occasions to oppose the 16 station and I've been heavily involved in working on that 17 opposition since that time. 18 In terms of my background, I graduated with a 19 bachelor's in science in biochemistry from Michigan State 20 University in December 1973, Phi Beta Kappa with high 21 honors. 22 MR. GROSSMAN: Well, let me stop you for a second. 23 MS. CORDRY: Sure. 24 MR. GROSSMAN: Are you offering yourself as an 25 expert witness?</p>

<p style="text-align: right;">Page 10</p> <p>1 MS. CORDRY: No, but I would like to just give my 2 overall background so that when I am testifying, you can 3 decide what weight you want to put on any of the things and 4 I expect I'll probably be asked these questions later on, so 5 I thought I would -- 6 MR. GROSSMAN: All right. 7 MS. CORDRY: -- put them on the record. 8 MR. GROSSMAN: So you have a bachelor of science 9 in biochemistry and what was it after that? 10 MS. CORDRY: And at that point I was just going to 11 say I had actually decided, though I had a science major, 12 that I was actually going to go to the other half of my 13 double major which was political science and pre-law. So I 14 began attending Antioch Law School here in the District for 15 two years beginning in the fall of 1974 and then I 16 transferred to Wayne State University. I graduated from 17 there in 1977 with a J.D., again, with highest honors; was 18 awarded the American Jurisprudence Book Award for conflicts 19 of law. I subsequently obtained an LLM from George 20 Washington University in labor law in 1987, again, with 21 highest honors. 22 After graduating from law school, I began working 23 for the National Labor Relations Board from 1977 until 1992, 24 and I've been employed by Attorneys General since 1992. I 25 would note, of course, that my testimony here is purely on</p>	<p style="text-align: right;">Page 12</p> <p>1 concerns and that was where I became concerned as well. 2 I attended the original meeting that Costco and 3 Westfield held with the KCA community in February 2010. It 4 was held at the Kenmont Pool site. I attended another 5 meeting that Costco and Westfield representatives, along 6 with some County staff people, held at the same location 7 later that spring of 2010 while they tried to explain their 8 proposed zoning text amendment at that point that would have 9 eliminated the special exception process for this station. 10 I did not find the explanation for that special exception 11 convincing and we obviously, KHC opposed it and it was not 12 accepted by the County Council. 13 Since then, I have attended virtually every other 14 meeting that Costco and/or Westfield have held with the 15 community. I have read all of their filings, some of them 16 several times, some of them in many versions. I met with 17 Planning Staff on several occasions, along with other KHCA 18 and/or Coalition representatives. I've read the special 19 exception provisions and I've attended these public 20 hearings, or rather the ones that have been held by Park and 21 Planning and so forth, also the Council on last summer's 22 zoning text amendment. 23 I have lived in this general area since 1983 at 24 three locations. I first lived on Venice Avenue near its 25 intersection with University Boulevard. So at that point I</p>
<p style="text-align: right;">Page 11</p> <p>1 my own behalf and that of KHCA, and is not meant to reflect 2 on the views of my employer. They are not involved in any 3 way. 4 When I first heard about this proposal for the 5 Costco gas station, I was not then and I am not now a 6 classical member largely because as a single person, it's 7 just really not particularly a viable way of shopping for 8 me. It's, the packages are too big. If I did buy 9 something, I would be in there about twice a year. But I 10 did occasionally, though, shop at a Baltimore Costco with my 11 father, usually at Christmastime, to help him pick out 12 things and, but that locale did not have a gas station at 13 the time. I believe since then it may have acquired one, 14 but there was not any there. 15 So when the proposal was first suggested that 16 there be a gas station here, and I heard that people were 17 opposing it, I said, well, what's the issue? And they said 18 go look at Beltsville and I said, okay. So I went over to 19 Beltsville and I went there on a Saturday and I saw the long 20 lines of waiting cars there and I saw what could concern my 21 neighbors, that the idea of something of that magnitude and 22 bigger being placed in direct proximity to our homes and the 23 swimming pool and the Stephen Knolls School was, and at the 24 back of a very busy mall with the traffic that was already 25 there was obviously, it seemed, I could understand the</p>	<p style="text-align: right;">Page 13</p> <p>1 was in close proximity to the stores and gas stations and 2 that general area in the Four Corners area. So I was 3 familiar with those stations. 4 When I first moved there, the Wheaton Metro was 5 not yet open and I would have to take a Ride-On bus or drive 6 down to Silver Spring to ride the Metro into work and I 7 worked in downtown D.C. Five years later, I moved to 8 Alberte (phonetic sp.) which is on the south side of Wheaton 9 Haven Park, I'm sorry, Wheaton Forest Park I should say, 10 which is Wheaton Forest. It's on University Boulevard just 11 west of Sligo Creek Park. 12 At that point, once the Metro finally arrived two 13 years after I moved in, I could then walk to the Metro from 14 there. It was about a 15-minute walk. At that point I was 15 relatively close to the stations at Amherst and the 16 University area so, again, I was familiar with that area. 17 And, finally, in July of 2001, I moved to my 18 current address at 10705 Torrance Drive, which is often 19 discussed, and I'll just point out on the map over here -- 20 MR. GROSSMAN: Well, okay. Which exhibit number 21 are you looking at? 22 MS. CORDRY: This will be Exhibit 159. 23 MR. GROSSMAN: Okay. 24 MS. CORDRY: Here's Stephen Knolls School. Here's 25 St. Margaret's.</p>

<p style="text-align: right;">Page 14</p> <p>1 MR. GROSSMAN: I can't see.</p> <p>2 MS. CORDRY: I'm sorry. Here's Stephen Knolls</p> <p>3 School.</p> <p>4 MR. GROSSMAN: All right.</p> <p>5 MS. CORDRY: St. Margaret's Drive, and the next</p> <p>6 street over is Torrance. I live on the south side of</p> <p>7 McComas (phonetic sp.) Avenue here. So I, as my, as the</p> <p>8 real agent said when I was looking at the house, all you</p> <p>9 have to do is walk up there and walk up the staircase and</p> <p>10 you're in the mall.</p> <p>11 MR. GROSSMAN: So are you just outside of the area</p> <p>12 that was defined as the general neighborhood by the</p> <p>13 Technical Staff?</p> <p>14 MS. CORDRY: Yes. I think I'd probably be a</p> <p>15 couple hundred feet outside that limited area, but obviously</p> <p>16 my walk every day, except when it rains and I get lazy and I</p> <p>17 drive down into work, 90 percent of the time I take the</p> <p>18 Metro, so I walk up here, I walk through the other block</p> <p>19 with Torrance, I walk up the staircase, I walk across the</p> <p>20 parking lot and the, out here across there into the Metro</p> <p>21 area and into the station and take the Metro downtown.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 MS. CORDRY: And, obviously, I shop at the mall, I</p> <p>24 am familiar with the gas stations around the mall and use</p> <p>25 them from time to time.</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. GROSSMAN: Which one is it?</p> <p>2 MS. ADELMAN: It's, I think, that one on the end.</p> <p>3 MR. GROSSMAN: The far --</p> <p>4 MS. ADELMAN: Yes.</p> <p>5 MR. GROSSMAN: -- the far one? Okay. So I need</p> <p>6 to get somebody here to -- all right. I'm sorry. Go ahead.</p> <p>7 MS. CORDRY: Sure. No problem. I think that one</p> <p>8 was eventually dropped. They just, I think, ended up not</p> <p>9 meeting the space that they were looking at. But in any</p> <p>10 case, we've certainly worked with the developers who wanted</p> <p>11 to build the BB&T Building. We developed the BB&T Building.</p> <p>12 That, again, with the economy fell through, but we looked at</p> <p>13 the Wendy's, we looked at quite a few other developments</p> <p>14 that were going on and certainly the whole idea of trying to</p> <p>15 redevelop the core, connect the mall and the core of</p> <p>16 Wheaton.</p> <p>17 I went to many, many sector plan meetings as well</p> <p>18 and so forth. So that's something I've been following and</p> <p>19 been very involved with for quite a few years. And all of</p> <p>20 that went into the kind of background I had when I was</p> <p>21 looking at this proposal. So what I would like to do is</p> <p>22 just start with this, to just give a quick overview of our</p> <p>23 position on the needs issues as sort of a road map of what</p> <p>24 I'm going to talk about today and then come back and discuss</p> <p>25 the points in depth.</p>
<p style="text-align: right;">Page 15</p> <p>1 Among the reasons I moved was because rather than</p> <p>2 a 15-minute walk, I appreciated the fact that I'm now about</p> <p>3 an eight to 10-minute walk to the Metro and I would like to</p> <p>4 stay in that home until I get too old to walk and climb</p> <p>5 stairs, and then I want to move into one of the apartments</p> <p>6 where I can just take the elevator down to the Metro and</p> <p>7 maybe still wear my bathrobe. I haven't quite decided that</p> <p>8 yet, but so anyway. This is the community where I live, I</p> <p>9 support, I have a strong interest in ensuring it remains a</p> <p>10 vibrant, livable area for my neighborhood generally and</p> <p>11 Wheaton as a whole.</p> <p>12 Because of my interest in this area, I volunteered</p> <p>13 in 2005 to become a member of the Wheaton Redevelopment</p> <p>14 Advisory Committee and I chaired that group in 2008 and</p> <p>15 2009. So I have been involved in looking at plans for</p> <p>16 development activities in Wheaton for a number of years. I</p> <p>17 supported virtually all of them. There was a few we had</p> <p>18 some concerns with and we talked, you know, a number of</p> <p>19 those concerns through, some, well, probably only about one</p> <p>20 which was something Lindsey Ford wanted to do with the</p> <p>21 parking lot was one that really raised, you know, serious</p> <p>22 community concerns and --</p> <p>23 MR. GROSSMAN: Excuse me. Is it my imagination or</p> <p>24 is there a light blinking?</p> <p>25 MS. CORDRY: No, you're right.</p>	<p style="text-align: right;">Page 17</p> <p>1 So from our view and, well, actually I think this</p> <p>2 is clear from the code, an absolute prerequisite for a</p> <p>3 special exception request for a gas station in Montgomery</p> <p>4 County is that there be a need for such a station to, quote,</p> <p>5 serve the population in the general neighborhood considering</p> <p>6 the present availability of identical or similar uses to</p> <p>7 that neighborhood, unquote. And that's Section 59-G-</p> <p>8 1.24(i). And that's labeled, quote, neighborhood need. And</p> <p>9 in all of the reading and analysis that I've seen, there's</p> <p>10 basically been two kinds of analyses used with respect to</p> <p>11 that issue. In our view, the station cannot be justified</p> <p>12 under either one.</p> <p>13 Before we get into those analyses, the sort of</p> <p>14 starting point we look at is that need is a counterbalance</p> <p>15 to burden that the need requirement in the statute only</p> <p>16 really makes sense when it's analyzed as being a trade-off</p> <p>17 to the inherent adverse effects of the station. The more a</p> <p>18 station is needed, the more appropriate it is to allow the</p> <p>19 burdens to be imposed on the community and vice versa. The</p> <p>20 need issue underscores and compliments all of the other</p> <p>21 substantive requirements in the special exception</p> <p>22 provisions. If there's a real need for the station --</p> <p>23 MR. GROSSMAN: Excuse me. I'm going to turn off</p> <p>24 these lights because they are continually blinking --</p> <p>25 MS. CORDRY: Okay.</p>

<p style="text-align: right;">Page 18</p> <p>1 MR. GROSSMAN: -- and I will ask staff to get 2 somebody here from maintenance to fix that. Thank you. 3 MS. CORDRY: Okay. Right. So if there really was 4 a need for the station due to the lack of existing 5 alternatives in the area, such as we're beginning to hear 6 about Bethesda becoming a gas station dessert, then if we 7 were in that kind of a situation then you might be in the 8 position, you would say, well, maybe we have to compromise 9 on some of the land use goals. We may not be able to do all 10 the things we want to do and try to reduce -- because we 11 still haven't completely gotten rid of automobiles yet, so 12 we still have to be able to continue to serve them. But if 13 we do have all of the stations we possibly can use in terms 14 of supply and availability, then why would we put a new 15 station in one of the most congested and space-limited 16 sections of the mall that would make it much more difficult 17 to do some of the things that the sector plan envisioned 18 such as the multi-modal pedestrian path around the mall. We 19 have after great effort obtained a non-multi-modal -- it's 20 certainly much better than nothing. 21 The path that is there is something that is a huge 22 improvement, but it is nothing like what I think the Council 23 has placed in the sector plan and says that as the area in 24 the mall continues to develop, that we should look at those 25 kind of landscape, multi-modal really nice paths that could</p>	<p style="text-align: right;">Page 20</p> <p>1 sector plan envisions? That's to say that goes for all of 2 our concerns about traffic and noise as well. 3 Again, if a station isn't needed, why incur any 4 health risks? Not only the homes in the areas that are 5 there, but there are additional homes well along in the 6 planning process to be placed on what we've been referring 7 to all along as Mount McComas. I attended a meeting with 8 the developer a couple months ago, maybe two months ago, 9 with the area there which one of the steps in the 10 development plan is to meet with the neighborhood groups. 11 He had his plans there. He had all his developments. There 12 will be additional homes going in there. 13 We've certainly seen that there was new 14 development building up at the Safeway location, at the 15 computer sciences building which is on Georgia Avenue just 16 south of the Metro. 17 MS. ADELMAN: Could you point out for us where 18 Mount McComas -- 19 MS. CORDRY: Okay. 20 MS. ADELMAN: -- development will occur? 21 MS. CORDRY: Sure. Again, on this map here on -- 22 this is Exhibit 159 -- there is a small swatch along this, 23 skinny swatch of greenery here. 24 MR. GROSSMAN: Just due south of the Costco 25 warehouse.</p>
<p style="text-align: right;">Page 19</p> <p>1 be done. And when the station is there, the location at the 2 back is one of the most constricted areas in the mall, 3 especially now that the warehouse has been built all the way 4 out to the ring road. So when you put all of the additional 5 traffic from the station there, you make it very difficult 6 to do those kind of new developments. 7 MR. GROSSMAN: Excuse me. You say the path that 8 is there. What path are you talking about? 9 MS. CORDRY: I'm talking about, what we've been 10 talking about, this five foot path. 11 MR. GROSSMAN: You mean the path that is proposed? 12 MS. CORDRY: The path that is proposed. It's, 13 right now they're -- 14 MR. GROSSMAN: Yes, currently proposed. 15 MS. CORDRY: Right. Right now there is no path 16 and so when I walk through there, I walk in the street and I 17 dodge the cars and I try to get up on the, between the path 18 and the hemlock trees, which are right out the edge and so 19 forth and -- 20 MR. GROSSMAN: Right. 21 MS. CORDRY: -- and we'll talk a great deal more 22 about the path and nuisance and traffic issues in other 23 portions of our testimony, but the point here is simply if 24 you don't need a station, why do you put it back there and 25 create more difficulties with doing the sorts of things the</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. CORDRY: Due south. See, it will be the 2 closest area to the gas station, even closer than the other 3 homes that are there. I haven't tried to measure out, but I 4 would guess it's probably less than 100 feet from borderline 5 to borderline there. And those homes, they're not built 6 yet, but I would expect -- I think in talking to Mr. Merring 7 (phonetic sp.), he was hopeful that they would be in within 8 two years let's say, hopefully less than that. But 9 Montgomery Planning and Development being what it is, he 10 wasn't prepared to give a final date yet, but certainly was 11 moving forward with that. Obviously, the Safeway 12 development is going in. 13 MR. GROSSMAN: Do they have an approved site plan 14 for that development at Mount McComas? 15 MS. CORDRY: Yes. Okay. I was -- 16 MR. GROSSMAN: I'm not talking about development 17 plan for a rezoning, whatever. 18 MS. CORDRY: Well, it's been rezoned already. 19 MR. GROSSMAN: I know. I was involved in that -- 20 MS. CORDRY: Right. 21 MR. GROSSMAN: -- that process, but -- 22 MS. CORDRY: Right. 23 MR. GROSSMAN: -- but I just wanted to know if 24 they had site plan approval because there was a question 25 about where the storm water management facility would be on</p>

<p style="text-align: right;">Page 22</p> <p>1 that property as I recall.</p> <p>2 MS. CORDRY: He was showing us development designs</p> <p>3 for a water management as well that indicates they've had a</p> <p>4 number, number of meetings. I believe the site plan has</p> <p>5 been approved. It is --</p> <p>6 MS. ADELMAN: I believe it is also.</p> <p>7 MS. CORDRY: It is certainly moving forward. If</p> <p>8 you want, we can certainly put that into the record. We</p> <p>9 have the Safeway development going in just north of the</p> <p>10 Metro station. We have a computer sciences building just</p> <p>11 south of there which is building up additional residential</p> <p>12 spaces above there. The current zoning for the mall allows</p> <p>13 for a hotel to be placed on the mall and that's being</p> <p>14 retained in the zoning update.. The zoning update proposes</p> <p>15 to put the mall -- the section right along here would be a</p> <p>16 CR zone and the rest of the mall would be retained in what's</p> <p>17 called a general --</p> <p>18 MR. GROSSMAN: Just for the record, when you say</p> <p>19 along here, you're talking --</p> <p>20 MS. CORDRY: I'm sorry, along University</p> <p>21 Boulevard?</p> <p>22 MR. GROSSMAN: -- along the north, along</p> <p>23 northeastern --</p> <p>24 MS. CORDRY: I'm sorry, along Veirs Mill.</p> <p>25 MR. GROSSMAN: The northeastern border --</p>	<p style="text-align: right;">Page 24</p> <p>1 which has very few numbers of automobile trips relative to</p> <p>2 the number of people being added. Certainly a small, you</p> <p>3 know, there will be a small number of additional trips. But</p> <p>4 the whole point of the kind of development we're doing and</p> <p>5 putting development directly on top of existing retail,</p> <p>6 directly next to transit, is precisely to reduce the amount</p> <p>7 of auto-related that will go forward. And what you will see</p> <p>8 at the end is that there is protections over the spike in</p> <p>9 population growth that automobile usage and gasoline usage</p> <p>10 are going to continue to decline in this country out through</p> <p>11 2040.</p> <p>12 So I think it is, also I think it's not</p> <p>13 unreasonable to be looking at what's going on. The zoning</p> <p>14 update has been in process for years. It is very far along</p> <p>15 in the process. I don't think there's any controversy</p> <p>16 whatsoever about some of these pieces and the zoning, the</p> <p>17 special exception process, I believe, also talks about not</p> <p>18 interfering with the logical development of the area or</p> <p>19 words to that effect. And certainly the logical development</p> <p>20 in this area includes those kind of things that are going</p> <p>21 on. There is a very strong trend in this direction and</p> <p>22 certainly the Council is well in the forefront of doing</p> <p>23 these things. I don't think it's reasonable to just set</p> <p>24 that aside and not look at that as part of the logical</p> <p>25 development that's going on and I believe that's also part</p>
<p style="text-align: right;">Page 23</p> <p>1 MS. CORDRY: Right.</p> <p>2 MR. GROSSMAN: -- of the site. Oh, no, not the</p> <p>3 site, of the mall.</p> <p>4 MS. CORDRY: Right. But the main body of the mall</p> <p>5 would be retained as a, what we call a general retail</p> <p>6 category. But that would also now have a residential</p> <p>7 component allotted of up to 30 percent. So, again, there's</p> <p>8 every possibility that there can be housing on the mall on a</p> <p>9 going forward basis. There are a number of malls in the</p> <p>10 Washington area that are being redeveloped with malls, with</p> <p>11 housing in the malls, White Flint, Laurel, Landmark, all of</p> <p>12 those.</p> <p>13 MR. GROSSMAN: Well, I think you're a bit far</p> <p>14 afield, but let's assume for a second that you are correct</p> <p>15 that there is a possibility of all these things. I can't</p> <p>16 really consider the zoning rewrite that's being contemplated</p> <p>17 by the Council now because it's not, has not been approved</p> <p>18 and there's who knows what the Council will or will not</p> <p>19 approve there. But my other question would be aren't the,</p> <p>20 if assuming there's additional development there, doesn't</p> <p>21 that cut against your argument that there's no need because</p> <p>22 there would be more development?</p> <p>23 MS. CORDRY: No, because the kind of development</p> <p>24 we're doing, this I will get to at the end, Wheaton is at</p> <p>25 the forefront of the mixed use, transit-oriented development</p>	<p style="text-align: right;">Page 25</p> <p>1 of what -- two things. One, what the Planning Board was</p> <p>2 looking at when it weighed its recommendation to deny</p> <p>3 approval in the spaces. And, second, if you look at the</p> <p>4 sector plan, it specifically says we are rezoning portions</p> <p>5 of the mall as CR because those portions are more workable</p> <p>6 in terms of the kind of very -- CR has kind of a very</p> <p>7 specific set of approaches of the way it does mixed use in</p> <p>8 terms of where parking is and how much retail space on the</p> <p>9 first floor and so forth.</p> <p>10 And what they said was the, putting that kind of</p> <p>11 control over the entire mall might not be practical, but it</p> <p>12 also said the rest of the mall is going to be looked at as</p> <p>13 part of the general zoning process that is going on at this</p> <p>14 moment. So the sector plan clearly contemplated dealing</p> <p>15 with the rest of the mall as part of this.</p> <p>16 MR. GROSSMAN: I think it's perfectly acceptable</p> <p>17 to look at the sector plan, especially since it was recently</p> <p>18 approved.</p> <p>19 MS. CORDRY: Right.</p> <p>20 MR. GROSSMAN: I don't believe that the Planning</p> <p>21 Board said anything in their letter to me about the zoning</p> <p>22 rewrite. They based their 3-2 opinion on the sector plan.</p> <p>23 MS. CORDRY: Right.</p> <p>24 MR. GROSSMAN: And I am, I'm not prepared to</p> <p>25 second guess what the Council may or may not do on the</p>

<p style="text-align: right;">Page 26</p> <p>1 zoning rewrite.</p> <p>2 MS. CORDRY: I understand that.</p> <p>3 MR. GROSSMAN: I'm quite familiar with the zoning</p> <p>4 rewrite having been involved in the process, but I don't</p> <p>5 think that it would be appropriate for me to base any</p> <p>6 conclusions on a rewrite that has not been approved, that is</p> <p>7 still in committee.</p> <p>8 MS. CORDRY: Right.</p> <p>9 MR. GROSSMAN: So --</p> <p>10 MS. CORDRY: I do believe it will be out of</p> <p>11 committee well before we, into this process. But in any</p> <p>12 case, but I do believe the, as I say, the sector plan itself</p> <p>13 points directly at the zoning, ongoing zoning process. So I</p> <p>14 think they are all tied together, the point being that it's</p> <p>15 simply, these are things that all, in the mix all can be</p> <p>16 considered and whether it's binding or not, our point is</p> <p>17 simply at this point in time and the need discussion is if</p> <p>18 you do not need the station, why would you put it in the mix</p> <p>19 and have the possibility of interference with these kind of</p> <p>20 processes?</p> <p>21 We've heard a lot about health. We're going to</p> <p>22 hear a lot more. Certainly if you end up with a hotel,</p> <p>23 which is part of the zoning on the mall anywhere near the</p> <p>24 gas station, there would be issues there. If you put</p> <p>25 housing on the mall, you raise, you know, additional issues</p>	<p style="text-align: right;">Page 28</p> <p>1 point of the need regulation. To be said that it's been</p> <p>2 suggested that somehow that's what Wheaton is about, we</p> <p>3 think that completely confuses it and I don't, I have a hard</p> <p>4 time seeing how anything comes out of the language that's in</p> <p>5 the statute.</p> <p>6 MR. GROSSMAN: So you don't think that need is at</p> <p>7 all a market-based material?</p> <p>8 MS. CORDRY: Well, I think, I think that obviously</p> <p>9 the question of what the market needs, what it demands,</p> <p>10 what's supplied, what capacities -- I think those are all</p> <p>11 issues there. But in the sense of if the applicant thinks</p> <p>12 it can find some way to operate and make money, that does</p> <p>13 not necessarily indicate that there is or is not a need. I</p> <p>14 don't view that as simply the operative question or,</p> <p>15 conversely, that as I've read in at least one decision,</p> <p>16 well, if the applicant is willing to go ahead, that's all we</p> <p>17 need to do to show need because we're just not in the</p> <p>18 business of telling them they can't try. I think that --</p> <p>19 MR. GROSSMAN: Well, you said one decision. What</p> <p>20 decision is that?</p> <p>21 MS. CORDRY: I'd have to go back and find the one,</p> <p>22 but there was one I read in passing that just sort of, well,</p> <p>23 we marked it, well, fine, you know if they want to go ahead,</p> <p>24 go ahead. Why should we tell them not to? I will get to</p> <p>25 some other ones, but that one seemed to me to be so far off</p>
<p style="text-align: right;">Page 27</p> <p>1 here. The question is simply, we simply say need underlies</p> <p>2 all of those other points.</p> <p>3 Now I will say that in terms of the basic concept</p> <p>4 of need, I've seen some suggestions in some of the special</p> <p>5 exception decisions and some discussions I've had that</p> <p>6 somehow it's supposed to be looking at some kind of</p> <p>7 requirement that the County has to sign, that there's going</p> <p>8 to be a need so as to ensure that the applicant can succeed</p> <p>9 in its business plan and the counter-argument that the</p> <p>10 County shouldn't be in the business of telling an applicant</p> <p>11 whether its model is successful or not.</p> <p>12 I, and as I indicated, say that we certainly agree</p> <p>13 that the County is not in the business of regulating</p> <p>14 entrepreneurial decisions or guaranteeing business success</p> <p>15 for someone who wants to operate here.</p> <p>16 MR. GROSSMAN: Well, it is in the business of the</p> <p>17 first, the regulating part of it.</p> <p>18 MS. CORDRY: Well --</p> <p>19 MR. GROSSMAN: Not guaranteeing success.</p> <p>20 MS. CORDRY: That's what I mean in the sense of --</p> <p>21 MR. GROSSMAN: But it is certainly part of the</p> <p>22 regulating --</p> <p>23 MS. CORDRY: Well, I meant regulating in that</p> <p>24 sense of trying to decide whether you're making a good</p> <p>25 business judgment or not. I would agree that is not the</p>	<p style="text-align: right;">Page 29</p> <p>1 the mark that I didn't really bring that one in here to put</p> <p>2 in.</p> <p>3 But our view, again, is that the point of need is</p> <p>4 to balance the burdens inherent and non-inherent that's</p> <p>5 being proposed by one of these special exception uses. All</p> <p>6 of the other requirements in the special exception do serve</p> <p>7 the purpose of limiting and conditioning the impact of the</p> <p>8 special exception. We don't see why need would be any</p> <p>9 different.</p> <p>10 MR. GROSSMAN: Well, I'm a little concerned about</p> <p>11 your analytical framework here. I wouldn't dispute that</p> <p>12 there's a balancing that has to take place, but doesn't that</p> <p>13 balancing come after we decide on whether or not the</p> <p>14 applicant has met the criteria for whatever they are for</p> <p>15 need? The balancing issue is something that the Board of</p> <p>16 Appeals will have to do, clearly, but isn't that a different</p> <p>17 question? It's not really the question of need. Aren't</p> <p>18 you --</p> <p>19 MS. CORDRY: No, I --</p> <p>20 MR. GROSSMAN: -- going beyond what is meant by</p> <p>21 anybody's interpretation of need?</p> <p>22 MS. CORDRY: No, I don't think so because I think</p> <p>23 it's simply a matter of when you start thinking about need</p> <p>24 and it also is a question when you're dealing with a need,</p> <p>25 I'm sort of starting with the underlying balance of why are</p>

<p style="text-align: right;">Page 30</p> <p>1 we talking about need at all.</p> <p>2 MR. GROSSMAN: Well, we're talking about need</p> <p>3 because it's a statutory requirement.</p> <p>4 MS. CORDRY: I understand, but --</p> <p>5 MR. GROSSMAN: For this particular special</p> <p>6 exception, it is not for most of the special exceptions</p> <p>7 imposed.</p> <p>8 MS. CORDRY: I understand and I think that's</p> <p>9 because, and I'll get here in a moment, that these</p> <p>10 particular ones in particular have invariant uses and are</p> <p>11 perhaps even more burdensome than some of the other ones</p> <p>12 and/or there are some other reasons here. I'm sort of</p> <p>13 setting up a framework of why isn't there and then we'll get</p> <p>14 to the test. And I would contradict or, you know, suggest</p> <p>15 there is a difference between a gas station patrol and a</p> <p>16 neighborhood need and 59-G-1.25 that describes other uses as</p> <p>17 being County needs.</p> <p>18 MR. GROSSMAN: Right. Clearly, there's a</p> <p>19 different standard --</p> <p>20 MS. CORDRY: Right.</p> <p>21 MR. GROSSMAN: -- different parts of the code.</p> <p>22 MS. CORDRY: Right. And right next to each other</p> <p>23 but, yes, clearly different needs there and our review is</p> <p>24 because gas stations are put under neighborhood need, so</p> <p>25 Council clearly intends that they should be looked at in the</p>	<p style="text-align: right;">Page 32</p> <p>1 In the earliest discussions we had with Park and Planning,</p> <p>2 which, you know, late 2010 or early 2011 I believe it was,</p> <p>3 with the prior exception it was suggested that a roughly</p> <p>4 seven minute driving radius made sense and we looked at it</p> <p>5 on a map in the, this exhibit, which is 217, back up. I</p> <p>6 don't know that we, when we discussed that, I don't believe</p> <p>7 we had this precise exhibit there, but we were looking at a</p> <p>8 map and it was being pointed out that that would run roughly</p> <p>9 over through the Kensington area down to roughly on the west</p> <p>10 side, down roughly to the Beltway and Georgia on the south</p> <p>11 side over to the Four Corners area on the east and up to the</p> <p>12 Randolph Road area, Randolph and Georgia, Randolph and Veirs</p> <p>13 Mill kind of area on the north.</p> <p>14 MR. GROSSMAN: Yes, it's that red, ziggy line.</p> <p>15 MS. CORDRY: Right. Well --</p> <p>16 MR. GROSSMAN: And I think the -- you had to</p> <p>17 testify about that and said that it was, we wondered why it</p> <p>18 was that ziggy, he testified about that, how it was</p> <p>19 comparable.</p> <p>20 MS. CORDRY: Right. Right.</p> <p>21 MR. GROSSMAN: So we did have the exhibit.</p> <p>22 MS. CORDRY: Okay. Well, no, no, no. I'm talking</p> <p>23 about when I met, when we met with Park and Planning.</p> <p>24 MR. GROSSMAN: Oh, I see.</p> <p>25 MS. CORDRY: And we clearly did not have this</p>
<p style="text-align: right;">Page 31</p> <p>1 neighborhood mode, the traditional mode of a relatively</p> <p>2 small-scale operation catering to a local area. Larger,</p> <p>3 regional operations are not envisioned as being appropriate.</p> <p>4 And certainly in our view these requirements</p> <p>5 control over the proposal of an applicant. The applicant</p> <p>6 can structure business operations in a proposal in any way</p> <p>7 it wants to, but that doesn't mean that the standard</p> <p>8 changes. The applicant has to meet the standard, not vice</p> <p>9 versa.</p> <p>10 So that, a preliminary background. The first view</p> <p>11 I think one could take of need would be the need as some</p> <p>12 form of a necessity. Most people when they would read that</p> <p>13 dictionary language or, I'm sorry, that statutory language,</p> <p>14 it's known that need usually means, in the dictionary, one</p> <p>15 would seem to think it would require some showing of</p> <p>16 unavailability of service or lack of capacity to serve the</p> <p>17 community, i.e., you would need more stations after</p> <p>18 considering what uses are already available to you to</p> <p>19 fulfill the demand in that neighborhood. So then you would</p> <p>20 look to see what's already in the neighborhood.</p> <p>21 Then you have to define the neighborhood and the</p> <p>22 prior cases I have looked at use, they don't have a rigid</p> <p>23 standard. It's a pragmatic test. It looks at the area</p> <p>24 there and considers the existing residential and business</p> <p>25 developments, tries to pick out some natural dividing lines.</p>	<p style="text-align: right;">Page 33</p> <p>1 ziggy line exhibit and when we were talking with them about</p> <p>2 it, it was not discussed in terms of a ziggy line in the</p> <p>3 exhibit. We were talking a roughly a seven minute radius,</p> <p>4 roughly where did that go out to and those appeared to be</p> <p>5 fairly sensible sort of boundaries to look at in that area.</p> <p>6 Within that boundary, again, leaving aside the</p> <p>7 zigzag that we'll talk about in more detail over by Four</p> <p>8 Corners, when we got over to Four Corners, we counted 30</p> <p>9 stations in the area. I understand he wants to count --</p> <p>10 three is not in there, but somewhere between 27 and 30</p> <p>11 stations in the area. And that appeared to us to be a lot</p> <p>12 of stations for a very limited area and we certainly were</p> <p>13 not aware of anywhere else and Park and Planning never</p> <p>14 suggested there was anywhere else that had higher ratios of</p> <p>15 stations.</p> <p>16 Certainly, again, assuming that a Costco gas</p> <p>17 station is somehow unique, there's already such a station</p> <p>18 within the driving range that the Council suggests that it</p> <p>19 draws from for its stations. So in our view there was no</p> <p>20 necessity for this station and Mr. Flynn actually conceded</p> <p>21 as much in his testimony, stated in that fashion was there</p> <p>22 any need or lack of supply, lack of capacity in this area.</p> <p>23 MR. GOECKE: I would like to object. That's a</p> <p>24 mischaracterization of his testimony.</p> <p>25 MS. CORDRY: It is not a mischaracterization.</p>

<p style="text-align: right;">Page 34</p> <p>1 MR. GROSSMAN: All right. Well, let's just, let's</p> <p>2 put it this way. There are going to be, obviously, two</p> <p>3 different views of his testimony and his testimony will</p> <p>4 speak for itself.</p> <p>5 MS. CORDRY: I mean I --</p> <p>6 MR. GROSSMAN: So I'm going to, I'm not going to</p> <p>7 sustain the objection as such, but we recognize that this is</p> <p>8 Ms. Cordry's interpretation of his testimony.</p> <p>9 MS. CORDRY: I will get through that point of his</p> <p>10 testimony and that is not a mischaracterization. That is</p> <p>11 exactly what he testified to.</p> <p>12 MR. GROSSMAN: Well, that's, once again, that's</p> <p>13 subject to interpretation --</p> <p>14 MS. CORDRY: We will get to that.</p> <p>15 MR. GROSSMAN: -- based, whatever his testimony</p> <p>16 is, it is, what it is as I like to say.</p> <p>17 MS. CORDRY: And we will get to that and I will</p> <p>18 quote from that, but --</p> <p>19 MR. GROSSMAN: All right.</p> <p>20 MS. CORDRY: -- he, and as I say, further on down</p> <p>21 here I have it actually quoted, but it's roughly, he said</p> <p>22 basically I didn't think my job here was look at things of</p> <p>23 supply and capacity. So we will get -- I'll come back to</p> <p>24 that when we get there.</p> <p>25 The other obviously test that comes up often is a</p>	<p style="text-align: right;">Page 36</p> <p>1 water or cleaning solutions for your windshield. It does</p> <p>2 not provide restrooms. And as was stated in Mr. Guckert's</p> <p>3 testimony, not only will it not sell any convenience items,</p> <p>4 no, he scoffed at the idea that the warehouse cannot be</p> <p>5 considered some form of, quote, super-sized convenience</p> <p>6 store. And that's in his May 1st testimony.</p> <p>7 Mr. Gang's land use report also disavowed any</p> <p>8 claim that this would be a station with a convenience store.</p> <p>9 The store is expected to pump about 12 million gallons a</p> <p>10 year, that's four to eight times the size of a typical gas</p> <p>11 station of 1.5 million gallons. The range in this County</p> <p>12 is, for most stations is about one to perhaps 2.5 million</p> <p>13 gallons. A very few such as the Freestate on Veirs Mill</p> <p>14 pumps about 3.4 million gallons per year. This station is</p> <p>15 well beyond those. And I would like at this point, on that</p> <p>16 point to submit the, part of the staff packet for the ZTA.</p> <p>17 And Ms. Adelman is going to hand that out.</p> <p>18 MS. ADELMAN: This is my new role.</p> <p>19 MR. GROSSMAN: Don't trip on any of the wires that</p> <p>20 may be down here.</p> <p>21 MS. ADELMAN: Let me do this properly. If I</p> <p>22 disappear, Mr. Grossman, you'll know.</p> <p>23 MR. GROSSMAN: We'll send out a search party.</p> <p>24 MS. CORDRY: No, I think that's just the, I think</p> <p>25 that's the first six pages or so of the ZTA. In particular,</p>
<p style="text-align: right;">Page 35</p> <p>1 question of need as some form of simple usefulness I'll call</p> <p>2 it, a broader, more amorphous standard has been used in some</p> <p>3 of the case law, whether it would be, quote, expedient,</p> <p>4 reasonably convenient and useful to the public, words to</p> <p>5 that effect.</p> <p>6 MR. GROSSMAN: That's Lucky Stores or --</p> <p>7 MS. CORDRY: I, it may have come out of there. It</p> <p>8 may come out of some other places. I will be discussing</p> <p>9 Lucky Stores in detail a little further on.</p> <p>10 MR. GROSSMAN: All right.</p> <p>11 MS. CORDRY: To whatever extend that that should</p> <p>12 be used as a compliment to the current language in the</p> <p>13 statute which has changed somewhat since the Lucky Stores</p> <p>14 case, we do not believe it can satisfy that broader</p> <p>15 definition either for several reasons. First, it will only</p> <p>16 serve about 25 percent of the neighborhood. The remaining</p> <p>17 75 percent will not benefit from or use the station. So</p> <p>18 when you talk about the general neighborhood, you're already</p> <p>19 only talking about a maximum possibility of 25 percent</p> <p>20 having any value.</p> <p>21 Second, we will provide nothing that is not</p> <p>22 already available in great abundance from other stations.</p> <p>23 It does not sell diesel or kerosene or E-85 ethanol type</p> <p>24 gasoline or any other unique product. It does not provide</p> <p>25 electrical charging services. It does not provide air or</p>	<p style="text-align: right;">Page 37</p> <p>1 if you can look at page 4 that talks about size of the</p> <p>2 station, page 6 and so forth, that discusses this and I</p> <p>3 think it's been pretty well discussed in various testimony</p> <p>4 here and so forth that the million and a half, million to 2</p> <p>5 million gallon station is the norm in this area.</p> <p>6 MR. GROSSMAN: All right. So this is Exhibit --</p> <p>7 MS. ADELMAN: Mr. Grossman, may I ask --</p> <p>8 MR. GROSSMAN: Yes?</p> <p>9 MS. ADELMAN: -- if this memorandum in its</p> <p>10 entirety has been submitted as an exhibit previously?</p> <p>11 MR. GROSSMAN: We're talking -- all right. That's</p> <p>12 a question I don't remember the answer to. This is Agenda</p> <p>13 Item 10, July 24, 2012. The memorandum of July 20, 2012</p> <p>14 from Jeb Ziance (phonetic sp.), legislative attorney to the</p> <p>15 County Council regarding zoning text amendment 12-07. Does</p> <p>16 anybody recall if the entirety of this memo has been</p> <p>17 submitted into the record?</p> <p>18 MS. HARRIS: I know the legislation itself has</p> <p>19 been -- the resolution was, I don't know that the memo was.</p> <p>20 I thought --</p> <p>21 MR. GROSSMAN: Right. Well, I know we put the</p> <p>22 resolution --</p> <p>23 MS. HARRIS: Right.</p> <p>24 MR. GROSSMAN: -- of the Council in there. Does</p> <p>25 anybody dispute that this would be fairly part of the</p>

<p style="text-align: right;">Page 38</p> <p>1 legislative history of the resolution? All right. So I'm 2 seeing a shaking of the heads. So if it's not disputed 3 about that, why not have the entire memo in? Do we have a 4 copy of the entire memo here? 5 MS. ADELMAN: I don't have one with me. I might 6 have one in my office. 7 MS. CORDRY: Unfortunately, I didn't copy it again 8 because a lot of these things are extremely lengthy, but I 9 will be happy to find a copy, one copy for the record if we 10 need to do that. 11 MR. GROSSMAN: All right. 12 MS. CORDRY: In fact, we'd be happy to have the 13 whole -- 14 MS. ADELMAN: I wonder if we could get one 15 upstairs? 16 MR. GROSSMAN: Well, I have, I have the memo in my 17 office, so I can put it in as part of the record. If we can 18 agree, I guess we can make this an exhibit even though right 19 now it includes only the first, well, yes, the only first 20 six pages. I can put the entire memorandum -- 21 MS. HARRIS: Is that what you're, you want the 22 red -- 23 MR. GROSSMAN: Well, I can't see that far. 24 MS. HARRIS: I'm sorry, it's the, it's -- 25 MR. GROSSMAN: No, I have the resolutions.</p>	<p style="text-align: right;">Page 40</p> <p>1 be the entire memorandum -- 2 MS. CORDRY: Okay. 3 MR. GROSSMAN: -- for Mr. Ziance to the County 4 Council. Is that agreeable with everybody? 5 MS. CORDRY: Sure. 6 MS. HARRIS: Yes. 7 MR. GROSSMAN: Okay. And so this is 7/20/12 8 memorandum from Jeff Ziance, legislative attorney, to County 9 Council re proposed ZTA 12-07. 10 (Exhibit No. 290 was marked for 11 identification.) 12 MR. GROSSMAN: Okay. 13 MS. CORDRY: Next point, and I'll certainly be 14 discussing it in some detail below, I'll just make the 15 summary point here, gasoline sales have peaked in this 16 country several years ago. They have been declining since 17 then. The Federal Information Agency's authoritative report 18 projects those sales. 19 MR. GROSSMAN: What are you reading from? 20 MS. CORDRY: This is just a summary that I am, 21 summarize our points. I will put all of those reports in in 22 detail. 23 MR. GROSSMAN: No, I know, but you referenced this 24 Exhibit 290. Are you reading something from this exhibit? 25 No?</p>
<p style="text-align: right;">Page 39</p> <p>1 MS. HARRIS: Okay. Okay. 2 MR. GROSSMAN: -- in the record. This is Jeb 3 Ziance's memorandum. 4 MS. HARRIS: Oh. 5 MS. ADELMAN: Just, I note that there's a number 6 of pages as I remember. 7 MR. GROSSMAN: Right. 8 MS. ADELMAN: Probably 40. 9 MR. GROSSMAN: I wouldn't add all as he had many 10 attachments to it. 11 MS. CORDRY: Well, I think that's actually -- 12 MR. GROSSMAN: But -- 13 MS. CORDRY: I think that's all of his memo. I 14 think the rest of it, I believe, was attachments. 15 MR. GROSSMAN: All right. Is that it? Is that 16 so? 17 MS. CORDRY: I think so. 18 MR. BRANN: It stops. 19 MS. HARRIS: It stops mid-sentence. 20 MR. GROSSMAN: Yes, all right. All right. 21 MS. CORDRY: Okay. All right. 22 MR. GROSSMAN: Why don't we do this. 23 MS. CORDRY: All right. 24 MR. GROSSMAN: We'll mark this as Exhibit 290 and 25 I will put the rest of it in. See, in other words, 290 will</p>	<p style="text-align: right;">Page 41</p> <p>1 MS. CORDRY: Oh, no, no, no. I'm moving on to 2 another point. 3 MR. GROSSMAN: Oh, okay. 4 MS. CORDRY: That was, this was merely to say that 5 the size of the stations in this area, that this station 6 would be much larger than typical stations in this area. 7 MR. GROSSMAN: Okay. 8 MS. CORDRY: Separate point in terms of the 9 summary is that gasoline sales have peaked, that 10 authoritative Federal guidance indicates that they believe 11 they will continue to decline for the next several decades 12 in 2040. And, again, I -- 13 MR. GROSSMAN: Well, what are you, what are you, 14 what is the guidance that you're talking about? 15 MS. CORDRY: The Federal Information Agency which 16 is the agency charged with putting together the most 17 authoritative, what Mr. Flynn said was the gold standard of 18 projection. 19 MR. GROSSMAN: You're -- a citation to a document 20 you're talking about? 21 MS. CORDRY: I have. I will put all of that in. 22 I'm going to get through all that. 23 MR. GROSSMAN: Okay. 24 MS. CORDRY: I'm just summarizing right at the 25 moment.</p>

