

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

## A P P E A R A N C E S

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## C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Karen Cordry	9/207			
Diane Cameron	179			
By Ms. Harris		188		
By Ms. Cordry		198		
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By Ms. Harris				201

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## P R O C E E D I N G S

1  
 2 MR. GROSSMAN: Okay. This is the 15th day of the  
 3 public hearing in the matter of Costco Wholesale  
 4 Corporation, Board of Appeals No. S-2863, OZAH No. 13-12, a  
 5 petition for special exception pursuant to Zoning Ordinance  
 6 Section 59-G-2.06. to allow petitioners to construct and  
 7 operate an automobile filling station which would include 16  
 8 pumps. The subject site is located at 11160 Veirs Mill  
 9 Road, Silver Spring, Maryland, Lot N, 631 Wheaton Plaza,  
 10 Parcel 10, also known as the Westfield Wheaton Mall, and is  
 11 zoned C-2, which is general commercial.

12 The hearing was begun on April 26, 2013, resumed  
 13 on May 1, May 6, May 23, June 4, June 17, June 19, July 8,  
 14 July 30, July 31, August 2, September 9, September 16,  
 15 September 20, and now it's September 23. It is noticed to  
 16 resume again today. The next session has been noticed for  
 17 Thursday, October 17, here in the second floor OZAH Board of  
 18 Appeals hearing room in the Council office building at 9:30  
 19 a.m.

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

1 MR. BRANN: Erich Brann for Costco. Good morning.  
 2 MS. HARRIS: Good morning. Pat Harris.  
 3 MR. GOECKE: Mike Goecke for Costco.  
 4 MS. DUCKETT: Eleanor Duckett, Kensington View  
 5 Civic Association.  
 6 MS. ADELMAN: Abigail Adelman, Stop Costco Gas  
 7 Coalition.  
 8 MS. SHEARD: Virginia Sheard, Kensington View.  
 9 MR. GROSSMAN: All right.  
 10 MS. CORDRY: And I would note I am here on behalf  
 11 of Kensington Heights Civic Association. Our attorney,  
 12 Michele Rosenfeld, had some issues come up that she wanted  
 13 to deal with today and we decided I could hold my own  
 14 probably, so she will not be here today.  
 15 MR. GROSSMAN: I have no doubt about that, Ms.  
 16 Cordry. Name yourself for the record.  
 17 MS. CORDRY: Karen Cordry.  
 18 MR. GROSSMAN: Okay.  
 19 MS. CORDRY: And I would just hopefully reserve  
 20 the right to perhaps raise a question or two, my own  
 21 objection if something comes up.  
 22 MR. GROSSMAN: Absolutely you have that right.  
 23 MS. CORDRY: Thank you.  
 24 MR. GROSSMAN: Okay. Let's see if I have any -- I  
 25 don't really have much in the way of preliminary matters

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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

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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

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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.

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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?

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

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

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

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.

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1 MR. GROSSMAN: I can't see.  
2 MS. CORDRY: I'm sorry. Here's Stephen Knolls  
3 School.  
4 MR. GROSSMAN: All right.  
5 MS. CORDRY: St. Margaret's Drive, and the next  
6 street over is Torrance. I live on the south side of  
7 McComas (phonetic sp.) Avenue here. So I, as my, as the  
8 real agent said when I was looking at the house, all you  
9 have to do is walk up there and walk up the staircase and  
10 you're in the mall.  
11 MR. GROSSMAN: So are you just outside of the area  
12 that was defined as the general neighborhood by the  
13 Technical Staff?  
14 MS. CORDRY: Yes. I think I'd probably be a  
15 couple hundred feet outside that limited area, but obviously  
16 my walk every day, except when it rains and I get lazy and I  
17 drive down into work, 90 percent of the time I take the  
18 Metro, so I walk up here, I walk through the other block  
19 with Torrance, I walk up the staircase, I walk across the  
20 parking lot and the, out here across there into the Metro  
21 area and into the station and take the Metro downtown.  
22 MR. GROSSMAN: Okay.  
23 MS. CORDRY: And, obviously, I shop at the mall, I  
24 am familiar with the gas stations around the mall and use  
25 them from time to time.

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1 Among the reasons I moved was because rather than  
2 a 15-minute walk, I appreciated the fact that I'm now about  
3 an eight to 10-minute walk to the Metro and I would like to  
4 stay in that home until I get too old to walk and climb  
5 stairs, and then I want to move into one of the apartments  
6 where I can just take the elevator down to the Metro and  
7 maybe still wear my bathrobe. I haven't quite decided that  
8 yet, but so anyway. This is the community where I live, I  
9 support, I have a strong interest in ensuring it remains a  
10 vibrant, livable area for my neighborhood generally and  
11 Wheaton as a whole.  
12 Because of my interest in this area, I volunteered  
13 in 2005 to become a member of the Wheaton Redevelopment  
14 Advisory Committee and I chaired that group in 2008 and  
15 2009. So I have been involved in looking at plans for  
16 development activities in Wheaton for a number of years. I  
17 supported virtually all of them. There was a few we had  
18 some concerns with and we talked, you know, a number of  
19 those concerns through, some, well, probably only about one  
20 which was something Lindsey Ford wanted to do with the  
21 parking lot was one that really raised, you know, serious  
22 community concerns and --  
23 MR. GROSSMAN: Excuse me. Is it my imagination or  
24 is there a light blinking?  
25 MS. CORDRY: No, you're right.

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1 MR. GROSSMAN: Which one is it?  
2 MS. ADELMAN: It's, I think, that one on the end.  
3 MR. GROSSMAN: The far --  
4 MS. ADELMAN: Yes.  
5 MR. GROSSMAN: -- the far one? Okay. So I need  
6 to get somebody here to -- all right. I'm sorry. Go ahead.  
7 MS. CORDRY: Sure. No problem. I think that one  
8 was eventually dropped. They just, I think, ended up not  
9 meeting the space that they were looking at. But in any  
10 case, we've certainly worked with the developers who wanted  
11 to build the BB&T Building. We developed the BB&T Building.  
12 That, again, with the economy fell through, but we looked at  
13 the Wendy's, we looked at quite a few other developments  
14 that were going on and certainly the whole idea of trying to  
15 redevelop the core, connect the mall and the core of  
16 Wheaton.  
17 I went to many, many sector plan meetings as well  
18 and so forth. So that's something I've been following and  
19 been very involved with for quite a few years. And all of  
20 that went into the kind of background I had when I was  
21 looking at this proposal. So what I would like to do is  
22 just start with this, to just give a quick overview of our  
23 position on the needs issues as sort of a road map of what  
24 I'm going to talk about today and then come back and discuss  
25 the points in depth.

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1 MR. GROSSMAN: So from our view and, well,  
2 actually I think this is clear from the code, an absolute  
3 prerequisite for a special exception request for a gas  
4 station in Montgomery County is that there be a need for  
5 such a station to, quote, serve the population in the  
6 general neighborhood considering the present availability of  
7 identical or similar uses to that neighborhood, unquote.  
8 And that's Section 59-G-1.24(i). And that's labeled, quote,  
9 neighborhood need. And in all of the reading and analysis  
10 that I've seen, there's basically been two kinds of analyses  
11 used with respect to that issue. In our view, the station  
12 cannot be justified under either one.  
13 Before we get into those analyses, the sort of  
14 starting point we look at is that need is a counterbalance  
15 to burden that the need requirement in the statute only  
16 really makes sense when it's analyzed as being a trade-off  
17 to the inherent adverse effects of the station. The more a  
18 station is needed, the more appropriate it is to allow the  
19 burdens to be imposed on the community and vice versa. The  
20 need issue underscores and compliments all of the other  
21 substantive requirements in the special exception  
22 provisions. If there's a real need for the station --  
23 MR. GROSSMAN: Excuse me. I'm going to turn off  
24 these lights because they are continually blinking --  
25 MS. CORDRY: Okay.

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

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

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.

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 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

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1 that property as I recall.  
2 MS. CORDRY: He was showing us development designs  
3 for a water management as well that indicates they've had a  
4 number, number of meetings. I believe the site plan has  
5 been approved. It is --  
6 MS. ADELMAN: I believe it is also.  
7 MS. CORDRY: It is certainly moving forward. If  
8 you want, we can certainly put that into the record. We  
9 have the Safeway development going in just north of the  
10 Metro station. We have a computer sciences building just  
11 south of there which is building up additional residential  
12 spaces above there. The current zoning for the mall allows  
13 for a hotel to be placed on the mall and that's being  
14 retained in the zoning update.. The zoning update proposes  
15 to put the mall -- the section right along here would be a  
16 CR zone and the rest of the mall would be retained in what's  
17 called a general --  
18 MR. GROSSMAN: Just for the record, when you say  
19 along here, you're talking --  
20 MS. CORDRY: I'm sorry, along University  
21 Boulevard?  
22 MR. GROSSMAN: -- along the north, along  
23 northeastern --  
24 MS. CORDRY: I'm sorry, along Veirs Mill.  
25 MR. GROSSMAN: The northeastern border --

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1 MS. CORDRY: Right.  
2 MR. GROSSMAN: -- of the site. Oh, no, not the  
3 site, of the mall.  
4 MS. CORDRY: Right. But the main body of the mall  
5 would be retained as a, what we call a general retail  
6 category. But that would also now have a residential  
7 component allotted of up to 30 percent. So, again, there's  
8 every possibility that there can be housing on the mall on a  
9 going forward basis. There are a number of malls in the  
10 Washington area that are being redeveloped with malls, with  
11 housing in the malls, White Flint, Laurel, Landmark, all of  
12 those.  
13 MR. GROSSMAN: Well, I think you're a bit far  
14 afield, but let's assume for a second that you are correct  
15 that there is a possibility of all these things. I can't  
16 really consider the zoning rewrite that's being contemplated  
17 by the Council now because it's not, has not been approved  
18 and there's who knows what the Council will or will not  
19 approve there. But my other question would be aren't the,  
20 if assuming there's additional development there, doesn't  
21 that cut against your argument that there's no need because  
22 there would be more development?  
23 MS. CORDRY: No, because the kind of development  
24 we're doing, this I will get to at the end, Wheaton is at  
25 the forefront of the mixed use, transit-oriented development

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1 which has very few numbers of automobile trips relative to  
2 the number of people being added. Certainly a small, you  
3 know, there will be a small number of additional trips. But  
4 the whole point of the kind of development we're doing and  
5 putting development directly on top of existing retail,  
6 directly next to transit, is precisely to reduce the amount  
7 of auto-related that will go forward. And what you will see  
8 at the end is that there is protections over the spike in  
9 population growth that automobile usage and gasoline usage  
10 are going to continue to decline in this country out through  
11 2040.  
12 So I think it is, also I think it's not  
13 unreasonable to be looking at what's going on. The zoning  
14 update has been in process for years. It is very far along  
15 in the process. I don't think there's any controversy  
16 whatsoever about some of these pieces and the zoning, the  
17 special exception process, I believe, also talks about not  
18 interfering with the logical development of the area or  
19 words to that effect. And certainly the logical development  
20 in this area includes those kind of things that are going  
21 on. There is a very strong trend in this direction and  
22 certainly the Council is well in the forefront of doing  
23 these things. I don't think it's reasonable to just set  
24 that aside and not look at that as part of the logical  
25 development that's going on and I believe that's also part

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1 of what -- two things. One, what the Planning Board was  
2 looking at when it weighed its recommendation to deny  
3 approval in the spaces. And, second, if you look at the  
4 sector plan, it specifically says we are rezoning portions  
5 of the mall as CR because those portions are more workable  
6 in terms of the kind of very -- CR has kind of a very  
7 specific set of approaches of the way it does mixed use in  
8 terms of where parking is and how much retail space on the  
9 first floor and so forth.  
10 And what they said was the, putting that kind of  
11 control over the entire mall might not be practical, but it  
12 also said the rest of the mall is going to be looked at as  
13 part of the general zoning process that is going on at this  
14 moment. So the sector plan clearly contemplated dealing  
15 with the rest of the mall as part of this.  
16 MR. GROSSMAN: I think it's perfectly acceptable  
17 to look at the sector plan, especially since it was recently  
18 approved.  
19 MS. CORDRY: Right.  
20 MR. GROSSMAN: I don't believe that the Planning  
21 Board said anything in their letter to me about the zoning  
22 rewrite. They based their 3-2 opinion on the sector plan.  
23 MS. CORDRY: Right.  
24 MR. GROSSMAN: And I am, I'm not prepared to  
25 second guess what the Council may or may not do on the

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1 zoning rewrite.  
2 MS. CORDRY: I understand that.  
3 MR. GROSSMAN: I'm quite familiar with the zoning  
4 rewrite having been involved in the process, but I don't  
5 think that it would be appropriate for me to base any  
6 conclusions on a rewrite that has not been approved, that is  
7 still in committee.  
8 MS. CORDRY: Right.  
9 MR. GROSSMAN: So --  
10 MS. CORDRY: I do believe it will be out of  
11 committee well before we, into this process. But in any  
12 case, but I do believe the, as I say, the sector plan itself  
13 points directly at the zoning, ongoing zoning process. So I  
14 think they are all tied together, the point being that it's  
15 simply, these are things that all, in the mix all can be  
16 considered and whether it's binding or not, our point is  
17 simply at this point in time and the need discussion is if  
18 you do not need the station, why would you put it in the mix  
19 and have the possibility of interference with these kind of  
20 processes?  
21 We've heard a lot about health. We're going to  
22 hear a lot more. Certainly if you end up with a hotel,  
23 which is part of the zoning on the mall anywhere near the  
24 gas station, there would be issues there. If you put  
25 housing on the mall, you raise, you know, additional issues

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1 here. The question is simply, we simply say need underlies  
2 all of those other points.  
3 Now I will say that in terms of the basic concept  
4 of need, I've seen some suggestions in some of the special  
5 exception decisions and some discussions I've had that  
6 somehow it's supposed to be looking at some kind of  
7 requirement that the County has to sign, that there's going  
8 to be a need so as to ensure that the applicant can succeed  
9 in its business plan and the counter-argument that the  
10 County shouldn't be in the business of telling an applicant  
11 whether its model is successful or not.  
12 I, and as I indicated, say that we certainly agree  
13 that the County is not in the business of regulating  
14 entrepreneurial decisions or guaranteeing business success  
15 for someone who wants to operate here.  
16 MR. GROSSMAN: Well, it is in the business of the  
17 first, the regulating part of it.  
18 MS. CORDRY: Well --  
19 MR. GROSSMAN: Not guaranteeing success.  
20 MS. CORDRY: That's what I mean in the sense of --  
21 MR. GROSSMAN: But it is certainly part of the  
22 regulating --  
23 MS. CORDRY: Well, I meant regulating in that  
24 sense of trying to decide whether you're making a good  
25 business judgment or not. I would agree that is not the

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1 point of the need regulation. To be said that it's been  
2 suggested that somehow that's what Wheaton is about, we  
3 think that completely confuses it and I don't, I have a hard  
4 time seeing how anything comes out of the language that's in  
5 the statute.  
6 MR. GROSSMAN: So you don't think that need is at  
7 all a market-based material?  
8 MS. CORDRY: Well, I think, I think that obviously  
9 the question of what the market needs, what it demands,  
10 what's supplied, what capacities -- I think those are all  
11 issues there. But in the sense of if the applicant thinks  
12 it can find some way to operate and make money, that does  
13 not necessarily indicate that there is or is not a need. I  
14 don't view that as simply the operative question or,  
15 conversely, that as I've read in at least one decision,  
16 well, if the applicant is willing to go ahead, that's all we  
17 need to do to show need because we're just not in the  
18 business of telling them they can't try. I think that --  
19 MR. GROSSMAN: Well, you said one decision. What  
20 decision is that?  
21 MS. CORDRY: I'd have to go back and find the one,  
22 but there was one I read in passing that just sort of, well,  
23 we marked it, well, fine, you know if they want to go ahead,  
24 go ahead. Why should we tell them not to? I will get to  
25 some other ones, but that one seemed to me to be so far off

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1 the mark that I didn't really bring that one in here to put  
2 in.  
3 But our view, again, is that the point of need is  
4 to balance the burdens inherent and non-inherent that's  
5 being proposed by one of these special exception uses. All  
6 of the other requirements in the special exception do serve  
7 the purpose of limiting and conditioning the impact of the  
8 special exception. We don't see why need would be any  
9 different.  
10 MR. GROSSMAN: Well, I'm a little concerned about  
11 your analytical framework here. I wouldn't dispute that  
12 there's a balancing that has to take place, but doesn't that  
13 balancing come after we decide on whether or not the  
14 applicant has met the criteria for whatever they are for  
15 need? The balancing issue is something that the Board of  
16 Appeals will have to do, clearly, but isn't that a different  
17 question? It's not really the question of need. Aren't  
18 you --  
19 MS. CORDRY: No, I --  
20 MR. GROSSMAN: -- going beyond what is meant by  
21 anybody's interpretation of need?  
22 MS. CORDRY: No, I don't think so because I think  
23 it's simply a matter of when you start thinking about need  
24 and it also is a question when you're dealing with a need,  
25 I'm sort of starting with the underlying balance of why are



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1 we talking about need at all.  
2 MR. GROSSMAN: Well, we're talking about need  
3 because it's a statutory requirement.  
4 MS. CORDRY: I understand, but --  
5 MR. GROSSMAN: For this particular special  
6 exception, it is not for most of the special exceptions  
7 imposed.  
8 MS. CORDRY: I understand and I think that's  
9 because, and I'll get here in a moment, that these  
10 particular ones in particular have invariant uses and are  
11 perhaps even more burdensome than some of the other ones  
12 and/or there are some other reasons here. I'm sort of  
13 setting up a framework of why isn't there and then we'll get  
14 to the test. And I would contradict or, you know, suggest  
15 there is a difference between a gas station patrol and a  
16 neighborhood need and 59-G-1.25 that describes other uses as  
17 being County needs.  
18 MR. GROSSMAN: Right. Clearly, there's a  
19 different standard --  
20 MS. CORDRY: Right.  
21 MR. GROSSMAN: -- different parts of the code.  
22 MS. CORDRY: Right. And right next to each other  
23 but, yes, clearly different needs there and our review is  
24 because gas stations are put under neighborhood need, so  
25 Council clearly intends that they should be looked at in the

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1 neighborhood mode, the traditional mode of a relatively  
2 small-scale operation catering to a local area. Larger,  
3 regional operations are not envisioned as being appropriate.  
4 And certainly in our view these requirements  
5 control over the proposal of an applicant. The applicant  
6 can structure business operations in a proposal in any way  
7 it wants to, but that doesn't mean that the standard  
8 changes. The applicant has to meet the standard, not vice  
9 versa.  
10 So that, a preliminary background. The first view  
11 I think one could take of need would be the need as some  
12 form of a necessity. Most people when they would read that  
13 dictionary language or, I'm sorry, that statutory language,  
14 it's known that need usually means, in the dictionary, one  
15 would seem to think it would require some showing of  
16 unavailability of service or lack of capacity to serve the  
17 community, i.e., you would need more stations after  
18 considering what uses are already available to you to  
19 fulfill the demand in that neighborhood. So then you would  
20 look to see what's already in the neighborhood.  
21 Then you have to define the neighborhood and the  
22 prior cases I have looked at use, they don't have a rigid  
23 standard. It's a pragmatic test. It looks at the area  
24 there and considers the existing residential and business  
25 developments, tries to pick out some natural dividing lines.

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1 In the earliest discussions we had with Park and Planning,  
2 which, you know, late 2010 or early 2011 I believe it was,  
3 with the prior exception it was suggested that a roughly  
4 seven minute driving radius made sense and we looked at it  
5 on a map in the, this exhibit, which is 217, back up. I  
6 don't know that we, when we discussed that, I don't believe  
7 we had this precise exhibit there, but we were looking at a  
8 map and it was being pointed out that that would run roughly  
9 over through the Kensington area down to roughly on the west  
10 side, down roughly to the Beltway and Georgia on the south  
11 side over to the Four Corners area on the east and up to the  
12 Randolph Road area, Randolph and Georgia, Randolph and Veirs  
13 Mill kind of area on the north.  
14 MR. GROSSMAN: Yes, it's that red, ziggy line.  
15 MS. CORDRY: Right. Well --  
16 MR. GROSSMAN: And I think the -- you had to  
17 testify about that and said that it was, we wondered why it  
18 was that ziggy, he testified about that, how it was  
19 comparable.  
20 MS. CORDRY: Right. Right.  
21 MR. GROSSMAN: So we did have the exhibit.  
22 MS. CORDRY: Okay. Well, no, no, no. I'm talking  
23 about when I met, when we met with Park and Planning.  
24 MR. GROSSMAN: Oh, I see.  
25 MS. CORDRY: And we clearly did not have this

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1 ziggy line exhibit and when we were talking with them about  
2 it, it was not discussed in terms of a ziggy line in the  
3 exhibit. We were talking a roughly a seven minute radius,  
4 roughly where did that go out to and those appeared to be  
5 fairly sensible sort of boundaries to look at in that area.  
6 Within that boundary, again, leaving aside the  
7 zigzag that we'll talk about in more detail over by Four  
8 Corners, when we got over to Four Corners, we counted 30  
9 stations in the area. I understand he wants to count --  
10 three is not in there, but somewhere between 27 and 30  
11 stations in the area. And that appeared to us to be a lot  
12 of stations for a very limited area and we certainly were  
13 not aware of anywhere else and Park and Planning never  
14 suggested there was anywhere else that had higher ratios of  
15 stations.  
16 Certainly, again, assuming that a Costco gas  
17 station is somehow unique, there's already such a station  
18 within the driving range that the Council suggests that it  
19 draws from for its stations. So in our view there was no  
20 necessity for this station and Mr. Flynn actually conceded  
21 as much in his testimony, stated in that fashion was there  
22 any need or lack of supply, lack of capacity in this area.  
23 MR. GOECKE: I would like to object. That's a  
24 mischaracterization of his testimony.  
25 MS. CORDRY: It is not a mischaracterization.