<p style="text-align: right;">Page 42</p> <p>1 MR. GROSSMAN: All right.</p> <p>2 MS. CORDRY: I have documents. I have copies. I</p> <p>3 have -- all of that will come in.</p> <p>4 MR. GROSSMAN: Because there's a significant</p> <p>5 hearsay aspect to what you're saying here. I just want to</p> <p>6 make sure that as, although --</p> <p>7 MS. CORDRY: Right.</p> <p>8 MR. GROSSMAN: -- some hearsay is permitted in</p> <p>9 this type of proceeding, we certainly want to have the best</p> <p>10 evidence of it rather than your recollection --</p> <p>11 MS. CORDRY: Right.</p> <p>12 MR. GROSSMAN: -- of what --</p> <p>13 MS. CORDRY: Right.</p> <p>14 MR. GROSSMAN: -- the Federal Government --</p> <p>15 MS. CORDRY: No, I am just summarizing here for</p> <p>16 the framework and then we'll come back to that --</p> <p>17 MR. GROSSMAN: All right.</p> <p>18 MS. CORDRY: -- a lot of this stack here is those</p> <p>19 kind of papers.</p> <p>20 MR. GOECKE: Mr. Grossman, I would like to object</p> <p>21 to the relevancy to the extent we have spent a lot of time</p> <p>22 talking about future trends. The standard in the code is is</p> <p>23 there a need today, not five years from now or 10 years from</p> <p>24 now or 20 years from now. So just in the spirit of</p> <p>25 efficiency, I'm not sure that it's useful to us to spend a</p>	<p style="text-align: right;">Page 44</p> <p>1 MS. ADELMAN: That was my point, Mr. Grossman,</p> <p>2 that I did read that information in Mr. Flynn's report.</p> <p>3 MR. GROSSMAN: All right. Thank you.</p> <p>4 MS. CORDRY: All right. So, in any case, the</p> <p>5 point being that any sales obtained by any new station going</p> <p>6 forward can be expected to be essentially cannibalizing</p> <p>7 sales from existing stations. We don't, no longer have the</p> <p>8 idea of a rising tide lifting all boats or an expanding</p> <p>9 market into which stations can operate. New stations are</p> <p>10 going to take sales from old stations.</p> <p>11 According to data that I will put in from the</p> <p>12 National Association of Convenience Stores, the stations are</p> <p>13 now operating on one of their lowest percentage profit</p> <p>14 margins in many years thus, again, any loss of sales would</p> <p>15 erode a very narrow profit base for existing stations. I</p> <p>16 just cite you back to Mr. Yusef Fia (phonetic sp.), I</p> <p>17 believe is how we pronounce his name, his testimony, the gas</p> <p>18 station operator who pointed out the strong likelihood of</p> <p>19 sales being, and stations closing. I expect there's going</p> <p>20 to be other testimony from other gas station operators to</p> <p>21 that extent. Our point being here, in terms of overall</p> <p>22 benefit to the, quote, general neighborhood, if stations</p> <p>23 close, if 75 percent of the population is not going to use</p> <p>24 this station and if, instead, it results in other local</p> <p>25 stations closing that the local population does use, then</p>
<p style="text-align: right;">Page 43</p> <p>1 lot of time talking about what people are speculating is</p> <p>2 going to happen in the future.</p> <p>3 MS. CORDRY: Well --</p> <p>4 MR. GROSSMAN: I'm going to overrule that</p> <p>5 objection because I'm going to give you some leeway to, is,</p> <p>6 when you say need today, I don't know how long today is and</p> <p>7 today may be need over the next year, today may be need</p> <p>8 right at this second, maybe over the life of the station.</p> <p>9 So I'm certainly going to give her some leeway in making her</p> <p>10 point about this.</p> <p>11 MS. CORDRY: And I would note that Mr. Flynn's</p> <p>12 report spends a fair amount of time talking about his not</p> <p>13 particularly documented suggestions about what need may</p> <p>14 happen in the future. He certainly also puts in projections</p> <p>15 about population and households and jobs, so --</p> <p>16 MR. GROSSMAN: That's true.</p> <p>17 MS. CORDRY: -- I think I have every right to</p> <p>18 respond to his projections about future need.</p> <p>19 MR. GROSSMAN: Yes. But I overruled the</p> <p>20 objection.</p> <p>21 MS. CORDRY: Thank you.</p> <p>22 MR. GROSSMAN: So you don't have to continue</p> <p>23 arguing.</p> <p>24 MS. CORDRY: Thank you. All right.</p> <p>25 MR. GROSSMAN: Yes?</p>	<p style="text-align: right;">Page 45</p> <p>1 that 75 percent is going to suffer a net loss of benefits</p> <p>2 and net loss of capacity in this area is not going to</p> <p>3 benefit.</p> <p>4 Moreover, that potential, and I think very real</p> <p>5 potential for loss of overall uses in this area would affect</p> <p>6 not only the 75 percent, but it would also affect the Costco</p> <p>7 members for all of the time period when Costco stations are</p> <p>8 not open. And if you have to remember that they operate</p> <p>9 much more limited hours than many other gas stations and</p> <p>10 they provide, as we have, as I noted above, no services</p> <p>11 apart from gas. So if a Costco member needs to buy gas at</p> <p>12 midnight on a Saturday, as Mr. Flynn was talking about, he</p> <p>13 doesn't have the choice of buying it at Costco. He's going</p> <p>14 to have to buy it at one of those stations on University</p> <p>15 Boulevard that Mr. Flynn was denigrating.</p> <p>16 Perhaps they might be as, not as pretty as the</p> <p>17 Costco station. Perhaps not, I'll leave that aside for the</p> <p>18 moment. But that's where he's going to need to have to go.</p> <p>19 If he needs to fill up his tires, he needs to go to a</p> <p>20 station that is open. I will say one of the things we did</p> <p>21 talk about when I was on rack was the changeover of when the</p> <p>22 gas station that was at the opening of the Wheaton Mall, I</p> <p>23 believe there's a Shell closed and now there's a Wendy's</p> <p>24 there, I really miss that station because it had air and I</p> <p>25 would fill my tires on a number of occasions at that</p>

<p style="text-align: right;">Page 46</p> <p>1 station. It was nice to have one very close to me that I 2 could do that at. But, you know, you can't do that with the 3 Costco station and you can't get any of these other services 4 at the Costco station. So it essentially piggybacks off the 5 fact that these other stations exist and serve all of those 6 members. 7 To the extent that it results in closure of any of 8 these stations, there is a net loss to everyone in this 9 community. And I think we will talk that there's, that's a 10 very real possibility in light of the declining overall need 11 for gasoline sales here. 12 MR. GROSSMAN: A reduction in convenience, in 13 effect? 14 MS. CORDRY: Yes, exactly, for everyone, 100 15 percent of the neighborhood because Costco members would say 16 not only the 75 percent that don't use Costco, but even the 17 Costco members have to use those stations for many aspects 18 of what they need to do with their cars. 19 The only true quantitative base of Costco's need 20 analysis was based on calculations by the Claritas (phonetic 21 sp.) Company with this question of retail gap in capture 22 rates and so forth and, again, I'll talk about those in more 23 detail below. But of the number that it calculated for 24 retail gap, the vast majority of the amount that it 25 calculated was for a gas station with a convenience store</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. GROSSMAN: No, not part of it. I'm saying 2 that in terms of analyzing the Claritas data -- 3 MS. CORDRY: Well -- 4 MR. GROSSMAN: -- which you have singled out the 5 fact or your recollection of the fact that the Claritas data 6 is based largely on stations with convenience stores, and 7 then you differentiate that from this one which will not 8 have a convenience store, but is it appropriate to 9 differentiate that data the way you are given the fact that 10 the Costco warehouse is there? 11 MS. CORDRY: Well, again, many stations are close, 12 are in mall areas. Many stations are close to other 13 businesses. It's often convenient to stop in a gas station 14 and go somewhere else. That does not make that a gas 15 station with a convenience store. That is a defined 16 category under Claritas and it breaks out as data in that 17 way. 18 A gas station with a convenience store is the sort 19 of thing that you go into, you gas up, you walk a few feet 20 across the parking lot, you go in, you buy a soda and you 21 use the restroom and you walk back out again. It is not, it 22 is simply not defined as the data where you have a general 23 kind of retail operation. There are other Claritas 24 classifications for general retail, for warehouse stores, 25 for all of these things. You can't just take data that</p>
<p style="text-align: right;">Page 47</p> <p>1 and that is not what Costco is going to provide. 2 Now we have a lot of language about how it's 3 convenient to visit the store and go to the gas station at 4 the same time, but that does not make the Costco warehouse a 5 convenience store, nor does it make this a gas station with 6 a convenience store. It's also convenient to visit the 7 mall, but that doesn't make the whole mall a convenience 8 store for this. The Claritas calculations are done on a 9 very specific kind of an operation. 10 MR. GROSSMAN: But don't you think that's 11 relatively analogous in this kind of situation? I just, in 12 terms of what you take your time here to testify on, the 13 fact that the Costco store is right there and doesn't that, 14 isn't there a kind of -- doesn't it approach the 15 situation -- 16 MS. CORDRY: Well -- 17 MR. GROSSMAN: -- when you have a convenience 18 store as part of the -- 19 MS. CORDRY: I would say a couple of things. 20 Number one, if we're going to consider that -- 21 MR. GROSSMAN: For need, in terms of need. 22 MS. CORDRY: If we're going to consider that the 23 Costco store is part of this gas station as part of being a 24 gas station with a convenience store, then the store should 25 have been part of the special exception.</p>	<p style="text-align: right;">Page 49</p> <p>1 Claritas calculates in a particular way and then say I'm 2 going to turn that into something else. If you're going to 3 rely on the data, then rely on the data in the way it 4 calculates. 5 MR. GROSSMAN: Well, I'm not sure that there 6 aren't analogies that you can make. I mean you don't, if 7 you go to a gas station with a convenience store and you use 8 the convenience store, you don't park at the pump while 9 you're doing it, right? You have to pull away from the pump 10 to a parking spot. I'm just asking you isn't that 11 relatively similar since the parking lot is right there in 12 the proposed location of the gas station to somebody who 13 just pulls away from the pump and then just goes into the 14 Costco station? 15 MS. CORDRY: Well -- 16 MR. GROSSMAN: Is there really an analytical 17 difference? 18 MS. CORDRY: Yes, there are many analytical 19 differences, not least of which is simply that a convenience 20 store is defined as, in Claritas data, I mean it's putting 21 this data out in particular chunks and categories. It is 22 defined as a store and, again, I'll get to this, it is a 23 store that sells a limited quality, line of goods. 24 Primarily, I think it's like milk and, I forget, a couple of 25 things. I'll quote that when I get there.</p>

<p style="text-align: right;">Page 50</p> <p>1 But it's not just saying that anytime there is a 2 store that is nearby to go shopping in, that that makes it a 3 gas station with a convenience store. It defines a specific 4 category of store and operation and sales, and puts that 5 classification together. And it's not just something you 6 can just say, well, I'll take that classification and I'll 7 make it say what I want it to say. 8 MR. GROSSMAN: Well, all right. I understand your 9 point. I'm just saying that I'm not sure that you're not 10 making a distinction without a real difference for 11 analytical purposes. But you certainly -- 12 MS. CORDRY: Well -- 13 MR. GROSSMAN: -- a point you can make if you 14 wish. 15 MS. CORDRY: Okay. Well, again, the point is 16 simply if Claritas pulls a certain amount of purchases out 17 and these are purchases made at gasoline stations with true 18 convenience stores as it defines a true convenience store, 19 that's the classification of which it's showing that there 20 is a purchasing desire for. It's -- there may be another 21 classification that they could have come up with, but it's 22 not doing that and you can't just pick and choose the data. 23 You have to use the data they give you. 24 MR. GROSSMAN: I understand your argument. 25 MS. CORDRY: All right. Well, I think it's the</p>	<p style="text-align: right;">Page 52</p> <p>1 that the two million gallon figure or \$2 million, I'm not 2 sure which -- 3 MS. CORDRY: Two million gallons. 4 MR. GROSSMAN: -- two million gallons figure 5 you're, you came up with is by eliminating from the analysis 6 any of the stations that have convenience stores, is that 7 what you're saying? 8 MS. CORDRY: Well, I'm saying the data that 9 Claritas presents as there is a certain desire for people to 10 go in a gas station that has a convenience store attached to 11 it -- 12 MR. GROSSMAN: Right. 13 MS. CORDRY: -- in the way it defines a 14 convenience store. There is a certain amount of data for 15 people who are buying and just going to a straight gas 16 station and it divides it into those two categories. It 17 lumps it all together under gas stations and then it divides 18 it out. If you take the kind of store that is being 19 proposed here, then the need is about a sixth or less of 20 what is shown of the total gas station need. And we'll talk 21 about what this County buys. 22 MR. GROSSMAN: Okay. 23 MS. CORDRY: And it doesn't -- it's not illogical 24 because we don't have a lot of, in fact, I don't think we 25 have any of sort of the bigger, traditional convenience</p>
<p style="text-align: right;">Page 51</p> <p>1 way they're operation works. In any case, that point being 2 when you're limited to a gas station without convenience 3 stores, the Claritas analysis shows that there's probably 4 less, when you just do the calculations, there's less than a 5 2 million gallon need, not the 13.1 million gallons that Mr. 6 Flynn came up with. And, again, I'll get to that in more 7 detail. 8 MR. GROSSMAN: You mean if you entirely drop the 9 data about stations that have convenience stores? 10 MS. CORDRY: Well, I will say that if I do the 11 same thing that Mr. Flynn did in one of his other reports 12 where he was analyzing the station with a convenience store, 13 he took the Claritas data, which I will talk about; he 14 divided the data into stores with, stations with convenience 15 stores, stations without. He only used the data for stores, 16 stations with convenience stores. And I'm just saying it 17 works the other way. If you are not building a gas station 18 with a convenience store, which this applicant has 19 repeatedly said it's not doing, we're not building a station 20 with a convenience store, when you limit yourself to the 21 portion of the data, the deals with gas stations without 22 convenience stores, pure gas stations, it's only about 15 23 percent of the, quote, need that the Claritas report comes 24 up with. 25 MR. GROSSMAN: Okay. So what you're saying is</p>	<p style="text-align: right;">Page 53</p> <p>1 store operations, the Royal Farms, the Wawa, the Sheetz, I 2 don't believe any of those from looking at their websites 3 are located in this County yet. So we are perhaps 4 underserved in this County with gas stations with 5 convenience stores, but that's not what we're getting. 6 MR. GROSSMAN: Okay. 7 MS. CORDRY: Okay. Okay. In fact, because all of 8 the sales from this gas station that would be proposed here 9 would be counted as being part of this area's sales, if you 10 go back and rerun this Claritas calculation a year or two 11 from now, if someone did come in and try to propose to build 12 a Royal Farms store and you had this 12 million gallons 13 being sold here, now all of this supposed need gap in the 14 area has been filled and now there would, that kind of a 15 store with a convenience store, which is what we really want 16 to have here, there would be no room under this need gap 17 analysis. There would no longer be a gap. It would have 18 been filled with a store that isn't what we need and would 19 preclude us from getting a store of the kind that we might 20 need. So that's another way in which this does not provide 21 a useful benefit to the community. 22 Last couple summary points. Any claim that is 23 low-cost price strategy provides a large benefit to its 24 members or incidental benefit to other areas by placing 25 downward pressure on surrounding prices we believe is</p>

<p style="text-align: right;">Page 54</p> <p>1 greatly overstated in the needs report. We will provide a 2 more detailed analysis here that indicates that any 3 purported savings are likely to be far smaller than asserted 4 and there is ample reason to believe that Costco essentially 5 prices to the surrounding market rather than establishing 6 any independent, automatic, lower Costco price. There's 7 certainly no guarantee that the Beltsville prices to which 8 Mr. Flynn compared the local area will be seen over here. 9 We would also note that there are other similar 10 kinds of gas saving discount programs through many other 11 retailer programs now that provide far more flexible 12 opportunities for users to save money and, thus, indicating 13 that even if, quote, cheap gas is a separate category of use 14 that you have to be able to supply, that there are other 15 places to get, quote, cheap gas. And then I'll go through 16 Mr. Flynn's report step by step and critique what's there 17 and what's not there, perhaps more importantly. I'll look 18 at a number of other comparable needs reports, including one 19 by Mr. Flynn and one by Mr. Cronin, and I will then get to 20 the part about what the authoritative projections are for 21 this area and in general as to need. So that's the 22 overview. 23 MR. GROSSMAN: All right. 24 MS. CORDRY: All right. So going back to just the 25 question of what does need actually mean and now do we</p>	<p style="text-align: right;">Page 56</p> <p>1 scrutiny is needed and that they can't build by right and 2 the community has a right to come back and discuss these. 3 And that's also discussed in that ZTA staff packet. 4 MR. GROSSMAN: Well, I think the fundamental point 5 of the reason for that provision -- 6 MS. CORDRY: Right. 7 MR. GROSSMAN: -- that you can't deny a special 8 exception based solely on inherent characteristics is that 9 the Council recognizes when it establishes the opportunity 10 for a special exception that it will have inherent 11 burdens -- 12 MS. CORDRY: Right. 13 MR. GROSSMAN: -- on the community and so the mere 14 fact that there are burdens on the community from a special 15 exception cannot be the sole basis for denying it. 16 MS. CORDRY: Right. So, yes, and some of these 17 special exception uses are fairly small scale and they can 18 be approved based on relatively specific standards and 19 conditions after the community puts its input in. Others, 20 though, it appears were viewed as imposing greater burdens 21 such their requirement should be imposed that there must be 22 a need shown for such use. So, again, this comes back to my 23 view that the need and the burden must be viewed as 24 complimentary there. 25 Again, it makes sense to impose an inherent burden</p>
<p style="text-align: right;">Page 55</p> <p>1 analyze it, again, the zoning code states in Section 59-C- 2 1.31 the land uses, that no use is allowed except as 3 indicated in the following table and in that table gas 4 stations are shown in Category E as being only allowed as a 5 special exception in a commercial zone. I look then at the 6 general standard in Section 59-G-1.2.1 for evaluating 7 special exceptions and this is what I say, I read a lot of 8 this a lot of times. This has been an interesting process 9 to follow through getting into the weeds of all these 10 special exception zoning requirements. And it stated the 11 decision maker must consider the inherent and non-inherent 12 adverse effects of the use on nearby properties in the 13 general neighborhood. It discusses inherent, adverse 14 effects being the physical and operational characteristics 15 necessarily associated with a particular use and that 16 inherent adverse effects alone are not a sufficient basis 17 for denial of a special exception. 18 I will say the first time I read that I said, 19 well, that doesn't make any sense. I mean you're saying I 20 can't oppose a project for precisely the reasons why I want 21 to oppose it? And in looking at the issue some more and 22 after talking with Park and Planning Staff and so forth, it 23 became clear that the basic point appeared to be that a 24 special exception is one that inherently imposes greater 25 burdens on the surrounding neighborhood so that stricter</p>	<p style="text-align: right;">Page 57</p> <p>1 on the community if they need the facility and they have to 2 take the bad with the good. Different question to impose on 3 a community that's already adequately served with the same 4 right, similar or identical use. It's not a special 5 exception, but as a, kind of an example, I mean none of us 6 like to hear trucks in the morning, but I accept the fact 7 that I have to hear a garbage truck for a few minutes once a 8 week to get my garbage picked up. But that doesn't mean 9 that I would want to have my, you know, residential 10 neighborhood street become a thoroughfare for heavy trucks 11 three hours a day because that's the most convenient way for 12 someone to go someplace if they didn't need to go there if 13 they could go some other way. So the burden and the benefit 14 should have some degree of relationship to each other. 15 Again, I looked at the fact that certain uses such 16 as drive-in restaurants, hotels, conference centers and the 17 like could show a County need for the service, but other 18 exceptions which all related to auto services and swimming 19 pools had to meet this neighborhood need standard that, 20 again, that there must be a need to serve the population in 21 the general neighborhood considering the present 22 availability of identical or similar uses. And Category 1 23 there, of course, was automobile filling station. 24 So, again, by contracting these two it appears 25 that filling stations are not expected to be large-scale</p>

<p style="text-align: right;">Page 58</p> <p>1 operations drawing from all over the County. They're not a 2 destination spot that gasoline stations are expected to 3 serve a small neighborhood need. It certainly makes sense 4 they're a pretty fungible product that, you know, everybody 5 needs to be able to get to and that that's what they were 6 looking at trying to encourage or allow. 7 MR. GOECKE: I would like to object to that, Mr. 8 Grossman. I feel sometimes we're getting into legal 9 conclusions here that sort of go beyond factual testimony 10 about whether or not a need exists under these 11 circumstances. 12 MR. GROSSMAN: We clearly are, but I'm going to 13 allow her to make her case about that and I consider it as 14 it's a mixed -- her analysis is clearly a mixed legal and 15 factual analysis and you will have every opportunity to 16 respond to that. 17 MR. GOECKE: Thank you. 18 MS. CORDRY: So then I took the next step, all 19 right, so if we're looking at what identical or similar uses 20 are available to the neighborhood, what's out there? In the 21 fall of 2010, the applicant filed its first need report in 22 the prior special exception. I submitted all of that to 23 Park and Planning as part of my filings on the need 24 question. A fair amount of that didn't get in 25 inadvertently, which part of it, otherwise it would be part</p>	<p style="text-align: right;">Page 60</p> <p>1 MS. CORDRY: So his entire 2010 report was Exhibit 2 7 to my piece, which is Exhibit 88(h). 3 MR. GROSSMAN: Okay. So I'll say -- 4 MS. CORDRY: And, again -- 5 MR. GROSSMAN: -- Attachment 7. 6 MS. CORDRY: Yes. And a lot of this -- 7 MR. GROSSMAN: Whose, I'm sorry, whose is this? 8 MS. CORDRY: This is Mr. Flynn's report. 9 MR. GROSSMAN: Okay. 10 MS. CORDRY: Okay. Now and that report 11 identified, as I think he has testified to, that there were 12 originally 27 stations that were part of this squiggly 13 calculation that we did on Exhibit 217. And, again, in 14 terms of sort of geography, again, basically going down to 15 the Beltway and Georgia Avenue, just south of there, down to 16 roughly Seminary Road going over to Kensington area on the 17 west side going up to Randolph on the north side and then 18 going over to Four Corners on the east side. 19 And the distances there, it's about a mile, 20 perhaps a little more than a mile, to the Kensington 21 boundary, about two miles to the north to Glenmont and about 22 two miles to the south to the Beltway. And with, as the 23 crow flies, it might be two miles to Four Corners as you 24 drive around the somewhat curves, University Boulevard, it's 25 about 2 1/2 miles there.</p>
<p style="text-align: right;">Page 59</p> <p>1 of Exhibit 70. But the whole package was submitted as part 2 of Exhibit 88(h), which was our prehearing filings with you. 3 And Exhibit 7 of that Exhibit 88(h) is the entire 4 need report from 2010 and portions of that were submitted 5 earlier as Exhibit 224 when we cross-examined Mr. Flynn. I 6 don't know that I actually have a copy of 224 with me, so 7 I'm going to discuss from the 88(h), the complete exhibit, 8 to the extent I mentioned it. 9 MR. GROSSMAN: Because I have, I have your letter 10 to the Planning Board -- 11 MS. CORDRY: Right. 12 MR. GROSSMAN: -- as being 80(g) exhibit. And I 13 have to look back and see 88(h). 14 MS. CORDRY: I think we submitted everything 15 twice. 16 MR. GROSSMAN: Okay. 17 MS. CORDRY: So 88 was a, I think, an even more 18 complete submission. So -- 19 MR. GROSSMAN: All right. Hold on one second. 20 Yes, I do have 88(h) as your statement by Karen Cordry 21 regarding lack of demonstrated need for the proposed gas 22 station. 23 MS. CORDRY: Right. And that had all the exhibits 24 attached to it, so -- 25 MR. GROSSMAN: Okay.</p>	<p style="text-align: right;">Page 61</p> <p>1 I did look at that listing and I noticed that 2 there were three stations at Four Corners that were not 3 included. We did ask Mr. Flynn about that in his testimony 4 and he suggested there might be some convoluted way that you 5 could drive around perhaps on the Beltway, perhaps to 6 Colesville Road, come back around and get to that one 7 station without going past the other ones there. 8 I went back over to that area because I have, I 9 lived there for several years and I was really kind of 10 surprised to hear that suggestion and I will tell you that 11 there is no access to that Shell station except by coming 12 from the west on University Boulevard. You have to come 13 there. You cannot -- there is a small road going into the, 14 or a small, next to the post office, which is right next to 15 it that looks like it might connect up with the road that 16 perhaps you could slide between the post office and into 17 that station without the BP, which is right on the other 18 side. But that, in fact, does not connect up. It's blocked 19 off. 20 MR. GROSSMAN: I might be able to save you some 21 time -- 22 MS. CORDRY: Yes. 23 MR. GROSSMAN: -- by letting you know I'm not 24 going to decide -- 25 MS. CORDRY: Right.</p>

<p style="text-align: right;">Page 62</p> <p>1 MR. GROSSMAN: -- the need issue --</p> <p>2 MS. CORDRY: Right.</p> <p>3 MR. GROSSMAN: -- based on the access --</p> <p>4 MS. CORDRY: Right.</p> <p>5 MR. GROSSMAN: -- to that Shell station.</p> <p>6 MS. CORDRY: Right. I understand. My point being</p> <p>7 only a couple of things. Number one, as we'll see later on,</p> <p>8 Mr. Flynn was not nearly as doctrinaire in his prior report</p> <p>9 about exactly which stations you included, if they were</p> <p>10 right at the edge of the boundary and were available to</p> <p>11 people in that market area, he has included those. So I</p> <p>12 would certainly say on that basis we could include them.</p> <p>13 Certainly in terms of the people who live in the area, I</p> <p>14 don't think would decide whether or not they would buy here</p> <p>15 or go over to the mall based on the squiggly diagrams. And</p> <p>16 it's just another example of the fact that the one thing</p> <p>17 that this Claritas report is not gospel either. It does</p> <p>18 have some errors in it.</p> <p>19 So from our perspective, there are 30 stations.</p> <p>20 In his perspective, 27. And as we'll see with some of the</p> <p>21 ratios, I say whether you use 27 or 30, it's a very large</p> <p>22 number. Thirty is kind of a nice, round number when you get</p> <p>23 to it. So --</p> <p>24 MR. GROSSMAN: And you also realize that I haven't</p> <p>25 made any decision as to whether or not I accept the analysis</p>	<p style="text-align: right;">Page 64</p> <p>1 by using the term general neighborhood there to mean the</p> <p>2 general neighborhood as it is usually interpreted for land</p> <p>3 use purposes for this later arrived at concept of market</p> <p>4 area.</p> <p>5 MS. CORDRY: Okay.</p> <p>6 MR. GROSSMAN: And so I'm not, I haven't made any</p> <p>7 decision as to which I am --</p> <p>8 MS. CORDRY: Right.</p> <p>9 MR. GROSSMAN: -- going to apply.</p> <p>10 MS. CORDRY: I would say -- I don't believe that</p> <p>11 we have suggested that for purposes of the need analysis</p> <p>12 that it need to be limited to just either the mall parcel or</p> <p>13 the area around there. We believe that --</p> <p>14 MR. GROSSMAN: No, I think you, in fact, have made</p> <p>15 that point and by you I mean Ms. Rosenfeld --</p> <p>16 MS. CORDRY: I, I don't believe so. I think</p> <p>17 Kensington View has made somewhat of that argument, but I</p> <p>18 think our position has been we have analyzed the need area</p> <p>19 in the same basis that this has been and we have said that</p> <p>20 taking that approach we are prepared to show that it doesn't</p> <p>21 qualify. I think we have discussed that the general</p> <p>22 neighborhood in terms of the physical impacts, the direct,</p> <p>23 physical impacts of the station, or certainly not just the</p> <p>24 mall parcel, that it is the broader area around there that</p> <p>25 can be physically impacted. But I think we have not tried</p>
<p style="text-align: right;">Page 63</p> <p>1 for the general neighborhood being the squiggly line area or</p> <p>2 the much smaller area that is defined by, as defined by</p> <p>3 Technical Staff as I mentioned earlier. So we had</p> <p>4 testimony --</p> <p>5 MS. CORDRY: Right.</p> <p>6 MR. GROSSMAN: -- using both.</p> <p>7 MS. CORDRY: Well, Technical Staff, it's been kind</p> <p>8 of interesting because throughout the entire process when we</p> <p>9 discussed with them and throughout these three reports we've</p> <p>10 all used some variation on the seven minute driving radius,</p> <p>11 whether we tried to be absolutely doctrinaire about it,</p> <p>12 whether we use an approximation, whether we use this, we</p> <p>13 basically use this area to discuss and that's what's been</p> <p>14 the focus of Mr. Flynn's reports for the last three years.</p> <p>15 It was what when we talked to Park and Planning Staff was</p> <p>16 understood was what they were working with. And it does</p> <p>17 present a set of fairly logical, pragmatic boundaries. It</p> <p>18 does appear to be within the kind of concept of what I have</p> <p>19 seen in reading other special exception reports.</p> <p>20 MR. GROSSMAN: That's true and which is why we</p> <p>21 look at it, but the problem is, as Ms. Rosenfeld and you, I</p> <p>22 believe, brought to my attention, that's not the general</p> <p>23 neighborhood as defined in the zoning ordinance or as</p> <p>24 defined by Technical Staff for this particular case. So it</p> <p>25 does raise a question as to whether or not the Council meant</p>	<p style="text-align: right;">Page 65</p> <p>1 to suggest that --</p> <p>2 MR. GROSSMAN: Well, my recollection is different</p> <p>3 on that. But even if you hadn't, it has been suggested here</p> <p>4 and in any event there's now an issue for me in my own mind</p> <p>5 as to whether or not the appropriate area to look at in</p> <p>6 terms of need in this section of the zoning ordinance is the</p> <p>7 general neighborhood as defined for land use purposes or</p> <p>8 some broader market area despite the fact that you're quite</p> <p>9 correct that prior gas station cases have looked at a market</p> <p>10 area, including cases I have handled because nobody has</p> <p>11 raised this point before and for some reason it just never,</p> <p>12 it was never, it never became an issue. And it has been an</p> <p>13 issue in this case and we'll have to decide it at some</p> <p>14 point.</p> <p>15 MS. CORDRY: Okay. Well, we can certainly come to</p> <p>16 that. For our purposes, I believe that we have and are</p> <p>17 continued to be willing to look at the same way it's been</p> <p>18 analyzed in the past.</p> <p>19 MR. GROSSMAN: I understand.</p> <p>20 MS. CORDRY: And starting with that, because I</p> <p>21 mean it can get very meaningless at that point that if the</p> <p>22 station is built in an area that doesn't have a gas station</p> <p>23 and half a block away there are 10, but it's not literally</p> <p>24 within, you know, a block of the mall, then you, you have</p> <p>25 this notion that somehow we're underserved. And I don't</p>

<p style="text-align: right;">Page 66</p> <p>1 think, from our perspective here, and certainly anyone 2 living in this general area, it's our view that we are 3 served by 30 stations within a seven minute radius and that 4 is a normal kind of an area that people would look at in 5 terms of their driving. 6 MR. GROSSMAN: Well, I don't think that -- I'm not 7 talking about the supply area. I'm talking about the demand 8 area. That is that the area, that the question is whether 9 or not to look at this larger area as being the demand area, 10 which is what has been done in this analysis, as opposed to 11 looking at the immediate area of your neighborhood as the 12 demand area, you conceivably could get supply from outside 13 of your neighborhood. So -- 14 MS. CORDRY: Well, I understand but, again, we're 15 perfectly prepared to have the supply and the demand area be 16 coincident. You can have complete distortions if you take 17 one or the other that is too narrow and don't deal with the 18 same kind of overlap of supply and demand. 19 MR. GROSSMAN: I don't doubt that you're prepared 20 to do it that way, I'm just saying I'm not sure that that 21 was the intent of what the Council did since they especially 22 did have a County need versus a general neighborhood need 23 and they determined general neighborhood has taken on a very 24 specific land use meaning. So -- 25 MS. CORDRY: Well --</p>	<p style="text-align: right;">Page 68</p> <p>1 present availability of 30 identical uses that can be used 2 by persons in the neighborhood and also remember it's in or 3 available to the neighborhood. So certainly even if it was 4 slightly outside the boundary, it's certainly available to 5 those persons. Again, 27 versus 30 in some respects is just 6 when you sort of lay it out there and say that 30 is a nice, 7 round number and you kind of say, gees, aren't we done? 8 Isn't that enough? If 30 isn't enough, what would ever be 9 enough to be, have a neighborhood be adequately served? 10 But somehow that didn't seem to end the 11 discussion, so I went back and started looking some more. 12 And I did, at this point I did start with the two cases that 13 seemed to be sort of the seminal cases her, the Amoco case, 14 which was 270 Md. 301, decided in 1973; and the Lucky Stores 15 case, 270 Md. 531, which was decided in 1973 as well. Both 16 Montgomery County cases, both interpreting the special 17 exception filling stations, the language was a little 18 different then, but pretty similar. 19 It stated Ms. Fine, quote, for the public 20 convenience and service, a need exists for the proposed use 21 for service to the population in the general neighborhood 22 considering the present availability of such uses to that 23 neighborhood. So functionally pretty similar. The Amoco 24 case didn't seem to be that helpful. It was talking about a 25 proposed station in Germantown when the area was still very</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. GROSSMAN: -- but in any event -- 2 MS. CORDRY: Okay. 3 MR. GROSSMAN: -- you may -- 4 MS. CORDRY: Right. 5 MR. GROSSMAN: -- you may -- 6 MS. CORDRY: In any case, I think there is a, 7 somewhat of a dividing line between County and, you know, 8 115 homes which is -- 9 MR. GROSSMAN: Right. 10 MS. CORDRY: -- right around -- in any case. All 11 right. So -- 12 MR. GROSSMAN: Well, you and the applicant may be 13 on the same side of this argument, so -- 14 MS. CORDRY: I am -- 15 MR. GROSSMAN: -- but I'm just saying. 16 MS. CORDRY: Right. I'm walking down the same 17 road with Mr. Flynn. I just -- 18 MR. GROSSMAN: Right. 19 MS. CORDRY: -- I just have problems with how Mr. 20 Flynn analyzed it, but in this case we -- 21 MR. GROSSMAN: Right. 22 MS. CORDRY: -- we're both working within roughly 23 this area here. 24 MR. GROSSMAN: I understand. 25 MS. CORDRY: So we started with that we assume the</p>	<p style="text-align: right;">Page 69</p> <p>1 undeveloped and 355 only had two lanes up there and it said 2 there really isn't any need at all up here, we just don't 3 really have anybody buying gas very much. 4 But the Lucky Stores case seemed to be a very 5 close match to the situation we have here. Lucky Stores ran 6 membership stores called Memco. They, like Costco, charged 7 a membership fee. They only charged \$1 and they donated it 8 to charity as opposed to being one of their main profit 9 centers. The existing Memco store was located on Rockville 10 Pike just south of Rawlins Avenue, close to the current 11 Twinbrook Metro station. Was then, and is now, a very busy 12 commercial area. The only opposition to that proposal came 13 from other gas station operators. 14 The applicant argued that it wanted to build a 15 station because it had built a reputation of being a, quote, 16 one stop shopping center, wanted to serve its members. 17 Virtually all of its business came from customers who were 18 already coming to the stores, so it was very convenient for 19 them to buy at this store and shop and buy gas at the same 20 time, argued they probably wouldn't take business away from 21 other local stations because customers had a different 22 orientation. 23 When the Board of Appeals here in Montgomery 24 County was considering that application, they asked, and I'm 25 reading from the Board of Appeals decision which was quoting</p>

<p style="text-align: right;">Page 70</p> <p>1 the Board record, they asked them why does Rockville Pike 2 need another station? And the answer was, and the Court of 3 Appeals italicized this, quote, we need to serve our 4 members, unquote. The Board of Appeals member asked again, 5 the ordinance says a need must be demonstrated, quote, again 6 in italics, why does the public need a new gas station on 7 Rockville Pike? And the answer again was, again in italics 8 in the Court of Appeals decision, it completes our one-stop 9 shopping complex, unquote, which is a nationally advertised 10 program.</p> <p>11 The Board of Appeals turned down that application 12 due to lack of need based on those answers and the court 13 upheld that position. The court noted there were 25 other 14 stations within 3.8 miles from the station. Here we're 15 looking at 27 to 30 within 2.5 miles or less. It said the 16 restricted nature of Memco's contemplated sales of gasoline 17 to its own customers who have the membership card is hardly 18 a reason to move the Board to find that Memco had 19 established a need for the proposed use for service to the 20 population in the general community.</p> <p>21 It added that, quote, the, quote, need is to serve 22 Memco's selling policy. It does not establish a need by the 23 population in the general neighborhood, unquote. And then 24 it went on to note that there was affirmative evidence of 25 the lack of need for another station in view of the rather</p>	<p style="text-align: right;">Page 72</p> <p>1 And they said, well, yes, there can be some need if there's, 2 if they're providing something that's expedient and is only 3 convenient and useful to the public. So there is some way 4 to deal with this. If the only question is existing 5 operators, as here being the only opponents, are they 6 necessarily allowed to simply freeze everyone out on that 7 basis?</p> <p>8 But it also held that doesn't mean you can never 9 deny any new permits due to an over-saturation of existing 10 uses. They said that would be absurd to suggest that that 11 would be somehow the approach there. So looking at all of 12 this, it seems to me that both of these approaches are what 13 I'll call need as necessity and need as usefulness. Both 14 are at play in this analysis. And so I went on then to 15 start looking at those kind of factors. Does it make sense 16 to take a five minute break here?</p> <p>17 MR. GROSSMAN: If you feel you need it. 18 MS. CORDRY: If I could have just a few minutes, 19 that would be great. Thank you.</p> <p>20 MR. GROSSMAN: Okay. All right. Let's break 21 until five after 11:00. 22 (Whereupon, at 10:58 a.m., a brief recess was 23 taken.) 24 MR. GROSSMAN: Testimony. 25 MS. CORDRY: So, well, I started analyzing this</p>
<p style="text-align: right;">Page 71</p> <p>1 extraordinary number of existing filling stations and marked 2 decline in gasoline sales, noted those stations could 3 readily supply the population. There was no delay in 4 satisfying the population and to the extent that it relied 5 on, quote, discount gas operations, but noted there were 6 other low-cost operations similarly noted. And it noted 7 that there was testimony that it could have been established 8 by need such as the number of residents, automobiles per 9 households, gasoline gallons used and it would provide some 10 absolute numbers tending to show how much gasoline might be 11 used. So, clearly, it was looking at questions of actual 12 capacity and actual supply, not just generalized benefit.</p> <p>13 And that, of course, all of that -- I think it's 14 very obvious how close that case and the facts are to what 15 the facts are that we have here, large numbers of stores 16 only serving a limited portion, affirmative evidence we will 17 present of lack of need in light of declining numbers and 18 numbers of other stations. Now that's the holding of the 19 case. There was certainly before they got to that part, 20 there was discussion about the general constitutional 21 questions of need and how you deal with that and whether it 22 has some form of anti-competitive purpose. In other words, 23 can it be used to stifle any new entrance into a market 24 simply by saying, well, the existing stations could pump 25 enough and, therefore, no one can ever enter the market.</p>	<p style="text-align: right;">Page 73</p> <p>1 starting with the first question, the need as necessity kind 2 of analysis, what was the actual supply and so forth in the 3 area. I started with the original 30 stations in the area, 4 or 27, take your pick. There are three that have now closed 5 in Glenmont. Mr. Flynn was only aware of two. This 6 actually, the third one, the Freestate has also closed up 7 there, leaving 27 stations, or 24 at issue.</p> <p>8 I took those 27 stations and I put them into a 9 spreadsheet. I used the information that Mr. Flynn had in 10 his 2012 needs report. It's Exhibit 14 in these 11 proceedings. And what I was looking at was Exhibit 3-1 on 12 page 3-2 of that report. And, Ms. Adelman, if you would 13 hand out this chart that I prepared?</p> <p>14 MR. GROSSMAN: Thank you. 15 MS. CORDRY: I carried over his columns about the 16 location of the station, the address, the number of pumps. 17 MR. GROSSMAN: This is your own modification -- 18 MS. CORDRY: Yes. 19 MR. GROSSMAN: -- of this? 20 MS. CORDRY: Right. I took the number of his 21 categories and then I added to those. 22 MR. GROSSMAN: Let's give this an exhibit number. 23 MS. CORDRY: Yes, it does. Yes. It should have a 24 new exhibit number please. So that would be, I think, 291? 25 MR. GROSSMAN: Exhibit 291 is Cordry extension of</p>

<p style="text-align: right;">Page 74</p> <p>1 Flynn, which, what, identify again the table?</p> <p>2 MS. CORDRY: It's Exhibit 3-1, and it's Exhibit 14</p> <p>3 in these proceedings. It's on page 3-2.</p> <p>4 MR. GROSSMAN: Exhibit 14, page 3-2?</p> <p>5 MS. CORDRY: 3-2, yes, in Exhibit 3-1.</p> <p>6 MR. GROSSMAN: All right. So that's Flynn Exhibit</p> <p>7 2-1?</p> <p>8 MS. CORDRY: Right. So, again --</p> <p>9 MR. GROSSMAN: Okay.</p> <p>10 (Exhibit No. 291 was marked for</p> <p>11 identification.)</p> <p>12 MS. CORDRY: I picked up the name, the address,</p> <p>13 the number of pumps, which is why I labeled it convenience</p> <p>14 store versus mart. He labeled it mart, but these are the</p> <p>15 kind of things that might be considered a convenience store</p> <p>16 or not. But in any case, he labeled these are mart.</p> <p>17 Then his column on service bays, his column on</p> <p>18 whether or not they sold diesel. And that's what came out</p> <p>19 of his chart. From there on over is what I've added.</p> <p>20 So what I did at that point was, first off, if you</p> <p>21 add up all of his pumps, you come out with a total of 229 at</p> <p>22 the end of the Four Corners listing there. I am including</p> <p>23 the three, all four stations at Four Corners. I did delete</p> <p>24 all three of the stations at Glenmont that have closed, but</p> <p>25 that were originally in the original 30, but these three</p>	<p style="text-align: right;">Page 76</p> <p>1 analyze what the likely traffic would be at this station</p> <p>2 based on observations at other stores. In his report, he</p> <p>3 did a set of numbers, he pulled actual transaction numbers</p> <p>4 from the Costco at Gateway, which is the Elkridge Costco.</p> <p>5 And if we can label this as an exhibit?</p> <p>6 MR. GROSSMAN: All right. So this will be Exhibit</p> <p>7 292.</p> <p>8 (Exhibit No. 292 was marked for</p> <p>9 identification.)</p> <p>10 MR. GROSSMAN: And what is 292?</p> <p>11 MS. CORDRY: Okay. It is a number of pages from</p> <p>12 the traffic report which is already in evidence. Again, I'm</p> <p>13 doing these for convenience purposes, but let's see, the</p> <p>14 traffic report I believe is Exhibit 11. Does anybody have</p> <p>15 the exhibit listing? It is one of the ones that was, the</p> <p>16 original one that was put in. I think it's 11(a).</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 MS. CORDRY: Yes, 11(a).</p> <p>19 MR. GROSSMAN: 11(a) is the traffic impact</p> <p>20 analysis.</p> <p>21 MS. CORDRY: Right. Okay.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 MS. CORDRY: This one is labeled page 22 at the</p> <p>24 bottom. That's, there's actually a series of pages in the</p> <p>25 report and then he has a number of appendices. So this was</p>
<p style="text-align: right;">Page 75</p> <p>1 have now closed.</p> <p>2 MR. GROSSMAN: Where is this, 229? Where is it?</p> <p>3 MS. CORDRY: If you go down just above the</p> <p>4 Glenmont, see the Four Corners?</p> <p>5 MR. GROSSMAN: Right.</p> <p>6 MS. CORDRY: And then underneath it Shell at 10100</p> <p>7 Colesville Road, totaling up at the bottom the pump numbers</p> <p>8 column.</p> <p>9 MR. GROSSMAN: I am not seeing the number. Can</p> <p>10 you point it out for me here?</p> <p>11 MS. CORDRY: Sure, I'll circle it on yours.</p> <p>12 MR. GROSSMAN: Okay. Thank you.</p> <p>13 MS. CORDRY: Okay. So what I tried to do at this</p> <p>14 point was to come up with some kind of reasonable</p> <p>15 calculation for what might be a capacity for each one of</p> <p>16 these pumps to put out. And what I did, that calculation is</p> <p>17 shown there on the bottom, right-hand side, under listing</p> <p>18 the area stations. The first number I used was a number of</p> <p>19 cars per hour that each station might be able to reasonably</p> <p>20 accommodate.</p> <p>21 MR. GROSSMAN: How did you achieve that number?</p> <p>22 MS. CORDRY: I achieved that number by looking at</p> <p>23 the figures from, this will be the next exhibit, if you</p> <p>24 could give this next one here, these came out of the traffic</p> <p>25 report that Mr. Guckert put together where he was trying to</p>	<p style="text-align: right;">Page 77</p> <p>1 actually page 22 in one of his appendices. So I wrote at</p> <p>2 the bottom page 63. That's actually the entire traffic</p> <p>3 report. It's the 63rd page.</p> <p>4 MR. GROSSMAN: I see.</p> <p>5 MS. CORDRY: Okay. And behind there, there are a</p> <p>6 number of pages which I will be talking about at later</p> <p>7 points where there's other excerpts from there that deal</p> <p>8 with the traffic generation and the breakdown of the trips</p> <p>9 and so forth, but for right now I'll just start with that</p> <p>10 first page there.</p> <p>11 And if you look at that first page under Costco</p> <p>12 gas pumps --</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 MS. CORDRY: -- trips per fueling station, the</p> <p>15 highest number there is listed at the bottom, on that very</p> <p>16 bottom line there, 13.17 for p.m. in and p.m. out.</p> <p>17 MR. GROSSMAN: Right.</p> <p>18 MS. CORDRY: So 13.17 trips in and 13.17 trips</p> <p>19 out. That's the average for that week of pumping at that</p> <p>20 station.</p> <p>21 MR. GROSSMAN: Well, I see the number, I'm just</p> <p>22 trying to -- but this, I presume, is in the peak hour --</p> <p>23 MS. CORDRY: Right. Right.</p> <p>24 MR. GROSSMAN: -- of the peak period?</p> <p>25 MS. CORDRY: Well, this is -- yes. This is --</p>