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1 MR. GROSSMAN: All right. Well, let's just, let's  
2 put it this way. There are going to be, obviously, two  
3 different views of his testimony and his testimony will  
4 speak for itself.  
5 MS. CORDRY: I mean I --  
6 MR. GROSSMAN: So I'm going to, I'm not going to  
7 sustain the objection as such, but we recognize that this is  
8 Ms. Cordry's interpretation of his testimony.  
9 MS. CORDRY: I will get through that point of his  
10 testimony and that is not a mischaracterization. That is  
11 exactly what he testified to.  
12 MR. GROSSMAN: Well, that's, once again, that's  
13 subject to interpretation --  
14 MS. CORDRY: We will get to that.  
15 MR. GROSSMAN: -- based, whatever his testimony  
16 is, it is, what it is as I like to say.  
17 MS. CORDRY: And we will get to that and I will  
18 quote from that, but --  
19 MR. GROSSMAN: All right.  
20 MS. CORDRY: -- he, and as I say, further on down  
21 here I have it actually quoted, but it's roughly, he said  
22 basically I didn't think my job here was look at things of  
23 supply and capacity. So we will get -- I'll come back to  
24 that when we get there.  
25 The other obviously test that comes up often is a

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1 question of need as some form of simple usefulness I'll call  
2 it, a broader, more amorphous standard has been used in some  
3 of the case law, whether it would be, quote, expedient,  
4 reasonably convenient and useful to the public, words to  
5 that effect.  
6 MR. GROSSMAN: That's Lucky Stores or --  
7 MS. CORDRY: I, it may have come out of there. It  
8 may come out of some other places. I will be discussing  
9 Lucky Stores in detail a little further on.  
10 MR. GROSSMAN: All right.  
11 MS. CORDRY: To whatever extend that that should  
12 be used as a compliment to the current language in the  
13 statute which has changed somewhat since the Lucky Stores  
14 case, we do not believe it can satisfy that broader  
15 definition either for several reasons. First, it will only  
16 serve about 25 percent of the neighborhood. The remaining  
17 75 percent will not benefit from or use the station. So  
18 when you talk about the general neighborhood, you're already  
19 only talking about a maximum possibility of 25 percent  
20 having any value.  
21 Second, we will provide nothing that is not  
22 already available in great abundance from other stations.  
23 It does not sell diesel or kerosene or E-85 ethanol type  
24 gasoline or any other unique product. It does not provide  
25 electrical charging services. It does not provide air or

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1 water or cleaning solutions for your windshield. It does  
2 not provide restrooms. And as was stated in Mr. Guckert's  
3 testimony, not only will it not sell any convenience items,  
4 no, he scoffed at the idea that the warehouse cannot be  
5 considered some form of, quote, super-sized convenience  
6 store. And that's in his May 1st testimony.  
7 Mr. Gang's land use report also disavowed any  
8 claim that this would be a station with a convenience store.  
9 The store is expected to pump about 12 million gallons a  
10 year, that's four to eight times the size of a typical gas  
11 station of 1.5 million gallons. The range in this County  
12 is, for most stations is about one to perhaps 2.5 million  
13 gallons. A very few such as the Freestate on Veirs Mill  
14 pumps about 3.4 million gallons per year. This station is  
15 well beyond those. And I would like at this point, on that  
16 point to submit the, part of the staff packet for the ZTA.  
17 And Ms. Adelman is going to hand that out.  
18 MS. ADELMAN: This is my new role.  
19 MR. GROSSMAN: Don't trip on any of the wires that  
20 may be down here.  
21 MS. ADELMAN: Let me do this properly. If I  
22 disappear, Mr. Grossman, you'll know.  
23 MR. GROSSMAN: We'll send out a search party.  
24 MS. CORDRY: No, I think that's just the, I think  
25 that's the first six pages or so of the ZTA. In particular,

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1 if you can look at page 4 that talks about size of the  
2 station, page 6 and so forth, that discusses this and I  
3 think it's been pretty well discussed in various testimony  
4 here and so forth that the million and a half, million to 2  
5 million gallon station is the norm in this area.  
6 MR. GROSSMAN: All right. So this is Exhibit --  
7 MS. ADELMAN: Mr. Grossman, may I ask --  
8 MR. GROSSMAN: Yes?  
9 MS. ADELMAN: -- if this memorandum in its  
10 entirety has been submitted as an exhibit previously?  
11 MR. GROSSMAN: We're talking -- all right. That's  
12 a question I don't remember the answer to. This is Agenda  
13 Item 10, July 24, 2012. The memorandum of July 20, 2012  
14 from Jeb Ziance (phonetic sp.), legislative attorney to the  
15 County Council regarding zoning text amendment 12-07. Does  
16 anybody recall if the entirety of this memo has been  
17 submitted into the record?  
18 MS. HARRIS: I know the legislation itself has  
19 been -- the resolution was, I don't know that the memo was.  
20 I thought --  
21 MR. GROSSMAN: Right. Well, I know we put the  
22 resolution --  
23 MS. HARRIS: Right.  
24 MR. GROSSMAN: -- of the Council in there. Does  
25 anybody dispute that this would be fairly part of the

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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.

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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

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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?

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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.

1 MR. GROSSMAN: All right.  
 2 MS. CORDRY: I have documents. I have copies. I  
 3 have -- all of that will come in.  
 4 MR. GROSSMAN: Because there's a significant  
 5 hearsay aspect to what you're saying here. I just want to  
 6 make sure that as, although --  
 7 MS. CORDRY: Right.  
 8 MR. GROSSMAN: -- some hearsay is permitted in  
 9 this type of proceeding, we certainly want to have the best  
 10 evidence of it rather than your recollection --  
 11 MS. CORDRY: Right.  
 12 MR. GROSSMAN: -- of what --  
 13 MS. CORDRY: Right.  
 14 MR. GROSSMAN: -- the Federal Government --  
 15 MS. CORDRY: No, I am just summarizing here for  
 16 the framework and then we'll come back to that --  
 17 MR. GROSSMAN: All right.  
 18 MS. CORDRY: -- a lot of this stack here is those  
 19 kind of papers.  
 20 MR. GOECKE: Mr. Grossman, I would like to object  
 21 to the relevancy to the extent we have spent a lot of time  
 22 talking about future trends. The standard in the code is is  
 23 there a need today, not five years from now or 10 years from  
 24 now or 20 years from now. So just in the spirit of  
 25 efficiency, I'm not sure that it's useful to us to spend a

1 lot of time talking about what people are speculating is  
 2 going to happen in the future.  
 3 MS. CORDRY: Well --  
 4 MR. GROSSMAN: I'm going to overrule that  
 5 objection because I'm going to give you some leeway to, is,  
 6 when you say need today, I don't know how long today is and  
 7 today may be need over the next year, today may be need  
 8 right at this second, maybe over the life of the station.  
 9 So I'm certainly going to give her some leeway in making her  
 10 point about this.  
 11 MS. CORDRY: And I would note that Mr. Flynn's  
 12 report spends a fair amount of time talking about his not  
 13 particularly documented suggestions about what need may  
 14 happen in the future. He certainly also puts in projections  
 15 about population and households and jobs, so --  
 16 MR. GROSSMAN: That's true.  
 17 MS. CORDRY: -- I think I have every right to  
 18 respond to his projections about future need.  
 19 MR. GROSSMAN: Yes. But I overruled the  
 20 objection.  
 21 MS. CORDRY: Thank you.  
 22 MR. GROSSMAN: So you don't have to continue  
 23 arguing.  
 24 MS. CORDRY: Thank you. All right.  
 25 MR. GROSSMAN: Yes?

1 MS. ADELMAN: That was my point, Mr. Grossman,  
 2 that I did read that information in Mr. Flynn's report.  
 3 MR. GROSSMAN: All right. Thank you.  
 4 MS. CORDRY: All right. So, in any case, the  
 5 point being that any sales obtained by any new station going  
 6 forward can be expected to be essentially cannibalizing  
 7 sales from existing stations. We don't, no longer have the  
 8 idea of a rising tide lifting all boats or an expanding  
 9 market into which stations can operate. New stations are  
 10 going to take sales from old stations.  
 11 According to data that I will put in from the  
 12 National Association of Convenience Stores, the stations are  
 13 now operating on one of their lowest percentage profit  
 14 margins in many years thus, again, any loss of sales would  
 15 erode a very narrow profit base for existing stations. I  
 16 just cite you back to Mr. Yusef Fia (phonetic sp.), I  
 17 believe is how we pronounce his name, his testimony, the gas  
 18 station operator who pointed out the strong likelihood of  
 19 sales being, and stations closing. I expect there's going  
 20 to be other testimony from other gas station operators to  
 21 that extent. Our point being here, in terms of overall  
 22 benefit to the, quote, general neighborhood, if stations  
 23 close, if 75 percent of the population is not going to use  
 24 this station and if, instead, it results in other local  
 25 stations closing that the local population does use, then

1 that 75 percent is going to suffer a net loss of benefits  
 2 and net loss of capacity in this area is not going to  
 3 benefit.  
 4 Moreover, that potential, and I think very real  
 5 potential for loss of overall uses in this area would affect  
 6 not only the 75 percent, but it would also affect the Costco  
 7 members for all of the time period when Costco stations are  
 8 not open. And if you have to remember that they operate  
 9 much more limited hours than many other gas stations and  
 10 they provide, as we have, as I noted above, no services  
 11 apart from gas. So if a Costco member needs to buy gas at  
 12 midnight on a Saturday, as Mr. Flynn was talking about, he  
 13 doesn't have the choice of buying it at Costco. He's going  
 14 to have to buy it at one of those stations on University  
 15 Boulevard that Mr. Flynn was denigrating.  
 16 Perhaps they might be as, not as pretty as the  
 17 Costco station. Perhaps not, I'll leave that aside for the  
 18 moment. But that's where he's going to need to have to go.  
 19 If he needs to fill up his tires, he needs to go to a  
 20 station that is open. I will say one of the things we did  
 21 talk about when I was on rack was the changeover of when the  
 22 gas station that was at the opening of the Wheaton Mall, I  
 23 believe there's a Shell closed and now there's a Wendy's  
 24 there, I really miss that station because it had air and I  
 25 would fill my tires on a number of occasions at that

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

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.

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

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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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.

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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.



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1 MR. GROSSMAN: -- the need issue --  
2 MS. CORDRY: Right.  
3 MR. GROSSMAN: -- based on the access --  
4 MS. CORDRY: Right.  
5 MR. GROSSMAN: -- to that Shell station.  
6 MS. CORDRY: Right. I understand. My point being  
7 only a couple of things. Number one, as we'll see later on,  
8 Mr. Flynn was not nearly as doctrinaire in his prior report  
9 about exactly which stations you included, if they were  
10 right at the edge of the boundary and were available to  
11 people in that market area, he has included those. So I  
12 would certainly say on that basis we could include them.  
13 Certainly in terms of the people who live in the area, I  
14 don't think would decide whether or not they would buy here  
15 or go over to the mall based on the squiggly diagrams. And  
16 it's just another example of the fact that the one thing  
17 that this Claritas report is not gospel either. It does  
18 have some errors in it.  
19 So from our perspective, there are 30 stations.  
20 In his perspective, 27. And as we'll see with some of the  
21 ratios, I say whether you use 27 or 30, it's a very large  
22 number. Thirty is kind of a nice, round number when you get  
23 to it. So --  
24 MR. GROSSMAN: And you also realize that I haven't  
25 made any decision as to whether or not I accept the analysis

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1 for the general neighborhood being the squiggly line area or  
2 the much smaller area that is defined by, as defined by  
3 Technical Staff as I mentioned earlier. So we had  
4 testimony --  
5 MS. CORDRY: Right.  
6 MR. GROSSMAN: -- using both.  
7 MS. CORDRY: Well, Technical Staff, it's been kind  
8 of interesting because throughout the entire process when we  
9 discussed with them and throughout these three reports we've  
10 all used some variation on the seven minute driving radius,  
11 whether we tried to be absolutely doctrinaire about it,  
12 whether we use an approximation, whether we use this, we  
13 basically use this area to discuss and that's what's been  
14 the focus of Mr. Flynn's reports for the last three years.  
15 It was what when we talked to Park and Planning Staff was  
16 understood was what they were working with. And it does  
17 present a set of fairly logical, pragmatic boundaries. It  
18 does appear to be within the kind of concept of what I have  
19 seen in reading other special exception reports.  
20 MR. GROSSMAN: That's true and which is why we  
21 look at it, but the problem is, as Ms. Rosenfeld and you, I  
22 believe, brought to my attention, that's not the general  
23 neighborhood as defined in the zoning ordinance or as  
24 defined by Technical Staff for this particular case. So it  
25 does raise a question as to whether or not the Council meant

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1 by using the term general neighborhood there to mean the  
2 general neighborhood as it is usually interpreted for land  
3 use purposes for this later arrived at concept of market  
4 area.  
5 MS. CORDRY: Okay.  
6 MR. GROSSMAN: And so I'm not, I haven't made any  
7 decision as to which I am --  
8 MS. CORDRY: Right.  
9 MR. GROSSMAN: -- going to apply.  
10 MS. CORDRY: I would say -- I don't believe that  
11 we have suggested that for purposes of the need analysis  
12 that it need to be limited to just either the mall parcel or  
13 the area around there. We believe that --  
14 MR. GROSSMAN: No, I think you, in fact, have made  
15 that point and by you I mean Ms. Rosenfeld --  
16 MS. CORDRY: I, I don't believe so. I think  
17 Kensington View has made somewhat of that argument, but I  
18 think our position has been we have analyzed the need area  
19 in the same basis that this has been and we have said that  
20 taking that approach we are prepared to show that it doesn't  
21 qualify. I think we have discussed that the general  
22 neighborhood in terms of the physical impacts, the direct,  
23 physical impacts of the station, or certainly not just the  
24 mall parcel, that it is the broader area around there that  
25 can be physically impacted. But I think we have not tried

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1 to suggest that --  
2 MR. GROSSMAN: Well, my recollection is different  
3 on that. But even if you hadn't, it has been suggested here  
4 and in any event there's now an issue for me in my own mind  
5 as to whether or not the appropriate area to look at in  
6 terms of need in this section of the zoning ordinance is the  
7 general neighborhood as defined for land use purposes or  
8 some broader market area despite the fact that you're quite  
9 correct that prior gas station cases have looked at a market  
10 area, including cases I have handled because nobody has  
11 raised this point before and for some reason it just never,  
12 it was never, it never became an issue. And it has been an  
13 issue in this case and we'll have to decide it at some  
14 point.  
15 MS. CORDRY: Okay. Well, we can certainly come to  
16 that. For our purposes, I believe that we have and are  
17 continued to be willing to look at the same way it's been  
18 analyzed in the past.  
19 MR. GROSSMAN: I understand.  
20 MS. CORDRY: And starting with that, because I  
21 mean it can get very meaningless at that point that if the  
22 station is built in an area that doesn't have a gas station  
23 and half a block away there are 10, but it's not literally  
24 within, you know, a block of the mall, then you, you have  
25 this notion that somehow we're underserved. And I don't

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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 --

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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

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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

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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

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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.

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.

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

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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.

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.

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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?

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?

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.

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

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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.

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?

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

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1 Flynn, which, what, identify again the table?  
2 MS. CORDRY: It's Exhibit 3-1, and it's Exhibit 14  
3 in these proceedings. It's on page 3-2.  
4 MR. GROSSMAN: Exhibit 14, page 3-2?  
5 MS. CORDRY: 3-2, yes, in Exhibit 3-1.  
6 MR. GROSSMAN: All right. So that's Flynn Exhibit  
7 2-1?  
8 MS. CORDRY: Right. So, again --  
9 MR. GROSSMAN: Okay.  
10 (Exhibit No. 291 was marked for  
11 identification.)  
12 MS. CORDRY: I picked up the name, the address,  
13 the number of pumps, which is why I labeled it convenience  
14 store versus mart. He labeled it mart, but these are the  
15 kind of things that might be considered a convenience store  
16 or not. But in any case, he labeled these are mart.  
17 Then his column on service bays, his column on  
18 whether or not they sold diesel. And that's what came out  
19 of his chart. From there on over is what I've added.  
20 So what I did at that point was, first off, if you  
21 add up all of his pumps, you come out with a total of 229 at  
22 the end of the Four Corners listing there. I am including  
23 the three, all four stations at Four Corners. I did delete  
24 all three of the stations at Glenmont that have closed, but  
25 that were originally in the original 30, but these three

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1 have now closed.  
2 MR. GROSSMAN: Where is this, 229? Where is it?  
3 MS. CORDRY: If you go down just above the  
4 Glenmont, see the Four Corners?  
5 MR. GROSSMAN: Right.  
6 MS. CORDRY: And then underneath it Shell at 10100  
7 Colesville Road, totaling up at the bottom the pump numbers  
8 column.  
9 MR. GROSSMAN: I am not seeing the number. Can  
10 you point it out for me here?  
11 MS. CORDRY: Sure, I'll circle it on yours.  
12 MR. GROSSMAN: Okay. Thank you.  
13 MS. CORDRY: Okay. So what I tried to do at this  
14 point was to come up with some kind of reasonable  
15 calculation for what might be a capacity for each one of  
16 these pumps to put out. And what I did, that calculation is  
17 shown there on the bottom, right-hand side, under listing  
18 the area stations. The first number I used was a number of  
19 cars per hour that each station might be able to reasonably  
20 accommodate.  
21 MR. GROSSMAN: How did you achieve that number?  
22 MS. CORDRY: I achieved that number by looking at  
23 the figures from, this will be the next exhibit, if you  
24 could give this next one here, these came out of the traffic  
25 report that Mr. Guckert put together where he was trying to

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1 analyze what the likely traffic would be at this station  
2 based on observations at other stores. In his report, he  
3 did a set of numbers, he pulled actual transaction numbers  
4 from the Costco at Gateway, which is the Elkridge Costco.  
5 And if we can label this as an exhibit?  
6 MR. GROSSMAN: All right. So this will be Exhibit  
7 292.  
8 (Exhibit No. 292 was marked for  
9 identification.)  
10 MR. GROSSMAN: And what is 292?  
11 MS. CORDRY: Okay. It is a number of pages from  
12 the traffic report which is already in evidence. Again, I'm  
13 doing these for convenience purposes, but let's see, the  
14 traffic report I believe is Exhibit 11. Does anybody have  
15 the exhibit listing? It is one of the ones that was, the  
16 original one that was put in. I think it's 11(a).  
17 MR. GROSSMAN: Okay.  
18 MS. CORDRY: Yes, 11(a).  
19 MR. GROSSMAN: 11(a) is the traffic impact  
20 analysis.  
21 MS. CORDRY: Right. Okay.  
22 MR. GROSSMAN: Okay.  
23 MS. CORDRY: This one is labeled page 22 at the  
24 bottom. That's, there's actually a series of pages in the  
25 report and then he has a number of appendices. So this was

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1 actually page 22 in one of his appendices. So I wrote at  
2 the bottom page 63. That's actually the entire traffic  
3 report. It's the 63rd page.  
4 MR. GROSSMAN: I see.  
5 MS. CORDRY: Okay. And behind there, there are a  
6 number of pages which I will be talking about at later  
7 points where there's other excerpts from there that deal  
8 with the traffic generation and the breakdown of the trips  
9 and so forth, but for right now I'll just start with that  
10 first page there.  
11 And if you look at that first page under Costco  
12 gas pumps --  
13 MR. GROSSMAN: Okay.  
14 MS. CORDRY: -- trips per fueling station, the  
15 highest number there is listed at the bottom, on that very  
16 bottom line there, 13.17 for p.m. in and p.m. out.  
17 MR. GROSSMAN: Right.  
18 MS. CORDRY: So 13.17 trips in and 13.17 trips  
19 out. That's the average for that week of pumping at that  
20 station.  
21 MR. GROSSMAN: Well, I see the number, I'm just  
22 trying to -- but this, I presume, is in the peak hour --  
23 MS. CORDRY: Right. Right.  
24 MR. GROSSMAN: -- of the peak period?  
25 MS. CORDRY: Well, this is -- yes. This is --

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

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

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

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

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1 percent to 28 percent.

2 MR. GROSSMAN: That's the ratio of what?

3 MS. CORDRY: Of what their actual pumping was,

4 what they were actually pumping and selling to the

5 theoretical maximum capacity. And that came out to, if you

6 average those out for those seven stations, that was a

7 little over 20 percent.

8 MR. GROSSMAN: Okay. So what's the bottom line

9 here?

10 MS. CORDRY: Okay. Okay. The bottom line of this

11 is that these stations, and I'm going to get to that, I just

12 want to walk everybody through the charts so we understood

13 what it was saying first there. A couple bottom lines of

14 this. First off, of course, these sales are very consistent

15 with what we talked about, one to two million gallons, the

16 largest one less than three and a half million gallons. No

17 one pumping anywhere in the vicinity of the kind of 12

18 million gallons we're talking about here.