<p style="text-align: right;">Page 78</p> <p>1 yes, these are peaks. So if you start on Monday, there were 2 154 cars; Tuesday, 152; Wednesday, 155; Thursday, 158; 3 Friday, 171. 4 MR. GROSSMAN: Right. 5 MS. CORDRY: That averaged to 158 a day in that 6 hour. That's divided by the 12 pumps that are at Elkridge 7 which gets you to that 13 number there per pump. 8 MR. GROSSMAN: All right. 9 MS. CORDRY: The highest number actually which he 10 doesn't have on here, but if you took the 171, if you 11 divided that by 12, it would be 14.25, but they have used 12 this number of 13.17 in an number of their calculations, 13 so -- 14 MR. GROSSMAN: Okay. 15 MS. CORDRY: -- that's the number I used on this 16 chart here. If I can get back and find that chart again? 17 Oops. All right. I used, again, this is somewhat of a 18 guesstimate, a figure of 12 gallons per fill-up. 19 MR. GROSSMAN: Okay. 20 MS. CORDRY: Mr. Flynn actually used that himself 21 in his testimony at one point as a similar guesstimate. So 22 it seemed like a reasonable number. You multiply that out. 23 You get the volume per hour per pump is 158. 24 I then came up with a calculation for the total 25 hours per year at the station and I came to that by using 18</p>	<p style="text-align: right;">Page 80</p> <p>1 were pumping it the absolute maximum capacity, 18 hours a 2 day. But that is what a station could pump. 3 MR. GROSSMAN: Okay. 4 MS. CORDRY: And I did the same kind of 5 calculation with Costco below that. Again, 13.17, 12-gallon 6 fill-up. Now the hours, I'm sorry, again, the volume per 7 hour per pump would be the same. The total hours would be 8 considerably less because Costco operates five days at 15 9 1/2 hours a day; two days at 13 hours a day. Well, that's 10 103.5 hours per week. It's all shown on the very last line 11 on the left-hand side there. That would equal to 5,382. I 12 reduced that by hours because they actually close for six 13 holidays and that would take you down to 5,300. 14 So I used the 5,300 in there and that would come 15 out to 837,612. For a 16-pump station, that would give you 16 a theoretical maximum capacity of 13.4. And if we're 17 assuming a 12 million gallon station here, that -- 18 MR. GROSSMAN: At a maximum capacity of 13.4? 19 MS. CORDRY: Four million, I'm sorry, gallons. A 20 12-million gallon station would be almost 90 percent of 21 that. Those numbers are probably a little low because we 22 know that Sterling pumps 13.7, so there may be some hours 23 they pump a little more than the 13.7 cars per hour. They 24 may pump a little more than 13 gallons, but you can see that 25 in any case 12 million gallons is going to be pretty close</p>
<p style="text-align: right;">Page 79</p> <p>1 hours a day for the stations on average. Now according to 2 the land use report, it said that most stations were open 24 3 hours a day and that report says he was getting the 4 information from Mr. Flynn. When I look at the needs 5 report, I don't actually see that number in there, but I 6 believe we asked Mr. Flynn about it in his testimony and I 7 think he indicated that was generally correct and I'm 8 assuming it's correct. 9 So I am starting with 18 hours a day. They 10 actually testified many of the stations were open as much as 11 24 hours a day and so forth, so the 18, I believe, is 12 probably a conservative number. So I used 18 hours a day, 13 seven days a week, that's 126 hours a week times 52 hours a 14 year would be 6,562. I rounded that down, took that down to 15 6508 on the assumption that they might close at least three 16 holidays, perhaps Christmas and Easter and Thanksgiving to 17 watch the football games. In any case, I reduced it a small 18 amount for a few holidays. 19 MR. GROSSMAN: Okay. 20 MS. CORDRY: So picking that, you know, all of 21 these assumptions can be played with a little bit, but these 22 are reasonable assumptions. Taking that number of hours per 23 year times the volume per pump, you come out with 1.028524. 24 Now that is a theoretical maximum. I am not suggesting that 25 anybody would do that because that would indicate that they</p>	<p style="text-align: right;">Page 81</p> <p>1 to capacity of what a station this size can pump. 2 MR. GROSSMAN: Okay. 3 MS. CORDRY: Okay. So to get a comparison of that 4 to what the local stations are doing, the next -- going back 5 up to the top of the chart, the pumping capacity, I simply 6 multiplied each pump number that a station had times that 7 1.028 million figure. So, for instance, the 12 pumps at the 8 Freestate would theoretically pump, 12.342 million gallons 9 and so forth all the way down the chart. 10 On that same line where I showed the 229 total 11 pumps, nozzles, that would then translate into a little, 12 about 235.5 million theoretical pumping capacity. 13 MR. GROSSMAN: Okay. 14 MS. CORDRY: Okay? I was given actual figures for 15 these seven stations through the dealer's association for 16 the seven that I have listed there, which would have been 17 the Freestate, the Sunoco, Shell on Georgia, Sunoco in 18 Glenmont, an Exxon and a Shell on, down near the Beltway, 19 and let's see, which one was that, the -- I'm trying to move 20 across the column here. It looks like the Liberty Mart, it 21 looks like in Kensington. So I took their monthly volume, 22 turned that into an annual volume and then just compared 23 what the ratio was there. 24 MR. GROSSMAN: Okay. 25 MS. CORDRY: And the ratio ranged from 10 1/2</p>

<p style="text-align: right;">Page 82</p> <p>1 percent to 28 percent.</p> <p>2 MR. GROSSMAN: That's the ratio of what?</p> <p>3 MS. CORDRY: Of what their actual pumping was,</p> <p>4 what they were actually pumping and selling to the</p> <p>5 theoretical maximum capacity. And that came out to, if you</p> <p>6 average those out for those seven stations, that was a</p> <p>7 little over 20 percent.</p> <p>8 MR. GROSSMAN: Okay. So what's the bottom line</p> <p>9 here?</p> <p>10 MS. CORDRY: Okay. Okay. The bottom line of this</p> <p>11 is that these stations, and I'm going to get to that, I just</p> <p>12 want to walk everybody through the charts so we understood</p> <p>13 what it was saying first there. A couple bottom lines of</p> <p>14 this. First off, of course, these sales are very consistent</p> <p>15 with what we talked about, one to two million gallons, the</p> <p>16 largest one less than three and a half million gallons. No</p> <p>17 one pumping anywhere in the vicinity of the kind of 12</p> <p>18 million gallons we're talking about here.</p> <p>19 Another bottom line you can take away is if you</p> <p>20 took all of the stations here, the 235 million figure and</p> <p>21 applied a similar 20 percent average to it, you would come</p> <p>22 out at 47 million gallons a year.</p> <p>23 MR. GROSSMAN: We do have the electrician here to</p> <p>24 replace that bulb, so we're going to take a break for five</p> <p>25 minutes to --</p>	<p style="text-align: right;">Page 84</p> <p>1 MS. CORDRY: All right. So I used this and I came</p> <p>2 up with here's a number 47 million gallons. Now I did go</p> <p>3 back to look at Mr. Flynn's report to see what he would</p> <p>4 estimate the stations were supplying. I hoped to look at</p> <p>5 that figure. It's not in his report anywhere. There is</p> <p>6 nothing in his report that tries to give you any indication</p> <p>7 whatsoever of what is being supplied by the existing</p> <p>8 stations.</p> <p>9 Okay. So, and this is the point at which I think</p> <p>10 if you look at his testimony both on July 30th and July</p> <p>11 31st, that he's not making any assertion there's any lack of</p> <p>12 applicable capacity. In his July 31st testimony at pages</p> <p>13 198 through 199, he was asked the question, you would agree</p> <p>14 that you don't actually need another station to satisfy any</p> <p>15 shortage of gasoline in that area, being Wheaton,</p> <p>16 Kensington, we're talking about, quote. Answer, quote, I</p> <p>17 don't think that the need that I'm looking at has to do with</p> <p>18 capacity or shortage, and other parts of his testimony to</p> <p>19 the same effect, which, I guess, is why he didn't put</p> <p>20 anything in his report about how much he thought the station</p> <p>21 would actually supply or could supply, were pumping,</p> <p>22 whatever.</p> <p>23 Certainly there's been no contention, I think,</p> <p>24 that there are any back-ups in this area as any routine</p> <p>25 matter in any other station and you need to wait in line for</p>
<p style="text-align: right;">Page 83</p> <p>1 MS. CORDRY: Okay. Sure.</p> <p>2 MR. GROSSMAN: -- get that bulb replaced.</p> <p>3 MS. CORDRY: Okay.</p> <p>4 MS. ADELMAN: I must say, I commend you for</p> <p>5 working in the dark.</p> <p>6 MR. GROSSMAN: I'm trying to bring light where</p> <p>7 there is darkness.</p> <p>8 MS. ADELMAN: In more ways than one.</p> <p>9 (Whereupon, at 11:25 a.m., a brief recess was</p> <p>10 taken.)</p> <p>11 MS. CORDRY: Abigail, we're back on.</p> <p>12 MR. GROSSMAN: See, now if a lawyer had done that</p> <p>13 light bulb change, it would have taken a whole lot longer</p> <p>14 and we would have been charged by the hour.</p> <p>15 MS. CORDRY: We would have billed a lot higher.</p> <p>16 MR. GROSSMAN: Right.</p> <p>17 (Discussion off the record.)</p> <p>18 MS. CORDRY: Okay.</p> <p>19 MR. GROSSMAN: Okay.</p> <p>20 MS. CORDRY: All right. So, Abigail, we're back</p> <p>21 on.</p> <p>22 MR. GROSSMAN: We're back on the record. We've</p> <p>23 been changed, or at least we've had one bulb removed.</p> <p>24 MS. HARRIS: That was fast.</p> <p>25 MR. GROSSMAN: Yes, it was.</p>	<p style="text-align: right;">Page 85</p> <p>1 extended periods of time to get gas. Certainly in the 30</p> <p>2 years I think I've been living here, the only station I've</p> <p>3 every observed that ever had perhaps more than a single car</p> <p>4 waiting for the, someone to pull away is occasionally at the</p> <p>5 Freestate. There might be occasion when a car or two or</p> <p>6 three trying to get in, but most times that's been because</p> <p>7 it's kind of a cramped space and it's hard for people to get</p> <p>8 around to get to open pumps. But that's the only one and</p> <p>9 certainly nothing even remotely approaching 10, 20, 30, 40</p> <p>10 cars lined up here.</p> <p>11 MR. GROSSMAN: So if I may leap ahead here --</p> <p>12 MS. CORDRY: Yes.</p> <p>13 MR. GROSSMAN: -- is your point here that these</p> <p>14 existing stations have a significant amount of additional</p> <p>15 capacity for pumping beyond what they are pumping and,</p> <p>16 therefore, there's less demonstration of a need for the</p> <p>17 Costco station?</p> <p>18 MS. CORDRY: Right.</p> <p>19 MR. GROSSMAN: Is that your point?</p> <p>20 MS. CORDRY: Certainly to the extent that there's</p> <p>21 any question of, you know, can the existing station service</p> <p>22 any conceivable need in this area which is a relevant</p> <p>23 question. You know, you can't just jump past that one, yes.</p> <p>24 The stations clearly have that capacity. And there are some</p> <p>25 other points that I'm just going to make at this point.</p>

<p style="text-align: right;">Page 86</p> <p>1 Now in terms of the fact that the Costco station, 2 on the other hand, is clearly selling so close to at or 3 above capacity, this has a number of effects in terms of the 4 effect on the general area. If that, if all of those cars 5 arrived evenly over the course of the day, it could just 6 barely satisfy, stay current with the need that it has 7 because they obviously do not arrive consistently over the 8 course of the day. What you then, of course, get is that 9 once they start to build up, then you get the kind of back- 10 ups that you have at the Costco stations. 11 And I would refer you to the, Mr. Sullivan's 12 exhibit that he put in his most recent report. I have other 13 problems with the report, but his reports on showing the 14 cars lined up in queuing and so forth, what it did show was 15 that -- 16 MR. GROSSMAN: Which report is this? 17 MS. CORDRY: This is the August 16th report. 18 MR. GROSSMAN: Okay. 19 MS. CORDRY: I don't have the number right with 20 me, but if you look at pages, for instance, 21 and 22, and 21 those that -- they show that the queue starts at very little 22 when the station opens and then it builds up quickly during 23 the morning and once it hits the store opening, then it 24 stays very high for hours on end and then drops off after 25 the store closes.</p>	<p style="text-align: right;">Page 88</p> <p>1 MS. CORDRY: Okay. The point is that, you know, 2 this is something where because they are operating so close 3 to capacity, the total maximum theoretical capacity the 4 station could have -- 5 MR. GROSSMAN: You're talking about Sterling? 6 MS. CORDRY: Yes, or any of the Costco stations. 7 MR. GROSSMAN: Well, I don't know if this -- in 8 any event, this is the Sterling station that's depicted -- 9 MS. CORDRY: Right. 10 MR. GROSSMAN: -- in the August 16 report? 11 MS. CORDRY: Right. 12 MR. GROSSMAN: That page. 13 MS. CORDRY: Right. 14 MR. GROSSMAN: Figure 7? 15 MS. CORDRY: Right. And what I, what I showed you 16 before was that on this chart that using these kind of 17 calculations, a 16-pump station would only do 13.4 million 18 gallons. So you would have to up some of these numbers. 19 You would have to have more cars per hour, you'd have to 20 have more gallons pumped to even get to the 13.7 million 21 that Sterling is pumping, and that's assuming cars were 22 coming evenly over the entire time period that they were 23 there. And, again, our 12-million gallon would be 24 approximately 90 percent of that. 25 So because you have so many cars, because you are</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. GROSSMAN: All right. So hold on one second. 2 (Discussion off the record.) 3 MS. ADELMAN: Are you ready for anything? 4 MS. CORDRY: Yes. 5 MR. GROSSMAN: Well, I have the exhibit up here. 6 MS. CORDRY: Yes. 7 MR. GROSSMAN: So this exhibit -- 8 MS. CORDRY: I did have just for -- 9 MR. GROSSMAN: 255(a). 10 MS. CORDRY: Right. 11 MR. GROSSMAN: So hold on a second. What page was 12 that? 13 MS. CORDRY: Well, for convenience purposes, I've 14 pulled out the -- 15 MR. GROSSMAN: Hold on a second. What page are 16 you on? 17 MS. CORDRY: Well, for convenience purposes, I 18 pulled out the -- 19 MR. GROSSMAN: Well, let me -- 20 MS. CORDRY: Okay. 21 MR. GROSSMAN: -- since I have the exhibit here, 22 what's the -- 23 MS. CORDRY: It's pages 21 and 22. 24 MR. GROSSMAN: Okay. Thank you. Okay. Now so 25 what was your point about this?</p>	<p style="text-align: right;">Page 89</p> <p>1 so close to capacity or, and because cars don't come evenly 2 over the entire time period, and that's what, you know, page 3 22 shows, you do build up, you do have idling, you do have 4 these long lines of cars and that this is unique to Costco 5 stations, that other stations do not operate at this level 6 of capacity. That's why they don't have the back-ups. 7 That's why they don't have the idling. But, essentially, 8 the idling is in large respect a basis of a decision that in 9 terms of building the station we're not going to build the 10 station big enough to handle everybody on a real time basis. 11 We are going to simply build in the notion that there will 12 be extensive queuing at our stations during most of the time 13 that the station is open and that is a designed decision. 14 It's certainly something that makes economic sense for a 15 company that helps it to hold down costs by not having more 16 space, more pumps, perhaps the need for another attendant, 17 more leased space and so forth. 18 MR. GROSSMAN: Well, how is this tying into need? 19 I want to try to hone your -- 20 MS. CORDRY: Okay. It, it, because -- 21 MR. GROSSMAN: -- evidence. 22 MS. CORDRY: -- it ties into need because one of 23 the questions that Mr. Flynn emphasized, and most the 24 witnesses come in and say is, oh, we have this cost 25 advantage, we're cheaper. So we're going to talk a lot</p>

<p style="text-align: right;">Page 90</p> <p>1 about cheap, but one of the reasons it's cheap is because 2 they build into their stations the fact that they will have 3 idling and queuing and they will put a burden on the 4 neighborhood in order to have this cheap gas. It's also a 5 burden on the members who come there as well. They're the 6 ones who have to sit in line. But the neighborhood is 7 burdened by the fact that in order to have the cheap gas, 8 one of the factors that goes into it is clearly this under- 9 design of the station. This idea that we will have, it's 10 okay to have the long lines and people waiting and the cars 11 idling because that will undoubtedly contribute to how the 12 gas stays cheaper. 13 MR. GROSSMAN: Okay. 14 MS. CORDRY: So, okay. So that's the supply side. 15 Then normally it would seem like you would look at what's 16 the demand side in the area. Again, apart from going to 17 this Claritas data, which I will come to at the end, but in 18 terms of walking through this area, what do the people in 19 this area use, how do they need gas, any kind of discussion 20 like that, there's nothing in the report. The entire 21 calculation of what kind of demand there is, what kind of 22 supply, any of that, is simply the Claritas figures. So 23 that's why, you know, it's going to make sense when we get 24 to there when we talk about those some more. 25 And I certainly have looked at other special</p>	<p style="text-align: right;">Page 92</p> <p>1 at the moment. 2 MR. GROSSMAN: Well, let me respond for a second. 3 Yes, his testimony does speak for itself and you can 4 question it, but it is his expert opinion and you're 5 entitled to give your analysis. 6 MS. CORDRY: Right. And my point is simply that 7 his report gave you no derivation of that figure whatsoever. 8 MR. GROSSMAN: Yes. 9 MS. CORDRY: It just said a thousand gallons. 10 But, and that we've never been given the studies that show, 11 but let's, but I'm prepared for the moment to accept 1,000 12 gallons of household, okay? If you multiply that out times 13 the 37,382 households, you come up to about 37.8 million 14 gallons a year for the neighborhood defined in the same 15 seven minute kind of an area. 16 So if everyone in this neighborhood bought every 17 bit of their gasoline in this neighborhood, that would be 18 about a sixth of the available pumping capacity that I 19 demonstrated there and it would be less than even 20 20 percent, you know, if you used this 20 percent figure across 21 the board as being an estimate of what those stations 22 actually sell, it's less than even that 20 percent. So the 23 station might even be selling more than what everybody in 24 this neighborhood uses. 25 You could add say another 50 percent. Again, I</p>
<p style="text-align: right;">Page 91</p> <p>1 reports and most of them have looked at, tried to look at a 2 determination of what they independently -- they may go to 3 the Claritas as well, but they also independently try to 4 determine what the area might generate. But, again, that's 5 not in this 2012 report at all. It's kind of surprising, in 6 fact, how many things aren't in this report as I went 7 through it. 8 Now, again, I could try to estimate a value and I 9 did. Going and looking at his report at page 3-6 again of 10 the 2012 report, there's a reference to there being, I'm 11 sorry, at page 4-3, I'm sorry, there is a reference to there 12 being 37,382 households in the study area and at page 3-6, 13 he says a typical household uses 1,012 gallons per year. 14 Okay. Now there's no derivation in this report at all for 15 that 1,012 figure. It just floats out there in space. In 16 his testimony, he said it came from some studies, but they 17 have never been presented. But we'll accept 1,000 gallons. 18 MR. GOECKE: Again, Mr. Grossman, just for the 19 record, his testimony speaks for itself. If she wanted to 20 ask him questions on cross-examination, they had that 21 opportunity. 22 MS. CORDRY: We did and he said he would supply it 23 and it's never been supplied. So -- 24 MR. GOECKE: Well -- 25 MS. CORDRY: -- I'm just talking about the report</p>	<p style="text-align: right;">Page 93</p> <p>1 have to guesstimate this because these numbers, this kind of 2 an analysis is not in his report at all, even though it is 3 in most of the other special exception reports I've read 4 we'll get to. But if you added on another 50 percent for 5 local businesses, passing traffic, people living nearby but 6 coming into the area to shop, that would bring you up to 7 56.7 million gallons, still capacity four times that and 8 only very little more than -- 9 MR. GROSSMAN: Still capacity four times what? 10 MS. CORDRY: The 56.7 million gallons. In other 11 words, 235 million gallon capacity and we could come to an 12 estimation of perhaps 56.7 million gallons being sold in 13 this area. 14 MR. GROSSMAN: Okay. 15 MS. CORDRY: So capacity of four times that and 16 very little more than what we would perhaps, seven to eight 17 million gallons more than what we are projecting is actually 18 sold here. And, again, that's on the assumption that 19 everyone in this neighborhood buys every gallon of their 20 gasoline in this neighborhood, not a particularly reasonable 21 assumption. 22 So, again, but there's no, none of that kind of 23 analysis in his new report at all. So we really don't know 24 anything having to do with supply or demand with respect to 25 the existing stations based on Mr. Flynn's need reports.</p>

<p style="text-align: right;">Page 94</p> <p>1 I've done my best with the evidence I have to give you some 2 reasonable estimations here.</p> <p>3 So at this point what I would like to turn to, and 4 this is probably as good a point as any, is to discuss what 5 Park and Planning has raised and what I'm sure we'll hear 6 here. And I think with as to Mr. Flynn, how can you on the 7 one hand say there's no need and on the other hand point the 8 long lines of idling cars? Aren't those two inconsistent? 9 Don't the long lines indicate need? Well, there's several 10 answers to that.</p> <p>11 One of them is what I've just pointed out. 12 Whatever the demand is at the station, if you don't build 13 enough pumps to take care of the demand, you're going to 14 have long lines of idling cars. That doesn't necessarily 15 indicate whether there's a need or not, it just indicates 16 that you're not building your capacity to supply whatever 17 you're bringing to that area with sufficient capacity.</p> <p>18 MR. GROSSMAN: I understand what you're saying, 19 but I'm not sure I follow that because let's say they built 20 something instead of 16 pumps with, I don't know, 30 pumps 21 and they were able to then have a flow without any queuing, 22 but they did sell, were able to sell and did sell 25 million 23 gallons a year, would you say that somehow reduces or 24 increases the showing of need?</p> <p>25 MS. CORDRY: No, not necessarily, but what I am</p>	<p style="text-align: right;">Page 96</p> <p>1 MS. CORDRY: And what I will get to next is 2 talking about this demand idea. And that, first off, of 3 course, as I think we can take judicial notice of is that 4 gas is, one, an extremely fungible item. Gas is gas and 5 it's highly price-sensitive. Certainly -- and it's 6 particularly price-sensitive because it's one of the few, 7 maybe the only item that I can think of that as you go down 8 the street, you're guaranteed to be able to see what the 9 price is. You don't have to go in a store to check it out, 10 you can walk, drive right by it and find out what the price 11 is. So it's extremely easy to be price-sensitive on 12 gasoline. And if you have a decent station and if the price 13 is slightly lower than somebody else, you can generate a 14 pretty, fairly unlimited demand for people to come buy 15 cheaper gas.</p> <p>16 Now if by need, you simply mean not what an 17 existing area lacks in available capacity, not what they're 18 going to buy, but what kind of a regional draw a station can 19 create by lowering prices a few cents, then you can always 20 show need, because anybody can lower their prices, 21 especially, and we'll talk about this a little more, a 22 station like this that is not a standalone financial center. 23 But in our view if that's the only thing you look at and say 24 that creates need, then you make the distinction between 25 neighborhood need and County need meaningless because we</p>
<p style="text-align: right;">Page 95</p> <p>1 saying is it's simply the fact that you have idling cars 2 doesn't prove need, it simply proves that you have a 3 mismatch between the design. So I'm going to answer the 4 rest of the question, but that's, that's the first answer to 5 that is idling cars does not necessarily prove need, it 6 simply proves you haven't built your station.</p> <p>7 MR. GROSSMAN: I don't know if it proves it, but 8 isn't there some, isn't there evidence of demand at the very 9 least when you have 16 pumps and you still have queuing?</p> <p>10 MS. CORDRY: Well, there is demand, but is it 11 going to be neighborhood need demand and that's where we, 12 that's what I'm going to come back to in just a moment. Or 13 I am going to --</p> <p>14 MR. GROSSMAN: But your point was --</p> <p>15 MS. CORDRY: -- it, at the point.</p> <p>16 MR. GROSSMAN: Your point was getting at a version 17 of whether there's demand. You're saying it didn't -- you 18 called it need, but you're really talking about demand and 19 you're suggesting that just because cars are queuing does 20 not indicate that there's really a demand. I'm not sure 21 that it's not an indicator of some kind of demand.</p> <p>22 MS. CORDRY: Well, it is, I think, a neutral 23 indicator of demand. It indicates there is some demand for 24 which you have, you may or may not have built the capacity.</p> <p>25 MR. GROSSMAN: All right.</p>	<p style="text-align: right;">Page 97</p> <p>1 are, as we're going to show, this need that whatever they 2 are supplying is not coming from the neighborhood, it is 3 coming from far beyond the neighborhood in general.</p> <p>4 And, again, pointing back at Mr. Yusef Fia's 5 testimony, he gave you some very knowledgeable information 6 about some of the reasons why this affiliated Costco gas 7 station which doesn't have to generate standalone profits 8 and is part of an operation that makes its profits fully or 9 completely on membership sales, can afford to sell slightly 10 cheaper. And I'll talk in a minute about whether, how much 11 it is or is not cheaper. But it's one of the reasons at 12 least on posting its base prices it can sell cheaper.</p> <p>13 MR. GROSSMAN: Well, your point raises a question 14 in my mind. You saw drawing from lots of places beyond the 15 neighborhood. There's been an assertion made by the 16 applicant that the people who are shopping in the mall are 17 part of the neighborhood. Do you disagree with them?</p> <p>18 MS. CORDRY: I think I do in part, at least 19 certainly to the extent that when we talk about Costco 20 operating on a regional basis, drawing its customers from 21 10, 15, 20, 30 minutes away as they have testified to, 22 bringing them here and then turning around and saying, well, 23 because I bring them here, I'm now satisfying the 24 neighborhood need, I think you, you know, you have a 25 regional operation and then you're trying to say, well, I'm</p>

<p style="text-align: right;">Page 98</p> <p>1 satisfying your neighborhood need. It's creating its own 2 need.</p> <p>3 MR. GROSSMAN: It's a form of self-fulfilling 4 prophecy?</p> <p>5 MS. CORDRY: Exactly.</p> <p>6 MR. GROSSMAN: But they're talking, I think, more 7 in terms of there are people on the roads, the various large 8 roads in the area of Georgia, Veirs Mill and University, and 9 there are also people in the mall all within this defined 10 neighborhood let's say who are shopping for other things and 11 are potentially users of the bus station. Would you agree 12 that those people are part of the neighborhood that have to 13 be considered?</p> <p>14 MS. CORDRY: Well, what I, I, I think they are to 15 an extent, but I think to the extent that people are being 16 drawn here simply because of the Costco station and not 17 already here in the area and so forth, that to use all of 18 that traffic at the Costco station, the Costco store brings 19 in and then to say that that's a neighborhood need here, 20 again, as you say, it's a self-fulfilling prophecy.</p> <p>21 MR. GROSSMAN: Well, the Costco store, as opposed 22 to the Costco station so the people that are there to shop 23 at the Costco store, the warehouse, aren't they part of the 24 neighborhood for purposes of this analysis?</p> <p>25 MS. CORDRY: I think --</p>	<p style="text-align: right;">Page 100</p> <p>1 break even point, it can draw people to the store, it can 2 generate membership profits. As we showed in prior 3 questioning, the membership profits are themselves the 4 entirety or more of the overall profits that Costco has and 5 that's, that then becomes, it's easy to run the station at a 6 price that can generate, can draw people from far away 7 simply because it doesn't have to stand on its own.</p> <p>8 I noticed at one point in one of Mr. Flynn's 9 reports in his September 2011 report he said the gas station 10 is important to Costco because it increases warehouse sales 11 by 20 percent and then he dropped that in a later report, I 12 don't really know why, but it certainly underscores the 13 points that the gas station is being used to satisfy the 14 store or to draw people to the store. Again, the question 15 is if the only question is being able to sell slightly 16 cheaper because of this operation, then you really don't 17 need a special exception, you just have an auction, whoever 18 promises to sell at the cheapest price, you let them build a 19 store, but, again, that really only benefits, as we recall, 20 the 25 percent of the people in this area who are members. 21 The other 75 percent of us don't get that benefit. We just 22 get the burdens from the store.</p> <p>23 And in terms of are there going to be stations 24 lost, I think if you recall we asked Mr. Flynn about the, 25 what was going on near the Beltsville store. And I recall</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. GROSSMAN: Not necessarily drawn there because 2 of the gas station, but they're there because of the Costco 3 store, because of Target, Macy's, or whatever?</p> <p>4 MS. CORDRY: Well, to the extent that they're in 5 this local area and people are not coming to Target and the 6 Macy's from 30 minutes away because there are Targets and 7 Macy's all over the place and you will -- I'll get to that 8 too as well in terms of the way that Costco's business, the 9 warehouse business operates also -- is another way of 10 drawing -- it's whole business model, both the warehouse and 11 the station, is a regional model that draws people from much 12 farther away than other businesses in this area and, 13 therefore --</p> <p>14 MR. GROSSMAN: I --</p> <p>15 MS. CORDRY: -- it creates, it creates a regional 16 need. And for them to take that regional need that it 17 creates and turn it into a neighborhood need, it means that 18 we've eliminated the distinction between these two.</p> <p>19 MR. GROSSMAN: I'm not sure it's not a portion of 20 both. I'm not sure that it eliminates it, but go ahead. I 21 understand.</p> <p>22 MS. CORDRY: Okay. All right. All right. And 23 certainly gas, you know, the gas station, again, does not 24 have to be really run, even if it's not run at a predatory 25 pricing level, as long as it's run at a, no more than a</p>	<p style="text-align: right;">Page 101</p> <p>1 how difficult it was to get him to concede what had 2 happened. But if you compare the language in his Exhibit 3 224, which was the -- and is, yes, which is, I think, the 4 2010 report and compare his current Exhibit 14 at page 3-6, 5 it's absolutely clear that he is talking about the same 6 area. It was within one mile from the Costco store. A 7 couple of years ago there were eight stations and a Wawa was 8 being considered. Two years later there were seven stores, 9 including the Wawa, so there was only six other stores.</p> <p>10 Now probably in that particular case it really was 11 the entrance of the Wawa as opposed to the Costco that drove 12 those stores out of business, but that's the point. A 13 single new entrant can easily draw other stores's business 14 away and can drive them out of business. Now where everyone 15 can go to the new store where it has new amenities, where it 16 serves the entire community and where we can all benefit 17 from it, then that's the kind of back and forth, okay, you 18 know, I may lose station A, but I get station B, and station 19 B is bigger and newer and better, and I can use it. But 20 when you have a membership store that drives out of business 21 other stores --</p> <p>22 MR. GROSSMAN: If they do.</p> <p>23 MS. CORDRY: -- and what I'm just saying is you 24 see that a store the size of Wawa, which is nowhere near the 25 size of what the Costco was going to operate at, drove, you</p>

<p style="text-align: right;">Page 102</p> <p>1 know, probably realistically drove two stores out of 2 business within two years. At least it's -- and I will be 3 talking about the overall scope of stores going down. But 4 it is a wholly reasonable assumption that stores will be 5 lost when someone comes in. You can't take 12 million 6 gallons of gas out of the market and not have it have an 7 effect on the other stations. And, again, we'll be talking 8 some more about how vulnerable they are, how close they are 9 to the margins. But that gasoline has to come from 10 someplace and it's not coming, as I said, from the market 11 expanding, it's coming from cannibalizing sales to other 12 stations. 13 MR. GROSSMAN: I don't say that there isn't some 14 attraction to your analytical framework. I do have a 15 problem with my analyzing need in terms of an assumption 16 that it will drive, that other stores will be driven out of 17 the market which is, I think, beyond what I can really rely 18 on as, you know, evidence in the case. And while I'm an 19 admirer of your analytical skills here and the willingness 20 of the opposition to martial all these facts into an 21 analytical framework, I'm not sure that I can really use 22 that as part of what I analyze here as opposed to the, to me 23 the more salient points about whether or not this ultimately 24 becomes something that's convenient for the neighborhood, et 25 cetera, under all of the other framework that we talk about.</p>	<p style="text-align: right;">Page 104</p> <p>1 store that is in this County is open to the public. 2 MR. GROSSMAN: Right. 3 MS. CORDRY: This is a store that will not be open 4 to the public. This is a store that will put a burden on 5 100 percent of the neighborhood and only benefit 25 percent 6 of the neighborhood. 7 MR. GROSSMAN: I understand. I think that's a 8 legitimate issue. 9 MS. CORDRY: Right. 10 MR. GROSSMAN: I'm talking about the other 11 things -- 12 MS. CORDRY: Right. 13 MR. GROSSMAN: -- the more mathematical form of 14 your analysis here which to me also applies to some extent 15 to the applicant's analysis. Whether or not that's really 16 going to be what turns this case, I think that it more turns 17 on the other more general concepts. I throw that out for 18 you to -- 19 MS. CORDRY: Right. 20 MR. GROSSMAN: -- so that you can hone your 21 testimony to more closely approach what's really going to 22 turn this case. 23 MS. CORDRY: Well, I am trying to follow down the 24 path that many other analyses have done -- 25 MR. GROSSMAN: I understand.</p>
<p style="text-align: right;">Page 103</p> <p>1 So I mean you might consider that in terms of 2 what's really going to impact what I have to analyze here, 3 am I really going to do the type of analysis you're 4 suggesting here or do I have to look at it in a different 5 way, in a more simplistic way in terms of, you know, in 6 terms of the Lucky Store kind of analysis. 7 MS. CORDRY: Well, I think the Lucky Store 8 analysis, if you look at a Lucky Store, I think we could go 9 home because Lucky Stores says a membership need is not a 10 neighborhood need. And I think that's -- 11 MR. GROSSMAN: I understand -- 12 MS. CORDRY: -- exactly -- 13 MR. GROSSMAN: -- there is an issue raised by the 14 case -- 15 MS. CORDRY: Right. 16 MR. GROSSMAN: -- in that regard and I think 17 that's one of the things -- 18 MS. CORDRY: Right. And that's -- 19 MR. GROSSMAN: -- I clearly have to look at that 20 issue, whether or not a membership store can be that and 21 then I have to look at also the issue of whether or not this 22 is going to meet the more general standards of providing 23 convenience for the neighborhood. 24 MS. CORDRY: But that's, that's what we're trying 25 to get to because this is a unique situation. Every other</p>	<p style="text-align: right;">Page 105</p> <p>1 MS. CORDRY: -- taking into account the unique 2 aspects of this one, which is, again, the Lucky Stores said, 3 look, you can't keep other people from coming into business 4 because it may be a benefit to the neighborhood to have 5 these. 6 MR. GROSSMAN: Truly, yes. 7 MS. CORDRY: But if the coming into the -- even if 8 the assumption is that some of those stations may go out of 9 business, it's not a guarantee that you don't put anybody 10 out of business. 11 MR. GROSSMAN: Right. 12 MS. CORDRY: But if the stations you put out of 13 business burden everyone and you only give a benefit to a 14 small portion, you do -- I think it is critical to recognize 15 that there is a strong possibility here, and as we put the 16 more testimony about where gas usually is going, this is not 17 speculative or unlikely, this is a very strong likelihood 18 that stations will continue to close and that as we limit it 19 to this station only serving a portion, the stations who 20 have closed will deprive all of us. So just very briefly 21 on -- 22 MR. GROSSMAN: Do we know why those three stations 23 in Glenmont closed? 24 MS. CORDRY: Well, the, well, they are doing road 25 reconstruction up there and that's a main part of it, some</p>

<p style="text-align: right;">Page 106</p> <p>1 of them are just being lost through that whole 2 intersection -- 3 MR. GROSSMAN: Right. 4 MS. CORDRY: -- being recharged. I'm not positive 5 about the Freestate, other than that it was, it may also 6 have been impacted by the whole road construction as well. 7 MR. GROSSMAN: So why do I, why should I draw a 8 conclusion about, that they were somehow driven out of the 9 market by economic forces when that's not actually the case? 10 MS. CORDRY: I'm not asking you to draw the 11 conclusion about that. I'm talking about the ones in 12 Beltsville that closed when a new competing station opened 13 up. And that within two years of the time that the Wawa, 14 which is a large, new store that has lots of conveniences 15 and has a real convenience store and so forth, when that 16 opened, two other stations went out of business. And I 17 think that that is a wholly likely possibility around here. 18 I think Mr. Yusef Fia testified about that. I sincerely 19 expect you're going to hear more about that from other 20 gasoline station operators as the case concludes. But 21 that's the point. I think that is the framework in which 22 you have to look at this, that to the extent that the 23 evidence can establish that there is a good, strong, 24 overwhelming, take your pick, as you go along, likelihood 25 that the stations may close, that those will then, there</p>	<p style="text-align: right;">Page 108</p> <p>1 look at the fact and what the public is losing from the old 2 stations that are closing. 3 Every other station that we've analyzed here has 4 been in the context that the new station comes in and says 5 even if I put somebody else out of business, look, I'm 6 providing a newer station, more amenities. The Freestate, 7 I'm providing kerosene and diesel. 8 MR. GROSSMAN: Lower prices. 9 MS. CORDRY: Lower prices possibly, but lower 10 prices that are not available to everyone. And if this 11 station's lower prices drives the Freestate, for instance, 12 out of business, that means I don't have that low price 13 station to go to anymore. 14 MR. GROSSMAN: I know, but I'm trying to it 15 separate out. 16 MS. CORDRY: Right. 17 MR. GROSSMAN: I think there are two points 18 here -- 19 MS. CORDRY: Right. 20 MR. GROSSMAN: -- that are linked in a way, but 21 they are separate points. And I'm still concerned about 22 that one part of it, that is, the kind of market analysis 23 that you're asking me to do is almost, in effect, choosing 24 between competing stations. The other part of it, the 25 impact on your convenience if it's not available to you as a</p>
<p style="text-align: right;">Page 107</p> <p>1 will be a net loss to the community in a way that is not 2 going to happen with other kind of public, what I'll call 3 public gas stations when they open up because they provide 4 an overall benefit to everyone that can make up for what is 5 lost when a station closes. 6 MR. GROSSMAN: Don't they get perilously close to 7 the concern raised in Lucky Stores about, you know, market 8 access issues, if I start analyzing that other stations may 9 be forced to close by a lower priced station opening up? I 10 mean am I not entering a perilous area? 11 MS. CORDRY: Again, I'll go back. Lucky Stores 12 said, okay, what's the benefit to the public from that 13 station opening? 14 MR. GROSSMAN: I understand, but answering my 15 question is it not, aren't you asking me to do something 16 that gets too close to this issue of restricting the market 17 in a way that's not appropriate? 18 MS. CORDRY: No, because, again, I think the Lucky 19 Stores analysis and discussion was in the context that, you 20 know, a store opens, a store closes, there is a succession, 21 but there is a continuing availability to the public. The 22 whole point of the benefit, the convenience and usefulness 23 of the new station was because it would be available to the 24 public. A convenience benefit that's not available to the 25 public doesn't then create a reason for me to, you know, not</p>	<p style="text-align: right;">Page 109</p> <p>1 member of the general public, that's a linked, but separate 2 part of it. I am concerned about trying to enter into 3 that -- 4 MS. CORDRY: Right. 5 MR. GROSSMAN: -- part of the analysis because I 6 think it could have -- 7 MS. CORDRY: Certainly if -- 8 MR. GROSSMAN: -- problematic underpinnings. 9 MS. CORDRY: Certainly if we were all available to 10 use the station, we would not be arguing that necessarily 11 having this station would be better or worse than having the 12 next station or that you could just do it because I like Joe 13 and I don't like Sam over here. 14 MR. GROSSMAN: Right. 15 MS. CORDRY: But that's not the argument we're 16 making. I think we were making the point there that, which 17 we've said in great detail here, that there is a strong 18 potential for a loss of amenities and benefits and 19 usefulness to the entire, not even just the 75 percent, but 20 the 100 percent population because Costco has to operate as 21 a piggyback on other stations. People cannot satisfy their 22 automobile needs in this area through Costco. I can't get 23 tires changed, I can't get batteries, I can't get air, I 24 can't even clean my windshield at Costco. Any of those 25 things I have to go to somebody else.</p>

<p style="text-align: right;">Page 110</p> <p>1 So if I filled up at the Costco and I needed to 2 clean my windshield in the wintertime, I'd still have to go 3 out and go to some other station and find that. Now maybe I 4 could use their eyewash station to clean it with, but I 5 can't use, I don't have a windshield washing station. So -- 6 MR. GROSSMAN: All right. 7 MS. CORDRY: All right. Just as another point 8 that somewhat illustrates the point we're making about 9 Costco's business model, this would be the, another exhibit 10 I'd like to put in which would be, actually two at this -- 11 let's see. 12 MS. ADELMAN: Is this the petroleum? 13 MS. CORDRY: This would be the, yes, the petroleum 14 industry one. So it looks like this. 15 MR. GROSSMAN: All right. You wanted this marked 16 as an exhibit? 17 MS. CORDRY: Yes. 18 MR. GROSSMAN: All right. This will be Exhibit 19 293. 20 (Exhibit No. 293 was marked for 21 identification.) 22 MS. CORDRY: Actually, didn't we have the traffic 23 report excerpt as 292 and then the Sullivan report? 24 MR. GROSSMAN: I didn't -- 25 MS. CORDRY: Oh, you didn't mark the Sullivan</p>	<p style="text-align: right;">Page 112</p> <p>1 would be fine. 2 MR. GROSSMAN: Excerpts from National Association 3 of Convenience Stores, and that's NACS, regarding petroleum 4 industry stats. 5 MS. ADELMAN: Is that 293? 6 MS. CORDRY: Yes, that would be 293. 7 MR. GROSSMAN: Yes. And then what else is in 8 here? 9 MS. CORDRY: There's four pages of that and then 10 there are a number of pages that are printouts from various 11 operator websites I'm putting in there to show indications 12 of how many stores and stations they have. 13 MR. GROSSMAN: Operator websites. 14 MS. CORDRY: Costco -- 15 MR. GROSSMAN: And Costco? 16 MS. CORDRY: -- Walmart, Royal Farms, a variety -- 17 I'll walk through them very quickly in a moment. 18 MR. GROSSMAN: And these are, you mean gas station 19 operator websites? 20 MS. CORDRY: Yes. 21 MR. GROSSMAN: All right. And -- 22 MS. CORDRY: Gas station/retailer, so -- 23 MR. GROSSMAN: -- gas station retailer -- these 24 are stats? 25 MS. CORDRY: Yes.</p>
<p style="text-align: right;">Page 111</p> <p>1 reports? 2 MR. GROSSMAN: I didn't mark the Sullivan report 3 because -- 4 MS. CORDRY: Okay. 5 MR. GROSSMAN: -- we already, we certainly have 6 that -- 7 MS. CORDRY: Okay. All right. 8 MR. GROSSMAN: -- if it's convenient. 9 MS. CORDRY: All right. Fine. Then this will be 10 293. 11 MR. GROSSMAN: And this -- 12 MS. CORDRY: This is a combination of things. The 13 first couple of pages are excerpts from the National 14 Association of Convenience Stores, a yearly report they do 15 on the gasoline industry, a retail fuels report, the URL at 16 the top is where this came from. 17 MR. GROSSMAN: All right. So hold on a second. 18 So this is, well, I'm a little concerned if it's a 19 combination of things -- 20 MS. CORDRY: Yes, and then -- 21 MR. GROSSMAN: -- but -- 22 MS. CORDRY: -- the remainder of it is -- 23 MR. GROSSMAN: -- how I label it as, so are we 24 talking about -- 25 MS. CORDRY: Or if you want to break it up, that</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. GROSSMAN: Okay. 2 MS. CORDRY: Stats. 3 MR. GROSSMAN: Stats. Okay. 4 MS. CORDRY: All right. So -- 5 MS. ADELMAN: Mr. Grossman, may I -- 6 MR. GROSSMAN: Yes, ma'am? 7 MS. ADELMAN: -- interrupt for a moment please? 8 MR. GROSSMAN: Certainly. 9 MS. ADELMAN: I am, was due to call Ms. Cameron -- 10 MR. GROSSMAN: Right. 11 MS. ADELMAN: -- about her testimony. So could we 12 take a moment here to that I can, since she's at work, so 13 that I can come up with a reasonable timeframe to request 14 her presence? 15 MR. GROSSMAN: Yes. I think what we agreed to was 16 whenever she appears, we'll put her on. So we'll break in 17 Ms. Cordry's testimony -- 18 MS. ADELMAN: Oh, okay. 19 MR. GROSSMAN: -- to put her on for her 20 convenience. 21 MS. ADELMAN: Okay. 22 MR. GROSSMAN: I think that was what we all agreed 23 to? 24 MS. CORDRY: Well, I thought we were just going 25 to do my testimony and that she would be at the end, so</p>