19 Another bottom line you can take away is if you

20 took all of the stations here, the 235 million figure and

21 applied a similar 20 percent average to it, you would come

22 out at 47 million gallons a year.

23 MR. GROSSMAN: We do have the electrician here to

24 replace that bulb, so we're going to take a break for five

25 minutes to --

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1 MS. CORDRY: Okay. Sure.

2 MR. GROSSMAN: -- get that bulb replaced.

3 MS. CORDRY: Okay.

4 MS. ADELMAN: I must say, I commend you for

5 working in the dark.

6 MR. GROSSMAN: I'm trying to bring light where

7 there is darkness.

8 MS. ADELMAN: In more ways than one.

9 (Whereupon, at 11:25 a.m., a brief recess was

10 taken.)

11 MS. CORDRY: Abigail, we're back on.

12 MR. GROSSMAN: See, now if a lawyer had done that

13 light bulb change, it would have taken a whole lot longer

14 and we would have been charged by the hour.

15 MS. CORDRY: We would have billed a lot higher.

16 MR. GROSSMAN: Right.

17 (Discussion off the record.)

18 MS. CORDRY: Okay.

19 MR. GROSSMAN: Okay.

20 MS. CORDRY: All right. So, Abigail, we're back

21 on.

22 MR. GROSSMAN: We're back on the record. We've

23 been changed, or at least we've had one bulb removed.

24 MS. HARRIS: That was fast.

25 MR. GROSSMAN: Yes, it was.

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1 MS. CORDRY: All right. So I used this and I came

2 up with here's a number 47 million gallons. Now I did go

3 back to look at Mr. Flynn's report to see what he would

4 estimate the stations were supplying. I hoped to look at

5 that figure. It's not in his report anywhere. There is

6 nothing in his report that tries to give you any indication

7 whatsoever of what is being supplied by the existing

8 stations.

9 Okay. So, and this is the point at which I think

10 if you look at his testimony both on July 30th and July

11 31st, that he's not making any assertion there's any lack of

12 applicable capacity. In his July 31st testimony at pages

13 198 through 199, he was asked the question, you would agree

14 that you don't actually need another station to satisfy any

15 shortage of gasoline in that area, being Wheaton,

16 Kensington, we're talking about, quote. Answer, quote, I

17 don't think that the need that I'm looking at has to do with

18 capacity or shortage, and other parts of his testimony to

19 the same effect, which, I guess, is why he didn't put

20 anything in his report about how much he thought the station

21 would actually supply or could supply, were pumping,

22 whatever.

23 Certainly there's been no contention, I think,

24 that there are any back-ups in this area as any routine

25 matter in any other station and you need to wait in line for

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1 extended periods of time to get gas. Certainly in the 30

2 years I think I've been living here, the only station I've

3 every observed that ever had perhaps more than a single car

4 waiting for the, someone to pull away is occasionally at the

5 Freestate. There might be occasion when a car or two or

6 three trying to get in, but most times that's been because

7 it's kind of a cramped space and it's hard for people to get

8 around to get to open pumps. But that's the only one and

9 certainly nothing even remotely approaching 10, 20, 30, 40

10 cars lined up here.

11 MR. GROSSMAN: So if I may leap ahead here --

12 MS. CORDRY: Yes.

13 MR. GROSSMAN: -- is your point here that these

14 existing stations have a significant amount of additional

15 capacity for pumping beyond what they are pumping and,

16 therefore, there's less demonstration of a need for the

17 Costco station?

18 MS. CORDRY: Right.

19 MR. GROSSMAN: Is that your point?

20 MS. CORDRY: Certainly to the extent that there's

21 any question of, you know, can the existing station service

22 any conceivable need in this area which is a relevant

23 question. You know, you can't just jump past that one, yes.

24 The stations clearly have that capacity. And there are some

25 other points that I'm just going to make at this point.

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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.

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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?

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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

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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

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

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

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

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.



1 I've done my best with the evidence I have to give you some  
2 reasonable estimations here.

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.

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.

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?

25 MS. CORDRY: No, not necessarily, but what I am

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.

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?

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 --

14 MR. GROSSMAN: But your point was --

15 MS. CORDRY: -- it, at the point.

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.

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.

25 MR. GROSSMAN: All right.

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.

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

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.

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.

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?

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

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1 satisfying your neighborhood need. It's creating its own  
2 need.

3 MR. GROSSMAN: It's a form of self-fulfilling  
4 prophecy?

5 MS. CORDRY: Exactly.

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?

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.

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?

25 MS. CORDRY: I think --

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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?

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 --

14 MR. GROSSMAN: I --

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.

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.

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

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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.

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.

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

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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.

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 --

22 MR. GROSSMAN: If they do.

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

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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.

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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

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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.

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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

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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

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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

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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

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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.

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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

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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

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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.

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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

1 really the question was --  
 2 MR. GROSSMAN: Well --  
 3 MS. CORDRY: -- will I be finishing today or not.  
 4 MR. GROSSMAN: Yes, that's what I -- but if she  
 5 was scheduled to come on today and that's what was --  
 6 MS. ADELMAN: Well, she understands that --  
 7 MR. GROSSMAN: Right.  
 8 MS. ADELMAN: -- that there might be a moment of  
 9 flexibility. So I think that what everybody feels is best.  
 10 MR. GROSSMAN: Do we know how long her testimony  
 11 will take?  
 12 MS. ADELMAN: I did not ask her that question. I  
 13 would imagine it would be an hour.  
 14 MR. GROSSMAN: Okay.  
 15 MS. ADELMAN: But I, you know, I don't have a  
 16 sense of whether we will get finished with Ms., whether this  
 17 will be the whole day, whether -- maybe there's no cross-  
 18 examination.  
 19 MR. GROSSMAN: That's always a possibility.  
 20 MS. ADELMAN: Always a possibility.  
 21 MR. GROSSMAN: Well, what I would suggest is ask  
 22 her what time is convenient for her today, bearing in mind  
 23 that we want to complete her in one day. So I would be  
 24 inclined to think that we should put her on right after  
 25 lunch, let her complete hers, Ms. Cordry is going to be here

1 in any event and so we can have her then continue her  
 2 testimony and if that runs over, it runs over, but we  
 3 wouldn't have to inconvenience Ms. Cameron and have her come  
 4 back again.  
 5 MS. ADELMAN: Okay. So after lunch would be?  
 6 MR. GROSSMAN: Well, shall we figure that -- well,  
 7 shall we say 2 o'clock, would that make sense --  
 8 MS. ADELMAN: 2:00 p.m.  
 9 MR. GROSSMAN: -- to us all? Okay. So at 2  
 10 o'clock.  
 11 MS. ADELMAN: All right.  
 12 MR. GROSSMAN: Okay.  
 13 MS. ADELMAN: Thank you very much.  
 14 MR. GROSSMAN: You're welcome. All right.  
 15 MS. CORDRY: All right. So in this report I would  
 16 point to on page 3, the reference to on a cents per gallon  
 17 in the margins there, on a cents per gallon basis, gross  
 18 margins from 2012 were, you know, the record set on a  
 19 percentage basis, margins in 2012 tied the, I'm sorry, the  
 20 14-year low set in 2007 and are lower than any --  
 21 MR. GROSSMAN: Well, wait a minute, wait a minute.  
 22 I'm looking here at a list of, by year, gasoline demand, is  
 23 that --  
 24 MS. CORDRY: Okay. I'm page 3.  
 25 MR. GROSSMAN: Oh.

1 MS. CORDRY: Yes.  
 2 MR. GROSSMAN: Sorry, I didn't hear you.  
 3 MS. CORDRY: I'm sorry. On page 3 for margins.  
 4 MR. GROSSMAN: Okay. So page 2, page 3.  
 5 MS. CORDRY: Where I was saying that gasoline  
 6 station margins are, they're operating at a very low  
 7 percentage basis currently. In 2012, it was only 5.1  
 8 percent of the price of the fuel, that that's the lowest, it  
 9 ties the lowest in 2007 and those two are the, well, you  
 10 know, less than half of what it used to be in say 1999. So,  
 11 again, stations are operating on very narrow margins now.  
 12 And then when we go down --  
 13 MR. GROSSMAN: You're not going to make me be the  
 14 most unpopular person in the country by somehow ruling that  
 15 gas stations should be making a bigger margin, are you?  
 16 MS. CORDRY: No, I'm not, but I think you do need  
 17 to take into consideration the question of whether or not  
 18 stations are likely to continue to close and close due to an  
 19 operation that takes away 12 million gallons out of some  
 20 area which is not going to be completely well-defined here,  
 21 but these, when you're operating on narrow margins, stations  
 22 are more likely to close.  
 23 MR. GROSSMAN: At what margin am I to conclude  
 24 that a station would close?  
 25 MS. CORDRY: I don't know if there's an absolute

1 number, but the lower the margin, the more marginal a  
 2 station becomes, the more likely it is to close. I, you  
 3 know, you, I'm not asking you to necessarily be able to  
 4 predict that this station versus the next one, they may come  
 5 in themselves and tell you that, but I am saying that when  
 6 you have a declining and, again, I go back to Lucky which  
 7 specifically points to declining gasoline sales as a factor  
 8 that could be looked at in terms of whether there's already  
 9 a proliferation of stations and whether it serves the  
 10 market.  
 11 So the point of this simply being that I'm simply  
 12 demonstrating that, yes, they are in a declining profit  
 13 margin. If you look at the bottom there with retail, I'm  
 14 sorry, where it says fueling sites, it notes that there was  
 15 156,000 total retail fueling sites in the United States in  
 16 2012. This has been in a continued decline since 1994 where  
 17 there was 202,000. So it's been about a third decline since  
 18 then.  
 19 MR. GROSSMAN: I'm not sure I can conclude from  
 20 this, by the way, that the margins will continue to decline  
 21 as they usually give you that warning if you're going to  
 22 invest in something.  
 23 MS. CORDRY: Well --  
 24 MR. GROSSMAN: The past performance is not in this  
 25 area an indicator --

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1 MS. CORDRY: I understand.  
2 MR. GROSSMAN: -- especially here since we know  
3 that the economy, you know, may be changing. So, I mean you  
4 do have a low of 5.1 percent also in 2007 and then, you  
5 know, and then it went up and then it went down again a  
6 little bit. So I just don't know what I can -- I don't know  
7 that I can use this to --  
8 MS. CORDRY: Okay.  
9 MR. GROSSMAN: -- predict anything.  
10 MS. CORDRY: What I would say though is that it  
11 is, for the last several years it has been low. It's been  
12 relatively consistent and it's been considerably lower than  
13 it was a decade ago. And --  
14 MR. GROSSMAN: All right.  
15 MS. CORDRY: -- considerably higher and it just  
16 puts you under a, you know, price pressures. The gasoline  
17 station, as I say, the fueling site indicates stations  
18 continue to close continually. I'm now on page 4. Then it  
19 talks about that there are 4,893 big box retailers that sell  
20 fuel and it talks about the top five, what they call hypo-  
21 markets, which are the big retailers, big station stores,  
22 Target, Walmart, Sam's Club, Safeway and Costco, and that  
23 they sold, last year they were selling about 12.4 percent of  
24 the motor fuels in the United States.  
25 Now I think, again, what's interesting here to