<p style="text-align: right;">Page 114</p> <p>1 really the question was --</p> <p>2 MR. GROSSMAN: Well --</p> <p>3 MS. CORDRY: -- will I be finishing today or not.</p> <p>4 MR. GROSSMAN: Yes, that's what I -- but if she</p> <p>5 was scheduled to come on today and that's what was --</p> <p>6 MS. ADELMAN: Well, she understands that --</p> <p>7 MR. GROSSMAN: Right.</p> <p>8 MS. ADELMAN: -- that there might be a moment of</p> <p>9 flexibility. So I think that what everybody feels is best.</p> <p>10 MR. GROSSMAN: Do we know how long her testimony</p> <p>11 will take?</p> <p>12 MS. ADELMAN: I did not ask her that question. I</p> <p>13 would imagine it would be an hour.</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 MS. ADELMAN: But I, you know, I don't have a</p> <p>16 sense of whether we will get finished with Ms., whether this</p> <p>17 will be the whole day, whether -- maybe there's no cross-</p> <p>18 examination.</p> <p>19 MR. GROSSMAN: That's always a possibility.</p> <p>20 MS. ADELMAN: Always a possibility.</p> <p>21 MR. GROSSMAN: Well, what I would suggest is ask</p> <p>22 her what time is convenient for her today, bearing in mind</p> <p>23 that we want to complete her in one day. So I would be</p> <p>24 inclined to think that we should put her on right after</p> <p>25 lunch, let her complete hers, Ms. Cordry is going to be here</p>	<p style="text-align: right;">Page 116</p> <p>1 MS. CORDRY: Yes.</p> <p>2 MR. GROSSMAN: Sorry, I didn't hear you.</p> <p>3 MS. CORDRY: I'm sorry. On page 3 for margins.</p> <p>4 MR. GROSSMAN: Okay. So page 2, page 3.</p> <p>5 MS. CORDRY: Where I was saying that gasoline</p> <p>6 station margins are, they're operating at a very low</p> <p>7 percentage basis currently. In 2012, it was only 5.1</p> <p>8 percent of the price of the fuel, that that's the lowest, it</p> <p>9 ties the lowest in 2007 and those two are the, well, you</p> <p>10 know, less than half of what it used to be in say 1999. So,</p> <p>11 again, stations are operating on very narrow margins now.</p> <p>12 And then when we go down --</p> <p>13 MR. GROSSMAN: You're not going to make me be the</p> <p>14 most unpopular person in the country by somehow ruling that</p> <p>15 gas stations should be making a bigger margin, are you?</p> <p>16 MS. CORDRY: No, I'm not, but I think you do need</p> <p>17 to take into consideration the question of whether or not</p> <p>18 stations are likely to continue to close and close due to an</p> <p>19 operation that takes away 12 million gallons out of some</p> <p>20 area which is not going to be completely well-defined here,</p> <p>21 but these, when you're operating on narrow margins, stations</p> <p>22 are more likely to close.</p> <p>23 MR. GROSSMAN: At what margin am I to conclude</p> <p>24 that a station would close?</p> <p>25 MS. CORDRY: I don't know if there's an absolute</p>
<p style="text-align: right;">Page 115</p> <p>1 in any event and so we can have her then continue her</p> <p>2 testimony and if that runs over, it runs over, but we</p> <p>3 wouldn't have to inconvenience Ms. Cameron and have her come</p> <p>4 back again.</p> <p>5 MS. ADELMAN: Okay. So after lunch would be?</p> <p>6 MR. GROSSMAN: Well, shall we figure that -- well,</p> <p>7 shall we say 2 o'clock, would that make sense --</p> <p>8 MS. ADELMAN: 2:00 p.m.</p> <p>9 MR. GROSSMAN: -- to us all? Okay. So at 2</p> <p>10 o'clock.</p> <p>11 MS. ADELMAN: All right.</p> <p>12 MR. GROSSMAN: Okay.</p> <p>13 MS. ADELMAN: Thank you very much.</p> <p>14 MR. GROSSMAN: You're welcome. All right.</p> <p>15 MS. CORDRY: All right. So in this report I would</p> <p>16 point to on page 3, the reference to on a cents per gallon</p> <p>17 in the margins there, on a cents per gallon basis, gross</p> <p>18 margins from 2012 were, you know, the record set on a</p> <p>19 percentage basis, margins in 2012 tied the, I'm sorry, the</p> <p>20 14-year low set in 2007 and are lower than any --</p> <p>21 MR. GROSSMAN: Well, wait a minute, wait a minute.</p> <p>22 I'm looking here at a list of, by year, gasoline demand, is</p> <p>23 that --</p> <p>24 MS. CORDRY: Okay. I'm page 3.</p> <p>25 MR. GROSSMAN: Oh.</p>	<p style="text-align: right;">Page 117</p> <p>1 number, but the lower the margin, the more marginal a</p> <p>2 station becomes, the more likely it is to close. I, you</p> <p>3 know, you, I'm not asking you to necessarily be able to</p> <p>4 predict that this station versus the next one, they may come</p> <p>5 in themselves and tell you that, but I am saying that when</p> <p>6 you have a declining and, again, I go back to Lucky which</p> <p>7 specifically points to declining gasoline sales as a factor</p> <p>8 that could be looked at in terms of whether there's already</p> <p>9 a proliferation of stations and whether it serves the</p> <p>10 market.</p> <p>11 So the point of this simply being that I'm simply</p> <p>12 demonstrating that, yes, they are in a declining profit</p> <p>13 margin. If you look at the bottom there with retail, I'm</p> <p>14 sorry, where it says fueling sites, it notes that there was</p> <p>15 156,000 total retail fueling sites in the United States in</p> <p>16 2012. This has been in a continued decline since 1994 where</p> <p>17 there was 202,000. So it's been about a third decline since</p> <p>18 then.</p> <p>19 MR. GROSSMAN: I'm not sure I can conclude from</p> <p>20 this, by the way, that the margins will continue to decline</p> <p>21 as they usually give you that warning if you're going to</p> <p>22 invest in something.</p> <p>23 MS. CORDRY: Well --</p> <p>24 MR. GROSSMAN: The past performance is not in this</p> <p>25 area an indicator --</p>

<p style="text-align: right;">Page 118</p> <p>1 MS. CORDRY: I understand.</p> <p>2 MR. GROSSMAN: -- especially here since we know</p> <p>3 that the economy, you know, may be changing. So, I mean you</p> <p>4 do have a low of 5.1 percent also in 2007 and then, you</p> <p>5 know, and then it went up and then it went down again a</p> <p>6 little bit. So I just don't know what I can -- I don't know</p> <p>7 that I can use this to --</p> <p>8 MS. CORDRY: Okay.</p> <p>9 MR. GROSSMAN: -- predict anything.</p> <p>10 MS. CORDRY: What I would say though is that it</p> <p>11 is, for the last several years it has been low. It's been</p> <p>12 relatively consistent and it's been considerably lower than</p> <p>13 it was a decade ago. And --</p> <p>14 MR. GROSSMAN: All right.</p> <p>15 MS. CORDRY: -- considerably higher and it just</p> <p>16 puts you under a, you know, price pressures. The gasoline</p> <p>17 station, as I say, the fueling site indicates stations</p> <p>18 continue to close continually. I'm now on page 4. Then it</p> <p>19 talks about that there are 4,893 big box retailers that sell</p> <p>20 fuel and it talks about the top five, what they call hypo-</p> <p>21 markets, which are the big retailers, big station stores,</p> <p>22 Target, Walmart, Sam's Club, Safeway and Costco, and that</p> <p>23 they sold, last year they were selling about 12.4 percent of</p> <p>24 the motor fuels in the United States.</p> <p>25 Now I think, again, what's interesting here to</p>	<p style="text-align: right;">Page 120</p> <p>1 units. 621 of those are Sam's Clubs. There are 59 in the</p> <p>2 state of Maryland alone.</p> <p>3 MR. GROSSMAN: Yes, but how is this going to even</p> <p>4 come close to something I would consider in evaluating this</p> <p>5 case?</p> <p>6 MS. CORDRY: Okay. The point is, again, we're</p> <p>7 trying to say is the fact that it is generating, that it is</p> <p>8 pulling some number of gallons of sales to this area, is</p> <p>9 that a sign that there is a neighborhood need? And what I</p> <p>10 am saying is that this is illustrative of the fact that</p> <p>11 compared to other large retailers that have many more</p> <p>12 stores, many more stations, divide up their market in much</p> <p>13 smaller areas, Costco operates on a regional basis. It</p> <p>14 pulls a regional market into a small neighborhood. And it</p> <p>15 cannot say then that when I draw from an area much huger</p> <p>16 than the general neighborhood, that I can then turn that</p> <p>17 into a neighborhood need without running afoul of the</p> <p>18 distinction between the neighborhood need and the County</p> <p>19 need that the code requires.</p> <p>20 MR. GROSSMAN: I understand what you're saying,</p> <p>21 but really that's -- I don't think I'll, I can go into that</p> <p>22 type of analysis in this type of a case. I just think</p> <p>23 that's way beyond -- I mean it's not that I don't understand</p> <p>24 it, I mean, you know, I have a background in economics</p> <p>25 myself, so I --</p>
<p style="text-align: right;">Page 119</p> <p>1 note in terms of whether or not we're satisfying a</p> <p>2 neighborhood need and so forth is the relative numbers of</p> <p>3 stores that operate. All of those are national operators</p> <p>4 and yet what you see is Costco in terms of stations is by</p> <p>5 far the, I'm sorry, leaving aside Safeway, which does --</p> <p>6 it's not really big into this, but of some of these ones</p> <p>7 that really make a market of this, it has far fewer stations</p> <p>8 than a number of these.</p> <p>9 MR. GROSSMAN: It's a third of the size of Walmart</p> <p>10 and --</p> <p>11 MS. CORDRY: Right.</p> <p>12 MR. GROSSMAN: -- I'm quoting approximately. So</p> <p>13 and what do I derive from that?</p> <p>14 MS. CORDRY: Okay. What I would derive from that</p> <p>15 is, and the rest of these, the sheets in here I have Walmart</p> <p>16 and I'll go through them. What my point is going to be is</p> <p>17 that Costco operates not only its stations, but its</p> <p>18 warehouses on a very limited number compared to many other</p> <p>19 retailers which means that they are, in a sense, a</p> <p>20 destination store. It does have its stores and the</p> <p>21 associated stations draw from the very big retail area and,</p> <p>22 therefore, concentrates a very big retail, I'm sorry, a big</p> <p>23 regional demand into a very small area.</p> <p>24 If you look at comparable kinds of stores like</p> <p>25 Walmart, for instance, if you turn back, it has 4,713 retail</p>	<p style="text-align: right;">Page 121</p> <p>1 MS. CORDRY: Right.</p> <p>2 MR. GROSSMAN: -- I understand it, I just don't</p> <p>3 think that that's the appropriate kind of analysis, that</p> <p>4 kind of comparison --</p> <p>5 MS. CORDRY: Well --</p> <p>6 MR. GROSSMAN: -- to what's here. I'm not going</p> <p>7 to compare Costco versus other similar retailers to decide</p> <p>8 on whether or not they are pulling more as a regional basis</p> <p>9 than others because they have fewer stores. I'm just not</p> <p>10 going to do that.</p> <p>11 MS. CORDRY: Okay. But let me just state the</p> <p>12 point and then you can consider where you go with it. The</p> <p>13 point is when it operates on this concentrated model with</p> <p>14 these very small numbers of stores nationwide compared to</p> <p>15 the entire area, it is by definition, and it says it, I mean</p> <p>16 it doesn't, it's not any point of dispute here, that they</p> <p>17 are operating regional operations. They are pulling in</p> <p>18 their demand from all over a much larger region than other</p> <p>19 places are so that when these other, when the other stations</p> <p>20 operates, other stores operate stations, both the store and</p> <p>21 the station are drawing from a smaller area, much more like</p> <p>22 a neighborhood. When Costco operates, it attempts to draw</p> <p>23 and does draw from a much larger area. It's, again, I think</p> <p>24 it's part of the model as to how they have the cheaper</p> <p>25 prices because, again, it's a very concentrated area.</p>

<p style="text-align: right;">Page 122</p> <p>1 Again, they're creating a regional need, 2 concentrating it into one area and it doesn't meet the 3 neighborhood need standard. That's our concern here. Do 4 you understand that's why -- 5 MR. GROSSMAN: I understand, but the kind of 6 comparison you want me to do to other business models and 7 other large stores I'm not going to do. I just think it's 8 beyond what should be the comprehension of what I do in 9 terms of the needs analysis or what the County does, 10 counsel, so I'm just -- 11 MS. CORDRY: What I am trying to, though, is just 12 make us understand why when we say there is not a 13 neighborhood need even though they can draw from a very 14 large area, that that, these two things are not incompatible 15 or inconsistent and that it's because it operates on a 16 different business model than, more concentrated than almost 17 anyone else in the United States. 18 MR. GROSSMAN: Okay. 19 MS. CORDRY: It may be why it sells more cheaply 20 than most people, but that's, it's something that -- 21 MR. GROSSMAN: There may be so many other factors 22 than that that I just don't think that it's something that I 23 should be toying with as part of this analysis. 24 MS. CORDRY: Well, again, I understand. But I 25 also understand that, again, Costco at every point has said</p>	<p style="text-align: right;">Page 124</p> <p>1 but my point being that when -- and I think it's a little 2 bit of a misnomer to, I mean I know it's called a regional 3 mall. I'm not sure that the people who come to shop at this 4 Target come any farther than -- there are Targets all over 5 the -- I mean that's really one of the points. There's 6 nothing unique in this mall apart from this Costco. There 7 are Macy's here. There are Macy's all over this County. 8 There are Targets here. There are Targets all over this 9 County. There is Giant there. There are Giants all over 10 this County. The only thing that is unique that would draw 11 people uniquely to this mall at this moment is the Costco. 12 So I understand it's regional in a sense that it's perhaps 13 slightly bigger than some of the other ones, but in the 14 sense of the retail complex along Rockville Pike, all the 15 other -- Montgomery Mall isn't one -- but, you know, 16 Lakeforest and all of the other malls in this area, the one 17 regional thing that would actually draw people here uniquely 18 is now the Costco. So -- 19 MR. GROSSMAN: But it's part of the mall. I mean 20 it's not -- 21 MS. CORDRY: I understand. 22 MR. GROSSMAN: -- the Costco gas station is my 23 area, but it is, whether it's, they're drawn here by the 24 Costco warehouse or not, or by Macy's or the other stores in 25 the mall, it is a regional mall by everybody's concession.</p>
<p style="text-align: right;">Page 123</p> <p>1 we are a regional model, we draw from a regional area, you 2 should let us use a regional amount of need to determine our 3 basis. And what we are trying -- 4 MR. GROSSMAN: But the comparison with other 5 stores -- 6 MS. CORDRY: No, no, no. 7 MR. GROSSMAN: -- is that their other business 8 models has nothing really to do with that. So let's just 9 move on to something else. 10 MS. CORDRY: All right. All right. So the point 11 being that we are trying to deal with a neighborhood and not 12 a regional need. And what does the general public in this 13 neighborhood need? Now -- 14 MS. CORDRY: But when you have, when your 15 neighborhood is a regional mall, isn't that, in effect, 16 something that you have to be able to look at, that is it is 17 pulling from the region. That is your neighborhood. 18 MS. CORDRY: Well -- 19 MR. GROSSMAN: In fact, I mean by the applicant's 20 definition, that is the neighborhood. By the definition 21 that I think should be applied here, which is the Technical 22 Staff's definition, the neighborhood is a little bit 23 broader, but clearly it includes the regional mall. 24 MS. CORDRY: Well, I'm certainly not disputing 25 that there is some, you know, traffic coming to the mall,</p>	<p style="text-align: right;">Page 125</p> <p>1 So isn't that, as part of a neighborhood, part of what I 2 have to consider? 3 MS. CORDRY: Okay. What I am suggesting to you is 4 that, again, despite whatever the name of it is, the real 5 draw in this mall -- this mall is not drawing people from 30 6 minutes away, not unless -- 7 MR. GROSSMAN: I don't know that, but it's not 8 that I don't think we have to slice the salami that, fine, I 9 would just -- we're asking, the question is if this, you're 10 decrying the use of regional in terms of determining 11 neighborhood need. But if the neighborhood is a regional 12 mall and, in fact, 90 percent of the neighborhood is a 13 regional mall, shouldn't that be a consideration? 14 MS. CORDRY: Well, if, in fact, the information 15 indicated that apart from the demand that Costco is creating 16 itself that people were coming here -- 17 MR. GROSSMAN: No, no, no, not Costco gas station. 18 MS. CORDRY: No, no, no. 19 MR. GROSSMAN: You're saying Costco warehouse may 20 be creating it, but that's an independent issue. 21 MS. CORDRY: Well -- 22 MR. GROSSMAN: That's not what's before me. What 23 is before me is the gas station. 24 MS. CORDRY: Okay. 25 MR. GROSSMAN: What is in the mall, Costco or</p>

<p style="text-align: right;">Page 126</p> <p>1 anybody else, is not, you know, I can't say that that's not 2 part of the regional aspect of it. 3 MS. CORDRY: Okay. But, again, again, I think 4 there is to a degree and we've kind of beaten this one to 5 the pulp a little bit, but when you build a regional store 6 that by its very aspect attempts to draw from an area far 7 larger than other areas, it concentrates all of that there, 8 then says, okay, as long as you're here, as long as you made 9 the destination trip here from a half an hour away, come buy 10 gasoline here. To suggest that then shows a neighborhood 11 need, I think then just completely obliterates the 12 distinction between neighborhood need and regional need. It 13 means you can always create a neighborhood need simply by 14 building a regional draw and say now, okay, I have to sell 15 gasoline to those people. 16 MR. GROSSMAN: The regional draw is already there. 17 It's the mall. Everybody concedes it's conceded in the 18 sector plan. It is a regional mall. So how can I just 19 ignore that? I'm saying this rhetorically at this point 20 because I think you've gone back and forth over it. You 21 don't have to answer it. But how can I ignore it and say 22 that's not part of the neighborhood? It is part of the 23 neighborhood here. It doesn't -- I don't think you can, you 24 can extrapolate this situation to other situations and say 25 that it's just a created need and, therefore, you can't, you</p>	<p style="text-align: right;">Page 128</p> <p>1 are two different things. But, all right, let's move on -- 2 MS. CORDRY: All right. 3 MR. GROSSMAN: -- to a different -- 4 MS. CORDRY: One other point I would like to make 5 here in terms of this question are people coming here to 6 buy, simply coming here to buy the gasoline as opposed to 7 coming to the Costco in general? I did go back and I looked 8 at the zip codes that the applicant supported from the 5,000 9 postcards and I think what's really interesting about those, 10 and Ms. Abigail, Ms. Adelman is providing another exhibit 11 here, is a number of these people who signed these postcards 12 wanting the station to be built here who live in areas that 13 are near the Costco station, let's say, in Gaithersburg and 14 yet suggest that they would perhaps drive past that store 15 and come down here to buy, presumably to buy gasoline 16 because otherwise they've already got a Costco store they're 17 closer to. 18 MR. GROSSMAN: All right. Let me -- 19 MS. CORDRY: Okay. 20 MR. GROSSMAN: -- make this an exhibit. 21 Assuming -- but it does say page 85 and 86 on it. What does 22 that refer to? 23 MS. CORDRY: Those are in -- these are taken from 24 the staff complete attachments. 25 MR. GROSSMAN: So you're saying this is page 85?</p>
<p style="text-align: right;">Page 127</p> <p>1 can't consider it as part of neighborhood need. It is 2 there. It is the mall. It's what I have to consider. 3 MS. CORDRY: But, well, okay. 4 MR. GROSSMAN: I'm not permitting the Costco 5 warehouse to be there. It's there. 6 MS. CORDRY: Well, I understand. That's one of 7 the problems here is that we have a situation in which the 8 warehouse is built and then we build the station and then we 9 don't draw these two together and yet on the one hand we're 10 trying to say, oh, well maybe it's like a convenience store, 11 for the warehouse to be the convenience store for the 12 station and we're drawing it together in that way, but on 13 the other hand we're going to act like it's totally separate 14 and the station is being considered over here without any 15 consideration. 16 MR. GROSSMAN: I understand. 17 MS. CORDRY: Like I saw, if we're going to put the 18 store in as part of the sense of this station, let's do it 19 for all purposes and that way we'll get -- 20 MR. GROSSMAN: Well, those are two different 21 things. I mean I think you conceptually have to look at 22 those two things differently and one is analyzing whether or 23 not this is analogous to gas stations that have convenience 24 stores and the other is saying the question of whether or 25 not the regional mall is part of the neighborhood. Those</p>	<p style="text-align: right;">Page 129</p> <p>1 MS. CORDRY: 85 and 86 in that, in the staff 2 complete attachments -- 3 MR. GROSSMAN: To the Technical Staff report? 4 MS. CORDRY: Right. Which would have been -- 5 MR. GROSSMAN: Okay. 6 MS. CORDRY: -- Exhibit 70. 7 MR. GROSSMAN: Okay. And so do you want me to 8 make a separate exhibit of this? 9 MS. CORDRY: Yes, please, I think it would be 10 easier. 11 MR. GROSSMAN: Okay. Exhibit 294 is Costco -- I 12 don't know what these are -- zip codes of the people who -- 13 MS. CORDRY: Signed those postcards. 14 MR. GROSSMAN: -- wrote the postcards in support? 15 MS. CORDRY: Right. Right. 16 (Exhibit No. 294 was marked for 17 identification.) 18 MS. CORDRY: And I've just labeled a number of 19 those and if you look at them on the map, which is the 20 second page there, you can see that quite a few of those zip 21 codes in which there are literally hundreds and hundreds of 22 people are closer to the Gaithersburg station, Gaithersburg 23 warehouse than we are and yet they're suggesting we should 24 build this gas station here, which suggests they're going to 25 drive past the Gaithersburg Costco and come down here to buy</p>

<p style="text-align: right;">Page 130</p> <p>1 gas. So --</p> <p>2 MR. GROSSMAN: Right.</p> <p>3 MS. CORDRY: -- this is a matter where, again,</p> <p>4 we're using, the gas station is a way to draw people all the</p> <p>5 way to Wheaton from, you know, Damascus and Clarksburg and</p> <p>6 Germantown and Boyds. Number one, it's a terrible result</p> <p>7 from a smart growth and traffic reduction standpoint and,</p> <p>8 secondly, if it's appropriate to drive that far to come</p> <p>9 here, then it's certainly no farther than from here over to</p> <p>10 Beltsville, which means there is already a Costco station</p> <p>11 available to this neighborhood which is, again, part of the</p> <p>12 definition in the special exception.</p> <p>13 MR. GROSSMAN: I mean if, of course, once again, I</p> <p>14 can't -- rezoning or zoning matters are not plebiscite, so I</p> <p>15 don't consider these postcards as part of -- I don't count</p> <p>16 the noses and the --</p> <p>17 MS. CORDRY: No, I'm not --</p> <p>18 MR. GROSSMAN: But I understand that the</p> <p>19 applicant, when I mentioned this point, if I recall, Ms.</p> <p>20 Harris said to me, well, it's an indication of demand, if I</p> <p>21 recall correctly.</p> <p>22 MS. HARRIS: Yes.</p> <p>23 MR. GROSSMAN: And so what you're saying is,</p> <p>24 you're attacking this assertion of demand by saying that</p> <p>25 many of these signators could actually go to a closer Costco</p>	<p style="text-align: right;">Page 132</p> <p>1 in some of the generally beneficial, again, what benefits</p> <p>2 will this neighborhood reach that it doesn't already have?</p> <p>3 And the answer, of course, is in terms of anything tangible,</p> <p>4 there is nothing that is being offered here that is not</p> <p>5 already available to other, through other stations. As we</p> <p>6 said, it doesn't offer mid-grade gasoline, diesel, kerosene,</p> <p>7 electric recharging services, doesn't have a convenience</p> <p>8 store, has not service bays, doesn't have an air pump.</p> <p>9 Even --</p> <p>10 MR. GROSSMAN: It offers price --</p> <p>11 MS. CORDRY: Right.</p> <p>12 MR. GROSSMAN: -- I guess is essential?</p> <p>13 MS. CORDRY: Exactly. That is the one point. Its</p> <p>14 witnesses did put a great deal of emphasis on the fact that</p> <p>15 they had eyewash stations which is part of their safety. I</p> <p>16 certainly, I've never known in my entire life anyone who has</p> <p>17 ever used an eyewash station at a garage, I mean at a gas</p> <p>18 station, but I've known many times when it would be useful</p> <p>19 to be able to wash my windshield or wash my hands, but we</p> <p>20 can't get that here either.</p> <p>21 Mr. Flynn had a lot of testimony that there was a</p> <p>22 need for the station in terms of safety and cleanliness, and</p> <p>23 that that somehow distinguished this Costco from other</p> <p>24 stations in the area, but he pretty much appeared to mostly</p> <p>25 back off of that in cross-examination, other than pointing</p>
<p style="text-align: right;">Page 131</p> <p>1 gasoline facility?</p> <p>2 MS. CORDRY: No, no, I'm saying --</p> <p>3 MR. GROSSMAN: You're not?</p> <p>4 MS. CORDRY: -- it's not a closer gasoline</p> <p>5 facility.</p> <p>6 MR. GROSSMAN: I see.</p> <p>7 MS. CORDRY: But they would be driving -- this is</p> <p>8 not just a matter of people saying I'm already coming to</p> <p>9 Costco and it's convenient for me to come to Costco and,</p> <p>10 therefore, buy gas. These are people who are going to drive</p> <p>11 past a Costco in Gaithersburg.</p> <p>12 MR. GROSSMAN: To get to a Costco gas station?</p> <p>13 MS. CORDRY: Yes, and to come down here, another</p> <p>14 15 or 20 minutes further, to come here to buy gas which</p> <p>15 means this is a regionally drawn demand for gasoline, not a</p> <p>16 demand for Costco.</p> <p>17 MR. GROSSMAN: Okay. I understand your point.</p> <p>18 MS. CORDRY: And I think there are a number of</p> <p>19 other -- these people, they didn't try to make that analysis</p> <p>20 much either, but there are also stations in Frederick and</p> <p>21 Elkrige and certainly Beltsville that a number of these</p> <p>22 people are probably closer to as well. So the point --</p> <p>23 MR. GROSSMAN: Okay.</p> <p>24 MS. CORDRY: -- simply being that we're drawing a</p> <p>25 regional demand into a local neighborhood. All right. Just</p>	<p style="text-align: right;">Page 133</p> <p>1 to one station that he was concerned about where it had the</p> <p>2 refueling. Certainly, I've never noticed that the stations</p> <p>3 in this area are particularly, you know --</p> <p>4 MR. GROSSMAN: Scuzzy?</p> <p>5 MS. CORDRY: -- scuzzy. They seem to me to be</p> <p>6 generally clean, neat, well-maintained, perfectly acceptable</p> <p>7 places to buy gasoline. Again, and he's like, well, you</p> <p>8 know, he talked about hold-ups, presents no statistics about</p> <p>9 crime, fires, accidents, anything of that kind in this area.</p> <p>10 So I think we can reasonably assume that the other stations</p> <p>11 in this area are also safe, well-maintained, clean,</p> <p>12 acceptable stations for people to shop at, that you somehow</p> <p>13 don't need this Costco station in order to provide the kind</p> <p>14 of place where people can go shop and the rest of the</p> <p>15 stations are somehow unacceptable on that basis.</p> <p>16 I think that is simply, I think you can pretty</p> <p>17 much set that aside, which leave cheap gas. Let's get to</p> <p>18 cheap gas as being really the only defining difference</p> <p>19 supposedly between Costco and everyone else's stations here.</p> <p>20 Again --</p> <p>21 MR. GROSSMAN: In terms of the consumer.</p> <p>22 MS. CORDRY: In terms of the consumer, yes, which</p> <p>23 is what we're talking about, the people in the neighborhood</p> <p>24 who would be buying gas.</p> <p>25 MR. GROSSMAN: In terms of need.</p>

<p style="text-align: right;">Page 134</p> <p>1 MR. GROSSMAN: Yes.</p> <p>2 MR. GROSSMAN: I mean there are other distinctions</p> <p>3 they've testified to that they contend makes them less of a</p> <p>4 pollutant.</p> <p>5 MS. CORDRY: I understand that, but --</p> <p>6 MR. GROSSMAN: But this is just --</p> <p>7 MS. CORDRY: -- I would have to say that I find it</p> <p>8 extraordinarily unlikely to believe that somebody comes to</p> <p>9 shop at a gas station because they think it has an air</p> <p>10 permeator or not.</p> <p>11 MR. GROSSMAN: All right. I understand.</p> <p>12 MS. CORDRY: Okay. All right. And the safety</p> <p>13 that even Mr. Flynn was talking about was not safety in that</p> <p>14 sense. He was just talking about, well, because there was</p> <p>15 an attendant wandering around and --</p> <p>16 MR. GROSSMAN: Right.</p> <p>17 MS. CORDRY: -- there are attendants elsewhere and</p> <p>18 so forth. All right. Again, the point being that whatever</p> <p>19 the benefits are, they are limited. There was a suggestion</p> <p>20 in the report that the Costco might put downward pressure on</p> <p>21 surrounding prices so that maybe the whole neighborhood</p> <p>22 might benefit from its pricing structure, but then it also</p> <p>23 concedes that pricing is very much a localized phenomenon.</p> <p>24 I would say, well, I'll get into the evidence that I'm going</p> <p>25 to put forward that there's no real evidence that it</p>	<p style="text-align: right;">Page 136</p> <p>1 MR. GROSSMAN: -- subject to hearing what she has</p> <p>2 to say.</p> <p>3 MS. CORDRY: All right. And, again, just a point</p> <p>4 that when, any lost amenities will fall on the neighborhood</p> <p>5 as a whole, including the Costco members, again, not</p> <p>6 particularly speculative. We've seen what happened in</p> <p>7 Beltsville when the new station comes open, comes in to</p> <p>8 close down. I will speak about the aggregate demand a</p> <p>9 little later.</p> <p>10 MR. GROSSMAN: I don't know why those --</p> <p>11 MS. CORDRY: We don't know, but we do know that</p> <p>12 that was certainly a very close result in time and that it's</p> <p>13 not at all unlikely.</p> <p>14 MR. GROSSMAN: I don't think I can extrapolate the</p> <p>15 rationale that you want without evidence as to why something</p> <p>16 happened.</p> <p>17 MS. CORDRY: All right. Now one of the things</p> <p>18 that would be useful in knowing what might happen to local</p> <p>19 stations would be if there was any attempt to determine in</p> <p>20 the needs report how many sales would be taken or going to</p> <p>21 be coming away from sales that would otherwise exist in the</p> <p>22 local market. That would be a very useful factor. The</p> <p>23 needs report made no attempt to quantify that. So one of</p> <p>24 the reasons why we have some difficulties here in telling</p> <p>25 you in terms of what would be the effect on location</p>
<p style="text-align: right;">Page 135</p> <p>1 actually pushes prices down or determines these things as</p> <p>2 opposed to in general, pricing the market around it, or at</p> <p>3 least that the evidence is equally likely that it prices to</p> <p>4 the market as opposed to that the market is necessarily</p> <p>5 driven by the Costco price. So we do have a mismatch</p> <p>6 between the number of users who are being drawn in from well</p> <p>7 outside the defined neighborhood and the burdens that can be</p> <p>8 imposed on the local residents and with no countervailing</p> <p>9 price benefit to the great majority of people that are</p> <p>10 there.</p> <p>11 MR. GOECKE: Mr. Grossman, I would like to object</p> <p>12 to that testimony as hearsay in terms of the basis for, also</p> <p>13 the foundation as to how she's arguing about prices and how</p> <p>14 they're determined and how there's no evidence that it would</p> <p>15 drive prices down in the neighborhood.</p> <p>16 MS. CORDRY: Well, I would.</p> <p>17 MR. GROSSMAN: We don't know if she's going to</p> <p>18 produce --</p> <p>19 MS. CORDRY: I'm going to put --</p> <p>20 MR. GROSSMAN: -- some evidence, so --</p> <p>21 MS. CORDRY: Yes.</p> <p>22 MR. GROSSMAN: -- so I'm going to overrule that</p> <p>23 objection --</p> <p>24 MR. GOECKE: So long as she provides it, that's</p> <p>25 fine.</p>	<p style="text-align: right;">Page 137</p> <p>1 stations is because their needs analysis makes no attempt to</p> <p>2 determine that issue. But, again, 12 million gallons has to</p> <p>3 come from someplace. If it's coming from local stations, it</p> <p>4 is taking away -- if my number there of 49 million gallons</p> <p>5 being sold is anywhere near correct, if you took 12 million</p> <p>6 gallons out of this local area, you're taking away 25</p> <p>7 percent of the business. Very few businesses with that kind</p> <p>8 of narrow profit margin can survive a 25 percent drop. If</p> <p>9 it's coming from somewhere else, then it means you're</p> <p>10 drawing business away from the non-local area and bringing</p> <p>11 it here and, in other words, we are satisfying what</p> <p>12 otherwise would be satisfied in the region as a whole and</p> <p>13 you're pulling it here. So, again, it's not satisfying a</p> <p>14 neighborhood need.</p> <p>15 So when do we want to go to in terms of --</p> <p>16 MR. GROSSMAN: Well, I think if we break for lunch</p> <p>17 about 1:15, and then we'll come back at 2 o'clock for Ms.</p> <p>18 Cameron's testimony.</p> <p>19 MS. CORDRY: I think that's fine. I think I've</p> <p>20 got a good --</p> <p>21 MR. GROSSMAN: Okay.</p> <p>22 MS. CORDRY: -- chunk here to go at that point.</p> <p>23 All right. So at this point I would like to just turn to</p> <p>24 Mr. Flynn's new report and start working through that in</p> <p>25 terms of what it says, what it doesn't say and what</p>

<p style="text-align: right;">Page 138</p> <p>1 critiques I would have of that.</p> <p>2 MR. GROSSMAN: Let me see if I brought a copy of</p> <p>3 that in with me, which I should have.</p> <p>4 MS. CORDRY: It's Exhibit 14, I think, perhaps.</p> <p>5 MR. GROSSMAN: Yes, I forget if this was under a</p> <p>6 separate cover or was --</p> <p>7 MS. CORDRY: It was filed separately, yes. I</p> <p>8 think 14.</p> <p>9 MR. GROSSMAN: I mean a separate --</p> <p>10 MS. CORDRY: Oh.</p> <p>11 MR. GROSSMAN: -- hold on a second. I've got an</p> <p>12 exploratory assessment of terrain flow.</p> <p>13 MS. CORDRY: No.</p> <p>14 MR. GROSSMAN: All right. Anybody happen to have</p> <p>15 an extra copy of that handy so that I can follow along</p> <p>16 without having to go back into my office?</p> <p>17 MS. CORDRY: Do you have -- yes. Yes, I think</p> <p>18 this is, I'm not sure if I have every single page in it,</p> <p>19 but --</p> <p>20 MR. GROSSMAN: All right.</p> <p>21 MS. CORDRY: -- and I wasn't planning on putting</p> <p>22 the whole thing in, but I think, I think this has,</p> <p>23 hopefully, the pages that I was referring to.</p> <p>24 MR. GROSSMAN: Okay.</p> <p>25 (Discussion off the record.)</p>	<p style="text-align: right;">Page 140</p> <p>1 MR. GROSSMAN: Right.</p> <p>2 MS. CORDRY: Again, and it states that there will</p> <p>3 be an 11 percent, let's see, at Exhibit 2-3, which is on</p> <p>4 page 2-5, it projects it out through 2040. There will be a</p> <p>5 total of 11 percent increase in the Kensington/Wheaton</p> <p>6 policy area, which is relatively close to what the study</p> <p>7 area is, not precisely the same, but somewhat the same, and</p> <p>8 projects an 11 percent increase, some of which has already</p> <p>9 taken place. But, again, it doesn't correlate that to any</p> <p>10 demand for gasoline one way or the other.</p> <p>11 I think one point that one might note in this</p> <p>12 listing is that the current median age is 38.6 and in the</p> <p>13 original 2010 report it was 40, which means we're, you know,</p> <p>14 fairly significant drop it seems like in just two years. It</p> <p>15 probably relates to all these large numbers of apartments</p> <p>16 in --</p> <p>17 MR. GROSSMAN: I know I'm not getting any younger,</p> <p>18 so --</p> <p>19 MS. CORDRY: Right. Right.</p> <p>20 MR. GROSSMAN: -- let's do somebody else.</p> <p>21 MS. CORDRY: So we must have, you know, the new</p> <p>22 people that are moving in are presumably younger. It being</p> <p>23 called, I think, the millennials and we'll talk later on</p> <p>24 about how they're more likely to use public transit, have</p> <p>25 fewer cars, drive less than others. So this may be driving</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. GROSSMAN: Thank you, Ms. Adelman. Okay. Go</p> <p>2 ahead, ma'am.</p> <p>3 MS. CORDRY: All right. So I am jumping over the</p> <p>4 introduction and I'm starting with the Section 2, which is,</p> <p>5 starts with area population for these demographics here and</p> <p>6 so forth.</p> <p>7 MR. GROSSMAN: Yes.</p> <p>8 MS. CORDRY: Okay. So Sections 2.1 through 2.3</p> <p>9 discuss overview, the study area and demographics. Again,</p> <p>10 this lays out this seven minute squiggly area.</p> <p>11 MR. GROSSMAN: Right.</p> <p>12 MS. CORDRY: And when we get to demographics, it</p> <p>13 lays out quite a few interesting things about the size of</p> <p>14 the population, the estimates on its growth through 2017,</p> <p>15 median age, household size, average household income,</p> <p>16 diversity of population and so forth, quite a few</p> <p>17 interesting numbers. Not a one of these numbers is</p> <p>18 correlated in any way, shape or form with any demand for</p> <p>19 gasoline. It just tells us how many people there are and</p> <p>20 how old they are. But, you know, for instance, it gives</p> <p>21 income levels and states they're above the national level,</p> <p>22 but below that for the County as a whole, but it doesn't</p> <p>23 give you any idea as to whether it's any correlation between</p> <p>24 income levels and gas usage and if so, what that correlation</p> <p>25 would be, or any of these other facts that are in here.</p>	<p style="text-align: right;">Page 141</p> <p>1 a correlation with lower gas usage but, again, it's not</p> <p>2 discussed at all.</p> <p>3 MR. GROSSMAN: Yes, I agree with you that these</p> <p>4 kinds of figures without a more direct connection --</p> <p>5 MS. CORDRY: Right.</p> <p>6 MR. GROSSMAN: -- to gas usage are of little</p> <p>7 value.</p> <p>8 MS. CORDRY: Right. I have seen a number of</p> <p>9 reports where they do tie them directly and say that there</p> <p>10 is some kind of correlation that is to get higher income and</p> <p>11 use more gas or less gas or whatever, but that's not in here</p> <p>12 at all. Secondly, Section 2.4 is travel to work. It says</p> <p>13 they have longer drive times than most Americans. But,</p> <p>14 again, it doesn't correlate the drive time to gasoline</p> <p>15 usage.</p> <p>16 MR. GROSSMAN: Well, longer drive time would</p> <p>17 correlate to gas usage.</p> <p>18 MS. CORDRY: Well, it also correlates to</p> <p>19 congestion.</p> <p>20 MR. GROSSMAN: I understand, but I mean I don't</p> <p>21 think it's fair to say that doesn't correlate to gas --</p> <p>22 MS. CORDRY: Well, I should say --</p> <p>23 MR. GROSSMAN: Longer drive time automatically</p> <p>24 correlates to gas usage.</p> <p>25 MS. CORDRY: Well, again, what I will say, he</p>

<p style="text-align: right;">Page 142</p> <p>1 doesn't make any effort to correlate this to gas usage.</p> <p>2 And, number two, again, compared to the nation as a whole, a</p> <p>3 40-minute drive in Wyoming is going to use more gas than a</p> <p>4 40-minute drive in the District of Columbia.</p> <p>5 MR. GROSSMAN: Well, I don't know that and I don't</p> <p>6 think, that's --</p> <p>7 MS. CORDRY: Well --</p> <p>8 MR. GROSSMAN: -- not the point. The point is that</p> <p>9 there is a correlation. I agree with you that some of the</p> <p>10 other things here you can't automatically correlate with</p> <p>11 gas, but automatically you can correlate longer drive time</p> <p>12 with gas usage.</p> <p>13 MS. CORDRY: Well, again --</p> <p>14 MR. GROSSMAN: Unless you're driving a diesel --</p> <p>15 MS. CORDRY: Well --</p> <p>16 MR. GROSSMAN: -- you know --</p> <p>17 MS. CORDRY: -- it is possible you could, but</p> <p>18 there is no actual correlation as to nationwide gasoline</p> <p>19 usage for a commuter is X and here it is Y. It is simply --</p> <p>20 MR. GROSSMAN: He doesn't make a mathematical</p> <p>21 connection, but it's clearly there is a connection.</p> <p>22 MS. CORDRY: Well, all things being equal, if I</p> <p>23 drive longer in the same area than somewhere in the same</p> <p>24 area, I will use more gasoline. I would, again, beg to</p> <p>25 strongly differ that drive time automatically correlates</p>	<p style="text-align: right;">Page 144</p> <p>1 neighborhood is at the center of the smart growth, transit</p> <p>2 oriented development plan of aspects of what the County is</p> <p>3 pushing for and that obviously a primary goal of that is to</p> <p>4 reduce the use of cars, consumption of gasoline and that</p> <p>5 growth and population and so forth is not going to</p> <p>6 necessarily correlate with gas usage and we're certainly</p> <p>7 trying to move people away from driving into cars.</p> <p>8 So the report further asserts at page 2-6, the</p> <p>9 households in this study, quote, need more vehicles than the</p> <p>10 average household, unquote, because they do, quote, this</p> <p>11 much driving. Now it doesn't quantify how many miles is</p> <p>12 this much driving. It doesn't quantify how many cars the</p> <p>13 average household has or whether this is a national average,</p> <p>14 a state average, a County average, some other average within</p> <p>15 this general area. It doesn't explain why, okay, some</p> <p>16 members may have a long commute and they may drive, but</p> <p>17 others use public transit, so they may not need more cars at</p> <p>18 all.</p> <p>19 Again, there's no correlation given in the report</p> <p>20 between cars per household and gasoline usage. Even if I</p> <p>21 have more cars, does that translate into more gasoline</p> <p>22 usage, less, you know, do people have cars that they like to</p> <p>23 keep in the backyard up on bricks, whatever? There's just,</p> <p>24 there's no correlation here. It's simply --</p> <p>25 MR. GROSSMAN: All right.</p>
<p style="text-align: right;">Page 143</p> <p>1 with higher usage because my drive time between my home in</p> <p>2 Wheaton and downtown D.C. differs by a factor of two or</p> <p>3 three between whether I'm going on the weekend or now, but</p> <p>4 the gas usage is not -- my only point being --</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 MS. CORDRY: -- there is no information here that</p> <p>7 actually says what these drive times correlate to in terms</p> <p>8 of gas usage.</p> <p>9 MR. GROSSMAN: All right.</p> <p>10 MS. CORDRY: It's just unrelated numbers being put</p> <p>11 out there.</p> <p>12 MR. GROSSMAN: I can't recall at this point</p> <p>13 whether that, there was a discussion of that in his</p> <p>14 testimony.</p> <p>15 MS. CORDRY: No.</p> <p>16 MR. GROSSMAN: Okay.</p> <p>17 MS. CORDRY: Okay. It asserts that most residents</p> <p>18 still drive alone, but agrees that one out of four</p> <p>19 residents, which it states is five times the national</p> <p>20 average, take public transit. The Wheaton sector plan says</p> <p>21 that of the people in this general area in Wheaton, actually</p> <p>22 52 percent use public transit to leave Wheaton. Whether</p> <p>23 it's 25 percent, 52 percent, and that number, the 52 percent</p> <p>24 is three times the County average. Whether it's one number</p> <p>25 or the other, somewhere in between it's clear this</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. CORDRY: -- numbers being put out. Same</p> <p>2 thing, worker population. It states there's a worker</p> <p>3 population, that it's expected to go up by about 2,000 over</p> <p>4 the next, over the 30-year period between 2010 and 2040.</p> <p>5 Some of that growth has already occurred. Again, no</p> <p>6 discussion here about any correlation between that job</p> <p>7 growth and gasoline usage.</p> <p>8 Traffic. It gives traffic counts at a number of</p> <p>9 locations on page 2-8 in 2009, 2010 and 2011. There's no</p> <p>10 consistent pattern in those. In some it goes up, in some it</p> <p>11 goes down, some it swings back and forth. Georgia Avenue</p> <p>12 north of the Beltway drops significantly from 80,000, then</p> <p>13 it went up to 81,000, then it dropped to 71,000. So, again,</p> <p>14 yes, there's traffic in this area, no correlation to</p> <p>15 gasoline usage made here.</p> <p>16 There is a reference there to the road improvement</p> <p>17 at the Georgia Avenue/Randolph Road intersection and it</p> <p>18 states the potential impact of this action on the need for</p> <p>19 gasoline is discussed in Section 3.2.1. There's no</p> <p>20 discussion in 3.2.1, which we'll get to in a little bit</p> <p>21 about how those stations being there or closing will impact</p> <p>22 on the need for gasoline in this area. So this whole</p> <p>23 section, interesting, but actually provides you, I think</p> <p>24 when you look at it in detail, no usable information for you</p> <p>25 in terms of need.</p>