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1 note in terms of whether or not we're satisfying a  
2 neighborhood need and so forth is the relative numbers of  
3 stores that operate. All of those are national operators  
4 and yet what you see is Costco in terms of stations is by  
5 far the, I'm sorry, leaving aside Safeway, which does --  
6 it's not really big into this, but of some of these ones  
7 that really make a market of this, it has far fewer stations  
8 than a number of these.  
9 MR. GROSSMAN: It's a third of the size of Walmart  
10 and --  
11 MS. CORDRY: Right.  
12 MR. GROSSMAN: -- I'm quoting approximately. So  
13 and what do I derive from that?  
14 MS. CORDRY: Okay. What I would derive from that  
15 is, and the rest of these, the sheets in here I have Walmart  
16 and I'll go through them. What my point is going to be is  
17 that Costco operates not only its stations, but its  
18 warehouses on a very limited number compared to many other  
19 retailers which means that they are, in a sense, a  
20 destination store. It does have its stores and the  
21 associated stations draw from the very big retail area and,  
22 therefore, concentrates a very big retail, I'm sorry, a big  
23 regional demand into a very small area.  
24 If you look at comparable kinds of stores like  
25 Walmart, for instance, if you turn back, it has 4,713 retail

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1 units. 621 of those are Sam's Clubs. There are 59 in the  
2 state of Maryland alone.  
3 MR. GROSSMAN: Yes, but how is this going to even  
4 come close to something I would consider in evaluating this  
5 case?  
6 MS. CORDRY: Okay. The point is, again, we're  
7 trying to say is the fact that it is generating, that it is  
8 pulling some number of gallons of sales to this area, is  
9 that a sign that there is a neighborhood need? And what I  
10 am saying is that this is illustrative of the fact that  
11 compared to other large retailers that have many more  
12 stores, many more stations, divide up their market in much  
13 smaller areas, Costco operates on a regional basis. It  
14 pulls a regional market into a small neighborhood. And it  
15 cannot say then that when I draw from an area much huger  
16 than the general neighborhood, that I can then turn that  
17 into a neighborhood need without running afoul of the  
18 distinction between the neighborhood need and the County  
19 need that the code requires.  
20 MR. GROSSMAN: I understand what you're saying,  
21 but really that's -- I don't think I'll, I can go into that  
22 type of analysis in this type of a case. I just think  
23 that's way beyond -- I mean it's not that I don't understand  
24 it, I mean, you know, I have a background in economics  
25 myself, so I --

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1 MS. CORDRY: Right.  
2 MR. GROSSMAN: -- I understand it, I just don't  
3 think that that's the appropriate kind of analysis, that  
4 kind of comparison --  
5 MS. CORDRY: Well --  
6 MR. GROSSMAN: -- to what's here. I'm not going  
7 to compare Costco versus other similar retailers to decide  
8 on whether or not they are pulling more as a regional basis  
9 than others because they have fewer stores. I'm just not  
10 going to do that.  
11 MS. CORDRY: Okay. But let me just state the  
12 point and then you can consider where you go with it. The  
13 point is when it operates on this concentrated model with  
14 these very small numbers of stores nationwide compared to  
15 the entire area, it is by definition, and it says it, I mean  
16 it doesn't, it's not any point of dispute here, that they  
17 are operating regional operations. They are pulling in  
18 their demand from all over a much larger region than other  
19 places are so that when these other, when the other stations  
20 operate, other stores operate stations, both the store and  
21 the station are drawing from a smaller area, much more like  
22 a neighborhood. When Costco operates, it attempts to draw  
23 and does draw from a much larger area. It's, again, I think  
24 it's part of the model as to how they have the cheaper  
25 prices because, again, it's a very concentrated area.

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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

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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,

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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.

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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



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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

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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

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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?

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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

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1 gas. So --  
2 MR. GROSSMAN: Right.  
3 MS. CORDRY: -- this is a matter where, again,  
4 we're using, the gas station is a way to draw people all the  
5 way to Wheaton from, you know, Damascus and Clarksburg and  
6 Germantown and Boyds. Number one, it's a terrible result  
7 from a smart growth and traffic reduction standpoint and,  
8 secondly, if it's appropriate to drive that far to come  
9 here, then it's certainly no farther than from here over to  
10 Beltsville, which means there is already a Costco station  
11 available to this neighborhood which is, again, part of the  
12 definition in the special exception.  
13 MR. GROSSMAN: I mean if, of course, once again, I  
14 can't -- rezoning or zoning matters are not plebiscite, so I  
15 don't consider these postcards as part of -- I don't count  
16 the noses and the --  
17 MS. CORDRY: No, I'm not --  
18 MR. GROSSMAN: But I understand that the  
19 applicant, when I mentioned this point, if I recall, Ms.  
20 Harris said to me, well, it's an indication of demand, if I  
21 recall correctly.  
22 MS. HARRIS: Yes.  
23 MR. GROSSMAN: And so what you're saying is,  
24 you're attacking this assertion of demand by saying that  
25 many of these signators could actually go to a closer Costco

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1 gasoline facility?  
2 MS. CORDRY: No, no, I'm saying --  
3 MR. GROSSMAN: You're not?  
4 MS. CORDRY: -- it's not a closer gasoline  
5 facility.  
6 MR. GROSSMAN: I see.  
7 MS. CORDRY: But they would be driving -- this is  
8 not just a matter of people saying I'm already coming to  
9 Costco and it's convenient for me to come to Costco and,  
10 therefore, buy gas. These are people who are going to drive  
11 past a Costco in Gaithersburg.  
12 MR. GROSSMAN: To get to a Costco gas station?  
13 MS. CORDRY: Yes, and to come down here, another  
14 15 or 20 minutes further, to come here to buy gas which  
15 means this is a regionally drawn demand for gasoline, not a  
16 demand for Costco.  
17 MR. GROSSMAN: Okay. I understand your point.  
18 MS. CORDRY: And I think there are a number of  
19 other -- these people, they didn't try to make that analysis  
20 much either, but there are also stations in Frederick and  
21 Elkridge and certainly Beltsville that a number of these  
22 people are probably closer to as well. So the point --  
23 MR. GROSSMAN: Okay.  
24 MS. CORDRY: -- simply being that we're drawing a  
25 regional demand into a local neighborhood. All right. Just

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1 in some of the generally beneficial, again, what benefits  
2 will this neighborhood reach that it doesn't already have?  
3 And the answer, of course, is in terms of anything tangible,  
4 there is nothing that is being offered here that is not  
5 already available to other, through other stations. As we  
6 said, it doesn't offer mid-grade gasoline, diesel, kerosene,  
7 electric recharging services, doesn't have a convenience  
8 store, has not service bays, doesn't have an air pump.  
9 Even --  
10 MR. GROSSMAN: It offers price --  
11 MS. CORDRY: Right.  
12 MR. GROSSMAN: -- I guess is essential?  
13 MS. CORDRY: Exactly. That is the one point. Its  
14 witnesses did put a great deal of emphasis on the fact that  
15 they had eyewash stations which is part of their safety. I  
16 certainly, I've never known in my entire life anyone who has  
17 ever used an eyewash station at a garage, I mean at a gas  
18 station, but I've known many times when it would be useful  
19 to be able to wash my windshield or wash my hands, but we  
20 can't get that here either.  
21 Mr. Flynn had a lot of testimony that there was a  
22 need for the station in terms of safety and cleanliness, and  
23 that that somehow distinguished this Costco from other  
24 stations in the area, but he pretty much appeared to mostly  
25 back off of that in cross-examination, other than pointing

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1 to one station that he was concerned about where it had the  
2 refueling. Certainly, I've never noticed that the stations  
3 in this area are particularly, you know --  
4 MR. GROSSMAN: Scuzzy?  
5 MS. CORDRY: -- scuzzy. They seem to me to be  
6 generally clean, neat, well-maintained, perfectly acceptable  
7 places to buy gasoline. Again, and he's like, well, you  
8 know, he talked about hold-ups, presents no statistics about  
9 crime, fires, accidents, anything of that kind in this area.  
10 So I think we can reasonably assume that the other stations  
11 in this area are also safe, well-maintained, clean,  
12 acceptable stations for people to shop at, that you somehow  
13 don't need this Costco station in order to provide the kind  
14 of place where people can go shop and the rest of the  
15 stations are somehow unacceptable on that basis.  
16 I think that is simply, I think you can pretty  
17 much set that aside, which leave cheap gas. Let's get to  
18 cheap gas as being really the only defining difference  
19 supposedly between Costco and everyone else's stations here.  
20 Again --  
21 MR. GROSSMAN: In terms of the consumer.  
22 MS. CORDRY: In terms of the consumer, yes, which  
23 is what we're talking about, the people in the neighborhood  
24 who would be buying gas.  
25 MR. GROSSMAN: In terms of need.

1 MR. GROSSMAN: Yes.  
 2 MR. GROSSMAN: I mean there are other distinctions  
 3 they've testified to that they contend makes them less of a  
 4 pollutant.  
 5 MS. CORDRY: I understand that, but --  
 6 MR. GROSSMAN: But this is just --  
 7 MS. CORDRY: -- I would have to say that I find it  
 8 extraordinarily unlikely to believe that somebody comes to  
 9 shop at a gas station because they think it has an air  
 10 permeator or not.  
 11 MR. GROSSMAN: All right. I understand.  
 12 MS. CORDRY: Okay. All right. And the safety  
 13 that even Mr. Flynn was talking about was not safety in that  
 14 sense. He was just talking about, well, because there was  
 15 an attendant wandering around and --  
 16 MR. GROSSMAN: Right.  
 17 MS. CORDRY: -- there are attendants elsewhere and  
 18 so forth. All right. Again, the point being that whatever  
 19 the benefits are, they are limited. There was a suggestion  
 20 in the report that the Costco might put downward pressure on  
 21 surrounding prices so that maybe the whole neighborhood  
 22 might benefit from its pricing structure, but then it also  
 23 concedes that pricing is very much a localized phenomenon.  
 24 I would say, well, I'll get into the evidence that I'm going  
 25 to put forward that there's no real evidence that it

1 actually pushes prices down or determines these things as  
 2 opposed to in general, pricing the market around it, or at  
 3 least that the evidence is equally likely that it prices to  
 4 the market as opposed to that the market is necessarily  
 5 driven by the Costco price. So we do have a mismatch  
 6 between the number of users who are being drawn in from well  
 7 outside the defined neighborhood and the burdens that can be  
 8 imposed on the local residents and with no countervailing  
 9 price benefit to the great majority of people that are  
 10 there.  
 11 MR. GOECKE: Mr. Grossman, I would like to object  
 12 to that testimony as hearsay in terms of the basis for, also  
 13 the foundation as to how she's arguing about prices and how  
 14 they're determined and how there's no evidence that it would  
 15 drive prices down in the neighborhood.  
 16 MS. CORDRY: Well, I would.  
 17 MR. GROSSMAN: We don't know if she's going to  
 18 produce --  
 19 MS. CORDRY: I'm going to put --  
 20 MR. GROSSMAN: -- some evidence, so --  
 21 MS. CORDRY: Yes.  
 22 MR. GROSSMAN: -- so I'm going to overrule that  
 23 objection --  
 24 MR. GOECKE: So long as she provides it, that's  
 25 fine.