<p style="text-align: right;">Page 146</p> <p>1 Then we turn to Section 3. This is the supply. 2 Again, this goes back to the stations. It refers to there 3 being 25 stations, in fact, as I say under his analysis it 4 would now be 24. In ours there's 27. 5 It goes through and discusses the stations and the 6 clusters, discusses where they each draw from, which 7 basically says they draw from people living and shopping 8 near them. Okay. In the Four Corners area, it doesn't 9 really have any discussion at all about what, where it draws 10 from. It refers only to that Four Corners Shell station. 11 It says its operation can impact the heavy traffic on 12 University Boulevard and the drivers slow to access the 13 station and stop traffic in order to merge back into the 14 flow. And I've bought a lot of gasoline at that station. I 15 never tried to stop traffic going in or coming out and I've 16 never observed it any more than any other station on the 17 main road backing up traffic. 18 But, again, I would assume that this station would 19 also serve people in the general area and people on 20 University Boulevard and Colesville Road. Okay. That's 21 great. This doesn't really tell us much about anything 22 other -- we know we do have these large numbers of stations 23 that are available to serve all of this area here. 24 In terms of trying to determine if there was any 25 comparable cluster of stations, I took Google Earth and I</p>	<p style="text-align: right;">Page 148</p> <p>1 MS. CORDRY: Right. I'm getting to that. What 2 I'm saying is back here -- 3 MR. GROSSMAN: Okay. 4 MS. CORDRY: -- he makes no -- and we'll get to 5 that at the end, but I'm, in his initial part he doesn't 6 correlate any of these things here. Okay. 7 So we can come to price competition. And this is 8 clearly in one sense the crux of this case one might say, or 9 at least in terms of what many people would want to think 10 about buying. Does the Costco station have some kind of 11 unique value to the community as a whole in that it will 12 purportedly charge less to its members than they might be 13 able to buy somewhere else? And what I would suggest, and 14 I'm going to go through this in some detail, is that the 15 reality is a lot less impressive than the report suggests as 16 to both the difference between Costco stations and other 17 nearby stations and stations in this area and its effects on 18 surrounding prices. 19 So we begin with the fact that what he did was he 20 went in, as he states, on one day in 2012 and fair enough, a 21 similar day in 2011 and 2010, took the Costco price at 22 Beltsville, looked at the prices in this area for stations 23 in the study area and went through them all and listed them 24 all and that's the chart on page 3-5, Exhibit 3-2. He 25 states that it's lower than any stations in this area and</p>
<p style="text-align: right;">Page 147</p> <p>1 tried to scan around the County and tried to see if I could 2 find anyplace that were putting gas stations in there. I 3 couldn't find anything. The closest I could find might have 4 been along the Rockville Pike area, but -- 5 MR. GROSSMAN: You couldn't -- finish that 6 sentence. You couldn't find anything -- 7 MS. CORDRY: I couldn't find anything that had a 8 comparable concentration of stations within a comparable 9 kind of geographic sort of area. 10 MR. GROSSMAN: Okay. 11 MS. CORDRY: The only area that geographically 12 might have come close is possibly someplace along the 13 Rockville Pike corridor, but if you look at drive times, 14 since that is a much more congested area than around here, 15 hard to believe -- 16 MR. GROSSMAN: Than around here meaning -- 17 MS. CORDRY: The Kensington/Wheaton area, that 18 would make your drive time slower which would make fewer 19 stations available. So, again, looking at this, couldn't 20 really see where I could really see anything where there was 21 a comparable concentration of supply stations. So now we 22 get to the crux of the matter, price competition. 23 MR. GROSSMAN: By the way, he does tie in 24 population growth with gas station, with gas demand on page 25 4-3.</p>	<p style="text-align: right;">Page 149</p> <p>1 that there was an overall 10.6 percent difference in the 2 range of average prices which he stated was between, on the 3 next page he states that the difference, oh, the difference 4 was between 3.83 and 4.19, which he lists as the average 5 price. 6 Now that's a kind of an odd number because that's 7 actually averaging all the prices the gas station charges 8 for each price of gasoline which nobody buys a gallon of 9 gasoline that's partly low octane and partly mid-octane and 10 partly high octane. I mean you buy one or the other of 11 these, but and it states that the premium price for 12 Beltsville was 3.96. 13 Now if you look at only regular gas, it's 3.58 at 14 Beltsville and ranges from 3.70 to 3.90. For premium gas, 15 it started at 3.96 in Beltsville and the Freestate was also 16 3.96. So actually zero cents difference on the premium gas 17 between the Freestate and the Beltsville station. And 18 actually two Freestates were at that price. 19 So the report then -- 20 MR. GROSSMAN: You can leave the door open. I 21 think it's okay. 22 MS. CORDRY: Okay. The report then states that 23 the, on page 3-6, that the difference for a household that 24 buys all of its gas, and again he comes up with this 1,012 25 gallon figure, at 3.77 per gallon, which is what he</p>

<p style="text-align: right;">Page 150</p> <p>1 calculated as the average price for Costco gas versus 4.05, 2 which he stated was the average for all of the local gas 3 stations with 28 cents a gallon times 1,000 gallons. Okay. 4 Again, that kind of calculation doesn't really make any 5 sense because nobody is buying gasoline at one price 6 versus -- the median price. They're buying one or the 7 other. 8 So I went back and actually recalculated what were 9 all the average prices for low octane, which is the vast 10 majority of what is, people buy. Interestingly enough, I 11 think it's by sheer coincidence it also actually turned out 12 to be 28 cents at that point if you averaged up all of those 13 numbers. So you can still make this comparison that if you 14 bought at the average price of all of the gas stations in 15 this area, you would theoretically save 28 cents a gallon 16 over what you would pay in Costco on that particular day in 17 Beltsville. 18 Now the reason why we think that's a really 19 completely overstated comparison, leaving aside the fact 20 that it's unlikely that most people buy all their gasoline 21 at one station, but to assume that a typical Costco customer 22 who we've already pretty much by definition have determined 23 is extremely price-sensitive because they are willing to sit 24 in gas lines for up to 20 minutes at a time to save on 25 gasoline, that that person is going to go to a, the median</p>	<p style="text-align: right;">Page 152</p> <p>1 drive over to Beltsville and buy gas at 3.58, what could 2 they have bought gas for here? And the answer is they could 3 buy it at the Freestate at 3.70. So that's really -- 4 MR. GROSSMAN: Which is how much more expensive 5 than the projected Costco price? 6 MS. CORDRY: Well, at that point on that 7 particular day it happened to be 12 cents. 8 MR. GROSSMAN: Okay. 9 MS. CORDRY: Okay. 10 MR. GROSSMAN: So you're saying the distinction is 11 that it would be, if you followed your rationale, you'd be 12 saving 12 cents a gallon at Costco -- 13 MS. CORDRY: And not 28. 14 MR. GROSSMAN: -- rather than 28? 15 MS. CORDRY: Right. So you look at that and all 16 of a sudden your savings are down to \$121 rather than 283, 17 again, for someone who buys all of their gas at Costco. And 18 if you looked at the premium price versus the premium price, 19 you would be saving zero dollars because the price is the 20 same at the Costco versus the Freestates here. 21 So it also noted a similar price comparison at 22 Elkridge, claiming that, let's see -- 23 MR. GROSSMAN: I follow your logic, but I'm not 24 sure that I can make the assumption that everybody you 25 compare to Costco is buying it at the Freestate as opposed</p>
<p style="text-align: right;">Page 151</p> <p>1 priced station here as opposed to the low priced stations. 2 It doesn't seem like a very logical assumption. It would 3 seem like a price conscious consumer is going to go to the 4 low price station. So the real comparison is between the 5 Costco price and the low price that they can get in this 6 area. So that's what I went back to try to look at and what 7 that kind of comparison would -- 8 MR. GROSSMAN: Well, I mean you could weight it. 9 you could look at the number of sales at the low price 10 station and the number of sales at the higher priced station 11 and compare in that fashion to see if your assumption is 12 correct. 13 MS. CORDRY: I mean you could do it -- 14 MR. GROSSMAN: I presume you don't want to 15 compare -- 16 MS. CORDRY: Right. 17 MR. GROSSMAN: -- you don't want to assume that 18 all of the other gasoline would be purchased at the lower 19 priced station because that's not, clearly that's not what 20 happens. 21 MS. CORDRY: Well, assuming they're there but, 22 again, we don't know how much is being drawn from this area, 23 how much is coming from somewhere else, how much was coming 24 from people buying at several different places. So all I 25 can say is that for an individual consumer, if they didn't</p>	<p style="text-align: right;">Page 153</p> <p>1 to -- 2 MS. CORDRY: Well, I am not, I'm not saying -- 3 MR. GROSSMAN: It's somewhere in between the 12 4 cents a gallon savings and the 28 cents a gallon savings, 5 right? 6 MS. CORDRY: But there's, but, yes. But there is 7 certainly every availability for someone to pay no more than 8 10 cents or 12 cents in this particular case, I'm sorry, 9 there. 10 MR. GROSSMAN: Depending on how close they were to 11 the Freestate station. 12 MS. CORDRY: Well, if they're already coming over 13 here to this Costco, the Freestate is approximately a 14 quarter mile away. 15 MR. GROSSMAN: All right. 16 MS. CORDRY: So -- 17 MR. GROSSMAN: Well, in any event, yes? 18 MS. CORDRY: So the -- there is -- 19 MR. GROSSMAN: There would be a savings, but it 20 would be some amount between 12 cents and 28 cents a gallon. 21 MS. CORDRY: On that particular day that would be 22 the particular number. 23 MR. GROSSMAN: Okay. 24 MS. CORDRY: And so obviously, again, as we've 25 talked about, in terms of getting to these price savings,</p>

<p style="text-align: right;">Page 154</p> <p>1 there are numerous ways in which Costco's model allows them 2 to save prices based on the volume, the compression of the 3 station, the idling and so forth, which puts the burden on 4 the neighborhood in order to gain these savings. 5 Now in terms of whether or not this Costco is 6 driving the prices in Beltsville, and remember Mr. Flynn 7 agreed that the locality had a great deal of effect on 8 prices -- 9 MR. GROSSMAN: Right. 10 MS. CORDRY: -- so was it Costco versus that or 11 was it Beltsville versus this area? So one of the things I 12 wanted to do was look at that. I mean Beltsville, it's a 13 lower cost industrial area. There are many, very close 14 competitors near the Costco station. All of those are 15 typically factors that are associated with low prices 16 whether or not the Costco is there or not. 17 So I wanted to look at several different things. 18 What are the kind of price differentials within Beltsville? 19 So is Beltsville just in general a lower price than here? 20 What is the price differential between different Costcos? 21 If Costco somehow is independently driving down prices 22 because it's setting this low price, you would assume that 23 there might be a Costco price that you would see across the 24 board. But, so I wanted to look at that. 25 Do all Costcos charge the same or is there a</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. GROSSMAN: And so I'll label this -- 2 MS. CORDRY: And I'll walk us -- yes, cost 3 comparisons here. 4 MR. GROSSMAN: -- Cordry gasoline cost 5 comparisons. 6 MS. CORDRY: Right. 7 MR. GROSSMAN: Okay. 8 MS. CORDRY: All right. So to walk through what I 9 did here, starting with this in 2012, over a number of days 10 in March and April, trying to do this every day and 11 sometimes I ran out of time, sometimes I forgot, sometimes I 12 didn't get to it, but so there's some random days. It 13 doesn't have every day, but there's quite a few days here 14 that I did do one, two, three, four, five, six, seven -- 15 there's about 25 days here, so over about a month and a half 16 period. 17 So it's not every single day, but it's quite a few 18 and they were not picked by any specific point. If I missed 19 a day, it was simply at random. I didn't get home that 20 night to be able to do it. What I did do was I went on Gas 21 Buddy. 22 MR. GROSSMAN: All right. 23 MS. CORDRY: You know, I did not have the time or 24 the ability to drive around 25 stations, including going 25 over to Beltsville and Elkridge and so forth, but --</p>
<p style="text-align: right;">Page 155</p> <p>1 differential between Costcos, and if so, then how do we 2 compare ourselves to Beltsville as opposed to some of these 3 other Costcos? I also wanted to look at this over time 4 because, I mean there's nothing in here that affirmatively 5 states that management didn't know when these prices were 6 being taken. I'm assuming that they didn't know, but 7 obviously it could be know. But even if you assume that 8 they didn't know anything about these prices, there prices 9 vary greatly from day to day and one station may get its gas 10 and the gas prices are going up, so they may get it on day X 11 and their prices go up and the next station may not get the 12 more expensive gas until a few days later and its price goes 13 up at a different day. So the differences between stations 14 can vary markedly from day to day. 15 MR. GROSSMAN: Okay. 16 MS. CORDRY: So I wanted to look at this not just 17 on a one-day period, but over some more extended periods of 18 time to get a better sense overall what was going on here. 19 And that's what I did do both in 2012 and then again in this 20 year and at this point if you want to hand this one out? 21 This would be a new exhibit. 22 MR. GROSSMAN: Thank you, Ms. Adelman. All right. 23 So this will be Exhibit 295. 24 (Exhibit No. 295 was marked for 25 identification.)</p>	<p style="text-align: right;">Page 157</p> <p>1 MR. GROSSMAN: And what is Gas Buddy? 2 MS. CORDRY: Gas Buddy is a website, an Internet 3 website where people call, e-mail in and put in prices that 4 they observe on a daily basis at various gas stations and 5 you can use it to look up and see where is the cheapest gas 6 in an area in order to be able to go. 7 MR. GROSSMAN: Okay. 8 MS. CORDRY: I put in the actual screen shots I 9 took from the Gas Buddy website, all the ones that I did in 10 2012 are in as part of the, that Exhibit 88(h). I have 11 actually here for 2013, if anybody wants them, but they just 12 back up and show you where these numbers come from. So this 13 is a compilation I pulled from there. 14 MR. GROSSMAN: Okay. 15 MS. CORDRY: So what I started with was for 16 Beltsville I took Costco's price every day and then I went 17 and looked and saw what was the lowest priced station that 18 was not Costco. And so, for instance, on March 12th, Costco 19 was at 3.65 and there was a Wawa at 3.69. And then I just 20 calculated what was the difference, .04 on that day. 21 MR. GROSSMAN: All right. 22 MS. CORDRY: And just in terms of my point about 23 how I can vary widely in that week it went from a four cent 24 difference -- let me just say on the 7th for some reason 25 nobody called in the Costco price, so I couldn't calculate</p>

<p style="text-align: right;">Page 158</p> <p>1 that on that day. And when I did my difference, I wouldn't 2 put in a day that we didn't have that. But, in any case, it 3 went from .04 to .02 to .12 to zero within a week. So some 4 days it was matched, some days it was more, some days it was 5 less. When you got down to the bottom, the overall 6 difference between Costco and the station near it in 2012 7 was .06 cents, 6.3 cents. 8 MR. GROSSMAN: Okay. 9 MS. CORDRY: That was an average difference. And 10 then I went up -- did the same thing at the Elkridge station 11 and what you can see there is in most cases the price at 12 Elkridge was more often substantially more than the price at 13 Beltsville. The first day they matched, but then by 8/12 it 14 was 3 cents more. It was then 10 cents more, then 6 cents 15 more, 6 cents. So, in any case, Elkridge tended to be 16 higher consistently than Beltsville. 17 I did the same lowest non-Costco price there and, 18 again, looked at the difference there. Compared to the 19 Beltsville station, the Elkridge station was much less price 20 competitive. Some days it was not the cheapest station, for 21 instance, March 12th. 22 MR. GROSSMAN: Well, I'm not sure I follow the 23 stats because -- 24 MS. CORDRY: Okay. 25 MR. GROSSMAN: -- you're looking at this front</p>	<p style="text-align: right;">Page 160</p> <p>1 MS. CORDRY: Okay. What I'm saying is that there 2 is a suggestion that Costco inevitably drives prices down 3 around it or that it's much cheaper than stations around it. 4 What I'm saying is that for instance if you look at various 5 Costcos, they have very different approaches there and that 6 it is not necessarily cheaper than other stations, Elkridge 7 being, and a good example, last year over the six week 8 period the average difference between the Elkridge Costco 9 and the next cheapest station was less than a penny. 10 MR. GROSSMAN: Okay. 11 MS. CORDRY: .8 cents. The next comparison I did 12 was then, okay, let's look at Wheaton over the same time 13 period. 14 MR. GROSSMAN: So if you're correct that there 15 isn't really going to be a big price differential for 16 Costco, then it won't drive any other stations out of 17 business? 18 MS. CORDRY: Well, the problem is that there is a 19 reality and there is a perception. There is a perception 20 that Costco has these much cheaper prices. The reality is 21 it's not necessarily true, but whether it's true or not, 22 people have it in their head that it's cheaper and they will 23 likely go there. And what we, you know, I'm trying to like 24 show is there this comparison, will it drive prices down and 25 so forth. Whether or not -- and the point is that the claim</p>
<p style="text-align: right;">Page 159</p> <p>1 page of Exhibit 295? 2 MS. CORDRY: Yes, I'm going across the page there, 3 yes. 4 MR. GROSSMAN: Right. And I presume you're 5 looking at this column which is on the right-hand side? Is 6 that the -- 7 MS. CORDRY: No, no, no, I'm, at the top there it 8 says Beltsville and then it says Elkridge. 9 MR. GROSSMAN: Okay. 10 MS. CORDRY: Okay. And we show the Costco price 11 and then the lowest non-Costco price. So, for instance, on 12 March 5th it would be Costco is 3.65 and the Xtra Mart was 13 3.67. 14 MR. GROSSMAN: Right. I thought you were 15 comparing Costcos, two Costcos to each other also. 16 MS. CORDRY: We, I, we're getting there. We're 17 getting there. 18 MR. GROSSMAN: Yes, okay. 19 MS. CORDRY: So the Costco to Elkridge, again, 20 was, as I say, far less price competitive than the Costco to 21 Beltsville prices. 22 MR. GROSSMAN: So what do I -- 23 MS. CORDRY: Okay. 24 MR. GROSSMAN: -- so assuming that statement is 25 correct, what do I, how do I use that in my analysis?</p>	<p style="text-align: right;">Page 161</p> <p>1 that it's so much cheaper is going to be the benefit. If 2 it's not so much cheaper, whether people think it's cheaper 3 or not and go there, but whether it is cheaper or not, the 4 reality of whether it is much cheap is what the, quote, 5 benefit will be. 6 MR. GROSSMAN: I understand your point -- 7 MS. CORDRY: Right. 8 MR. GROSSMAN: -- but I think aren't you trying to 9 have it both ways here? I mean at one point you're saying 10 that it's going to drive the extra convenience or whatever 11 is not really going to be convenience because it's going to 12 drive these other gas stations out of business because of 13 its lower prices and now you're saying that the figures 14 you've put together show that it's really not that more, 15 much more price competitive, so theoretically it won't drive 16 other stations out of business. But then you're saying that 17 in the minds of people, somehow it's lower so that over some 18 period of time, even though it's not really lower, they're 19 going to continue to wait in a queue to get gasoline at 20 Costco that's no less, that's no lower in price. 21 MS. CORDRY: Okay. 22 MR. GROSSMAN: Does that make any sense? 23 MS. CORDRY: Okay. First off, perceptions often 24 make -- people are convinced in their head that it's 25 cheaper. Number two, what I'm going to show you over time</p>

<p style="text-align: right;">Page 162</p> <p>1 is that it's not necessarily that it's not at all cheaper. 2 What I'm going to show you is that it is not hugely cheaper 3 and that the, if there is a small price differential and 4 people are -- there's a great deal of price sensitivity. I 5 mean people will drive across the street and around the 6 block to save two or three cents. So it doesn't have to be 7 a huge different and it's, what I'm trying to point out is 8 that when you're talking about saving \$300 and this kind of 9 thing, it's highly unlikely it's going to save that much 10 money. So it's not, it's not a huge benefit, but the 11 perception or even the reality of a few cents is enough to 12 drive a huge amount of business, people just are that way. 13 It's not particularly sensible. I mean there are people who 14 talk about I'm going to drive over to Beltsville because 15 I'll save money on gasoline. That's insane. You cannot 16 possibly drive from here to Beltsville, sit in line for 20 17 minutes -- 18 MR. GROSSMAN: All right. 19 MS. CORDRY: -- drive back and on a 10 or 15 cent 20 gallon difference in gasoline save any money when you 21 calculate it up and, yet, I've sat there and heard people 22 say that over and over again. So -- 23 MR. GROSSMAN: I understand. 24 MS. CORDRY: -- people aren't necessarily sensible 25 about this, but it -- I'm just trying to work through the</p>	<p style="text-align: right;">Page 164</p> <p>1 difference between Beltsville stations in January was about 2 half what it was in the previous year, but on the other hand 3 Elkridge got a little more competitive. Not a whole lot of 4 difference in the Wheaton stations. At this point and, 5 again, in terms of the range of stations, again, 15 cents 6 range on average in the Costco prices in Maryland and about 7 30 cents in Virginia, partially because there was a broader 8 range of stations and it went clear down to the Richmond 9 area there. 10 MR. GROSSMAN: Okay. 11 MS. CORDRY: And then I, in March and April I 12 expanded that a little bit. I went out to Beltsville, 13 Elkridge, Frederick and Sterling. And you heard an awful 14 lot about Sterling and I think Sterling is, you now, 15 interesting as well to look at. 16 You know, at this point now it's Beltsville and, 17 again, there's a lot of freedom to set these prices. 18 Beltsville at this point now is about 8 cents cheaper; 19 Elkridge, about three and a half cents; the Costco versus -- 20 I'm sorry, these are the prices between the Costco and the 21 local area there. So the Beltsville Costco had made itself 22 a little more price competitive than what it used to be and 23 it was up to about eight cents. The Elkridge one stayed 24 about the same. The Frederick and Costco got less price 25 competitive. Between here and Wheaton, now the number is up</p>
<p style="text-align: right;">Page 163</p> <p>1 reality of these things and let me finish going through this 2 sort of quickly and then I think we'd probably -- 3 MR. GROSSMAN: All right. 4 MS. CORDRY: -- be at a good point to break. 5 Again, in 2012, the difference between, overall between say 6 the Freestate and the next closet one on the same kind of 7 comparison was about six and a half cents. Between Wheaton 8 and Beltsville in 2012, the difference was only about 2.8 9 cents. Between Wheaton and the Costco in Elkridge, it was a 10 minus 2.3 cents. It was actually cheaper here than to go up 11 to, than in Elkridge. Which, again, either says -- it says 12 many things. What it also just likely says is that Costco 13 prices to the market, that there isn't some magical way in 14 which Costco brings down prices for everybody, but that 15 Costco prices to the market that's around them. 16 The farthest over column I went and I pulled up 17 all the Costcos in Maryland over this time period. There 18 was difference in price there. The average range of prices 19 was 17 cents. So that if you were lower than the price in 20 one Costco wouldn't necessarily mean that you would be lower 21 than prices in other Costcos. The same thing in Virginia, 22 the range was even wider, 21 cents for Costco's, did much 23 the same thing then again starting this year, some in 24 January and then some again in March and April. 25 Trailing across on the bottom page there, the</p>	<p style="text-align: right;">Page 165</p> <p>1 to about nine cents difference between Beltsville and 2 Wheaton. I'm sorry, that was the difference within Wheaton. 3 On the far, right side -- Wheaton versus 4 Beltsville, at this point now the Beltsville station has 5 made itself more price competitive than here. Whether it's 6 doing this because we're getting into this point, whatever, 7 it's hard to say, but at this point it's about a 12 and a 8 half cent difference. Wheaton versus Elkridge, six, a 9 little less than seven cents; Frederick about the same 10 thing, about 11 cents. But if you look at the Sterling 11 numbers which are at the very bottom there, we're 12 consistently below the Sterling price. So, again, it simply 13 makes the point that -- a couple of things. That there may 14 or may not be a price differential here. It's something 15 that Costco has a great deal of ability to control how much 16 price differential there is, again, because of the way the 17 stations operate. That the differential can clearly drive 18 this issue here and can be looked at in a lot of different 19 ways and that there is not guarantee on the other hand that 20 if you, if the idea is that the price benefit of going to 21 Costco is going to be the big benefit that's going to be the 22 need here, that's basically only driven by looking at the 23 Beltsville station. 24 And we have no guarantee we would get the 25 Beltsville price. There is no guarantee that that price</p>

<p style="text-align: right;">Page 166</p> <p>1 cannot be simply set in order to show a valuable price 2 comparison. And if you look at this station versus other 3 Costcos, it is far less likely that there is a big price 4 savings here. So the bottom line is, it simply boils down 5 to this whole report and almost everybody coming in and 6 testifying to you really boils down to saying we're going to 7 save money at Costco, there's this huge price benefit, 8 that's why we go. I want to save money at Costco. You can 9 read every piece of testimony that people talk about, you 10 can listen to people's testimony, the whole answers. We 11 have to have this Costco gas station here because it's 12 cheaper. And what I'm simply saying here is that that's a 13 very artificial comparison that can be set in many different 14 ways. And to try to do a need determination based on 15 whether somebody says I can sell gasoline more cheaply than 16 somebody else and that's the only determination is really, 17 again, simply allows the applicant to largely manipulate the 18 market. 19 And the last point I would simply put in on this 20 is in terms of -- and, again, I point out that the Lucky 21 Stores said there were other discount operations in the 22 market. There are other ways to save gasoline, to have 23 cheap gas that are far more available to everyone in this 24 neighborhood and under far more flexible programs, so 25 there's certainly no need to look at giving a Costco cheap</p>	<p style="text-align: right;">Page 168</p> <p>1 MS. CORDRY: Well, what I'm saying is -- 2 MR. GROSSMAN: Should I, is that something I 3 shouldn't do? 4 MS. CORDRY: Well, what I am saying is you are 5 being asked to evaluate whether the neighborhood as a whole 6 has a need for the station. What you are being given is a 7 small portion of the neighborhood that says I would like to 8 buy, to get a discount on gasoline by buying it on, there's 9 this one particular program from this one particular -- 10 MR. GROSSMAN: It's not addressing my question. 11 MS. CORDRY: No. 12 MR. GROSSMAN: I understand that. My question is 13 in analyzing this, should I be substituting and determining 14 need? Should I be substituting what the people who testify, 15 who testified before me consider their need for their 16 convenience based on price or whatever? Should I be 17 substituting my judgment of that or isn't it really the need 18 that the community, those who testified in the community 19 perceive -- 20 MS. CORDRY: Okay. 21 MR. GROSSMAN: -- is a guiding light for me. 22 MS. CORDRY: Okay. But what I am suggesting here 23 is that the community is beyond the portion, and we'll get 24 to that -- 25 MR. GROSSMAN: I understand that, but try to</p>
<p style="text-align: right;">Page 167</p> <p>1 gas unique bonus points. 2 We've talked to some extent about the Giant and 3 the Shell discount program. There's numerous other ones, 4 Safeway, K-mart. It seems like every time I open an 5 advertisement, somebody is offering me discounts on 6 gasoline. Giant is the one I tend to use most, 10 cent 7 reduction for every \$100 in gas, in groceries you buy. A 8 typical family might spend 150, \$200 a week on groceries. 9 That's a 15 to 20-cent gallon discount there that they can 10 use at any Shell anywhere in the country during the longer 11 hours that Shell operators with all of the amenities that 12 Shell has. 13 MR. GROSSMAN: You're saying around the country. 14 I think you mean the County. 15 MS. CORDRY: County, country, anywhere. 16 MR. GROSSMAN: Well, I'm not sure that they all 17 participate all over the country, but let's assume all this 18 is true, the suggestion you're making to me, if I understand 19 you correctly, is that even though these people came in and 20 testified that they have a felt need for what they perceive 21 to be a lower Costco gasoline price, I should substitute my 22 judgment as to what is the likely reality taking into 23 account your statistical analysis and also other objective, 24 theoretically objective sources and substitute that for 25 their felt need?</p>	<p style="text-align: right;">Page 169</p> <p>1 address my question first. 2 MS. CORDRY: Okay. No, no, okay. Well, if your 3 question is simply do those people who go to Costco for 4 whatever reason, that small portion of the neighborhood, do 5 they want to buy, get their discount gas through the Costco 6 discount program? Of course. I'm not, I'm not disputing 7 that and I'm not saying you should, that you have to tell 8 them that they're wrong. 9 MR. GROSSMAN: But isn't that part of what I have 10 to consider as need, that is their feeling of need, not just 11 your analysis of whether or not the price differentials are 12 sufficient based on distance and so on to make it 13 worthwhile? Isn't it, isn't as an analytical matter, 14 shouldn't that be considering, at least within reasonable 15 bounds, their felt need? 16 MS. CORDRY: I would not dispute that they have a 17 felt need to want to buy gasoline and to get a discount 18 through the Costco discount program. I'm not -- 19 MR. GROSSMAN: But shouldn't I be considering that 20 as part of my analysis of need -- 21 MS. CORDRY: And I'm not saying you shouldn't. 22 MR. GROSSMAN: -- rather than just the more 23 analytical approach you've taken as to whether or not it's 24 worth it to drive five miles to save 5 cents? 25 MS. CORDRY: Well, what I am saying is, one, you</p>

<p style="text-align: right;">Page 170</p> <p>1 can consider that, of course. 2 MR. GROSSMAN: Okay. 3 MS. CORDRY: I am saying that though to the extent 4 that there is an objective suggestion that people are 5 actually saving as this report says, somebody is going to 6 save \$283 -- 7 MR. GROSSMAN: Right. 8 MS. CORDRY: -- I think it is absolutely 9 appropriate to say that it is highly unlikely that they will 10 save anything like that. 11 MR. GROSSMAN: I would agree with you. I think 12 that your -- 13 MS. CORDRY: So -- 14 MR. GROSSMAN: -- analysis has to factor into the 15 more objective portion of this, which is whether or not the 16 predictions of the applicant's expert are correct or 17 overstated or whatever. The other question -- 18 MS. CORDRY: Right. 19 MR. GROSSMAN: -- mine is a more -- 20 MS. CORDRY: Right. 21 MR. GROSSMAN: -- a different question in terms of 22 how I really -- 23 MS. CORDRY: Right. 24 MR. GROSSMAN: -- should be assessing these. Let 25 me turn to one other question --</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. GROSSMAN: -- in Wheaton? 2 MS. CORDRY: Right. 3 MR. GROSSMAN: And assuming that -- 4 MS. CORDRY: Because if I'm a price-conscious 5 consumer out there looking for what's the best deal I can 6 get, I will go and I will say, oh, look, I can go to 7 Freestate and I can get 3.67. I can look at -- if I was in 8 Sterling, I would have to pay 3.71. So the idea that Costco 9 as such somehow automatically is lower than our prices here 10 is truly not -- 11 MR. GROSSMAN: I understand. 12 MS. CORDRY: -- correct. 13 MR. GROSSMAN: Okay. I understand. 14 MS. CORDRY: And, you know, certainly subjective 15 preferences, of course they are something you have to look 16 at, but then, of course, then, of course, you become, your 17 subjective preference of the rest of the neighborhood as 18 well. And, again, I keep coming back to the real difference 19 here is if everyone were accessing the Costco price and 20 everyone said, okay, I can either go to another station and 21 pay a little more and not sit in line or I can go to Costco 22 and perhaps pay a little less and sit in line. That's 23 everybody's choice. Everybody has the ability to deal with 24 that. 25 But we're not in that situation now. We're in a</p>
<p style="text-align: right;">Page 171</p> <p>1 MS. CORDRY: Sure. 2 MR. GROSSMAN: -- before I break and that is on 3 the second page of Exhibit 295, you have a series of figures 4 at the very bottom. 5 MS. CORDRY: Right. That is simply a comparison 6 between the Sterling price on a given day and I didn't write 7 the Wheaton price in there too, but how, well, actually the 8 Wheaton price is the one that is up there above it, directly 9 above there you see Wheaton and the Freestate and so forth. 10 MR. GROSSMAN: So when you say Wheaton, you're 11 referring to other prices available in Wheaton? 12 MS. CORDRY: Yes, I looked -- 13 MR. GROSSMAN: Not an imagined Wheaton Costco 14 price? 15 MS. CORDRY: No, no, no. 16 MR. GROSSMAN: Okay. 17 MS. CORDRY: I'm looking, yes, I'm looking at if 18 you were not buying at the Costco, if you were buying within 19 the Wheaton area, what is your alternative that you can do 20 if you're looking for a low price alternative. And if you 21 see there, for instance, the Freestate was listed as 3.67, 22 the Sterling Costco was 3.71. 23 MR. GROSSMAN: So you're comparing the Sterling 24 Costco price to what you could get on the best deal -- 25 MS. CORDRY: Right.</p>	<p style="text-align: right;">Page 173</p> <p>1 situation where Costco is bringing people from all over the 2 County into the neighborhood, burdening this neighborhood 3 with traffic, with noise, whether it exceeds the lines or 4 not, with potential health effects with all or whatever 5 issues we have here. All of that is being brought in here 6 and concentrated here and yet only, not even all Costco 7 shoppers, only a portion of Costco shoppers use the station 8 and get that benefit. So that's really the question, does 9 that -- 10 MR. GROSSMAN: Well, let's say that's 25 percent 11 of the community. Let me ask you this. Should I never 12 consider in this kind of analysis services that are only 13 useful to a portion of the community? 14 MS. CORDRY: Well, I think it goes to the question 15 of, and this I think, and I make a point and I started to 16 write down here about say a swimming pool. Granted most 17 swimming pools are only community membership things, but 18 they have to serve the neighborhood need. A community 19 swimming pool normally does not draw from 20 or 30 miles 20 away. There is a limited burden on the community which is 21 roughly commensurate with the limited benefits to the 22 community. That's why we keep trying to emphasize if this 23 station was only drawing from this limited area here, it 24 would be one thing, but again because of the business model 25 that Costco uses that draws from such a huge area, it brings</p>

<p style="text-align: right;">Page 174</p> <p>1 in so much more burden beyond what would normally be 2 commensurate with what the community was benefiting from and 3 that's exacerbated then by the membership nature of it. 4 MR. GROSSMAN: Right. But let's deal with the 5 membership nature of it first and that is you raise a pool. 6 Okay, the community pool where you have to be a member. 7 MS. CORDRY: Right. 8 MR. GROSSMAN: Isn't that a good example, 9 forgetting about the regional part of it, is that an 10 instance in which we once again should not find need because 11 only a portion of the community would be allowed to use it? 12 MS. CORDRY: Well, no, because again, as I say, 13 the question is you are showing the community need and the 14 community benefit and the two sides, the neighborhood need 15 and neighborhood benefit -- the neighborhood has to benefit 16 from it and the neighborhood needs it. 17 MR. GROSSMAN: No, forget about the benefit part. 18 That's a later comparison. Right now let's just deal with 19 the need. Is that an analogous situation here or about the 20 fact that just in terms of gas stations, not everybody is a 21 driver. This would only serve the portion of the community 22 that are drivers. Do I -- 23 MS. CORDRY: Well, that I think is part of the 24 inherent adverse effects that we have to put up with and 25 which we then have to balance by showing a need. So --</p>	<p style="text-align: right;">Page 176</p> <p>1 MS. CORDRY: Right. Well, it's a need -- 2 MR. GROSSMAN: For better or for worse, one can 3 argue about it. 4 MS. CORDRY: Right. 5 MR. GROSSMAN: In fact, you wanted me to look at 6 the zoning rewrite. It's possible in the zoning rewrite 7 that they will eliminate the need requirement. 8 MS. CORDRY: Actually -- 9 MR. GROSSMAN: I will look at that. 10 MS. CORDRY: Well, they have made sure that it is 11 back in there now. 12 MR. GROSSMAN: Well, they haven't made sure of it. 13 I mean there have been committee discussions. 14 MS. CORDRY: Right. Right. 15 MR. GROSSMAN: So I'm just saying that's another 16 reason why I can't look at the zoning. I'm not going to 17 make any assumptions as to what the whole Council is going 18 to do because they could do a lot of things. 19 MS. CORDRY: All right. My point is I think that 20 when you talk about need, you talk about need in light of 21 the other uses in the area. So it's, similar, identical 22 uses in the area. So it is clearly tying need to what else 23 is already available there. And that is what, you know, 24 what we've been trying to deal with here as well. 25 MR. GROSSMAN: All right. I think that in order</p>
<p style="text-align: right;">Page 175</p> <p>1 MR. GROSSMAN: Well, no, but the point I'm getting 2 at is, and I want to analyze need, must I eliminate from a 3 showing of need an operation that only serves a portion of 4 the community? 5 MS. CORDRY: I mean clearly not because clearly, 6 you know, swimming pools are in general that kind of thing 7 and that is one of the ones that's there. But, again, I 8 think because of the fact that they distinguish between the 9 neighborhood need versus the County need, they are, in fact, 10 assuming that you should only be dealing with a localized 11 need, a localized sort of operation precisely because of 12 that, that because some of the -- now gas stations last 13 because until this kind of an advent, we really hadn't had 14 membership gas stations. But if you want to draw the 15 analogy by the swimming pool, at the very least the burden 16 on the community is balanced by the fact that it's not 17 drawing from outside the community. It's only a limited 18 burden that's being put on the community that's commensurate 19 with the need in that community. 20 MR. GROSSMAN: Right. But you want to do that 21 balance -- you refuse to have the analysis of need first and 22 then make the balancing and that's what I'm trying to do. 23 I'm saying that need is a separate statutory provision. 24 There's a rationale for it but, in any event, they require 25 me to make that analysis.</p>	<p style="text-align: right;">Page 177</p> <p>1 to -- 2 MS. CORDRY: All right. Let me just see if I -- 3 right, that's fine. It's a good stopping point. 4 MR. GROSSMAN: Okay. How much longer do you think 5 your testimony will be? 6 MS. CORDRY: I'm probably about 50 to 60 percent 7 through. 8 MR. GROSSMAN: Okay. All right. Then let's break 9 until 2 o'clock and we'll resume with Ms. Cameron's 10 testimony and then after that go back to Ms. Cordry. 11 (Whereupon, at 1:17 p.m., a luncheon recess was 12 taken.) 13 MR. GROSSMAN: Ms. Adelman -- 14 MS. ADELMAN: Yes, sir. 15 MR. GROSSMAN: -- are you ready? 16 MS. ADELMAN: I am, indeed. 17 MR. GROSSMAN: All right then. Okay. So on the 18 program now is Diane Cameron. Are you in the audience? Hi. 19 Would you come forward please and have a seat on the witness 20 stand? Yes. Can you state your full name and your address 21 for the record please? 22 MS. CAMERON: My name is Diane -- is this on or is 23 this -- 24 MR. GROSSMAN: Yes, well, actually it's recording 25 for the court reporter.</p>

<p style="text-align: right;">Page 178</p> <p>1 MS. CAMERON: My name is Diane Cameron and that is 2 spelled D-I-A-N-E, C-A-M-E-R-O-N, and I am here representing 3 Audubon Naturalist Society. And my work address for Audubon 4 Naturalist Society is 8940 Jones Mill Road, Chevy Chase, 5 Maryland 20815. 6 MR. GROSSMAN: Ms. Cameron, would you raise your 7 right hand please? 8 (Witness sworn.) 9 MR. GROSSMAN: All right. I understand you have 10 a statement you wish to make? 11 MS. CAMERON: Yes. 12 MR. GROSSMAN: All right. You may do so. 13 MS. CAMERON: And I have an accompanying graphic. 14 MR. GROSSMAN: All right. This, you provided me 15 an e-mail version of this and then I forwarded it to other 16 parties in the case which you should have received and I 17 take it this is for us to keep? 18 MS. CAMERON: Yes. 19 MR. GROSSMAN: All right. Then let me mark it 20 and it's Exhibit 296, because all those who have gone before 21 you have managed to submit 295 exhibits before you got here. 22 All right. 23 (Exhibit No. 296 was marked for 24 identification.) 25 MR. GROSSMAN: All right. Describe what Exhibit</p>	<p style="text-align: right;">Page 180</p> <p>1 Coalition. 2 MR. GROSSMAN: But the reason I ask is that 3 experts have to be qualified as experts. They have to go 4 through a procedure called a voir dire in which you are 5 questioned as to your expertise and your credentials as an 6 expert have to be submitted in advance. You have to be 7 named as an expert in advance so that the other side has an 8 opportunity to verify your credentials and to prepare the 9 voir dire if they wish to engage in that. 10 MS. CAMERON: Okay. Thank you for -- 11 MR. GROSSMAN: So -- 12 MS. CAMERON: -- that clarification and due to 13 that, in light of that clarification, I am a lay witness. 14 MR. GROSSMAN: All right. And by, I should 15 mention to you that the Wheaton sector plan is part of this 16 record. In fact, we have a couple of copies of it that are 17 already in the record here and it's automatically a copy of, 18 you know, a copy of it is automatically in the record in our 19 case, so -- 20 MS. CAMERON: Okay. That's good to know. Audubon 21 Naturalist Society has a long, has for many years worked to 22 protect the Anacostia and to restore the streams of the 23 Anacostia watershed and of Rock Creek. And the particular 24 site in question actually includes head water streams for 25 both the Anacostia River watershed and for Rock Creek. And</p>
<p style="text-align: right;">Page 179</p> <p>1 296 is. 2 MS. CAMERON: Exhibit 296 is an artist's rendering 3 of the, much of the green forested buffer that exists now 4 along the southern edge of the ring road at the Westfield 5 Mall and close to or adjacent to the Costco site, and also 6 this exhibit also has in it an artist's rendering of an 7 envisioned shared use pathway for pedestrians and cyclists 8 that is contained as a desired facility in the Wheaton 9 sector plan. And I brought with me in my remarks today the 10 relevant excerpt that I want to read into the record -- 11 MR. GROSSMAN: All right. 12 MS. CAMERON: -- from that sector plan. And so, 13 first, I will give a little bit of background and give more 14 about my work. I am the conservation director for Audubon 15 Naturalist Society and in this work I am a local clean water 16 advocate and I have a specialty in watershed protection and 17 restoration policies and regulations. 18 MR. GROSSMAN: All right. 19 MS. CAMERON: Audubon Naturalist Society works -- 20 MR. GROSSMAN: Well, are you testifying here as 21 an expert or are you testifying as a lay witness on behalf 22 of the Audubon Naturalist Society? 23 MS. CAMERON: Kind of both. I'm a policy expert 24 on watershed protection policy and I'm also an advocate and 25 our organization is a member of the Stop Costco Gas</p>	<p style="text-align: right;">Page 181</p> <p>1 so as you mentioned just now, that the record, it already 2 includes the Wheaton sector plan. My testimony concerns the 3 intent and purpose of part of the Wheaton sector plan and 4 specifically how the proposal for a Costco gas station 5 relates to the portion of the Wheaton sector plan pertaining 6 to the Wheaton Mall and to the green buffer. 7 MR. GROSSMAN: All right. 8 MS. CAMERON: And so I wanted -- 9 MR. GROSSMAN: Are you familiar, by the way, with 10 the very latest plans that have been filed in this case by 11 Costco? 12 MS. CAMERON: I have taken a look at them. 13 MR. GROSSMAN: Okay. 14 MS. CAMERON: Yes. So the relevant portion of the 15 Wheaton sector plan, and I won't read it at length, but just 16 read a few very specific portions, states the following: 17 "Preserve the existing green buffer area in 18 its entirety which is currently approximately 19 five acres in size and 30 feet to 200 feet in 20 depth along the property's southern edge 21 between the residential community and the 22 mall ring road to reduce the impact of new 23 development on adjacent residential areas and 24 the nearby school, and to contribute to the 25 protection and restoration of Sligo Creek and</p>

<p style="text-align: right;">Page 182</p> <p>1 Rock Creek. All existing forested areas 2 should be maintained as forest, explore 3 opportunities for expansion of the existing 4 buffer area as major redevelopment occurs on 5 the mall site. This will help improve the 6 health of the watershed by reducing 7 impervious surfaces and provide a better 8 transition between the mall site and the 9 adjoining residential community. Explore the 10 option of a multi-functional, green 11 infrastructure shared use path with rows of 12 trees and rain gardens in the section of the 13 ring road adjacent to the existing buffer 14 area." 15 And that's on page 53. And so the remainder of my 16 testimony concerns this, the quote that I just gave from the 17 sector plan and how that relates to the question before you 18 about the proposed gas station. 19 MR. GROSSMAN: All right. 20 MS. CAMERON: So in my considered opinion, based 21 upon this portion of the sector plan, the highest and best 22 purpose for this particular site, which I include the green 23 buffer and the ring road and its vicinity, has several 24 components. Number one, preservation of the existing green 25 buffer in its entirety; number two, enhancement and</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. GROSSMAN: They are the owner of the mall, so 2 they are in control of the area that we're largely talking 3 about, but they're not a party before me. They're not an 4 applicant here. They have agreed to make certain changes, 5 including the path. 6 MS. CAMERON: Thank you for that clarification. 7 And I have laid out several reasons why I believe that the 8 proposed gas station is fundamentally incompatible with this 9 existing green forested buffer and the sector plan's 10 priority to preserve this buffer and with the proposed or 11 envisioned shared use path. First of all, in my, in my 12 estimation, there is not enough space, so there is a lack of 13 physical space to provide both a shared use green 14 infrastructure path and a large gas station while still 15 being able to provide sufficient parking at the Costco site. 16 And this is particularly true given the imperative to 17 preserve the green buffer in its entirety. So, in other 18 words, if the County or, you know, partnership of some kind 19 were to initiate building a shared use pedestrian path, 20 there would not be the option to encroach in a southerly 21 direction into the existing green buffer. So that not being 22 an option, the only way to go would be to move, shift 23 everything northward and, thus, that is where we get into 24 some real space constraints. 25 Next, and just further information about this, I</p>
<p style="text-align: right;">Page 183</p> <p>1 expansion of the buffer as possible in order to serve as a 2 transition and as a protective natural area between the mall 3 and the adjacent community; and, number three, to seriously 4 consider the option to initiate a multi-functional, shared 5 use path adjacent to the buffer. 6 And in my opinion the proposed Costco gas station 7 represents a threat to the integrity of this forested buffer 8 and the head waters of these two creeks. This threat 9 consists of additional air and water pollution that will be 10 emitted from the proposed gas station and from the queuing 11 lines of vehicles that will be waiting for the gas pumps. 12 Environmental control measures can mitigate these pollution 13 impacts, but they cannot entirely prevent them. And in my, 14 again, in my opinion and in my professional experience, 15 these measures will, the mitigation of this pollution will 16 still not be sufficient to protect public health and to 17 protect this forested buffer from harm. 18 Another point is that Costco is, and Westfield are 19 requesting approval to build and operate a, the County's 20 largest gas station which would have the effect of rendering 21 impossible or nearly impossible the realization of the 22 sector plan's desired pedestrian path. 23 MR. GROSSMAN: By the way, Westfield is not a 24 party before me. 25 MS. CAMERON: Okay.</p>	<p style="text-align: right;">Page 185</p> <p>1 have made some estimates about dimensions and I, my 2 understanding is that you already have the facts in the 3 record about dimensions, but just to give a sense of what I 4 have estimated. The shared use path would be roughly 18 5 feet wide, which includes an eight foot wide pedestrian and 6 cyclist pathway itself. And then on either side there would 7 be roughly -- 8 MR. GROSSMAN: I'm sorry, you're suggesting that 9 the shared use path that you're talking about will be 18 10 feet wide? 11 MS. CAMERON: Yes, which would be the, consist of 12 roughly eight feet, an eight foot wide shared use path that 13 would be permeable pavement. So it would be a form of 14 pavement. And then on either side of it there would be 15 storm water, a linear storm water -- on one side there would 16 be a storm water swale that would be about five feet wide 17 and on the other side there would be a five foot wide 18 roughly landscaping buffer between the pedestrians and the 19 ring road that would be planted with shrubs and trees. So 20 altogether that would be an 18-foot wide facility. And the 21 artist's rendering is an attempt to depict this multi-modal, 22 shared use pathway and to show that the ring road next to it 23 and then going to the right in this rendering, which is 24 going northward, is the, is part of the parking lot. 25 MR. GROSSMAN: And you would have to take a</p>