1 MR. GROSSMAN: -- subject to hearing what she has  
 2 to say.  
 3 MS. CORDRY: All right. And, again, just a point  
 4 that when, any lost amenities will fall on the neighborhood  
 5 as a whole, including the Costco members, again, not  
 6 particularly speculative. We've seen what happened in  
 7 Beltsville when the new station comes open, comes in to  
 8 close down. I will speak about the aggregate demand a  
 9 little later.  
 10 MR. GROSSMAN: I don't know why those --  
 11 MS. CORDRY: We don't know, but we do know that  
 12 that was certainly a very close result in time and that it's  
 13 not at all unlikely.  
 14 MR. GROSSMAN: I don't think I can extrapolate the  
 15 rationale that you want without evidence as to why something  
 16 happened.  
 17 MS. CORDRY: All right. Now one of the things  
 18 that would be useful in knowing what might happen to local  
 19 stations would be if there was any attempt to determine in  
 20 the needs report how many sales would be taken or going to  
 21 be coming away from sales that would otherwise exist in the  
 22 local market. That would be a very useful factor. The  
 23 needs report made no attempt to quantify that. So one of  
 24 the reasons why we have some difficulties here in telling  
 25 you in terms of what would be the effect on location

1 stations is because their needs analysis makes no attempt to  
 2 determine that issue. But, again, 12 million gallons has to  
 3 come from someplace. If it's coming from local stations, it  
 4 is taking away -- if my number there of 49 million gallons  
 5 being sold is anywhere near correct, if you took 12 million  
 6 gallons out of this local area, you're taking away 25  
 7 percent of the business. Very few businesses with that kind  
 8 of narrow profit margin can survive a 25 percent drop. If  
 9 it's coming from somewhere else, then it means you're  
 10 drawing business away from the non-local area and bringing  
 11 it here and, in other words, we are satisfying what  
 12 otherwise would be satisfied in the region as a whole and  
 13 you're pulling it here. So, again, it's not satisfying a  
 14 neighborhood need.  
 15 So when do we want to go to in terms of --  
 16 MR. GROSSMAN: Well, I think if we break for lunch  
 17 about 1:15, and then we'll come back at 2 o'clock for Ms.  
 18 Cameron's testimony.  
 19 MS. CORDRY: I think that's fine. I think I've  
 20 got a good --  
 21 MR. GROSSMAN: Okay.  
 22 MS. CORDRY: -- chunk here to go at that point.  
 23 All right. So at this point I would like to just turn to  
 24 Mr. Flynn's new report and start working through that in  
 25 terms of what it says, what it doesn't say and what

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1 critiques I would have of that.  
2 MR. GROSSMAN: Let me see if I brought a copy of  
3 that in with me, which I should have.  
4 MS. CORDRY: It's Exhibit 14, I think, perhaps.  
5 MR. GROSSMAN: Yes, I forget if this was under a  
6 separate cover or was --  
7 MS. CORDRY: It was filed separately, yes. I  
8 think 14.  
9 MR. GROSSMAN: I mean a separate --  
10 MS. CORDRY: Oh.  
11 MR. GROSSMAN: -- hold on a second. I've got an  
12 exploratory assessment of terrain flow.  
13 MS. CORDRY: No.  
14 MR. GROSSMAN: All right. Anybody happen to have  
15 an extra copy of that handy so that I can follow along  
16 without having to go back into my office?  
17 MS. CORDRY: Do you have -- yes. Yes, I think  
18 this is, I'm not sure if I have every single page in it,  
19 but --  
20 MR. GROSSMAN: All right.  
21 MS. CORDRY: -- and I wasn't planning on putting  
22 the whole thing in, but I think, I think this has,  
23 hopefully, the pages that I was referring to.  
24 MR. GROSSMAN: Okay.  
25 (Discussion off the record.)

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1 MR. GROSSMAN: Thank you, Ms. Adelman. Okay. Go  
2 ahead, ma'am.  
3 MS. CORDRY: All right. So I am jumping over the  
4 introduction and I'm starting with the Section 2, which is,  
5 starts with area population for these demographics here and  
6 so forth.  
7 MR. GROSSMAN: Yes.  
8 MS. CORDRY: Okay. So Sections 2.1 through 2.3  
9 discuss overview, the study area and demographics. Again,  
10 this lays out this seven minute squiggly area.  
11 MR. GROSSMAN: Right.  
12 MS. CORDRY: And when we get to demographics, it  
13 lays out quite a few interesting things about the size of  
14 the population, the estimates on its growth through 2017,  
15 median age, household size, average household income,  
16 diversity of population and so forth, quite a few  
17 interesting numbers. Not a one of these numbers is  
18 correlated in any way, shape or form with any demand for  
19 gasoline. It just tells us how many people there are and  
20 how old they are. But, you know, for instance, it gives  
21 income levels and states they're above the national level,  
22 but below that for the County as a whole, but it doesn't  
23 give you any idea as to whether it's any correlation between  
24 income levels and gas usage and if so, what that correlation  
25 would be, or any of these other facts that are in here.

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1 MR. GROSSMAN: Right.  
2 MS. CORDRY: Again, and it states that there will  
3 be an 11 percent, let's see, at Exhibit 2-3, which is on  
4 page 2-5, it projects it out through 2040. There will be a  
5 total of 11 percent increase in the Kensington/Wheaton  
6 policy area, which is relatively close to what the study  
7 area is, not precisely the same, but somewhat the same, and  
8 projects an 11 percent increase, some of which has already  
9 taken place. But, again, it doesn't correlate that to any  
10 demand for gasoline one way or the other.  
11 I think one point that one might note in this  
12 listing is that the current median age is 38.6 and in the  
13 original 2010 report it was 40, which means we're, you know,  
14 fairly significant drop it seems like in just two years. It  
15 probably relates to all these large numbers of apartments  
16 in --  
17 MR. GROSSMAN: I know I'm not getting any younger,  
18 so --  
19 MS. CORDRY: Right. Right.  
20 MR. GROSSMAN: -- let's do somebody else.  
21 MS. CORDRY: So we must have, you know, the new  
22 people that are moving in are presumably younger. It being  
23 called, I think, the millennials and we'll talk later on  
24 about how they're more likely to use public transit, have  
25 fewer cars, drive less than others. So this may be driving

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1 a correlation with lower gas usage but, again, it's not  
2 discussed at all.  
3 MR. GROSSMAN: Yes, I agree with you that these  
4 kinds of figures without a more direct connection --  
5 MS. CORDRY: Right.  
6 MR. GROSSMAN: -- to gas usage are of little  
7 value.  
8 MS. CORDRY: Right. I have seen a number of  
9 reports where they do tie them directly and say that there  
10 is some kind of correlation that is to get higher income and  
11 use more gas or less gas or whatever, but that's not in here  
12 at all. Secondly, Section 2.4 is travel to work. It says  
13 they have longer drive times than most Americans. But,  
14 again, it doesn't correlate the drive time to gasoline  
15 usage.  
16 MR. GROSSMAN: Well, longer drive time would  
17 correlate to gas usage.  
18 MS. CORDRY: Well, it also correlates to  
19 congestion.  
20 MR. GROSSMAN: I understand, but I mean I don't  
21 think it's fair to say that doesn't correlate to gas --  
22 MS. CORDRY: Well, I should say --  
23 MR. GROSSMAN: Longer drive time automatically  
24 correlates to gas usage.  
25 MS. CORDRY: Well, again, what I will say, he

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1 doesn't make any effort to correlate this to gas usage.  
2 And, number two, again, compared to the nation as a whole, a  
3 40-minute drive in Wyoming is going to use more gas than a  
4 40-minute drive in the District of Columbia.  
5 MR. GROSSMAN: Well, I don't know that and I don't  
6 think, that's --  
7 MS. CORDRY: Well --  
8 MR. GROSSMAN: -- not the point. The point is that  
9 there is a correlation. I agree with you that some of the  
10 other things here you can't automatically correlate with  
11 gas, but automatically you can correlate longer drive time  
12 with gas usage.  
13 MS. CORDRY: Well, again --  
14 MR. GROSSMAN: Unless you're driving a diesel --  
15 MS. CORDRY: Well --  
16 MR. GROSSMAN: -- you know --  
17 MS. CORDRY: -- it is possible you could, but  
18 there is no actual correlation as to nationwide gasoline  
19 usage for a commuter is X and here it is Y. It is simply --  
20 MR. GROSSMAN: He doesn't make a mathematical  
21 connection, but it's clearly there is a connection.  
22 MS. CORDRY: Well, all things being equal, if I  
23 drive longer in the same area than somewhere in the same  
24 area, I will use more gasoline. I would, again, beg to  
25 strongly differ that drive time automatically correlates

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1 with higher usage because my drive time between my home in  
2 Wheaton and downtown D.C. differs by a factor of two or  
3 three between whether I'm going on the weekend or now, but  
4 the gas usage is not -- my only point being --  
5 MR. GROSSMAN: Okay.  
6 MS. CORDRY: -- there is no information here that  
7 actually says what these drive times correlate to in terms  
8 of gas usage.  
9 MR. GROSSMAN: All right.  
10 MS. CORDRY: It's just unrelated numbers being put  
11 out there.  
12 MR. GROSSMAN: I can't recall at this point  
13 whether that, there was a discussion of that in his  
14 testimony.  
15 MS. CORDRY: No.  
16 MR. GROSSMAN: Okay.  
17 MS. CORDRY: Okay. It asserts that most residents  
18 still drive alone, but agrees that one out of four  
19 residents, which it states is five times the national  
20 average, take public transit. The Wheaton sector plan says  
21 that of the people in this general area in Wheaton, actually  
22 52 percent use public transit to leave Wheaton. Whether  
23 it's 25 percent, 52 percent, and that number, the 52 percent  
24 is three times the County average. Whether it's one number  
25 or the other, somewhere in between it's clear this

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1 neighborhood is at the center of the smart growth, transit  
2 oriented development plan of aspects of what the County is  
3 pushing for and that obviously a primary goal of that is to  
4 reduce the use of cars, consumption of gasoline and that  
5 growth and population and so forth is not going to  
6 necessarily correlate with gas usage and we're certainly  
7 trying to move people away from driving into cars.  
8 So the report further asserts at page 2-6, the  
9 households in this study, quote, need more vehicles than the  
10 average household, unquote, because they do, quote, this  
11 much driving. Now it doesn't quantify how many miles is  
12 this much driving. It doesn't quantify how many cars the  
13 average household has or whether this is a national average,  
14 a state average, a County average, some other average within  
15 this general area. It doesn't explain why, okay, some  
16 members may have a long commute and they may drive, but  
17 others use public transit, so they may not need more cars at  
18 all.  
19 Again, there's no correlation given in the report  
20 between cars per household and gasoline usage. Even if I  
21 have more cars, does that translate into more gasoline  
22 usage, less, you know, do people have cars that they like to  
23 keep in the backyard up on bricks, whatever? There's just,  
24 there's no correlation here. It's simply --  
25 MR. GROSSMAN: All right.