<p style="text-align: right;">Page 186</p> <p>1 considerable portion over the presently existing ring road 2 to do this, would you not?</p> <p>3 MS. CAMERON: Correct. And so the ring road would 4 either itself would need to shrink and/or the entire road to 5 be shifted northward into what is now the parking lot and so 6 in my estimation that is very, it's possible with a redesign 7 to do that, but that would not be compatible with also 8 having a gas station there. The space needs for the gas 9 station all told would obviate putting in this facility.</p> <p>10 MR. GROSSMAN: But presumably Westfield would have 11 to agree to do this on their land, is that correct?</p> <p>12 MS. CAMERON: Correct.</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 MS. CAMERON: And I think that's the, that's 15 really the gist of my testimony. I did want to also point 16 out that in addition there's a policy point that was brought 17 out in the, in the Planning Board discussions about this 18 that I was present for and that related back to the same 19 portion of the Wheaton sector plan which is it's about what 20 is the vision for Wheaton overall, for downtown Wheaton and 21 what's the vision and how can this part of the sector plan 22 contribute to the vision? And that specific vision is for a 23 transit-oriented redevelopment of Wheaton.</p> <p>24 And so in our, both in my organization's and our 25 membership's interest, and in the stated decision of the</p>	<p style="text-align: right;">Page 188</p> <p>1 that's for them to decide, there's no power to recommend, in 2 their case decide, to require Westfield to put in a shared 3 use path of the kind that you're suggesting would be 4 beneficial. They have, Westfield has agreed to put in a 5 five foot wide pedestrian path if this special exception is 6 approved, but that's not exactly -- that's not what you're 7 requesting here. You're requesting something completely 8 different.</p> <p>9 MS. CAMERON: Yes, and I -- and thank you for 10 clarifying that. And I'm aware that that is, that decision 11 is outside your purview in this procedure, but I also 12 believe that just by highlighting, by my highlighting that 13 this is a stated public policy desire that is, was made part 14 of the Wheaton sector plan, that the, that that public 15 policy desire could still be taken into account in this 16 decision.</p> <p>17 MR. GROSSMAN: Okay. Thank you. Cross- 18 examination?</p> <p>19 MS. HARRIS: Yes. Thank you.</p> <p style="text-align: center;">20 CROSS-EXAMINATION</p> <p>21 BY MS. HARRIS:</p> <p>22 Q Ms. Cameron, you noted that one of your goals was, 23 excuse me, preservation of the buffer area in its entirety, 24 correct?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 187</p> <p>1 Planning Board, there is the concept that we need to choose 2 between being either automobile dependent or transit- 3 oriented, and that it's very difficult to really do both in 4 the same sector or the same area, and that certainly cars 5 will continue to coexist with pedestrians and cyclists in 6 our society, definitely, but in terms of placing -- the 7 question about whether to place a mega gas station on this 8 site is seen by certainly my organization and our members as 9 fundamentally incompatible with the transit-oriented, what 10 we call a green urbanist vision for Wheaton which is, in our 11 view, is what is embodied by the core vision that is 12 contained in the Wheaton sector plan. So there's both a 13 site-specific incompatibility in this particular part of the 14 Wheaton sector plan near the ring road and then I'm also 15 making this point that there's also a policy in 16 compatibility on the scale of the entire Wheaton sector 17 plan.</p> <p>18 MR. GROSSMAN: Okay.</p> <p>19 MS. CAMERON: And for all these reasons, the 20 Audubon Naturalist Society joins with the Stop Costco Gas 21 Coalition in asking for a rejection of the special exception 22 application, S-2863.</p> <p>23 MR. GROSSMAN: Okay. You understand that since 24 Westfield is not a party here, there is no, this body, 25 myself and I believe the Board of Appeals as well, but</p>	<p style="text-align: right;">Page 189</p> <p>1 Q And are you aware that, in fact, the proposed 2 special exception is preserving the buffer area?</p> <p>3 A Yes. Well, could you please explain further what 4 you're --</p> <p>5 Q There's no decrease in land --</p> <p>6 A -- what you're saying?</p> <p>7 Q -- area of the buffer area associated with the 8 special exception, do you agree with that?</p> <p>9 A As far as I've seen that, I believe that's 10 accurate.</p> <p>11 Q And in the page 53 of the sector plan that you 12 quoted, you know, or the language itself says upon future 13 major redevelopment of the mall certain things should occur. 14 In your definition, what constitutes major redevelopment?</p> <p>15 A I don't have a, I don't have that, a technical 16 definition with me for that, so I, although I view this, I 17 view what has been going on as major redevelopment already. 18 Like the whole process of building the Costco's facility in 19 my view is, constitutes major redevelopment that itself has 20 been an opportunity to create enhancements.</p> <p>21 MR. GROSSMAN: When you say the Costco facility, 22 are you referring to the warehouse or are you referring to 23 the proposed gasoline station?</p> <p>24 THE WITNESS: I'm referring to the, in, right now 25 to the warehouse. So, in other words, when I look at the</p>

<p style="text-align: right;">Page 190</p> <p>1 Westfield Mall and this segment of the Westfield Mall, in 2 my, in my view and, again, I'm not, I'm not here as an 3 expert, but in my view we're in the midst of a major 4 redevelopment because of the Costco warehouse and all that 5 that -- I realize that's been built, but in my view that we 6 are, we've been in a phase of major redevelopment through 7 that project going on. 8 BY MS. HARRIS: 9 Q If Westfield were to add a small pad site say up 10 near University Boulevard that was a Panera Bread or 11 something like that as a pad site, would that constitute 12 major redevelopment? 13 A It depends on, I guess it would depend on certain 14 factors which I'm not sure. 15 Q And have you seen the plans for the, you said you 16 have seen the plans for the five foot pedestrian path that 17 Costco is now proposing? 18 A Yes. 19 Q And do you think that that in part satisfies or 20 provides improved pedestrian walkway along the ring road? 21 A I think it certainly is a step forward since there 22 isn't a pedestrian walkway today, but it's very different 23 than the shared use path envisioned in the Wheaton sector 24 plan. 25 Q The shared use path that was envisioned upon</p>	<p style="text-align: right;">Page 192</p> <p>1 Q And are you aware that the gas station site 2 referenced in Exhibit 159, that the gas station site extends 3 no further south to the ring road than the existing Costco 4 warehouse? 5 A Yes, I was aware of that. 6 Q So to the extent something may obviate what your 7 ideal vision would be for that pedestrian path, would you 8 agree that the warehouse may have already obviated it? 9 A I would agree that it makes it, that the 10 particular design of the warehouse makes it difficult and 11 would certainly narrow, create a narrowing of any pathway in 12 that segment, but it doesn't prevent it. 13 Q No more than the gas station wouldn't prevent it 14 either? 15 A Well, the gas station has additional impacts and 16 additional conditions that it would create, including long 17 queuing lines that I think would tend to be a deterrent to 18 pedestrians and people on bicycles and people with children 19 in carriages and so forth. 20 Q Were you here when it was testified that the 21 queuing would occur within the special exception area? Are 22 you familiar with that testimony? 23 A No, I wasn't, but I was familiar with the overall 24 issue -- 25 Q Okay.</p>
<p style="text-align: right;">Page 191</p> <p>1 future major redevelopment of the mall parcel? 2 A Right. 3 Q And, in fact, what you are proposing, wouldn't 4 that actually require major redevelopment since it would 5 mean a shifting of the existing curb line 18 feet into what 6 is now the mall parcel? 7 A Uh-huh. And so my point in my testimony today, 8 just to clarify, is not to say, is not to give an opinion as 9 to when or what the trigger is for building this shared use 10 path. There can be a number of triggers. In fact, 11 Montgomery County itself could initiate a public, private 12 partnership with Westfield Mall and Costco and any other 13 partners it wished. At any time there could be a trigger 14 even initiated by a public agency to say we want to work 15 together to build this facility that is in the public's 16 interest and we want to work with you to do that. 17 My core point in my testimony here today is to say 18 that we, Audubon Naturalist Society, believes that this is 19 an important public, both protecting the existing forest 20 buffer and creating this shared use path are important 21 public policy goals or needs and that we do not want to see 22 either of those public policy goals obviated or thwarted by 23 decisions that we would view as being more or less 24 irrevocable going long into the future and rendering this 25 possibility moot.</p>	<p style="text-align: right;">Page 193</p> <p>1 A -- about queuing. 2 Q And in terms of your ultimate vision for the mall 3 site, have you spoken to Westfield about your vision? 4 A No, I have not. 5 Q And so you have no idea what their view would be 6 on this? 7 A Correct, but I would welcome the opportunity to 8 talk with them. 9 Q In regard to transit-oriented development in the 10 Wheaton area, in your mind are surface parking lots 11 consistent with TOD visions? 12 MR. GROSSMAN: TOD meaning -- 13 MS. HARRIS: I'm sorry, transit-oriented 14 development. 15 MR. GROSSMAN: All right. 16 THE WITNESS: They, I mean I think that if there 17 are places where certainly they, surface parking lots do 18 coexist with transit-oriented development. A lot of people 19 who are, who work in the field of transit-oriented 20 development planning tend to promote structured parking more 21 than surface parking. 22 BY MS. HARRIS: 23 Q And are there any plans on the Wheaton Mall site 24 for any future structured parking? 25 A I don't know the answer to that.</p>

<p style="text-align: right;">Page 194</p> <p>1 MS. HARRIS: I think that's it. Thank you.</p> <p>2 MR. GROSSMAN: All right. And before I allow the</p> <p>3 opposition to also ask you additional questions, I'm not</p> <p>4 sure I understand how the gas station queues would affect</p> <p>5 pedestrians on the path that is planned or has been offered</p> <p>6 to, by Westfield, a five foot wide path that they have</p> <p>7 agreed to offer now after some changes, we went through a</p> <p>8 number of iterations, along the ring road?</p> <p>9 THE WITNESS: You're not -- I'm sorry, you're not</p> <p>10 sure how the --</p> <p>11 MR. GROSSMAN: How, you indicated that there was</p> <p>12 an additional burden imposed by the gas station, the</p> <p>13 proposed gas station beyond the Costco warehouse in addition</p> <p>14 to space because it doesn't extend, the special exception</p> <p>15 site does not extend further southward than the Costco</p> <p>16 warehouse according to counsel. If it's not a space</p> <p>17 imposition, you said there were additional burdens added on</p> <p>18 by the gas station to pedestrians along the ring road. What</p> <p>19 is the additional burden if they're on a pedestrian path</p> <p>20 that Westfield establishes?</p> <p>21 THE WITNESS: A lot of it is, it's pollution --</p> <p>22 it's three things, three factors. It's air pollution, noise</p> <p>23 and safety in terms of just vehicular traffic, the more</p> <p>24 dense the traffic. And I realize there's a factor there</p> <p>25 with speed of the traffic and perhaps queuing lines are, you</p>	<p style="text-align: right;">Page 196</p> <p>1 function was protecting streams. So I'm not sure how that</p> <p>2 contributes any more than what has already been approved by</p> <p>3 or reviewed by Technical Staff and the Planning Board.</p> <p>4 THE WITNESS: Uh-huh. It, the shared use path has</p> <p>5 the potential to contribute to restoring these streams by</p> <p>6 infiltrating, collecting a lot of run-off and infiltrating</p> <p>7 it rather than discharging it through a pipe. And so there,</p> <p>8 at least starting with any run-off or precipitation falling</p> <p>9 on the pathway itself would be, if it's permeable pavement,</p> <p>10 then it's soaking that into the ground.</p> <p>11 And then there's also the possibility that this</p> <p>12 would effectively be a redesign of this part of the ring</p> <p>13 road. There's the possibility to collect run-off from the</p> <p>14 ring road itself and infiltrate it into the ground in a</p> <p>15 dispersed way and rather than adding that amount of run-off</p> <p>16 to what's coming out of the pipes.</p> <p>17 MR. GROSSMAN: Ms. Harris, would you refresh my</p> <p>18 recollection? Is the planned pedestrian path, is that to be</p> <p>19 made out of a permeable surface on the current plans? I</p> <p>20 can't recall.</p> <p>21 MS. HARRIS: No, but it is replacing impervious</p> <p>22 road. They -- okay.</p> <p>23 MR. GROSSMAN: Mr. Brann?</p> <p>24 MR. BRANN: We've agreed upon the width and the</p> <p>25 location of the path. We've not gotten into specifications</p>
<p style="text-align: right;">Page 195</p> <p>1 know, are not traveling fast or they're in a stopped</p> <p>2 position. But there's, I think, starting with the air</p> <p>3 pollution, a lot of pedestrians are concerned about just</p> <p>4 literally their own health, breathing in fumes, breathing in</p> <p>5 motor vehicle exhaust. Particularly in warmer weather, that</p> <p>6 exhaust can be very intense in a situation like this where</p> <p>7 vehicles are, engines are idling and so I think that that</p> <p>8 would just, that -- it's partly reality and it's partly</p> <p>9 perception on the part of would be pedestrians to think do I</p> <p>10 want to walk here when it's a hot day, it's still air and</p> <p>11 it's going to be, you know, X number of vehicles that I'm</p> <p>12 going to be walking along next to and breathing in all of</p> <p>13 that air, additional air pollution because the queuing lines</p> <p>14 with more vehicles than there otherwise would be.</p> <p>15 MR. GROSSMAN: Okay. The queuing lines, by the</p> <p>16 way, wouldn't be on the southern side of the ring road where</p> <p>17 the pedestrian path would be. They would be on, to the</p> <p>18 north of the ring road. They would be a distance away.</p> <p>19 THE WITNESS: Uh-huh.</p> <p>20 MR. GROSSMAN: All right. And also I would like</p> <p>21 to know how does the shared use path protect and restore the</p> <p>22 streams, which I noticed that in your letter of January 15,</p> <p>23 2013, to Renee Cayman (phonetic sp.) of Technical Staff you</p> <p>24 had indicated that that was one of your interests and you</p> <p>25 indicated here today that part of your organization's</p>	<p style="text-align: right;">Page 197</p> <p>1 of what it would be made out of. It would be easy enough to</p> <p>2 make it out of a permeable pavement.</p> <p>3 MR. GROSSMAN: Ms. Adelman.</p> <p>4 MS. ADELMAN: Mr. Grossman, I believe there is a</p> <p>5 policy in Montgomery County that states that as of, I think</p> <p>6 it was two years ago, 2011, that the County will try and use</p> <p>7 permeable surfaces when developing anything such as a</p> <p>8 pedestrian plan or in areas that aren't really heavily,</p> <p>9 heavily impacted by constant traffic such as I-95. They're</p> <p>10 try and use that material.</p> <p>11 MR. GROSSMAN: So, Mr. Brann, do I understand you</p> <p>12 correctly, and you're still under oath, that Costco, to the</p> <p>13 extent that it influences this decision, is willing to have</p> <p>14 it as a permeable surface, that is the planned pedestrian</p> <p>15 path?</p> <p>16 MR. BRANN: If it's a feasible method of</p> <p>17 construction, we would be willing, yes.</p> <p>18 MR. GROSSMAN: I presume that would be helpful to</p> <p>19 the extent -- again, I mean there is a limit. There is --</p> <p>20 the only thing before me is a request for a special</p> <p>21 exception for a Costco gas station. The remainder of this</p> <p>22 discussion of the proposed shared use path is not</p> <p>23 technically before me as something I can recommend approval</p> <p>24 of or not. However, to the extent that, I don't know what</p> <p>25 the Board of Appeals will do, but if they decide to approve</p>

<p style="text-align: right;">Page 198</p> <p>1 a special exception, I would hope that, you know, whatever</p> <p>2 actions could be taken to improve the pedestrian</p> <p>3 accessibility would be taken and this is one of the things</p> <p>4 that the applicant has agreed to along with Westfield.</p> <p>5 So I understand the concerns, but there is, we</p> <p>6 have limited, a limited item before us, not the entire</p> <p>7 execution of what might, what might not be the intent of the</p> <p>8 master plan overall. So, all right, did you wish to ask any</p> <p>9 questions, Ms. Cordry or Ms. Adelman?</p> <p>10 MS. CORDRY: Yes. I had one or two.</p> <p>11 BY MS. CORDRY:</p> <p>12 Q One is you've spoken about this, increasing the</p> <p>13 infiltration of storm water. Are there problems with the</p> <p>14 current storm water runoff that you can observe in the area</p> <p>15 in the forest buffer?</p> <p>16 A Yes. There are problems with the current storm</p> <p>17 water runoff management approach which includes in the</p> <p>18 forested buffer there is the discharge outlet of runoff from</p> <p>19 much of this part of the Westfield Mall and what has been</p> <p>20 observed is that during and immediately after a storm, there</p> <p>21 has been a flow of runoff that is already starting to move</p> <p>22 boulders and move rocks that were supposed to be stationary</p> <p>23 in this rip rap filled channel and so --</p> <p>24 MR. GROSSMAN: Hold on. Who observed? You said</p> <p>25 it had been observed. Who observed this?</p>	<p style="text-align: right;">Page 200</p> <p>1 THE WITNESS: The proposed gas station is, my</p> <p>2 understanding has been proposed to have some additional</p> <p>3 storm water management measures built along with it,</p> <p>4 however, even those measures, they can mitigate runoff, they</p> <p>5 can't completely prevent it, especially for larger storms.</p> <p>6 MR. GROSSMAN: Well, will they make the situation</p> <p>7 worse than the current situation that you're observing or</p> <p>8 say has been observed?</p> <p>9 THE WITNESS: Well, I -- in terms of -- there is a</p> <p>10 potential for making it worse in terms of the additional</p> <p>11 amount of chemical pollutants that might be in the runoff</p> <p>12 from the additional number of vehicles that would be queuing</p> <p>13 because the exhaust that those vehicles are emitting will</p> <p>14 make its way into runoff eventually. So, in other words,</p> <p>15 what goes up into the air does come down in the rain and</p> <p>16 ends up in our streams in terms of polluted runoff. And,</p> <p>17 again, more modern storm water management measures can</p> <p>18 filter some of these pollutants out, but they cannot --</p> <p>19 they're not 100 percent efficient, so they don't filter all</p> <p>20 the pollutants out. And during larger storms, there is</p> <p>21 still a discharge that can be erosive.</p> <p>22 MR. GROSSMAN: All right. Additional questions,</p> <p>23 Ms. Adelman?</p> <p>24 MS. ADELMAN: Yes. Most of my questions have been</p> <p>25 asked, but I do have one more.</p>
<p style="text-align: right;">Page 199</p> <p>1 THE WITNESS: I think it was, I saw a video that</p> <p>2 was taken by Danillo Sheveiko and was put on You Tube to</p> <p>3 that, was taken shortly after a recent storm.</p> <p>4 MR. GROSSMAN: Okay. So when Mr. Sheveiko</p> <p>5 testifies, I guess he'll, he can testify as to that. And</p> <p>6 what was the specific area you were referring to along the</p> <p>7 riff raff?</p> <p>8 THE WITNESS: Rip rap is a kind of medium, large</p> <p>9 rocks that are put into a channel to attempt to prevent</p> <p>10 erosion of a stream bank or a channel and this is, what I'm</p> <p>11 referring to here is a head water of Silver Creek which is</p> <p>12 part of Rock Creek. And it consist of a pipe that</p> <p>13 discharges runoff from the part of the parking lot and</p> <p>14 routes of the Costco and other parts of at least this</p> <p>15 section of the Westfield Mall. And so to answer your</p> <p>16 question, there already is an ongoing storm water runoff and</p> <p>17 erosion problem and issue, and so this rip rap, a placing</p> <p>18 of, loading rocks into this channel is an attempt to</p> <p>19 mitigate erosion from this runoff and it's not the most</p> <p>20 green solution, if you will. There are more green solutions</p> <p>21 that I have studied that are more effective in infiltrating</p> <p>22 runoff rather than just discharging it. And so that's an</p> <p>23 ongoing concern.</p> <p>24 MR. GROSSMAN: How does that relate to the</p> <p>25 proposed gas station?</p>	<p style="text-align: right;">Page 201</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MS. ADELMAN:</p> <p>3 Q Ms. Cameron, are tailpipe emissions from idling</p> <p>4 cars in a queue able to affect existing foliage, trees,</p> <p>5 bushes in the forest buffer?</p> <p>6 A My understanding is, yes, there can be an effect</p> <p>7 on foliage --</p> <p>8 Q A negative effect?</p> <p>9 A -- a negative effect. I have not studied that</p> <p>10 issue in depth, but that is my understanding.</p> <p>11 Q Thank you.</p> <p>12 MR. GROSSMAN: Ms. Duckett, did you have any</p> <p>13 questions?</p> <p>14 MS. DUCKETT: No.</p> <p>15 MR. GROSSMAN: Ms. Sheard, did you have any</p> <p>16 questions?</p> <p>17 MS. SHEARD: No questions.</p> <p>18 MR. GROSSMAN: Okay.</p> <p>19 MS. HARRIS: Recross?</p> <p>20 MR. GROSSMAN: Ms. Harris, do you have --</p> <p>21 MS. HARRIS: Yes.</p> <p>22 MR. GROSSMAN: Okay.</p> <p>23 RECROSS EXAMINATION</p> <p>24 BY MS. HARRIS:</p> <p>25 Q Ms. Cameron, you noted, you expressed some concern</p>

<p style="text-align: right;">Page 202</p> <p>1 about the erosion problem and I assume -- were you referring</p> <p>2 to the erosion problem to the extent one exists in the</p> <p>3 Kensington Branch, is that correct?</p> <p>4 A Yes, and in this particular headwater of the</p> <p>5 Kensington Branch.</p> <p>6 Q Okay. And were you aware that upon the</p> <p>7 redevelopment of the gas station site, if it were to</p> <p>8 redeveloped, that all the storm water would actually be</p> <p>9 flowing into the Wheaton Branch?</p> <p>10 A I don't think I was aware of that.</p> <p>11 Q Okay.</p> <p>12 A Of that plan.</p> <p>13 Q Thank you. And then you noted that you had, based</p> <p>14 upon your understanding there could be some potential impact</p> <p>15 to the foliage of the trees, and what's the basis for that</p> <p>16 opinion?</p> <p>17 A Just, I just know in general that air pollutants</p> <p>18 can, they tend to settle on the leaves of, you know, when</p> <p>19 trees are in leaf --</p> <p>20 Q Okay.</p> <p>21 A -- the leaves are, can be very efficient</p> <p>22 collectors of air pollutants which has like a, has a</p> <p>23 positive and a negative effect. And, actually, could I go</p> <p>24 back to your previous question to clarify?</p> <p>25 MR. GROSSMAN: Sure.</p>	<p style="text-align: right;">Page 204</p> <p>1 A So the additional runoff from, or any runoff from</p> <p>2 the proposed gas station would be affecting Wheaton Branch</p> <p>3 of Sligo Creek, which is part of the Anacostia.</p> <p>4 Q All right. Right. Okay. And then to the extent</p> <p>5 there may be damage from, to the trees, is there any impact</p> <p>6 currently from the existing surface parking lot and the cars</p> <p>7 that are coming to the Wheaton Mall on the foliage?</p> <p>8 A I have not examined that, so I'm not able to</p> <p>9 answer that.</p> <p>10 Q And so you really don't know if the increased</p> <p>11 traffic attributable to the gas station will, in fact, have</p> <p>12 any effect on the trees?</p> <p>13 A I think it's reasonable to -- it's, I think it's a</p> <p>14 reasonable environmental science principle that additional</p> <p>15 traffic beyond what's already there now will be adding more</p> <p>16 greater air pollution loading per day or per unit of time to</p> <p>17 that area and, therefore, there will be additional air</p> <p>18 pollutants that will be transported downwind and so to the</p> <p>19 extent that foliage is affected by vehicle exhaust, it's</p> <p>20 reasonable to, in my view, to have that as a concern.</p> <p>21 Q But we don't know if the existing amount of</p> <p>22 traffic to the Wheaton Mall is causing any damage to the</p> <p>23 foliage currently, is that correct?</p> <p>24 A I do not know the answer --</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 203</p> <p>1 MS. HARRIS: Certainly.</p> <p>2 THE WITNESS: When you said all the runoff would</p> <p>3 be discharged to Wheaton Branch, what are you referring to,</p> <p>4 all the runoff from what, from what facility?</p> <p>5 MS. HARRIS: Am I able to answer?</p> <p>6 MR. GROSSMAN: Go ahead.</p> <p>7 MS. HARRIS: All the runoff within the special</p> <p>8 exception area --</p> <p>9 THE WITNESS: Uh-huh.</p> <p>10 MS. HARRIS: -- will be redirected to the Wheaton</p> <p>11 Branch.</p> <p>12 THE WITNESS: Okay. Yes, I was aware of that. I</p> <p>13 thought you were referring to --</p> <p>14 MS. HARRIS: Well, I thought you --</p> <p>15 THE WITNESS: -- the whole, the entire Costco --</p> <p>16 MS. HARRIS: -- had previously testified that the</p> <p>17 development of the gas station will, in fact, cause</p> <p>18 increased erosion at the Kensington Branch. That was your</p> <p>19 testimony, correct?</p> <p>20 THE WITNESS: Yes. Okay. So --</p> <p>21 BY MS. HARRIS:</p> <p>22 Q But if we're not flowing into the Kensington</p> <p>23 Branch, how could we increase the erosion?</p> <p>24 A Okay. So I stand, I am corrected on this point.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 205</p> <p>1 A -- to that question.</p> <p>2 Q Thank you.</p> <p>3 MS. HARRIS: No other questions.</p> <p>4 MR. GROSSMAN: In effect, you're saying that the</p> <p>5 addition of a gas station inherently would add more fumes</p> <p>6 and potential damage to the environment?</p> <p>7 THE WITNESS: Yes.</p> <p>8 MS. ADELMAN: Mr. Grossman --</p> <p>9 MR. GROSSMAN: All right.</p> <p>10 MS. ADELMAN: -- my question really was specific</p> <p>11 towards the idling in the queue. Those become more or less</p> <p>12 stationary cars that will be adjacent to the foliage in the</p> <p>13 forest buffer. That was my point, not that the parking lot,</p> <p>14 which is a distance and, secondly, those cars are turned off</p> <p>15 in theory hopefully in the parking lot and I'm more</p> <p>16 concerned about idling cars on or near the ring road and</p> <p>17 adjacent to the property.</p> <p>18 MR. GROSSMAN: I understand your concerns, but I</p> <p>19 have additional --</p> <p>20 MS. ADELMAN: That was my question to Ms. Cameron</p> <p>21 to ask her opinion on that.</p> <p>22 MR. GROSSMAN: Right, but I have an additional</p> <p>23 question --</p> <p>24 MS. ADELMAN: Not on the parking lot.</p> <p>25 MR. GROSSMAN: -- which I asked which was --</p>

<p style="text-align: right;">Page 206</p> <p>1 MS. ADELMAN: Right.</p> <p>2 MR. GROSSMAN: -- which I took it the sense of Ms.</p> <p>3 Cameron's answer to Ms. Harris was that, in effect, if you</p> <p>4 add a gas station and as cars come in, additional cars</p> <p>5 coming, that that automatically is going to mean that there</p> <p>6 is going to be additional pollution and that's going to have</p> <p>7 some adverse consequences.</p> <p>8 MS. ADELMAN: Right.</p> <p>9 MR. GROSSMAN: And you may not be familiar with</p> <p>10 the standards how we operate under here, but one of them is</p> <p>11 the question of inherent versus non-inherent adverse</p> <p>12 consequences. And the concept behind a special exception is</p> <p>13 that the Council has decided that they know that there are</p> <p>14 going to be some inherent adverse effects from a special</p> <p>15 exception on the community. They decided that the benefits</p> <p>16 will outweigh the inherent adverse effects. So we're</p> <p>17 expressly prohibited from denying a special exception based</p> <p>18 solely on inherent adverse effects of a potential special</p> <p>19 exception.</p> <p>20 We can, or the Board of Appeals can deny a special</p> <p>21 exception based on non-inherent effects, as well as a</p> <p>22 combination of inherent and non-inherent adverse effects.</p> <p>23 But, anyway, I thought you ought to know that.</p> <p>24 MS. CORDRY: Can I ask one follow-up question?</p> <p>25 MR. GROSSMAN: Sure.</p>	<p style="text-align: right;">Page 208</p> <p>1 So his report in terms of impact just says, well,</p> <p>2 if everybody has a great station, they won't be impacted.</p> <p>3 That's nice, but it doesn't really prove a whole lot there.</p> <p>4 But we did try to determine from this report whether there</p> <p>5 was any attempt to quantify where Costco expected the sales</p> <p>6 to come from from this 12 million gallons and the only thing</p> <p>7 that's really in this report is the statement that they</p> <p>8 expect about 4.2 to 4.8 million gallons of sales at</p> <p>9 Beltsville would transfer to here. There's no real</p> <p>10 indication, though, whether those are sales around the</p> <p>11 Beltsville area, whether they are sales from this</p> <p>12 neighborhood area that would be coming back here. So you</p> <p>13 really can't tell too much from that. You can't tell</p> <p>14 anything from this report about the remaining, whatever that</p> <p>15 would be, seven to eight million gallons of sales, whether</p> <p>16 they would be coming from far outside this area, in which</p> <p>17 case you would be bringing in, you know, sales into this</p> <p>18 area, whether they would be coming from other stations that</p> <p>19 are already here in which case you would, if we get to this</p> <p>20 need gap in a moment, if you're diverting sales from</p> <p>21 stations that are already here in this area, you're not</p> <p>22 closing the need gap, you're just taking it away.</p> <p>23 If you're taking it from somewhere outside of this</p> <p>24 area and bringing it in here then, again, you aren't closing</p> <p>25 the need gap, but you are making it look like you are</p>
<p style="text-align: right;">Page 207</p> <p>1 BY MS. CORDRY:</p> <p>2 Q From your experience, Ms. Cameron, is it inherent</p> <p>3 in gas stations to have 20, 30, 40 cars lined up for eight</p> <p>4 to 10 hours a day or more? Is that your experience with</p> <p>5 other gas stations you have observed?</p> <p>6 A I have not made personal observations and counts,</p> <p>7 so I'm not able to answer your question.</p> <p>8 MR. GROSSMAN: All right. Well, anyway, thank you</p> <p>9 very much, Ms. Cameron, for taking your time to come down</p> <p>10 and sharing your views and the views of the Audubon</p> <p>11 Naturalist Society.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 MR. GROSSMAN: Appreciate it. Okay. Back to Ms.</p> <p>14 Cordry. And you're more than welcome to stay and watch the</p> <p>15 further festivities if you'd like. It's a public session.</p> <p>16 MS. CORDRY: All right. I think I was still at</p> <p>17 the point of working through Mr. Flynn's report. I was at a</p> <p>18 point of saying that in terms of the station impact, which</p> <p>19 was Section 3.2.3, it is interesting that there is no effort</p> <p>20 in this report to estimate what volume the station would</p> <p>21 sell which, again, is very unusual compared to other special</p> <p>22 exception reports I've read because it's awfully difficult</p> <p>23 to tell what kind of impact you're going to have or what</p> <p>24 kind of need you have if you don't assess what you're</p> <p>25 actually going to put on the market.</p>	<p style="text-align: right;">Page 209</p> <p>1 filling the need gap because we're selling more gas here,</p> <p>2 but we're not necessarily selling more to the people who</p> <p>3 live right here. So you really can't tell any of that from</p> <p>4 this report because it doesn't really address that at all.</p> <p>5 So basic point, if you can sell this 12 million</p> <p>6 gallons without harming the local stations, which is sort of</p> <p>7 the import of this report, that's presumably because you're</p> <p>8 bringing the sales in from someplace else and that will use</p> <p>9 up this need gap which I will talk about more in just a</p> <p>10 minute. But that means, again as I say, that if there is a</p> <p>11 station that comes here that does try to actually sell to</p> <p>12 the local neighborhood, just the neighborhood, operate a</p> <p>13 convenience store, whatever, and needs to make the same kind</p> <p>14 of analysis to show that it has a need to satisfy the entire</p> <p>15 neighborhood, it will be handicapped in doing so by virtue</p> <p>16 of the sales being brought in from the outside.</p> <p>17 Conversely, if it is taking sales away from</p> <p>18 stations in this area, then we're right back at the point</p> <p>19 that I've probably made ad nauseum at this point, that --</p> <p>20 MR. GROSSMAN: I would never say that.</p> <p>21 MS. CORDRY: I will say it because it's a point</p> <p>22 about which we are deeply concerned, that -- we live in this</p> <p>23 neighborhood. We don't want to have to go outside of our</p> <p>24 neighborhood and go 10 or 15 minutes away to find something.</p> <p>25 And if our stations are being taken away, then we are losing</p>

<p style="text-align: right;">Page 210</p> <p>1 the benefits that we would otherwise have.</p> <p>2 Just the last couple points on his report. He</p> <p>3 talked about customers interviews. In the first set he said</p> <p>4 he talked to 24 people buying gas in this local area. And</p> <p>5 that 16 said they would likely purchase gas at Costco</p> <p>6 assuming its price was competitive. Now I think the,</p> <p>7 probably the really interesting point of this interview</p> <p>8 selection was he said as a total group, most were already</p> <p>9 Costco members. So I don't know how he picked his group,</p> <p>10 but if you've only got a 23 percent local membership here</p> <p>11 and you manage to find that most of the people you talk to</p> <p>12 were already Costco members, something a little skewed about</p> <p>13 that group there.</p> <p>14 MR. GROSSMAN: I don't place much credence in --</p> <p>15 MS. CORDRY: Right.</p> <p>16 MR. GROSSMAN: -- on scientific --</p> <p>17 MS. CORDRY: Exactly.</p> <p>18 MR. GROSSMAN: -- survey. That's hearsay.</p> <p>19 MS. CORDRY: I would agree, especially one that is</p> <p>20 clearly from however it happened has a rather biased sample</p> <p>21 there. His other sample was he talked to 40 people buying</p> <p>22 gas at Beltsville and found they typically bought most of</p> <p>23 their gas there. Now I think he wants to extrapolate from</p> <p>24 that that most people going to Costco buy their gas there,</p> <p>25 but since he only talked to people already buying gas, what</p>	<p style="text-align: right;">Page 212</p> <p>1 accurately targeting the sales gaps that exist in the</p> <p>2 marketplace.</p> <p>3 Leaving aside the jargon of what an actionable</p> <p>4 portrait is, I think what we can understand from that is</p> <p>5 that this is a marketing tool. This is a way in which</p> <p>6 someone seeking to operate a business attempts to determine</p> <p>7 is there some kind of niche into which I can fit myself and</p> <p>8 find a way to operate and make a profit, which is not at all</p> <p>9 necessarily the same question as does an area need another</p> <p>10 store?</p> <p>11 MR. GROSSMAN: I think we have an imperfect</p> <p>12 tools --</p> <p>13 MS. CORDRY: Okay.</p> <p>14 MR. GROSSMAN: -- for this.</p> <p>15 MS. CORDRY: So in his testimony, Mr. Flynn</p> <p>16 suggested he perhaps had carried a lot of independent</p> <p>17 analysis to get to these supply and demand figures, but it's</p> <p>18 actually clear that he simply submitted his report to</p> <p>19 Claritas, he asked for the seven minute figures and got back</p> <p>20 a set of numbers. And you can tell that because the County</p> <p>21 staff was able to generate exactly the same figures</p> <p>22 themselves by submitting their own request. And,</p> <p>23 presumably, they had not done Mr. Flynn's analysis, so we</p> <p>24 both submitted a report, we both get the same thing back.</p> <p>25 It's tell me what need there is -- what's his gap within the</p>
<p style="text-align: right;">Page 211</p> <p>1 he got his answers from there tells you nothing about how</p> <p>2 many people going to store.</p> <p>3 MR. GROSSMAN: Yes, I don't this his interviews</p> <p>4 are going to play a part --</p> <p>5 MS. CORDRY: Fine.</p> <p>6 MR. GROSSMAN: -- in my analysis.</p> <p>7 MS. CORDRY: Right. I just wanted to make clear</p> <p>8 that -- because, see, actually he will get to that somewhat</p> <p>9 in his supplemental need report he put in and I think you</p> <p>10 will see there that he has misconceived his statistics on</p> <p>11 that point, another mathematical error we'll get to in a</p> <p>12 little bit.</p> <p>13 All right. So let's turn to Section 4, which is</p> <p>14 when he finally actually does address need and this is</p> <p>15 really the only point at which he actually is talking about</p> <p>16 need in terms of any kind of, try to calculate what this</p> <p>17 area actually needs in the way of gas. Now, of course, as</p> <p>18 we all, I think, understand, he is, as he said in his</p> <p>19 testimony, he is not addressing in any way, shape or form</p> <p>20 the question of need as necessity. Nothing in the</p> <p>21 suggestion that this area cannot supply the gasoline here.</p> <p>22 Rather, what he is doing is he's going to this organization</p> <p>23 called Neilson Claritas and asking them for a report on what</p> <p>24 they describe as, quote, an actionable portrait of sales</p> <p>25 opportunity so marketers can maximize gross strategies by</p>	<p style="text-align: right;">Page 213</p> <p>1 seven minute area?</p> <p>2 If you want to look, their report is mentioned on</p> <p>3 page 52 of the staff attachments which is Exhibit 70 again.</p> <p>4 I can put that in if you want, but it's in there and just</p> <p>5 goes through and shows that they came up with the exact same</p> <p>6 numbers that he came up with. Okay.</p> <p>7 MR. GROSSMAN: The staff found that there was a</p> <p>8 demonstrated need.</p> <p>9 MS. CORDRY: Well, the staff found that when you</p> <p>10 submit a request to Claritas, you get a set of numbers back</p> <p>11 that were the same numbers he did. I will talk in a minute</p> <p>12 about what his actually demonstrates.</p> <p>13 MR. GROSSMAN: Well, you can challenge the basis</p> <p>14 for it, but they're, they did make a finding that in their</p> <p>15 opinion there was a demonstrated need.</p> <p>16 MS. CORDRY: Well, they made a finding that --</p> <p>17 MR. GROSSMAN: You consider it erroneous.</p> <p>18 MS. CORDRY: Okay. No, I'm not saying erroneous,</p> <p>19 I'm saying you have to understand what it actually</p> <p>20 represents. And what they are saying is, yes, we submitted</p> <p>21 the same thing, we got the same numbers back from Claritas.</p> <p>22 And what I'm going to discuss in just a minute is what, what</p> <p>23 those numbers actually mean from what Claritas itself says.</p> <p>24 I'm not debating them. I'm not fighting with them about</p> <p>25 what they do.</p>

<p style="text-align: right;">Page 214</p> <p>1 They generate, they say, a dollar value for 2 calculated gaps between these purposed needs. They measure 3 the distance between estimated sale in the area, what's 4 actually being sold currently in the area, and demand, which 5 they calculate as being measured by potential sales. And, 6 again, this is all described in the report and in the 7 excerpts from their documents and how they describe what 8 they do. 9 So what we are dealing with is a gap between what 10 is actually sold in the area and what is the potential for, 11 if all of the sales a particular neighborhood area wanted to 12 buy of a particular good or service was bought in that area. 13 MR. GROSSMAN: Right. 14 MS. CORDRY: That's the retail gap they're 15 describing there. And that's described as an opportunity 16 for sales. That's certainly true. And if the number is 17 positive, i.e., the potential sales are higher than actual 18 sales, this is a marketing opportunity. If negative, it 19 represents that sales are being drawn into the area from 20 outside the local area, that they are selling more in a 21 particular area than that area itself would consume as 100 22 percent of its needs. 23 And these numbers showed a positive figure, i.e., 24 this market gap of \$71 million for the seven minute drive 25 area. That was reduced by approximately a third. Take into</p>	<p style="text-align: right;">Page 216</p> <p>1 (Discussion off the record.) 2 MS. CORDRY: And this is not the entire snapshot, 3 it goes on for 120 or 130 pages, I think, or something on 4 that order. So this is excerpts from it again. 5 MR. GROSSMAN: Okay. So do you want me to make 6 this into an exhibit? 7 MS. CORDRY: Yes, please. 8 MR. GROSSMAN: Okay. And this will be Exhibit 9 297. And it's excerpts from Montgomery County snapshot. 10 (Exhibit No. 297 was marked for 11 identification.) 12 MS. CORDRY: And just to start with, if you -- 13 MR. GROSSMAN: Of May 2012. 14 MS. CORDRY: Right. If you look at page 20, for 15 instance, at the top there in terms of retail activity, it 16 mentions overall Montgomery County retailers captured a 17 relatively higher proportion of spending by County 18 residents, 81 percent, compared to both Fairfax County and 19 the District of Columbia. So this is a kind of a measure 20 that the County uses as well. 21 Now what I think has, clearly has to be 22 understood, although Nielsen and Claritas would certainly 23 like you to read this as saying it's some kind of absolute 24 demand for a supply, when you get into it a little bit more, 25 you have, it has to become clear quite easily that this is</p>
<p style="text-align: right;">Page 215</p> <p>1 account what Mr. Flynn says and what I've seen from other 2 special exceptions that the non-gasoline sales at gasoline 3 stations are roughly about a third of the overall value, so 4 the gas sales are estimated approximately two-third of that 5 dollar number. 6 And then he divided that number by the price of 7 gasoline at the time when he did this request, which was 8 3.55 at the time and that translated into a number of 9 gallons, namely, the 13.1 million gallons that he comes up 10 with. So far so good. We understand what he's doing. 11 And, again, there is another term that's often 12 used here is capture rate and it's just the flipside of the 13 retail gap. If there's 100 percent of sales that are made 14 and if I sold every one of those sales to the -- if everyone 15 in the neighborhood bought 100 percent of their goods in 16 this area, I would have 100 percent capture rate. If I only 17 buy 70 percent of my goods here, then there's a 70 percent 18 capture rate and there's a 30 percent retail gap. Those are 19 the two sides of the coin. And, of course, you can have a 20 negative retail gap if you're selling more than what the 21 area itself needs. And the County does that kind of 22 calculation itself and, Abigail. 23 MS. ADELMAN: This is Appendix B. 24 MS. CORDRY: This would be the Montgomery County 25 snapshot. There you go. Okay.</p>	<p style="text-align: right;">Page 217</p> <p>1 not necessarily that somebody is demanding more of a 2 service, that it's not all purchased in the area. It's not 3 because people want to buy more in the area, need to buy 4 more or don't have supply in the area of the particular 5 item. 6 MR. GROSSMAN: I -- 7 MS. CORDRY: It can mean that. It can mean that. 8 MR. GROSSMAN: But I'm not sure what you mean. 9 MS. CORDRY: Okay. What I mean is by this, which 10 I was going to get to as a starting -- 11 MR. GROSSMAN: Right. 12 MS. CORDRY: -- setting this up. Again, because 13 it's simply the question of how much total somebody 14 purchases versus how much they purchase in a local area, you 15 would have a capture rate of 100 percent only if it would be 16 logical to assume you would spend 100 percent of your money 17 on a particular good or service in your local neighborhood. 18 And I will take the simplest example of that which is food 19 and drink establishments. If you look at, if you're looking 20 at his need report, for instance, page 4-2 and 4-1 there -- 21 MR. GROSSMAN: Well, you didn't give me 4-1 on the 22 copy, so -- 23 MS. CORDRY: It's page 4-2. It's Exhibit 4-1. 24 MR. GROSSMAN: Oh, yes. Okay. 25 MS. CORDRY: Okay. If you see there in that list</p>

<p style="text-align: right;">Page 218</p> <p>1 of retail opportunities, there's a number of things there. 2 He's listed gasoline stations, but it has a number of other 3 kinds of services such as food service and drinking places. 4 MR. GROSSMAN: Right. 5 MS. CORDRY: Okay. And that shows a \$50 million 6 gap for food and drinking establishments in this seven 7 million, seven minute area. 8 MR. GROSSMAN: Right. 9 MS. CORDRY: Well, as someone who lives in the 10 Wheaton area, I find it difficult to believe that there's 11 really any shortage of restaurants here in the sense that 12 there are not restaurants here that can supply all that. 13 Certainly for myself, to the extent that I show a personal 14 retail gap in terms of having my food and drinking place 15 dollars spent here, it's because a large number of them, 16 perhaps half or more, are spent when I go downtown during 17 the day and I eat lunch downtown. Now it doesn't matter how 18 many food and service establishments we have in Wheaton, I 19 will never eat my lunches in Wheaton, at least until I 20 retire. 21 MR. GROSSMAN: Right. But in terms of gas 22 stations, since as you said that the product is fungible, 23 don't these stats have much more bearing than when you're 24 talking about items which are more preference-oriented such 25 as --</p>	<p style="text-align: right;">Page 220</p> <p>1 that this is a be all and end all, that it absolutely 2 establishes a need is a very, it's a blunt tool. It's a 3 start, but it's not the answer. So -- 4 MR. GROSSMAN: Okay. 5 MS. CORDRY: -- okay. 6 MR. GROSSMAN: Is there contrary evidence of -- 7 MS. CORDRY: Well, we will get to, yes, we will 8 get to what this is showing in a moment. Again, it's simply 9 saying all sales with potential demand and no showing 10 necessarily that there's a reason to expect all demand to be 11 met within the given area. 12 What this could possibly say is that there is a 13 maximum potential of this 13.1 million gallons. So is it 14 logical to count -- here's a new question. Is it logical to 15 count the question of saying any gap here is a need that has 16 to be filled? So I started with the logical ideas that 17 didn't seem too likely, but then I thought, well, let me go 18 see what's happening on the special exceptions. How do they 19 treat this? What do they expect to have happen? 20 So I started looking some up and the first one I 21 ran across was S-2743 in which you were the Hearing Examiner 22 and Mr. Cronin was the witness. And in the report, you 23 reported on his testimony at page 30 of the decision here 24 and actually, let's see, yes, can we put this one in, 25 Abigail, next?</p>
<p style="text-align: right;">Page 219</p> <p>1 MS. CORDRY: Well, but -- 2 MR. GROSSMAN: -- eating or -- 3 MS. CORDRY: But -- 4 MR. GROSSMAN: -- location-oriented? 5 MS. CORDRY: Well, but that is exactly the point. 6 The gas is also something that is very location oriented 7 because, again, you do not spend all your time in your 8 neighborhood buying gas, gasoline in particular. You are 9 out driving all around. I drive to the Eastern Shore and 10 when I drive to the Eastern Shore, I quite often buy my gas 11 over there because that happens to be where my gas tank is 12 getting ready to run dry and I don't want to try to get home 13 to Wheaton to buy gas. So gas is very much of a subject 14 that is not necessarily bought in your neighborhood area. 15 And I use the food and drink only to make the 16 point that it doesn't matter how many restaurants you put in 17 Wheaton or even how desirable they are, I might very well 18 prefer at lunchtime to be eating out at Nava Thai, you know, 19 in Wheaton, but I'm in downtown Washington on M Street, so I 20 am not going to be eating there. So this is a marketing 21 tool. It is an analyst's tool. It's a way to start -- 22 MR. GROSSMAN: Right. 23 MS. CORDRY: -- the discussion, but it doesn't end 24 the discussion, it doesn't establish the issue and that's, 25 that's the point to make about this, is that simply saying</p>	<p style="text-align: right;">Page 221</p> <p>1 MS. ADELMAN: Is this the Appendix B then? 2 MS. CORDRY: This would be the one that is labeled 3 Exhibit 10. 4 MR. GROSSMAN: Is this Henderson Corner? Is that 5 what you're -- 6 MS. CORDRY: Yes, this is Henderson Corner. 7 (Discussion off the record.) 8 MR. GROSSMAN: All right. So this will be Exhibit 9 298. Exhibit 298 is excerpt from brilliant -- 10 MS. CORDRY: Hearing Examiner's brilliant report, 11 yes. 12 MR. GROSSMAN: Right. Right. All right. Excerpt 13 from Hearing Examiner report in S-2743 dated, well, I don't 14 have a date on this one. Do you have a date on it? I think 15 it was at least a couple years ago. It was -- 16 MS. CORDRY: Yes. Yes. 17 MS. HARRIS: I have the report. 18 MS. CORDRY: It looks like the testimony was taken 19 in 2009, February of 2009. 20 MR. GROSSMAN: Then I would say the chances are 21 it's a 2009 report. 22 MS. HARRIS: It is a 2009. 23 MS. CORDRY: Yes. 24 MS. HARRIS: It's April 13, 2009. 25 MR. GROSSMAN: April 13th? 4/13. Okay. So</p>

<p style="text-align: right;">Page 222</p> <p>1 Exhibit 298 is excerpt from Hearing Examiner report S-2743 2 dated April 13, 2009. 3 (Exhibit No. 298 was marked for 4 identification.) 5 MS. CORDRY: All right. And it is describing Mr. 6 Cronin's analysis. It has the idea of a trade area which 7 was, I think, roughly equivalent to what we've been 8 discussing here as the study area or the seven minute drive 9 area -- 10 MR. GROSSMAN: Right. 11 MS. CORDRY: -- determined by geographic 12 boundaries, traffic patterns, concentrations of uses and so 13 forth. On page 30, in the paragraph that starts, in this 14 case, Mr. Cronin found on average a household was likely to 15 purchase about 1,400 gallons of gasoline per year resulting 16 in aggregate purchases of 16.45 million gallons per year for 17 all households residing in the area. Then the area itself 18 is never going to capture 100 percent of those purchases. 19 Applying a reasonable estimate used in Prince George's 20 County and other places in the Washington area, about 60 21 percent of those household purchases are actually going to 22 happen within the market area. I, therefore, conclude that 23 9.87 million gallons of gasoline, which I will tell you if 24 you run your calculator, is 60 percent of 16.45. 9.87 25 million gallons of gasoline are going to be demanded and</p>	<p style="text-align: right;">Page 224</p> <p>1 23, Ms. Carrier is discussing the needs analysis. She notes 2 that Mr. Giegerich (phonetic sp.), I guess that's how it's 3 pronounced, Giegerich, Giegerich, he's not here, so I don't 4 worry about -- 5 MR. GROSSMAN: Say it any way you want since he's 6 not here. 7 MS. CORDRY: I'll call it Mr. Giegerich, that he 8 used five different methods to analyze and to try to come up 9 with an objective calculation of how much need there was in 10 the area. The first method, use Census data and National 11 Expenditure Profiles to estimate the amount of money they 12 spent on gasoline. He assumed, based on industry standards, 13 that 65 percent of those expenditures would be made in the 14 Cloverly market area and the remaining 35 percent would be 15 made elsewhere. So, again, calculate 65 percent of the 16 amount of Cloverly residents can be expected to spend on 17 gasoline, found that was considerably higher than the dollar 18 value of gasoline before existing stations can be expected 19 to sell and, therefore, there was this gap, that the 65 20 percent was higher than what the local sales were going to 21 be. 22 MR. GROSSMAN: But, apparently, Mr. Giegerich used 23 numerous methods. 24 MS. CORDRY: Right. Each one of which he found 25 showed a need and at the end Ms. Carrier found that none of</p>
<p style="text-align: right;">Page 223</p> <p>1 captured or be available for capture within the market area 2 from resident households. 3 So Mr. Cronin says 60 percent is an industry 4 standard number for what you might expect to capture. I 5 then went and pulled up S-2476, which is a Safeway petition 6 that Ms. Carrier was the hearing examiner on. It looks 7 like, again, I don't know that I have the date on that. The 8 Board of Appeals decision on that case was made in -- 9 MS. HARRIS: Which case? 10 MS. CORDRY: -- it looks like November of 2003. 11 MS. HARRIS: The Johnson case? 12 MS. CORDRY: This would be, no, Cloverly. 13 MS. HARRIS: Okay. 14 MR. GROSSMAN: All right. So Exhibit 299 is 15 excerpt from Hearing Examiner report in S-2476 and let's see 16 if they have a date on this one. 17 (Exhibit No. 299 was marked for 18 identification.) 19 MS. CORDRY: See, I don't know that I was trying 20 to find the date on that, but I do have some other 21 information that indicates that the, as I said, the Board of 22 Appeals ruling as in November 2003. So this would have been 23 sometime during 2003. 24 MR. GROSSMAN: Okay. 25 MS. CORDRY: And on that, where I start at page</p>	<p style="text-align: right;">Page 225</p> <p>1 those actually established a need and the Board of Appeals 2 upheld that and that was upheld by the Court as well. 3 MR. GROSSMAN: Right. 4 MS. HARRIS: Objection. That's a wrong legal 5 conclusion of that case. 6 MR. GROSSMAN: All right. You can put a gloss on 7 it right now, so -- 8 MS. HARRIS: Okay. 9 MR. GROSSMAN: -- I understand the context. 10 MS. HARRIS: The circuit court determined, well, 11 the Board of Appeals determined that there wasn't a need. 12 The circuit court determined that in the question of need, 13 that there was, in fact, a need proven, though they did not, 14 though, they recommended denial based on other grounds. 15 MR. GROSSMAN: Well, they recommended denial. 16 MS. HARRIS: They recommended denial, but not on 17 need. The Board of -- 18 MR. GROSSMAN: When you say recommended, you mean 19 they found? 20 MS. HARRIS: I mean they found, sorry. 21 MR. GROSSMAN: Okay. 22 MS. HARRIS: They -- 23 MR. GROSSMAN: I thought you said -- start that 24 sentence from the beginning -- 25 MS. HARRIS: Okay.</p>

<p style="text-align: right;">Page 226</p> <p>1 MR. GROSSMAN: -- so I make sure I understand.</p> <p>2 MS. HARRIS: The Board of Appeals denied the</p> <p>3 special exception based on the number of reasons, including</p> <p>4 need.</p> <p>5 MR. GROSSMAN: Okay.</p> <p>6 MS. HARRIS: The circuit court found that -- the</p> <p>7 circuit court affirmed the Board of Appeals' action, but</p> <p>8 specifically found that the applicant had proven a need.</p> <p>9 MR. GROSSMAN: Okay. All right. Do you accept</p> <p>10 that gloss or you don't know?</p> <p>11 MS. CORDRY: I have not actually been able to find</p> <p>12 the Court of Appeals opinion yet. I will accept that, but I</p> <p>13 will point out that as we go through you will see that the</p> <p>14 need shown in this analysis is dramatically more complete</p> <p>15 and provides background that this report does not.</p> <p>16 MR. GROSSMAN: Right.</p> <p>17 MS. CORDRY: In any case, I would put that in for</p> <p>18 the point that 65 percent is an established industry kind of</p> <p>19 standard capture rate.</p> <p>20 MR. GROSSMAN: By the way, going back to the</p> <p>21 Henderson Corner opinion that I wrote in 2743, I note on</p> <p>22 page 32 that it could well be argued that the case law</p> <p>23 definition of need eliminates, or at least reduces the</p> <p>24 utility of supply and demand market analysis of the kind</p> <p>25 employed in this case and other similar cases. We need not</p>	<p style="text-align: right;">Page 228</p> <p>1 information in this other Cloverly case then there is here</p> <p>2 does not mean that what was shown here is not demonstrated.</p> <p>3 MS. CORDRY: I understand.</p> <p>4 MR. GROSSMAN: So one does not follow the</p> <p>5 premise --</p> <p>6 MS. CORDRY: We are getting there. We are getting</p> <p>7 there.</p> <p>8 MR. GROSSMAN: Okay.</p> <p>9 MS. CORDRY: And you did ask me is there</p> <p>10 information that indicates that the Claritas number, that</p> <p>11 100 percent is not the right number for gasoline stations</p> <p>12 and I am saying to you that, yes, I am showing you that</p> <p>13 other experts in this field who have been qualified as</p> <p>14 experts, and I will note that I am dealing with all the ones</p> <p>15 where these people were qualified as experts, including Mr.</p> <p>16 Cronin, Mr. Giegerich and so forth, all --</p> <p>17 MR. GROSSMAN: One said 60 percent and one said 65</p> <p>18 percent --</p> <p>19 MS. CORDRY: Right.</p> <p>20 MR. GROSSMAN: -- in terms of applying to. So,</p> <p>21 presumably, if you applied that, you would multiply 60</p> <p>22 percent or 65 percent times the 13 point whatever it was?</p> <p>23 MS. CORDRY: No, no, no. You --let me put all of</p> <p>24 these in and then I'll come back and say what they are.</p> <p>25 MR. GROSSMAN: Well, they answered that question.</p>
<p style="text-align: right;">Page 227</p> <p>1 decide that issue now as I said there and leave it, go on,</p> <p>2 you know.</p> <p>3 MS. CORDRY: Right.</p> <p>4 MR. GROSSMAN: But the point is now I will have to</p> <p>5 decide --</p> <p>6 MS. CORDRY: Right.</p> <p>7 MR. GROSSMAN: -- or at least make a, or I may</p> <p>8 have to, I'm not sure I have to, but this may be that, that</p> <p>9 case, the Henderson Corner case that I just read from, you,</p> <p>10 of course, had no opposition, so nobody was there to</p> <p>11 challenge this process or to say it's useful or not useful</p> <p>12 in making a determination of need in accordance with what</p> <p>13 the courts have defined need as.</p> <p>14 MS. CORDRY: Right. I will say that the Cloverly</p> <p>15 one was one where, as I say, there was an enormous amount of</p> <p>16 information placed in the record on the basis of need and</p> <p>17 there was a determination that it was not sufficient. The</p> <p>18 fact that that level of information, which I will tell you</p> <p>19 when you read the information there, is vastly beyond what</p> <p>20 you will find in this case, I don't think is inconsistent</p> <p>21 with finding no need shown here. And I will certainly say</p> <p>22 that it is --</p> <p>23 MR. GROSSMAN: Well, I don't know, but that, I</p> <p>24 don't think that sentence delivers any information to me.</p> <p>25 The fact that there was a larger amount, volume of</p>	<p style="text-align: right;">Page 229</p> <p>1 MS. CORDRY: Okay. Well --</p> <p>2 MR. GROSSMAN: You wouldn't do that?</p> <p>3 MS. CORDRY: Okay. Okay. No, no, because that is</p> <p>4 the gap. What you would need to say is, okay, and I do say</p> <p>5 this -- let's say potential sales in the area were 100</p> <p>6 million gallons. That's the total that the people in the</p> <p>7 area might buy would be 100 million gallons.</p> <p>8 MR. GROSSMAN: Right.</p> <p>9 MS. CORDRY: Let's say they buy 80 million</p> <p>10 gallons. That's a 20 million gap.</p> <p>11 MR. GROSSMAN: Right.</p> <p>12 MS. CORDRY: But if I'm going to capture,</p> <p>13 remember, the question of capture is how much of the 100</p> <p>14 million am I capturing? If it's reasonable to assume that</p> <p>15 I'm capturing 60 percent of that, then that would be 60</p> <p>16 million gallons that I should be expected to capture. I'm</p> <p>17 already capturing 80 million in this example. Do you follow</p> <p>18 that?</p> <p>19 MR. GROSSMAN: No, I don't.</p> <p>20 MS. CORDRY: Okay. Let me start again. The</p> <p>21 capture rate is the difference between the total that I</p> <p>22 might expect to sell --</p> <p>23 MR. GROSSMAN: Yes.</p> <p>24 MS. CORDRY: -- and the amount that's actually</p> <p>25 being sold there. In my example with the 100 million and</p>

<p style="text-align: right;">Page 230</p> <p>1 the 80 million, we have an 80 percent capture rate. Now 2 there is, there is at least a 13, there's a \$20 million, 20 3 million gallon gap between those two, which would be the 4 equivalent of this 13.1 million gap we were talking about. 5 MR. GROSSMAN: Right. 6 MS. CORDRY: But in terms of capture, I've already 7 captured 80 percent. I'm capturing more than the industry 8 standards say I would capture. So what we're saying, 60 to 9 65 percent, it would be normal, it would be expected for me 10 to only be selling 60 to 65 million. So in that example, 11 the 13.1 million would be totally subsumed in this portion 12 that you never expect to capture as Mr. Cronin characterized 13 it. 14 MR. GROSSMAN: So is your bottom line that if you 15 accept Mr. Cronin's figures as well-founded up to the point 16 where he gets to the 13.1 or whatever -- 17 MS. CORDRY: Mr. Flynn's figures, yes. 18 MR. GROSSMAN: -- Mr. Flynn's, the 13.1, is that 19 what, is that the correct figure, 13.1 -- 20 MS. CORDRY: Yes. 21 MR. GROSSMAN: -- gap, then you would not, you 22 would say that doesn't demonstrate need at all? 23 MS. CORDRY: Well, what I would say is that 24 doesn't answer your question at all. You can't tell whether 25 that's part of what the, let's call it slippage, this, the</p>	<p style="text-align: right;">Page 232</p> <p>1 MS. CORDRY: No. Let me pull back his report here 2 again. What Mr. Cronin did was he, what I am saying here, 3 he calculated this top line number. There's X numbers of 4 households. They're likely to purchase X number of gallons 5 resulting in aggregate purchases of 16.45 million gallons 6 for all households residing in the area. That's the top 7 line number. 8 Then he said you're not going to capture 100 9 percent of that, you're going to capture this 60 percent. 10 So he says the 9.87 million, that's the number I expect to 11 capture. And then he actually goes on, I didn't get into 12 the rest of this, but he goes on to the rest of this to talk 13 about what other kinds of demands there might be, what's the 14 total demand out there and how does that total demand, which 15 was this figure for the neighborhood, plus some for some 16 passersby and so forth, he came up to a total figure of what 17 the total demand, which went back into a total, total demand 18 of let's say, it was about 15 million gallons and then he 19 expected that the actual supply in the area would be less 20 than that and it was that difference between those two 21 figures that he was doing. He took the 60 percent against 22 the total demand. That's what he -- he reduced the bottom 23 line number and that's what you start with. It doesn't go 24 against the gap. The gap comes in after you take and you 25 figure out what the top line number is and what the supply</p>
<p style="text-align: right;">Page 231</p> <p>1 difference between 60 or 65 percent and 100, let's, I'll 2 call that slippage, is that 13.1 million part of this normal 3 slippage or is it something that is a problem? And the only 4 way you get to that is you have to know not just this 5 difference, but you have to know the top line number and the 6 bottom line number. And as I say, that's what this report 7 never did. 8 We don't know what Mr. Flynn thinks this area will 9 sell, I mean it needs to buy, you know, what the actual true 10 capacity demand in this area is. We don't know what he 11 thinks in this area will sell. 12 MR. GROSSMAN: All right. 13 MS. CORDRY: Without those numbers, you can't make 14 this calculation at all. But what is clear is it's simply 15 saying 13.1 million gallons and if you haven't captured 100 16 percent of the market, you automatically have a 13.1 million 17 gap. It is clearly not the way people do this kind of 18 calculation. I've given you two examples. Let me give 19 you -- 20 MR. GROSSMAN: And if you followed the procedure 21 followed by Mr. Cronin in Henderson Corner, would you then 22 apply his, I believe it was 60 percent to the 13.1 million? 23 I understand you don't agree that that is, you can get to 24 that stage yet, but if you followed the procedure he used, 25 would you not at that point, you would apply the 60 percent?</p>	<p style="text-align: right;">Page 233</p> <p>1 number is. 2 MR. GROSSMAN: And so what if you applied the, 3 that procedure to Mr. Flynn's work here and you took the 60 4 percent of the total demand? 5 MS. CORDRY: I don't have a figure from him with 6 the total demand. 7 MR. GROSSMAN: You don't have any figure for total 8 demand at all? 9 MS. CORDRY: No. 10 MR. GROSSMAN: Okay. 11 MS. CORDRY: So I can't apply it. 12 MR. GROSSMAN: All right. 13 MS. CORDRY: That's why I said I started with 14 something. I said, well, maybe if you take his 35,000 15 households and multiply it by the thousand gallons, that 16 brings you up to a figure of about 37 million. Then you 17 need something more for the business and the supply, but he 18 doesn't give it to us, so I don't, I don't have a top line 19 number. But if I did, if you took the 57 million, I think 20 that I came up with a figure if I just upped that by 50 21 percent arbitrarily and came up with about 57 million, that 22 would be the number that you would apply the 60 percent 23 against. 24 MR. GROSSMAN: Okay. 25 MS. CORDRY: And, or actually perhaps just the</p>

<p style="text-align: right;">Page 234</p> <p>1 area, actually not, not the total for you. You would</p> <p>2 actually probably apply that just against the 37 million of</p> <p>3 the households in this area. So I would take 60 percent of</p> <p>4 that and then I might add some passersby and so forth.</p> <p>5 There's various things you could do and you could come up</p> <p>6 with a top line number. It didn't get done.</p> <p>7 MR. GROSSMAN: Okay.</p> <p>8 MS. CORDRY: So I can't really give you a good</p> <p>9 example, but I can tell you Mr. Flynn hasn't given it to you</p> <p>10 either and I can tell you that simply assuming that you're</p> <p>11 going to capture 100 percent in this area is not what they</p> <p>12 do. And let me put in three more exhibits if I could?</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 MS. CORDRY: The --</p> <p>15 MS. ADELMAN: Did I hear my name?</p> <p>16 MS. CORDRY: Yes.</p> <p>17 MR. GROSSMAN: Silently called out.</p> <p>18 MS. CORDRY: Why don't you bring all three of them</p> <p>19 and just let's hand them all in at one time?</p> <p>20 MS. ADELMAN: So N, O and --</p> <p>21 MS. CORDRY: P, yes.</p> <p>22 MS. ADELMAN: -- is that right?</p> <p>23 MS. CORDRY: Yes. It's just my -- the N, O and P</p> <p>24 is just my internal note keeping, help me keep --</p> <p>25 MR. GROSSMAN: Right.</p>	<p style="text-align: right;">Page 236</p> <p>1 identification.)</p> <p>2 MS. CORDRY: Right.</p> <p>3 MR. GROSSMAN: And we don't have a date on that</p> <p>4 one either.</p> <p>5 MS. HARRIS: I have the document. That's August</p> <p>6 8, 2005.</p> <p>7 MR. GROSSMAN: August 8, 2005. Okay.</p> <p>8 MS. CORDRY: All right. And this was by a firm</p> <p>9 called the Sherwood Consultancy. And Mr. Sherwood</p> <p>10 testified, again, about need if you look back on page 25 in</p> <p>11 that report.</p> <p>12 MS. ADELMAN: What's that one?</p> <p>13 MS. CORDRY: This is the S-2631. And, again,</p> <p>14 looking at the neighborhood, residents and so forth, again,</p> <p>15 estimates the number of households and so forth, converts</p> <p>16 the number into a gasoline demand figure by, in this case he</p> <p>17 used per capita gasoline purchases, multiplied 465 by the</p> <p>18 population estimate, arrived at a total demand for gasoline</p> <p>19 among the area as 10.9 million gallons. And then based on</p> <p>20 the number of stations and so forth, and elsewhere in here</p> <p>21 he says, I think, that there were 16 stations and based on</p> <p>22 those number of stations and so forth, he indicated he</p> <p>23 estimated the trade area residents would, again, purchase</p> <p>24 about 65 percent of their gasoline within the trade area and</p> <p>25 the rest elsewhere. So, again, a 65 percent likely capture</p>
<p style="text-align: right;">Page 235</p> <p>1 MS. CORDRY: -- track of them.</p> <p>2 MR. GROSSMAN: It doesn't add up to nope.</p> <p>3 MS. CORDRY: No, no, no, no, not yet.</p> <p>4 MR. GROSSMAN: Thank you.</p> <p>5 MS. CORDRY: Okay. And I will be describing them</p> <p>6 as we go. The next one would be Board of Appeals No. S-</p> <p>7 2631. It's the Germantown Walter Johnson property.</p> <p>8 MR. GROSSMAN: Okay. So I'll take -- so this is</p> <p>9 not, this is also the Hearing Examiner's report?</p> <p>10 MS. CORDRY: Right.</p> <p>11 MR. GROSSMAN: Okay. So --</p> <p>12 MS. CORDRY: Yes, I'm just giving you the Board of</p> <p>13 Appeals. Yes, again, it's a hearing examiner report.</p> <p>14 MR. GROSSMAN: I'm sorry, you're giving me the</p> <p>15 Board of Appeals opinion or you're giving me the hearing</p> <p>16 examiner's report?</p> <p>17 MS. CORDRY: The hearing examiner's report. I was</p> <p>18 just saying Board of Appeals Case No. --</p> <p>19 MR. GROSSMAN: Okay.</p> <p>20 MS. CORDRY: -- S-2631.</p> <p>21 MR. GROSSMAN: Okay. So Exhibit 300, thank you --</p> <p>22 MS. HARRIS: I'm sorry, which one is 300?</p> <p>23 MR. GROSSMAN: Exhibit 300 is the hearing examiner</p> <p>24 report in S-2631.</p> <p>25 (Exhibit No. 300 was marked for</p>	<p style="text-align: right;">Page 237</p> <p>1 rate for residential use and that resulted in, again, about</p> <p>2 7 million gallons being the demand he was working with, not</p> <p>3 10.7, which is the, or 10.9, which would have been the</p> <p>4 starting point if you used 100 percent of the demand.</p> <p>5 The next exhibit is actually, it was put in as an</p> <p>6 exhibit in that S-2631 case. It itself actually came from</p> <p>7 S-2299. It's the one labeled Exhibit No. 30 at the bottom.</p> <p>8 It has automobile filling station, proof of need analysis,</p> <p>9 IO limited partnership.</p> <p>10 MR. GROSSMAN: Okay. Hold on. I'm sorry, what</p> <p>11 are we looking at now?</p> <p>12 MS. CORDRY: This one says automobile filling</p> <p>13 station --</p> <p>14 MR. GROSSMAN: Okay.</p> <p>15 MS. CORDRY: -- IO limited partnership.</p> <p>16 MR. GROSSMAN: All right. That will be Exhibit</p> <p>17 301.</p> <p>18 (Exhibit No. 301 was marked for</p> <p>19 identification.)</p> <p>20 MR. GROSSMAN: It is -- that's the holding</p> <p>21 analysis or just the --</p> <p>22 MS. CORDRY: I'm not sure if it's the whole need</p> <p>23 analysis or not. I think it may be. A couple pages in</p> <p>24 general about the thing. It goes to neighborhood market</p> <p>25 area definition. Then Part 4 there is demographic profile</p>

<p style="text-align: right;">Page 238</p> <p>1 which -- and then existing gas stations, gas station demand. 2 So it has quite a bit of the kind of demographics and so 3 forth, but this is one where, as I indicated, this actually 4 talks about, for instance, that market expenditures for 5 gasoline service stations are above the U.S. index and so 6 forth. So, anyway, this one has quite a few other need 7 analyses kind of demonstrations here where it is tying the 8 level of gasoline usage to higher ownership rates and higher 9 expenditure indexes specifically for gasoline. But turning 10 back to page -- it doesn't really have pages -- but if you 11 go back, oh, yes. It's 11, I guess it would be page 12 at 12 the very top, right-hand corner, it says page 11 and then 13 the next page is page 12, labeled gas station demand 14 calculations. 15 MR. GROSSMAN: Okay. 16 MS. CORDRY: Okay. And everybody has a different 17 way of getting to their demand. He used personal income 18 divided by gasoline station sales to derive 3.192 percent of 19 personal income as a basis for what gasoline station 20 expenditures would be and he adjusts that by a factor based 21 on income levels and comes to all of that and he comes to 22 gasoline station expenditures of \$13,782. He uses dollars 23 apparently as opposed to gasoline gallons, but same kind of 24 notion. Total, top line number, 13,782. He uses a capture 25 rate of 75 percent.</p>	<p style="text-align: right;">Page 240</p> <p>1 of this corridor in the area known as Colesville. Three of 2 these stations are just south of the market area boundary, 3 but they are so accessible to the market area population 4 that we've included them in this inventory. So I would just 5 note that it seems to be that's very analogous to the 6 stations in the Colesville, in the Four Corners area that 7 are obviously 150 feet away probably from the gas station 8 that is being counted and right across the street and so 9 forth. So at this point, as I say, we're not being quite so 10 doctrinaire about who we include and who we do not include. 11 Then here on page 3-1, in this one he does attempt 12 to determine what are the actual sales being made at the 13 stations in the area and comes up with a figure based on 14 trying to analyze each station and not only that, but how 15 much he might sell at a local station versus passersby and 16 so forth which, again, was not done in this report. And 17 based on all of that on page 3-2, he says, so we're 18 estimating total gasoline sales at, existing gasoline sales 19 at 12, just under 12 million gallons per year. 20 And then he comes and makes these various 21 community demands for gasoline and, again, is using this, 22 some of these Claritas numbers and so forth and comes to the 23 bottom and says we estimate that residents make 85 percent 24 of their gas expenditures in the area. So he's the highest 25 of the ones I could find, but even he did not go above 85</p>
<p style="text-align: right;">Page 239</p> <p>1 MR. GROSSMAN: Right. 2 MS. CORDRY: Selective industry standards and 3 apparently they all have somewhat of a variation, but the 4 one thing that is standard is that they don't use 100 5 percent. So he discounts the total amount of market, 6 residential market sale to 10,000, 10,000,336. And that 7 then becomes his number that he's using, is a 75 percent 8 number. 9 MR. GROSSMAN: Okay. 10 MS. CORDRY: And, finally, the last one I have 11 here is S-2699, which is a market needs study done for 12 16001/16255 New Hampshire Avenue done by Thomas Flynn 13 Associates, i.e., Mr. Flynn's firm in February of 2007. 14 MR. GROSSMAN: All right. This will be Exhibit 15 302. And this is also excerpts from need study, need 16 analysis in -- what case is this in? 17 MS. CORDRY: This is S-2699. 18 MR. GROSSMAN: In S-2699. Okay. 19 (Exhibit No. 302 was marked for 20 identification.) 21 MS. CORDRY: All right. Page 2-7, he talks about 22 the existing fuel stations and convenience stations. He 23 talks about the gas station sales are defined by a group of 24 nine stations. On the following page, when he's describing 25 these, he says there are four stations at the southern end</p>	<p style="text-align: right;">Page 241</p> <p>1 percent. So you kind of average those five figures and you 2 come out with the industry standard is probably in the range 3 of about 67 to 70 percent capture is a reasonable capture 4 rate. 5 MR. GROSSMAN: Okay. 6 MS. CORDRY: If you take five different experts 7 testifying on the subject and none of them, including Mr. 8 Flynn, said that 100 percent was a reasonable capture rate. 9 So again, as I say, but before you can actually make that 10 calculation, you don't apply the 60 percent against the gap, 11 you apply it against the top line demand number, you bring 12 the demand down, then you will see from those different 13 reports they try to calculate what is the supply being made, 14 what is actually the sales being made in the area from the 15 gas stations and they look at that difference. And that 16 difference is the kind of need they're looking at. And in 17 each one of these, the station that they are proposing fit 18 within that need so that if the total reduced after capture 19 rate calculation came to 40 million gallons and the stations 20 were selling 35 million gallons, each one of these ones had 21 a station that was proposed to sell, for instance, a million 22 and a half. And they would say, see, there's five million 23 gallons of need, I'm only proposing a million and a half, 24 I'm within that need number. That's what we don't have 25 here, any of that.</p>

<p style="text-align: right;">Page 242</p> <p>1 All we have is this one gap number which standing 2 alone doesn't really answer any of these particular 3 questions, particularly how does it relate to the question 4 of what is the need in this area and what is the demand in 5 this area and what is the supply in this area. And, again, 6 then we come back to the question of demand for what? And 7 this is where I come back to, again, this point about stores 8 with and stores without convenience stores, stations with 9 and without convenience stores. And you did ask me earlier 10 about isn't the Costco warehouse sort of analogous to a 11 convenience store? 12 MR. GROSSMAN: For purposes of -- 13 MS. CORDRY: For this, yes. 14 MR. GROSSMAN: -- the comparison. 15 MS. CORDRY: And I would say absolutely not for 16 several reasons. Number one, the kind of defining 17 characteristics of a convenience store attached to a gas 18 station is, number one, it is open as long as the gas 19 station is, which means for most of these stores we're 20 talking about 18 hours a day, seven days a week, at which I 21 can go in and use the convenient facilities at that store. 22 Here the gas, this gas station is open much less 23 than most gas stations and the store is open much less than 24 the gas station. So if I was going to consider the store 25 somehow, the warehouse somehow an equivalent of a</p>	<p style="text-align: right;">Page 244</p> <p>1 little package to eat. 2 MR. GROSSMAN: That's true. 3 MS. CORDRY: So the kind of things you buy in the 4 Costco warehouse are not equivalent to what I would buy -- 5 MR. GROSSMAN: I agree with you. I'm not, I don't 6 say that they are directly analogous, I just said that if 7 you were going to compare the statistics can, does not that 8 warehouse right next to the gas station have a 9 comparative -- 10 MS. CORDRY: Well, clearly not because they are 11 not serving the same purposes. A convenience store is 12 convenient for anybody walking and it also does not serve 13 the public, of course. 14 MR. GROSSMAN: I take -- 15 MS. CORDRY: Okay. 16 MR. GROSSMAN: Okay. 17 MS. CORDRY: And it's really a very critical point 18 here because, as you've seen in our papers, when you take 19 this broad 3.1 million gallon number and you break it out, 20 as you will see in, at the back of his report where he has 21 Exhibit A-2, which are the broken out figures on these types 22 of gasoline stations, of that \$71 million which was the 23 number that eventually translates into 13 million gallons of 24 gasoline, 61 million of that 71 million is for gas stations 25 with convenience stores. Less than 10 million, so less than</p>
<p style="text-align: right;">Page 243</p> <p>1 convenience store, I'm talking a store that is only open 2 from 10:00 to 8:30 during the week, 9:30 to 7:00 on -- no, 3 9:30 to 6:00 -- 4 MR. BRANN: 9:30 to 6:00. 5 MS. CORDRY: 6:00. I asked Mr. Brann this. Let 6 me get this right. 9:30 to 6:00 on Saturday and 10:00 to 7 6:00 on Sunday. So on Sunday this convenience store is open 8 for only a third of the days of the hour and many of these 9 convenience stores are open 24 hours a day. So, number one, 10 it is not open the kind of hours a convenience store would 11 be. Number two, generally I can either still stay parked at 12 the pump or I may move my car 20 or 30 feet over to be a 13 little closer and I go in, I get my item, I pay at the 14 counter with maybe a person or two ahead of me and I pick up 15 my pack of gum or my pack of crackers and I walk back out 16 again. 17 MR. GROSSMAN: Now if you leave your car parked at 18 the pump, there are going to be a lot of unhappy people. 19 MS. CORDRY: Not if I'm not at, not if I'm at a 20 station that doesn't have 20 or 40 cars lined up. 21 MR. GROSSMAN: No, any station. I don't recommend 22 that. 23 MS. CORDRY: Well, even so, even so, it's a much 24 closer walk in there. But more to the point, when I walk 25 in, I don't have to buy a 20-pack of crackers to get one</p>	<p style="text-align: right;">Page 245</p> <p>1 a seventh of this, is for gas stations without convenience 2 stores. 3 So I can't take 13.1 million gallons and say it's 4 fair to say that's what this report is demonstrating. You 5 have to take what they're going to open, which is a gas 6 station without a convenience store. And if you take that 7 same ratio of nine over 71, times 13.1 million gallons, you 8 get less than two. So even if there's any need in this 9 area, and that leaves aside this whole question of the 10 capture rate and the slippage and everything else we talked 11 about. 12 MR. GROSSMAN: I'm not sure about that, ma'am, by 13 the way, but go ahead. 14 MS. CORDRY: Well, no, I mean I'll be happy to do 15 it, but nine, that's roughly one-seventh. 16 MR. GROSSMAN: Yes, but what are you, what -- when 17 you differentiate between the two types of stations -- 18 MS. CORDRY: Right. 19 MR. GROSSMAN: -- those with and without, how do 20 you move from your differentiation there to a calculation 21 that the total need demand -- 22 MS. CORDRY: Oh, sure. 23 MR. GROSSMAN: -- would be 2 million? 24 MS. CORDRY: Sure. When he took his 71 million, 25 he took a third of that off in terms --</p>

<p style="text-align: right;">Page 246</p> <p>1 MR. GROSSMAN: Where are you looking?</p> <p>2 MS. CORDRY: Okay. We talked about that a little</p> <p>3 earlier, but in Exhibit Q, let's see where he did his</p> <p>4 calculations here, okay, page 4-1. I'm sorry, yes, the need</p> <p>5 report there that you're looking at, yes.</p> <p>6 MR. GROSSMAN: Well, okay, Exhibit 4-1, yes.</p> <p>7 MS. CORDRY: Okay. Page 4-1, actually.</p> <p>8 MR. GROSSMAN: Well, I don't have a page 4-1.</p> <p>9 MS. ADELMAN: Which exhibit are we on now?</p> <p>10 MS. CORDRY: Okay. We are on the 2012 need report.</p> <p>11 MS. ADELMAN: And that's 302?</p> <p>12 MS. CORDRY: Okay. I will give you my page. As I</p> <p>13 say, this is all --</p> <p>14 MR. GROSSMAN: No, not 302, this is the, this is</p> <p>15 from Mr. Flynn's report.</p> <p>16 MS. CORDRY: Yes, and the --</p> <p>17 MS. ADELMAN: Oh, I see.</p> <p>18 MS. CORDRY: No. I'm back to his report in this</p> <p>19 case.</p> <p>20 MR. GROSSMAN: Right.</p> <p>21 MS. CORDRY: Okay. Yes. All right. I don't know</p> <p>22 why that was done, but in any case the entirety of it, as I</p> <p>23 say, is in, is part of Exhibit 88(h). But --</p> <p>24 MR. GROSSMAN: Okay.</p> <p>25 MS. CORDRY: -- 4-1, if you see at the bottom</p>	<p style="text-align: right;">Page 248</p> <p>1 MR. GROSSMAN: Right.</p> <p>2 MS. CORDRY: Which gets you to whatever that may</p> <p>3 be, 48ish or something million gallons and then he goes over</p> <p>4 and starts talking about he divided that by -- it goes on to</p> <p>5 the top of the next page, 4-2 -- and he says, when I divide</p> <p>6 that number of dollars by the price of gasoline, which was</p> <p>7 3.55 at the time, that's how I get to 13.1 million gallons.</p> <p>8 So all I did was say if 13.1 million gallons corresponds to</p> <p>9 \$71 million, then nine million gallons corresponds to the</p> <p>10 same nine over 70 once.</p> <p>11 MR. GROSSMAN: But I don't, see, I don't see the</p> <p>12 logical in that. I mean --</p> <p>13 MS. CORDRY: Okay.</p> <p>14 MR. GROSSMAN: -- you're, he's listing two types</p> <p>15 of gas stations, and I'm not saying, I don't think he's</p> <p>16 saying that in terms of determining need that if you</p> <p>17 categorize this as one that doesn't have a convenience store</p> <p>18 that somehow that means that you would look at the reduced,</p> <p>19 the smaller number of stations in that category and say that</p> <p>20 determines --</p> <p>21 MS. CORDRY: Well, it's not a smaller number of</p> <p>22 stations. This has nothing to do with stations. This is</p> <p>23 just breaking the \$71 million into two categories of money.</p> <p>24 MR. GROSSMAN: Yes, or the smaller amount of</p> <p>25 money. It doesn't matter to me --</p>
<p style="text-align: right;">Page 247</p> <p>1 there, he says there's a \$71 million gap and that</p> <p>2 corresponds to the gasoline stations, the top line gasoline</p> <p>3 stations, dash 447 in Exhibit A-2.</p> <p>4 MR. GROSSMAN: Okay. Hold on.</p> <p>5 MS. CORDRY: It's most the way down at the bottom</p> <p>6 of the page.</p> <p>7 MR. GROSSMAN: Okay. Gasoline stations, 447, is</p> <p>8 that what you're saying?</p> <p>9 MS. CORDRY: Right. Yes.</p> <p>10 MR. GROSSMAN: Okay.</p> <p>11 MS. CORDRY: Right. So the top line category is</p> <p>12 gasoline stations. That's all gasoline stations. And he</p> <p>13 calculates a \$71 million gap there.</p> <p>14 MR. GROSSMAN: Right.</p> <p>15 MS. CORDRY: Okay. Then underneath that, that</p> <p>16 breaks down into two subcomponents, gasoline stations with</p> <p>17 convenience stores, gasoline stations without convenience</p> <p>18 stores.</p> <p>19 MR. GROSSMAN: Right.</p> <p>20 MS. CORDRY: Okay. Now in terms of getting from</p> <p>21 the 71 million into gallons, if we start at the bottom of</p> <p>22 page 4-1 --</p> <p>23 MR. GROSSMAN: Right.</p> <p>24 MS. CORDRY: -- he says I take a third off of that</p> <p>25 for the non-gasoline sales.</p>	<p style="text-align: right;">Page 249</p> <p>1 MS. CORDRY: All right.</p> <p>2 MR. GROSSMAN: -- whether you --</p> <p>3 MS. CORDRY: Even if I say that for a gasoline</p> <p>4 station --</p> <p>5 MR. GROSSMAN: It's not --</p> <p>6 MS. CORDRY: -- without a convenience store, but</p> <p>7 that doesn't mean they don't sell anything else but</p> <p>8 gasoline. There is -- Costco may be the only station in the</p> <p>9 country that only sells gasoline. Convenience stores are a</p> <p>10 little bigger category. There's tires, there's batteries,</p> <p>11 there's services, all those kind of things that fall into</p> <p>12 it. But even if you took that \$9 million and said 100</p> <p>13 percent of that was gasoline sales, which clearly would not</p> <p>14 be the case, you would still have a figure that is vastly</p> <p>15 smaller than 13.1 million gallons.</p> <p>16 MR. GROSSMAN: I understand what you're saying</p> <p>17 mathematically, I just don't know that I follow the logic of</p> <p>18 applying it that way, that that means that --</p> <p>19 MS. CORDRY: Well --</p> <p>20 MR. GROSSMAN: -- that there is this reduced</p> <p>21 amount of demand actually, but --</p> <p>22 MS. CORDRY: Well, I, well, it's just saying that</p> <p>23 there's a demand, there's two kinds of demand here which are</p> <p>24 being lumped together in the category, the overall</p> <p>25 category --</p>

<p style="text-align: right;">Page 250</p> <p>1 MR. GROSSMAN: Right.</p> <p>2 MS. CORDRY: -- of all gasoline stations has two</p> <p>3 kinds of demand --</p> <p>4 MR. GROSSMAN: Right.</p> <p>5 MS. CORDRY: -- demand for gasoline stations</p> <p>6 without convenience stores and demand for gasoline</p> <p>7 stations --</p> <p>8 MR. GROSSMAN: Yes, I mean I --</p> <p>9 MS. CORDRY: -- with convenience stores.</p> <p>10 MR. GROSSMAN: -- my inclination would be to look</p> <p>11 at the entire demand and make adjustments --</p> <p>12 MS. CORDRY: Well --</p> <p>13 MR. GROSSMAN: -- from there.</p> <p>14 MS. CORDRY: -- except that those are two</p> <p>15 different things and people use them in different ways and</p> <p>16 the main point is Claritas, which is where he's drawing his</p> <p>17 data from --</p> <p>18 MR. GROSSMAN: Yes.</p> <p>19 MS. CORDRY: -- divides these into two different</p> <p>20 places. And to make clear that I am not suggesting that</p> <p>21 it's just me who says you can divide this up, I would go</p> <p>22 back again to Mr. Flynn's report --</p> <p>23 MR. GROSSMAN: I understand he divided them up.</p> <p>24 MS. CORDRY: No, no, no, no. He did not divide</p> <p>25 them up. That's the point.</p>	<p style="text-align: right;">Page 252</p> <p>1 amounts to 8.4 million gallons.</p> <p>2 So that's what he's taking. He's not taking the</p> <p>3 entire amount, he's taking the amount of gas stations with</p> <p>4 convenience stores. I'm sorry, yes, and that's right. It</p> <p>5 translates over into here. The -- I was reading the wrong</p> <p>6 number. I was reading the sales. If we go back to page 3-</p> <p>7 4, I'm sorry.</p> <p>8 MR. GROSSMAN: All right.</p> <p>9 MS. CORDRY: Let me do this clearly now so I'm not</p> <p>10 messing this up. The column labeled or the row labeled</p> <p>11 gasoline stations in total was 35 million; retail sales, 20</p> <p>12 million; a total gap of 14.987 million. Do you see that?</p> <p>13 MR. GROSSMAN: Sorry, no, I don't.</p> <p>14 MS. CORDRY: Right in the middle of page 3-4 --</p> <p>15 MR. GROSSMAN: Yes?</p> <p>16 MS. CORDRY: -- and the chart there has gasoline</p> <p>17 stations kind of right in the middle of that chart?</p> <p>18 MR. GROSSMAN: Okay.</p> <p>19 MS. CORDRY: Okay. If you read across the top</p> <p>20 line number, the gasoline stations, 447.</p> <p>21 MR. GROSSMAN: Right.</p> <p>22 MS. CORDRY: Okay. 35 million potential</p> <p>23 expenditures, 20 million in actual sales, gap of roughly \$15</p> <p>24 million.</p> <p>25 MR. GROSSMAN: Right.</p>
<p style="text-align: right;">Page 251</p> <p>1 MR. GROSSMAN: Well, he divided them up in his</p> <p>2 Figure A.</p> <p>3 MS. CORDRY: He did there, but what I'm saying, he</p> <p>4 didn't divide in his demand. What I'm saying is --</p> <p>5 MR. GROSSMAN: Right.</p> <p>6 MS. CORDRY: -- if you look at the 2699 report,</p> <p>7 the Exhibit 302, this also is one where there is a, if you</p> <p>8 go to page 3-4 --</p> <p>9 MR. GROSSMAN: Okay. I'm looking at it.</p> <p>10 MS. CORDRY: Actually, I'm sorry, it's not 304.</p> <p>11 Let me find it, his -- okay. His total figure there, yes,</p> <p>12 it's on page 3-4. Again, it's the same kind of chart,</p> <p>13 gasoline stations in total, 20 million, gasoline stations</p> <p>14 with convenience stores and other gasoline stations.</p> <p>15 MR. GROSSMAN: Okay.</p> <p>16 MS. CORDRY: So he takes the \$17 million there and</p> <p>17 when he translates it all back, it translates -- I've got to</p> <p>18 find this, but these are right, but he, he is, he divides up</p> <p>19 himself between the gasoline stations with convenience</p> <p>20 stores and, you know, for gasoline stations without</p> <p>21 convenience stores. On page 3-3, he shows that a</p> <p>22 difference -- okay. He says Exhibit 3-3 shows a difference</p> <p>23 between demand measured by potential sales and supplies</p> <p>24 which represents actual estimated sales. The gas station</p> <p>25 gap in this market area for stations with convenience stores</p>	<p style="text-align: right;">Page 253</p> <p>1 MS. CORDRY: Okay? But underneath that for</p> <p>2 gasoline stations with convenience stores, 26 million of</p> <p>3 potential expenditures, 17 million of supply, 17.6, 8.5</p> <p>4 million roughly of opportunity.</p> <p>5 MR. GROSSMAN: Right.</p> <p>6 MS. CORDRY: That's the number that then back on</p> <p>7 page 3-3, that's the number he uses to work with, not the</p> <p>8 entirety, but only the portion of gasoline sales, stores</p> <p>9 with convenience -- gasoline stations with convenience</p> <p>10 stores because that's the kind of store they were proposing</p> <p>11 to build in this case.</p> <p>12 MR. GROSSMAN: I understand that. I'm just not</p> <p>13 sure that of the logic of saying that the demand doesn't</p> <p>14 slosh between those two types of gas stations, ones with</p> <p>15 convenience stores and ones that not in a way that makes</p> <p>16 this kind of distinction, a distinction without a difference</p> <p>17 in terms of people who are going to buy gasoline. So --</p> <p>18 MS. CORDRY: Well --</p> <p>19 MR. GROSSMAN: -- I just don't see that.</p> <p>20 MS. CORDRY: Okay. If that --</p> <p>21 MR. GROSSMAN: I'm not sure I see the logic in</p> <p>22 making, I agree with you, they made the distinction in</p> <p>23 this --</p> <p>24 MS. CORDRY: And --</p> <p>25 MR. GROSSMAN: -- but I don't necessarily buy the</p>

<p style="text-align: right;">Page 254</p> <p>1 distinction that in determining whether there's demand. 2 MS. CORDRY: But the point is he is using figures 3 from an organization to create the only information he is 4 giving you on demand, on need, supply and demand. All he is 5 doing is presenting to you figures from the Claritas 6 organization. And all I'm saying is you need to use the 7 figures in the way they present them. 8 MR. GROSSMAN: No, I don't. 9 MS. CORDRY: Well, okay, you don't need to, but I 10 am suggesting that it seems logical that rather than say 11 they present them in a particular fashion and I'm just going 12 to say that's not the way the demand divides out, and what 13 I'm saying is it's -- I fail to see why if you only use part 14 of it when it's, you know, when he is doing this analysis 15 himself in another case, he does exactly what I am 16 suggesting should be done here. 17 MR. GROSSMAN: I understand that. I see the 18 inconsistencies and I think you expertly pointed them out. 19 I think that what bothers me about this whole process of 20 this kind of market analysis for demand as I hinted in the 21 Henderson case bothers me as applied to the real standard 22 that's going, that is used by the courts here, but I 23 understand why applicants do it and I understand why you've 24 critiqued it, because that's what has been done in the past. 25 I'm just not sure that that, under the case law that's the</p>	<p style="text-align: right;">Page 256</p> <p>1 MS. CORDRY: No. What I am telling you -- 2 MR. GROSSMAN: You won't have much pollution, you 3 won't have any other gas stations leaving. I mean -- 4 MS. CORDRY: No, Mr. -- 5 MR. GROSSMAN: -- doesn't it work against you -- 6 MS. CORDRY: No, because -- 7 MR. GROSSMAN: -- more than -- 8 MS. CORDRY: -- what we are talking about is 9 demand in the neighborhood. This is a neighborhood need 10 standard and this is what the demand is in the neighborhood. 11 What he is dealing, again, as I've tried to say numerous 12 times, the problem here is what the, and because the model 13 that Costco uses, it's warehouses and it's gas stations both 14 are huge regional operations and much more regional than 15 anything this mall does. I think regardless of what the 16 name is of this mall, I do not think that this mall draws 17 people from 25 or 30 miles away in the way that the Costco 18 store might, simply because everything in this mall I 19 cannot, I'm trying to think of anything in this mall that is 20 unique to this mall and is not duplicated numerous other 21 places in the County, except for the Costco warehouse, which 22 is only here. 23 MR. GROSSMAN: So you think they will sell the 12 24 million gallons a year, but that people will come from 25 outside the neighborhood?</p>
<p style="text-align: right;">Page 255</p> <p>1 appropriate standard to apply any more. 2 MS. CORDRY: Well, I would again point to, I 3 would -- 4 MR. GROSSMAN: But, fine. I'm not arguing with 5 what you've done. I think, I give you kudos for going into 6 this kind of detail, but -- 7 MS. CORDRY: Well -- 8 MR. GROSSMAN: -- you know, there is a question to 9 me as to what, you know, where it all leads. I haven't sat 10 down and analyzed it all out in this case because I haven't 11 heard the whole case yet but, you know, I will at some 12 point. 13 MS. CORDRY: All right. Well, I am simply stating 14 that based on the exact same analysis that Costco's expert 15 has presented to you -- 16 MR. GROSSMAN: Right. 17 MS. CORDRY: -- that if you use his analysis and 18 you do it correctly, using the data in the correct way of 19 what he has done in the past and that reflects the data he's 20 actually relying on, the demand does not translate out into 21 13.1 million gallons, it translates into less than two and 22 they are proposing to a build a station that is six times 23 the size of that. The second point -- 24 MR. GROSSMAN: So, presumably, they won't sell 25 much gasoline?</p>	<p style="text-align: right;">Page 257</p> <p>1 MS. CORDRY: Yes, that's really basically the 2 point we're saying here and that that is not then consistent 3 with the County standards that distinguishes between the 4 County need, or we'll call it a County need or regional 5 need, versus a neighborhood need. That creating a regional 6 need, pulling people from all over the County, dropping them 7 in one spot and then saying, oh, now I can meet a 8 neighborhood need standard is not consistent there and it is 9 not what he has done. He has tried to demonstrate 10 neighborhood need to you through a set of facts and figures. 11 And what I think I have shown is that those facts and 12 figures do not support what he has said. So I think I have 13 every basis to do that. 14 I would also point out that this County snapshot, 15 the County, for the County as a whole, it's -- let me just 16 stay with this one here for a moment. It is also showing 17 the same kind of gasoline station and so forth idea, what's 18 solely in the area and what's not. It's on page, let's see, 19 31 in here. 20 MR. GROSSMAN: Okay. In the snapshot? 21 MS. CORDRY: Yes. 22 (Discussion off the record.) 23 MS. CORDRY: Which showed that for the County as a 24 whole, gasoline stations only capture, for all gasoline 25 stations, it only captures 38 percent of the theoretical</p>

<p style="text-align: right;">Page 258</p> <p>1 sales volume in the County for all gasoline stations. And</p> <p>2 that -- then if you turn back to page 33 and 34, it breaks</p> <p>3 out to the other gasoline stations --</p> <p>4 MR. GROSSMAN: I don't understand. So where is</p> <p>5 this figure about 38 percent? I don't know.</p> <p>6 MS. CORDRY: In, at the bottom under retail</p> <p>7 activity there.</p> <p>8 MR. GROSSMAN: Oh, I see.</p> <p>9 MS. CORDRY: Yes. Right.</p> <p>10 MR. GROSSMAN: Gasoline stations, capture ratio or</p> <p>11 rate is 38 percent?</p> <p>12 MS. CORDRY: Correct. If you turn --</p> <p>13 MR. GROSSMAN: Okay.</p> <p>14 MS. CORDRY: -- back to page 33, most of the way</p> <p>15 down the page is other gasoline stations and that's the</p> <p>16 equivalent of the gasoline stations without convenience</p> <p>17 stores. Actually, they're both on that page. About a third</p> <p>18 of the way down it says gasoline stations with convenience</p> <p>19 stores on page 33.</p> <p>20 MR. GROSSMAN: Mine, for some reason, my pages</p> <p>21 went from, or what you gave me, went from page 30 and the</p> <p>22 next page after that is page 29.</p> <p>23 MS. CORDRY: Let me see if, you know, I --</p> <p>24 MR. GROSSMAN: Okay. Again, going backwards here.</p> <p>25 MS. CORDRY: Perhaps. I think there might be a</p>	<p style="text-align: right;">Page 260</p> <p>1 of, the Wawa's, the Royal Farms, any of those, and so forth.</p> <p>2 MR. GROSSMAN: Right.</p> <p>3 MS. CORDRY: But then you go down to other</p> <p>4 gasoline stations about two-thirds of the way down --</p> <p>5 MR. GROSSMAN: Right, I see it.</p> <p>6 MS. CORDRY: -- and you see we capture 66 percent.</p> <p>7 MR. GROSSMAN: Right.</p> <p>8 MS. CORDRY: So we have a lot more of those kind</p> <p>9 of stations and we capture that, and that's pretty much just</p> <p>10 right about in the general range of what everyone said you</p> <p>11 capture here. Then if we go back a little bit further in</p> <p>12 there, we come to District 5, I'm sorry, District 4 figures</p> <p>13 which is where Wheaton is now.</p> <p>14 MS. ADELMAN: What page is it?</p> <p>15 MS. CORDRY: It would be page 76. I'm using the</p> <p>16 equivalent kind of numbers --</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 MS. CORDRY: -- for that.</p> <p>19 MR. GROSSMAN: Gasoline stations.</p> <p>20 MS. CORDRY: Okay. So gasoline stations are,</p> <p>21 again, all totaled, only 30 percent in this district.</p> <p>22 MR. GROSSMAN: All right.</p> <p>23 MS. CORDRY: But gasoline station with convenience</p> <p>24 stores as low as 16 percent. Again, we really have nothing</p> <p>25 of that nature here. But other gasoline stations, 70</p>
<p style="text-align: right;">Page 259</p> <p>1 blank page in there or something, but let me --</p> <p>2 MR. GROSSMAN: All right. Let's see.</p> <p>3 MS. CORDRY: It's right here.</p> <p>4 MR. GROSSMAN: All right. So 22, 26 --</p> <p>5 MS. CORDRY: Do you have page 33?</p> <p>6 MR. GROSSMAN: -- 29. Hold on a second. 30, oh,</p> <p>7 I see. This one doesn't have a page number on it, it's been</p> <p>8 chopped off. So, okay, now what, which page am I looking</p> <p>9 for now?</p> <p>10 MS. CORDRY: Well, I think it would be another</p> <p>11 page or two down, page 33 is what you're looking for.</p> <p>12 MR. GROSSMAN: 33? Okay. 32 --</p> <p>13 MS. CORDRY: Yes, there we go.</p> <p>14 MR. GROSSMAN: -- 33. Okay.</p> <p>15 MS. CORDRY: A whole page of numbers to make you</p> <p>16 squint.</p> <p>17 MR. GROSSMAN: Right.</p> <p>18 MS. CORDRY: So about a third of the way down,</p> <p>19 gasoline stations with convenience stores.</p> <p>20 MR. GROSSMAN: Yes.</p> <p>21 MS. CORDRY: We only capture 29 percent here</p> <p>22 which --</p> <p>23 MR. GROSSMAN: Right.</p> <p>24 MS. CORDRY: -- again, is an indication of the</p> <p>25 fact that this County doesn't have a lot of the typical kind</p>	<p style="text-align: right;">Page 261</p> <p>1 percent. So we have an abundance of other gasoline stations</p> <p>2 in this area, more than the County as a whole. We don't</p> <p>3 have gasoline stations with convenience stores. It might be</p> <p>4 a nice thing if we had some of those, but we don't have them</p> <p>5 and that's not what we're proposing to build here. And I</p> <p>6 think to use market demand for gasoline stations without,</p> <p>7 with convenience stores, which is what clearly it shows the</p> <p>8 County is short of and this district is short of, and to use</p> <p>9 that to support a need for a gasoline station without a</p> <p>10 convenience store is a, just a misuse of the need figures</p> <p>11 and the data that's being supplied.</p> <p>12 It just doesn't really match. You know, if you</p> <p>13 had data that said we need restaurants and of that category</p> <p>14 we need a whole lot of Italian restaurants and we have a</p> <p>15 full supply of Cambodian restaurants, you can't come in and</p> <p>16 say, well, because we need restaurants in this area in</p> <p>17 total, I should build another Cambodian restaurant. We need</p> <p>18 Italian restaurants or whatever.</p> <p>19 MR. GROSSMAN: Okay. Point taken.</p> <p>20 MS. CORDRY: All right. In terms of whether or</p> <p>21 not those distinctions are appropriate as well, Mr. Flynn</p> <p>22 attempted to suggest that perhaps there really was these,</p> <p>23 these categories were out of date and there really should be</p> <p>24 some new category for warehouse stores with gas stations,</p> <p>25 which there isn't one. I would like to put another exhibit</p>

<p style="text-align: right;">Page 262</p> <p>1 in. This will be Exhibit R.</p> <p>2 MS. ADELMAN: Well, you're skipping over this?</p> <p>3 MS. CORDRY: Yes.</p> <p>4 MS. ADELMAN: Okay.</p> <p>5 MS. CORDY: We'll skip over that.</p> <p>6 MR. GROSSMAN: All right. So this will be Exhibit</p> <p>7 303.</p> <p>8 MS. HARRIS: Excuse me, Mr. Grossman. Can we take</p> <p>9 a very brief break?</p> <p>10 MR. GROSSMAN: Yes. About how much longer do you</p> <p>11 think you're going to have?</p> <p>12 MS. CORDRY: Well, if we're going to -- how late</p> <p>13 did you say you could go today?</p> <p>14 MR. GROSSMAN: 4:45.</p> <p>15 MS. CORDRY: I can probably get done, at least the</p> <p>16 direct, by 4:45 if you want, but it might go over, so it's</p> <p>17 up to you if you want.</p> <p>18 MR. GROSSMAN: Okay. Exhibit 303 is what?</p> <p>19 MS. CORDRY: This is some information from the</p> <p>20 Bureau of Labor and Statistics on producer price indexes and</p> <p>21 then the industry categories that correlate to these</p> <p>22 classifications for gas stations and so forth that I have</p> <p>23 been talking about.</p> <p>24 MR. GROSSMAN: So excerpts from Bureau of Labor</p> <p>25 and Statistics regarding, well, it looks like it's not just</p>	<p style="text-align: right;">Page 264</p> <p>1 in in 1996 and these categories weren't now relevant any</p> <p>2 more.</p> <p>3 MR. GROSSMAN: Which categories?</p> <p>4 MS. CORDRY: The categories of gas stations with</p> <p>5 and without convenience stores.</p> <p>6 MR. GROSSMAN: I see.</p> <p>7 MS. CORDRY: All right. And this report, which as</p> <p>8 you can see at the top, BLS.gov, that's the</p> <p>9 BureauofLaborStandards.gov, these are trade indexes being</p> <p>10 added to the producer price index and talks about as a</p> <p>11 result of changes, this is at the bottom of the first</p> <p>12 paragraph there, as a result of changes in the 2002 NAICS</p> <p>13 industry definitions, new indexes were introduced for</p> <p>14 gasoline stations with convenience stores and other gasoline</p> <p>15 stations in January 2004. So these categories are updated</p> <p>16 as of at least January 2004, well after this 1996 date when</p> <p>17 he suggested that these changes started being made in the</p> <p>18 market.</p> <p>19 And then just to, just for clarification and</p> <p>20 clarity, I put in four different definitions under this</p> <p>21 North American Industry Classification System, which is what</p> <p>22 Claritas works off of.</p> <p>23 MR. GROSSMAN: Well, hold on one second. Going</p> <p>24 back to the Bureau of -- is it Bureau of Labor Standards or</p> <p>25 Bureau of Labor and Statistics?</p>
<p style="text-align: right;">Page 263</p> <p>1 gas stations. What is --</p> <p>2 MS. CORDRY: Right, but I will -- it's several,</p> <p>3 several indexes were added --</p> <p>4 MR. GROSSMAN: Okay.</p> <p>5 MS. CORDRY: -- at this point.</p> <p>6 MR. GROSSMAN: Regarding trade indexes for --</p> <p>7 MS. CORDRY: Right.</p> <p>8 MR. GROSSMAN: -- gas stations? Okay.</p> <p>9 MS. CORDRY: Among others, yes.</p> <p>10 (Exhibit No. 303 was marked for</p> <p>11 identification.)</p> <p>12 MR. GROSSMAN: All right. Why don't we take a</p> <p>13 break --</p> <p>14 MS. CORDRY: Okay.</p> <p>15 excerpts from Bureau of Labor and Statistics regarding --</p> <p>16 and come back at 10 after 4:00.</p> <p>17 (Whereupon, at 4:04 p.m., a brief recess was</p> <p>18 taken.)</p> <p>19 MR. GROSSMAN: You may resume.</p> <p>20 MS. CORDRY: All right. Let's see. All right.</p> <p>21 So what this particular report goes to is that Mr. Flynn</p> <p>22 testified on, I think it was July 30th, that this really</p> <p>23 wasn't a relevant distinction any more because there were</p> <p>24 these hyper-markets or mega-retailers, whatever you want, I</p> <p>25 forget exactly what he referred to them as, started coming</p>	<p style="text-align: right;">Page 265</p> <p>1 MS. CORDRY: I think it's statistics, I believe.</p> <p>2 MR. GROSSMAN: Okay. Yes, I thought you said</p> <p>3 standards.</p> <p>4 MS. CORDRY: Oh, did I? I meant statistics. I'm</p> <p>5 sorry.</p> <p>6 MR. GROSSMAN: Okay. And so going back to that,</p> <p>7 are you saying that these figures on page, in the second</p> <p>8 page of what you provided me, the NAICS standards, they were</p> <p>9 recently updated or these are just old updates? I'm not</p> <p>10 sure -- it says last modified date --</p> <p>11 MS. CORDRY: I think --</p> <p>12 MR. GROSSMAN: -- was December 13, 2012, but were</p> <p>13 these particular standards modified then, because there are</p> <p>14 many others on --</p> <p>15 MS. CORDRY: I believe, yes, I believe this is --</p> <p>16 what I am referring to is the language at the top that talks</p> <p>17 about these indexes, these new indexes were introduced for</p> <p>18 gasoline stations in January of 2004. This is a longer</p> <p>19 document that talks about some other changes and so forth</p> <p>20 and I'm not really sure when exactly they were all made or</p> <p>21 whether this was simply a, you know, the only date I see --</p> <p>22 I do see a December 2012 date on this, but I'm not sure what</p> <p>23 exactly was being updated in December 2012. But what I'm</p> <p>24 pointing to is the language that says the new indexes were</p> <p>25 introduced. There was changes in the NAICS industry</p>

<p style="text-align: right;">Page 266</p> <p>1 definitions in 2002, well after 1996.</p> <p>2 MR. GROSSMAN: Right.</p> <p>3 MS. CORDRY: And that these new indexes were</p> <p>4 introduced in the producer price index in January 2004. So</p> <p>5 my point being if Mr. Flynn was saying that these changes</p> <p>6 were in 1996 and that somehow --</p> <p>7 MR. GROSSMAN: I see.</p> <p>8 MS. CORDRY: -- NAICS didn't know about them, this</p> <p>9 was six years later and --</p> <p>10 MR. GROSSMAN: Okay.</p> <p>11 MS. CORDRY: -- no reason to think they didn't</p> <p>12 know about them. So I put in, and these are the most up-to-</p> <p>13 date definitions. I don't know that they have been changed,</p> <p>14 but these are the most up-to-date definitions here, 2012,</p> <p>15 NAICS definitions for the sub-category 447110 gas stations</p> <p>16 with convenience stores; 447190, which are other gasoline</p> <p>17 stations. I also put in the definition for just a plain old</p> <p>18 convenience store which 44512. And then there is another</p> <p>19 classification for warehouse clubs and super centers which I</p> <p>20 believe is what the Costco warehouse fits into, which is</p> <p>21 452910. So the Claritas definitions are broken down by</p> <p>22 these kind of categories.</p> <p>23 MR. GROSSMAN: Is that the case, by the way,</p> <p>24 that -- do we know that the Claritas --</p> <p>25 MS. CORDRY: Yes, if you look at --</p>	<p style="text-align: right;">Page 268</p> <p>1 MS. CORDRY: I'm sorry. Pretty much I think at</p> <p>2 the very end of it.</p> <p>3 MR. GROSSMAN: On what page?</p> <p>4 MS. CORDRY: Part of the appendix is at the end.</p> <p>5 It would say D-3 and D-4 at the top.</p> <p>6 MR. GROSSMAN: Oh, no, that didn't come with my --</p> <p>7 MS. CORDRY: All right.</p> <p>8 MR. GROSSMAN: -- copy of Exhibit 302.</p> <p>9 MS. ADELMAN: I will give you mine again.</p> <p>10 MS. CORDRY: As I stated, the entire report is in</p> <p>11 the record as --</p> <p>12 MR. GROSSMAN: Right.</p> <p>13 MS. CORDRY: -- Exhibit 88(h). Okay. So at the</p> <p>14 very bottom there of D-3 going into D-4.</p> <p>15 MR. GROSSMAN: Okay. What about that now?</p> <p>16 MS. CORDRY: It talks about how they're</p> <p>17 calculating those demands and then the very last sentence</p> <p>18 talks about we take these and these overall geographic</p> <p>19 estimates of demand and we assign them to the NAICS</p> <p>20 classifications.</p> <p>21 MR. GROSSMAN: Okay.</p> <p>22 MS. CORDRY: Okay. So, again, it appears to me</p> <p>23 that to the extent that Mr. Flynn wants to rely on the</p> <p>24 Claritas data to establish need, it should be relied on in</p> <p>25 the way it's calculated under the classifications it divides</p>
<p style="text-align: right;">Page 267</p> <p>1 MR. GROSSMAN: -- things are broken down by these</p> <p>2 newer categories?</p> <p>3 MS. CORDRY: Well, they update them continually.</p> <p>4 And, again, these are not new categories. These are ones</p> <p>5 they --</p> <p>6 MR. GROSSMAN: Well, they have 2012 written there.</p> <p>7 MS. CORDRY: Those are the current, existing ones.</p> <p>8 I have, from what I have been able to find, I don't see</p> <p>9 anything that suggests they have changed and I think I</p> <p>10 looked at these a couple years ago and they were the same.</p> <p>11 I could probably go back and try to find if they've changed,</p> <p>12 but they're not particularly unusual definitions for these</p> <p>13 matters. And, certainly, this report was run in 2012. And</p> <p>14 the Claritas Nielsen release notes at the end of that</p> <p>15 exhibit, they would be showing the 2012 report.</p> <p>16 It talks about at the bottom of page D-3 going to</p> <p>17 D-4 that they make these demands site estimates, they do all</p> <p>18 this to get all these estimated expenditures and make all</p> <p>19 these adjustments and bring all these things in and then at</p> <p>20 the very end of that they say these --</p> <p>21 MR. GROSSMAN: Where are you seeing D-3 and --</p> <p>22 MS. CORDRY: It's all at the very end -- it's an</p> <p>23 appendix. No, no, I'm sorry, not in that, in the 2012</p> <p>24 report.</p> <p>25 MR. GROSSMAN: Oh.</p>	<p style="text-align: right;">Page 269</p> <p>1 and uses the applicable data.</p> <p>2 MR. GROSSMAN: Okay.</p> <p>3 MS. CORDRY: Okay. And I guess I would just say,</p> <p>4 you know, in terms of this, again, we really are going to</p> <p>5 try to count the store, the warehouse as part of a</p> <p>6 convenience store, then fine, let's have a warehouse with a</p> <p>7 convenience store, gasoline station, let's make the whole</p> <p>8 aspect part of the special exception, but I think that would</p> <p>9 be a very different special exception than you're looking at</p> <p>10 at this point.</p> <p>11 MR. GROSSMAN: Well, it's not a special</p> <p>12 exception --</p> <p>13 MS. CORDRY: Well --</p> <p>14 MR. GROSSMAN: -- as it's recognized in the code.</p> <p>15 MS. CORDRY: But --</p> <p>16 MR. GROSSMAN: The convenience store, the store, I</p> <p>17 shouldn't say that, the warehouse is a matter of right.</p> <p>18 MS. CORDRY: I understand. But if you're trying</p> <p>19 to make it the convenience store for this station --</p> <p>20 MR. GROSSMAN: I understood. I -- your --</p> <p>21 MS. CORDRY: Right. Got it.</p> <p>22 MR. GROSSMAN: -- I took your point.</p> <p>23 MS. CORDRY: Yes. Okay. So I just wanted to --</p> <p>24 MR. GROSSMAN: You beat me into submission.</p> <p>25 MS. CORDRY: Got it. Got it on that. I try not</p>

<p style="text-align: right;">Page 270</p> <p>1 to do that, but just trying this, this really is, I think, a 2 critical point that has to be analyzed here and I think we 3 are trying to really systematically address what's been 4 contended, whether it holds up, whether it meets with the 5 way these standards have been done in other cases and in 6 other, past, what's the accepted method of doing these. I 7 mean I can't go out and -- 8 MR. GROSSMAN: Well, I don't know that it's going 9 to, that my analysis is going to be consistent with what's 10 been done in the past because I'm not sure that that's the 11 correct way to analyze it, it's just that we have, this 12 issue hasn't been presented to me before. So I'm going to 13 look at the issue of what's the appropriate way to look at 14 it based on all the evidence. I'm also going to look at 15 whatever, if there is cross-examination of you or rebuttal 16 and whatever other evidence there is, obviously. 17 MS. CORDRY: Well, okay. 18 MR. GROSSMAN: But for this point, I don't, I 19 don't see any reason -- 20 MS. CORDRY: Okay. 21 MR. GROSSMAN: -- to pursue this issue further. 22 MS. CORDRY: All right. I certainly understand 23 that. I guess our view would be that this gasoline station 24 is a gasoline station like other gasoline stations, that the 25 standard hasn't changed, that the fact that they are a</p>	<p style="text-align: right;">Page 272</p> <p>1 MR. GROSSMAN: Okay. 2 MS. CORDRY: All right. It refers to some growth 3 in the population up through 2012, which is already, of 4 course, already happened and it's projected to grow it says 5 another 3.4 percent by 2017. Another projection seems to 6 suggest that it would be considerably lower than that 7 because the cog projections are only 3.7 percent, which 8 would seem to be a lot less than 3.4 percent over five 9 years. 10 In any case, it says: 11 "If the market for gasoline sales rose at the 12 same rate, there would be demand for an 13 additional 147,400 gallons." 14 Since we have no figure in this report for what 15 demand is from residents, I don't know how whether it's .37 16 percent per year or 3.4 percent over four years. If I don't 17 have any number to apply that against, I don't know he comes 18 up with this figure of 147,000 gallons. There is no 19 derivation for that number whatsoever in his report. 20 Similarly, it says: 21 "The worker population in this area is 22 growing at a higher rate, .75 percent. This 23 indicates additional demand of 14,520 24 gallons." 25 Again, there is no base number, so I don't know</p>
<p style="text-align: right;">Page 271</p> <p>1 regional store with a regional membership that's trying to 2 fit itself into a classification they may not fit into 3 doesn't mean that the whole need analysis has to change. 4 Obviously, you're the Hearing Examiner and you decide this, 5 but all we can do is make the analysis in line with 6 precedent and in line with what -- 7 MR. GROSSMAN: Right. 8 MS. CORDRY: -- it appears has been the 9 established way of looking at these things and we'll 10 certainly look at any other way that you want to suggest as 11 well but, you know, we can't afford to hire our own market 12 analyst, so we have to sort of start with what the existing 13 market analysts have done and -- 14 MR. GROSSMAN: I got you. 15 MS. CORDRY: -- and try to analyze this station 16 consistently with what's been done by other analysts in the 17 past -- 18 MR. GROSSMAN: Right. 19 MS. CORDRY: -- including Mr. Flynn. So moving 20 into the last section of the report -- 21 MR. GROSSMAN: Okay. 22 MS. CORDRY: -- it talks about some market areas 23 and this is a point where it's starting to talk about growth 24 and what might happen in the future and so forth, growth in 25 the market area, starting at page 4-3.</p>	<p style="text-align: right;">Page 273</p> <p>1 how he can apply a growth rate to a non-existent base 2 number. So I think those numbers are totally meaningless, 3 but as we'll get to in a moment -- 4 MR. GROSSMAN: Well, I don't know if they're 5 meaningless. It's possible that he used a base number, but 6 he just didn't mention it in his report. 7 MS. CORDRY: Well, I understand that, but I don't 8 know how we can analyze things that he doesn't mention in 9 his report. This is just a number, this is a real problem 10 with this report. Numbers just float around in it, they 11 have no derivation, they don't say where they come from, 12 they don't say how they're calculated. Right now he just 13 has something is going to grow at a rate of .37 percent 14 which is going to equal 147 and you don't have what is it 15 you're requiring. 16 MR. GROSSMAN: Well, when he was cross-examined -- 17 MS. CORDRY: No. 18 MR. GROSSMAN: -- was that question asked? 19 MS. CORDRY: I don't remember if I did, but I 20 think that's really his job to put into the record. 21 MR. GROSSMAN: No, no, no, no, I mean it's his job 22 to write a report so that you understand what he is, his 23 opinion is, but he doesn't necessarily have to include every 24 background figure in his report. But that's why we have 25 cross-examination.</p>

<p style="text-align: right;">Page 274</p> <p>1 MS. CORDRY: Okay.</p> <p>2 MR. GROSSMAN: So if there's an issue of something</p> <p>3 you don't know how he derived something, it's, a simple</p> <p>4 question is how did you derive that figure of 147,400</p> <p>5 gallons --</p> <p>6 MS. CORDRY: Well --</p> <p>7 MR. GROSSMAN: -- of additional demand?</p> <p>8 MS. CORDRY: I'm not positive if we asked the</p> <p>9 question or not. I will say that it is my understanding</p> <p>10 that it is the burden of proof on the applicant to really</p> <p>11 support its position and that whether or not we have asked</p> <p>12 every question that illustrates the flaws in their report</p> <p>13 doesn't change the fact that the report does not give you</p> <p>14 any basis for where those numbers come from.</p> <p>15 MR. GROSSMAN: Well, once again, it's not -- he's</p> <p>16 an expert. He doesn't necessarily have to give every</p> <p>17 background number that went into his calculations. He's</p> <p>18 made, he's offered an opinion in this particular case that</p> <p>19 demand, there would be a demand for an additional 147,400</p> <p>20 gallons per year from residents and that's been before you</p> <p>21 for a long time. You certainly can ask that question or you</p> <p>22 can gather other information and testify that it's</p> <p>23 erroneous.</p> <p>24 MS. CORDRY: Okay. I am going to be testifying</p> <p>25 for the rest of this about why that is a unrealistic,</p>	<p style="text-align: right;">Page 276</p> <p>1 this is a segment that has been evolving over history</p> <p>2 reports. His first and second reports didn't address the</p> <p>3 concept at all, they just threw out the statement if sales</p> <p>4 grow at the same rate as population, then we will have this</p> <p>5 unsourced figure of so many gallons per year.</p> <p>6 The first time I read that, I thought, well, gee,</p> <p>7 that's kind of unusual because, you know, we have a lot of</p> <p>8 things happening in the marketplace in terms of development</p> <p>9 new car systems, higher mileage, electric cars, so forth,</p> <p>10 that it seems to me that the assumption that everything is</p> <p>11 going to grow at the same rate is not a necessarily a</p> <p>12 particularly good assumption unless you have some basis for</p> <p>13 that.</p> <p>14 The first time this was actually dealt with by Mr.</p> <p>15 Flynn was in April of 2012 when he submitted a supplement</p> <p>16 letter to the first special exception application and I</p> <p>17 would like to put that in at this point, Ms. Adelman.</p> <p>18 MS. ADELMAN: I'm sorry. I was busy reading your</p> <p>19 testimony.</p> <p>20 MS. CORDRY: She's trying to stay up.</p> <p>21 MS. ADELMAN: The good news is I know my name.</p> <p>22 MR. GROSSMAN: That's always a good starting</p> <p>23 point. Thank you. And you want me to exhibitize this?</p> <p>24 MS. CORDRY: Yes, please. Please.</p> <p>25 MR. GROSSMAN: So this is Exhibit 304 and that's</p>
<p style="text-align: right;">Page 275</p> <p>1 unreasonable and erroneous calculation, but I do think it is</p> <p>2 reasonable to also look at the fact that this report does</p> <p>3 not have pretty much any of the basic numbers that you would</p> <p>4 need to have to be able to actually make the determinations</p> <p>5 he is making as an expert, that being one of them. But if</p> <p>6 you don't have the base calculation, I don't know how you</p> <p>7 can apply the rest of this.</p> <p>8 He goes on to talk about the market areas. He</p> <p>9 talks about Wheaton being bigger than Elkridge or</p> <p>10 Beltsville. He doesn't really give any particular</p> <p>11 indications of why it's 12 million compared to the eight to</p> <p>12 nine million that's being sold at Elkridge, the 12 million</p> <p>13 at Beltsville. It might be that the number is higher, in</p> <p>14 which case Mr. Sullivan's number would have to be higher if</p> <p>15 it's not going to be higher than those numbers such as the</p> <p>16 12 million gallons at Beltsville or extrapolating up from</p> <p>17 Elkridge, it would suggest that perhaps it's because there</p> <p>18 are so many stations in this area that it isn't needed. But</p> <p>19 there really is no -- there's just no comparison again.</p> <p>20 These numbers are just put out there. There's nothing</p> <p>21 really giving you any clear indication of what they're</p> <p>22 supposed to prove.</p> <p>23 But, in any case, that's really kind of the end,</p> <p>24 almost the end of what he says. The last part he has in</p> <p>25 here is the future patterns driving and fuel economy. Now</p>	<p style="text-align: right;">Page 277</p> <p>1 April 6, 2012 letter from Tom Flynn to Lisa Tate.</p> <p>2 (Exhibit No. 304 was marked for</p> <p>3 identification.)</p> <p>4 MR. GROSSMAN: And what's this in reference to, re</p> <p>5 his needs study?</p> <p>6 MS. CORDRY: Right. And the question of future</p> <p>7 demand, future gasoline usage.</p> <p>8 MR. GROSSMAN: Okay.</p> <p>9 MR. GOECKE: And, I'm sorry, this is 304?</p> <p>10 COURT REPORTER: Yes.</p> <p>11 MR. GROSSMAN: Yes.</p> <p>12 MS. CORDRY: And this is discussing projections</p> <p>13 coming from the U.S. Energy Information Administration.</p> <p>14 It's a publication, Short-Term Energy Outlook, January 2012,</p> <p>15 talking about what's happening with gasoline usage and</p> <p>16 what's projecting out there.</p> <p>17 MR. GROSSMAN: Okay.</p> <p>18 MS. CORDRY: Among other things, projecting that</p> <p>19 energy consumption by light-duty vehicles, cars and light</p> <p>20 trucks will decline out to 2012 and then increase from 2026</p> <p>21 to 2035. So at this point projecting a decline for the next</p> <p>22 dozen years or so from that point, 13 years at that point.</p> <p>23 MR. GROSSMAN: Okay.</p> <p>24 MS. CORDRY: And that's total energy consumption</p> <p>25 by light-duty vehicles. Even with that, it talks about</p>

<p style="text-align: right;">Page 278</p> <p>1 sources of energy for transportation other than gasoline, 2 ethanol, bio-diesel and natural gas and electric are growing 3 as components of the picture. Overall, the Administration 4 has projected that gasoline consumption will grow by a total 5 of .1 million to 100,000 barrels per day during the entire 6 period from 2008 to 2035, whereas the use of diesel fuel and 7 E-85 will increase by 1 million and 1.2 million barrels per 8 day.</p> <p>9 So at this point, as of April 2012, the projection 10 was that there would be a total growth in the entire 11 national economy, and those I will proffer to you in a 12 moment, that's what this Administration report is about is 13 the national economy of 100,000 barrels a day and that 14 includes all the growth of population everywhere else people 15 might be living and so forth. So that point is obviously, 16 even at that point this growth is going to be very slight. 17 Gasoline is expected to increase slightly over the next 23 18 years.</p> <p>19 Now as it stands, that clearly is not consistent 20 with the statement that if things increase at the same rate 21 as population because a .1 million gallon per barrel day 22 increased, in the first place decreasing for 12 or 13 years 23 and then slowly increasing out is not consistent with a 24 consistent, ongoing growth of population of the next five 25 years and so forth. But -- and then when we come back to</p>	<p style="text-align: right;">Page 280</p> <p>1 MR. GROSSMAN: -- is it different? Yes, they're 2 national in the letter, they're national statistics, right? 3 MS. CORDRY: Right. And what -- 4 MR. GROSSMAN: I just wondered whether the same 5 statistics applied to this immediate area? I'm not, I'm 6 just not sure -- 7 MS. CORDRY: Right. 8 MR. GROSSMAN: -- when he makes this growth 9 projection whether we're comparing oranges and apples. 10 MS. CORDRY: Well, this is a national growth 11 projection, yes. It is not necessarily in and of itself 12 going to determine these things, but I will talk some more 13 about whether it is likely that these are going to apply 14 across the board and there's a lot more information that I 15 have on this. But to start with, the only information he's 16 putting in here about future patterns is this information 17 from the Energy Administration Agency. And in his letter 18 and in his report it's basically the same. He's looking at 19 a report that goes out through 2035 and projects only 20 100,000 barrels per day, an increase over that entire time 21 period for gasoline usage -- 22 MR. GROSSMAN: Okay. 23 MS. CORDRY: -- which is what we're talking about 24 here. Now what's important to realize is that these, and I 25 will put that information in the record, that these reports</p>
<p style="text-align: right;">Page 279</p> <p>1 his October 2012 report, he basically puts the same 2 information into his need report. It has not been updated 3 from this letter. It's pretty much saying exactly the same 4 thing.</p> <p>5 I'm sorry, I take that back. He did point out 6 that there was, that the AEO was revised in June 2012 and 7 again indicates that gasoline usage is expected to increase 8 just slightly over the next 23 years, which is consistent 9 with what we have here.</p> <p>10 MR. GROSSMAN: It's consistent with what we have 11 where? 12 MS. CORDRY: I'm sorry, we had in Exhibit 304, the 13 kind of language that's in 304 that there's a decline out 14 and then just a slight, slight increase because it's, again, 15 referring to the 100,000 barrels per day from 2008 to 2035, 16 and the increase in diesel and ethanol and E-85.</p> <p>17 MR. GROSSMAN: Do you assume that he's referring 18 in his April 6, 2012 letter to the same area of growth as 19 he's referring to in his report? 20 MS. CORDRY: Well, a good bit of it is word for 21 word, so I, and it's referring to the same kind of report 22 so, yes, these are national statistics here in these 23 reports. So -- 24 MR. GROSSMAN: Well, I just wondered whether -- 25 MS. CORDRY: Okay.</p>	<p style="text-align: right;">Page 281</p> <p>1 that the Energy Information Agency, Administration does, it 2 produces what's called a reference case which is kind of a 3 baseline case that it does. That reference case does not 4 include in it any projected changes in regulations or 5 statutes. So if Congress is considering an increase in 6 ethanol, but it has not passed yet, that doesn't go into the 7 reference case. They certainly discuss it in those reports, 8 they consider what the effects might be and so forth, but as 9 far as the reference case itself, it doesn't go in until 10 it's passed.</p> <p>11 So at this time when this was going on in the fall 12 of 2012, there were, in fact, changes being considered to 13 what are called cafe standards, which is the corporate 14 average fuel economy, and those are dramatic changes. There 15 initially were some changes that were going to go out 16 through 2012, I believe, and then they were extended again 17 and made even more stringent and they were put in place 18 roughly by the end of October 2012. And they then went into 19 future EIA projections.</p> <p>20 But let me start, before I do that, let me put in 21 first the pages from the 2012 energy report that correspond 22 to what Mr. Flynn -- 23 MR. GROSSMAN: Well, what's the, what are you 24 saying this is all establishing? 25 MS. CORDRY: Okay. What I'm going to establish</p>

<p style="text-align: right;">Page 282</p> <p>1 from this is, and from quite a few other ones, is that as of 2 now, with the fact that corporate fuel economy is going to 3 roughly double over the next 10 to 15 years, that doubling 4 the fuel economy in this country is going to result in a 5 dramatic decrease in necessary gasoline usage, even 6 considering population increases. That the current report 7 and, you know, I will go into all this, but I'll give you a 8 preview in the next five minutes because I don't think I can 9 get through all of this in five minutes, but that it 10 projects out that there will be, even with all of the 11 population increase from now out until 2040, that there's 12 projected to be baseline case about a 15 to 17 percent 13 overall decline in gasoline usage. Then that holds up even 14 if there is either low gas prices or high economic growth. 15 It picks a, the reference case uses a kind of middle of the 16 road gasoline price projection, it uses a middle of the road 17 economic projections and comes up with a certain degree of 18 projected decline in energy usage, all the -- for gasoline 19 in particular -- all the way out through 2040. 20 MR. GROSSMAN: All right. So let's see, let's 21 give this an exhibit number, Exhibit -- 22 MS. CORDRY: 3-0 -- 23 MR. GROSSMAN: -- 305. And that will be Annual 24 Energy Outlook -- 25 MS. CORDRY: Right.</p>	<p style="text-align: right;">Page 284</p> <p>1 got probably about a half hour more. 2 MR. GROSSMAN: Okay. 3 MS. CORDRY: A half hour to 45 minutes. 4 MR. GROSSMAN: So we will continue -- 5 MS. CORDRY: Okay. 6 MR. GROSSMAN: -- at the next -- 7 MS. CORDRY: That's why I was just saying, let me 8 just sort of give you a couple pieces out of here and then 9 we can -- 10 MR. GROSSMAN: Okay. 11 MS. CORDRY: -- look through that. 12 MR. GROSSMAN: All right. So -- 13 MS. CORDRY: Just to be clear, this one does have 14 the language in it. It talks about the reference case. It 15 talks about on page 28 the energy -- this is talking about 16 what the energy impacts would be of these cafe standards 17 which are not, let's see, are these the ones he had in 18 place? Yes, I think at this point it's discussing, yes, at 19 this point this one was discussing proposed cafe standards 20 and what they would do in the future, but these were not yet 21 in effect, so they were not yet in that referenced case. 22 But it's indicating some of the things that could happen and 23 shortly after this report, a few months after this report 24 they were, in fact, put into place and they are going 25 forward and are happening and that's, you know, the rest of</p>
<p style="text-align: right;">Page 283</p> <p>1 MR. GROSSMAN: -- 2012 with projections to 2035. 2 MS. CORDRY: Correct. 3 (Exhibit No. 305 was marked for 4 identification.) 5 MS. CORDRY: And what they do with these is that 6 there's an early one that comes out either late, very late 7 fall or early in the year. That's the one he was referring 8 to in January 2012. And then the actual outlook comes out 9 in mid-year. So this was the updated version of that, the 10 June 2012, which he refers to in his report, that the 11 Administration revised the AEO in June 2012. So this is the 12 June 2012 revisions that he's referring to in his report. 13 MR. GROSSMAN: Okay. And you say that they show 14 that there will be a decline of 15 to 17 percent in gas 15 usage? 16 MS. CORDRY: That would actually be the next 17 year's report. The current report that we are currently 18 dealing with, which will be the next exhibit I put in. 19 MR. GROSSMAN: I see. 20 MS. ADELMAN: Do you want that now? 21 MS. CORDRY: Let me just focus on this one a 22 little bit and just -- 23 MR. GROSSMAN: Well, we don't really have too much 24 time to focus. 25 MS. CORDRY: Right. Well, I've got a fair, I've</p>	<p style="text-align: right;">Page 285</p> <p>1 what I'll -- 2 MR. GROSSMAN: Okay. 3 MS. CORDRY: -- talk about. 4 MR. GROSSMAN: I think that's yours. 5 MS. CORDRY: Thank you. 6 MR. GROSSMAN: Okay. Is there anything else that 7 we have to address before we adjourn until our next session, 8 which is actually October 17, as I have it on my calendar, 9 is that correct? Does everybody agree with that? Anything 10 else that needs to be addressed at this point? 11 Okay. Then we are adjourned until then. 12 MS. CORDRY: Well, now I have to sort out -- I 13 still have to keep some of these exhibits straight and some 14 not. 15 (Whereupon, at 4:44 p.m., the hearing was 16 adjourned.) 17 18 19 20 21 22 23 24 25</p>

. Digitally signed by Tracy M. Hahn

ELECTRONIC CERTIFICATE

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

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

By:

Tracy M. Hahn, Transcriber

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