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1 MS. CORDRY: -- numbers being put out. Same  
2 thing, worker population. It states there's a worker  
3 population, that it's expected to go up by about 2,000 over  
4 the next, over the 30-year period between 2010 and 2040.  
5 Some of that growth has already occurred. Again, no  
6 discussion here about any correlation between that job  
7 growth and gasoline usage.  
8 Traffic. It gives traffic counts at a number of  
9 locations on page 2-8 in 2009, 2010 and 2011. There's no  
10 consistent pattern in those. In some it goes up, in some it  
11 goes down, some it swings back and forth. Georgia Avenue  
12 north of the Beltway drops significantly from 80,000, then  
13 it went up to 81,000, then it dropped to 71,000. So, again,  
14 yes, there's traffic in this area, no correlation to  
15 gasoline usage made here.  
16 There is a reference there to the road improvement  
17 at the Georgia Avenue/Randolph Road intersection and it  
18 states the potential impact of this action on the need for  
19 gasoline is discussed in Section 3.2.1. There's no  
20 discussion in 3.2.1, which we'll get to in a little bit  
21 about how those stations being there or closing will impact  
22 on the need for gasoline in this area. So this whole  
23 section, interesting, but actually provides you, I think  
24 when you look at it in detail, no usable information for you  
25 in terms of need.

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

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.

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

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

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

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

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

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,

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

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.)

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 --

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



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

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?

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

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

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

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

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

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

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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

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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?

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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

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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

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 --

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.

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

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

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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 --

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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.

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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

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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.

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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

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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

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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

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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

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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

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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.

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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

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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

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1 considerable portion over the presently existing ring road  
2 to do this, would you not?  
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.  
10 MR. GROSSMAN: But presumably Westfield would have  
11 to agree to do this on their land, is that correct?  
12 MS. CAMERON: Correct.  
13 MR. GROSSMAN: Okay.  
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.  
24 And so in our, both in my organization's and our  
25 membership's interest, and in the stated decision of the

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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.  
18 MR. GROSSMAN: Okay.  
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.  
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

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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.  
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.  
17 MR. GROSSMAN: Okay. Thank you. Cross-  
18 examination?  
19 MS. HARRIS: Yes. Thank you.  
20 CROSS-EXAMINATION  
21 BY MS. HARRIS:  
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?  
25 A Correct.

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1 Q And are you aware that, in fact, the proposed  
2 special exception is preserving the buffer area?  
3 A Yes. Well, could you please explain further what  
4 you're --  
5 Q There's no decrease in land --  
6 A -- what you're saying?  
7 Q -- area of the buffer area associated with the  
8 special exception, do you agree with that?  
9 A As far as I've seen that, I believe that's  
10 accurate.  
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?  
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.  
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?  
24 THE WITNESS: I'm referring to the, in, right now  
25 to the warehouse. So, in other words, when I look at the



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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

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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.

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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.

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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.

1 MS. HARRIS: I think that's it. Thank you.  
 2 MR. GROSSMAN: All right. And before I allow the  
 3 opposition to also ask you additional questions, I'm not  
 4 sure I understand how the gas station queues would affect  
 5 pedestrians on the path that is planned or has been offered  
 6 to, by Westfield, a five foot wide path that they have  
 7 agreed to offer now after some changes, we went through a  
 8 number of iterations, along the ring road?

9 THE WITNESS: You're not -- I'm sorry, you're not  
 10 sure how the --

11 MR. GROSSMAN: How, you indicated that there was  
 12 an additional burden imposed by the gas station, the  
 13 proposed gas station beyond the Costco warehouse in addition  
 14 to space because it doesn't extend, the special exception  
 15 site does not extend further southward than the Costco  
 16 warehouse according to counsel. If it's not a space  
 17 imposition, you said there were additional burdens added on  
 18 by the gas station to pedestrians along the ring road. What  
 19 is the additional burden if they're on a pedestrian path  
 20 that Westfield establishes?

21 THE WITNESS: A lot of it is, it's pollution --  
 22 it's three things, three factors. It's air pollution, noise  
 23 and safety in terms of just vehicular traffic, the more  
 24 dense the traffic. And I realize there's a factor there  
 25 with speed of the traffic and perhaps queuing lines are, you

1 know, are not traveling fast or they're in a stopped  
 2 position. But there's, I think, starting with the air  
 3 pollution, a lot of pedestrians are concerned about just  
 4 literally their own health, breathing in fumes, breathing in  
 5 motor vehicle exhaust. Particularly in warmer weather, that  
 6 exhaust can be very intense in a situation like this where  
 7 vehicles are, engines are idling and so I think that that  
 8 would just, that -- it's partly reality and it's partly  
 9 perception on the part of would be pedestrians to think do I  
 10 want to walk here when it's a hot day, it's still air and  
 11 it's going to be, you know, X number of vehicles that I'm  
 12 going to be walking along next to and breathing in all of  
 13 that air, additional air pollution because the queuing lines  
 14 with more vehicles than there otherwise would be.

15 MR. GROSSMAN: Okay. The queuing lines, by the  
 16 way, wouldn't be on the southern side of the ring road where  
 17 the pedestrian path would be. They would be on, to the  
 18 north of the ring road. They would be a distance away.

19 THE WITNESS: Uh-huh.

20 MR. GROSSMAN: All right. And also I would like  
 21 to know how does the shared use path protect and restore the  
 22 streams, which I noticed that in your letter of January 15,  
 23 2013, to Renee Cayman (phonetic sp.) of Technical Staff you  
 24 had indicated that that was one of your interests and you  
 25 indicated here today that part of your organization's

1 function was protecting streams. So I'm not sure how that  
 2 contributes any more than what has already been approved by  
 3 or reviewed by Technical Staff and the Planning Board.

4 THE WITNESS: Uh-huh. It, the shared use path has  
 5 the potential to contribute to restoring these streams by  
 6 infiltrating, collecting a lot of run-off and infiltrating  
 7 it rather than discharging it through a pipe. And so there,  
 8 at least starting with any run-off or precipitation falling  
 9 on the pathway itself would be, if it's permeable pavement,  
 10 then it's soaking that into the ground.

11 And then there's also the possibility that this  
 12 would effectively be a redesign of this part of the ring  
 13 road. There's the possibility to collect run-off from the  
 14 ring road itself and infiltrate it into the ground in a  
 15 dispersed way and rather than adding that amount of run-off  
 16 to what's coming out of the pipes.

17 MR. GROSSMAN: Ms. Harris, would you refresh my  
 18 recollection? Is the planned pedestrian path, is that to be  
 19 made out of a permeable surface on the current plans? I  
 20 can't recall.

21 MS. HARRIS: No, but it is replacing impervious  
 22 road. They -- okay.

23 MR. GROSSMAN: Mr. Brann?

24 MR. BRANN: We've agreed upon the width and the  
 25 location of the path. We've not gotten into specifications

1 of what it would be made out of. It would be easy enough to  
 2 make it out of a permeable pavement.

3 MR. GROSSMAN: Ms. Adelman.

4 MS. ADELMAN: Mr. Grossman, I believe there is a  
 5 policy in Montgomery County that states that as of, I think  
 6 it was two years ago, 2011, that the County will try and use  
 7 permeable surfaces when developing anything such as a  
 8 pedestrian plan or in areas that aren't really heavily,  
 9 heavily impacted by constant traffic such as I-95. They're  
 10 try and use that material.

11 MR. GROSSMAN: So, Mr. Brann, do I understand you  
 12 correctly, and you're still under oath, that Costco, to the  
 13 extent that it influences this decision, is willing to have  
 14 it as a permeable surface, that is the planned pedestrian  
 15 path?

16 MR. BRANN: If it's a feasible method of  
 17 construction, we would be willing, yes.

18 MR. GROSSMAN: I presume that would be helpful to  
 19 the extent -- again, I mean there is a limit. There is --  
 20 the only thing before me is a request for a special  
 21 exception for a Costco gas station. The remainder of this  
 22 discussion of the proposed shared use path is not  
 23 technically before me as something I can recommend approval  
 24 of or not. However, to the extent that, I don't know what  
 25 the Board of Appeals will do, but if they decide to approve

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1 a special exception, I would hope that, you know, whatever  
2 actions could be taken to improve the pedestrian  
3 accessibility would be taken and this is one of the things  
4 that the applicant has agreed to along with Westfield.  
5 So I understand the concerns, but there is, we  
6 have limited, a limited item before us, not the entire  
7 execution of what might, what might not be the intent of the  
8 master plan overall. So, all right, did you wish to ask any  
9 questions, Ms. Cordry or Ms. Adelman?  
10 MS. CORDRY: Yes. I had one or two.  
11 BY MS. CORDRY:  
12 Q One is you've spoken about this, increasing the  
13 infiltration of storm water. Are there problems with the  
14 current storm water runoff that you can observe in the area  
15 in the forest buffer?  
16 A Yes. There are problems with the current storm  
17 water runoff management approach which includes in the  
18 forested buffer there is the discharge outlet of runoff from  
19 much of this part of the Westfield Mall and what has been  
20 observed is that during and immediately after a storm, there  
21 has been a flow of runoff that is already starting to move  
22 boulders and move rocks that were supposed to be stationary  
23 in this rip rap filled channel and so --  
24 MR. GROSSMAN: Hold on. Who observed? You said  
25 it had been observed. Who observed this?

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1 THE WITNESS: I think it was, I saw a video that  
2 was taken by Danillo Sheveiko and was put on You Tube to  
3 that, was taken shortly after a recent storm.  
4 MR. GROSSMAN: Okay. So when Mr. Sheveiko  
5 testifies, I guess he'll, he can testify as to that. And  
6 what was the specific area you were referring to along the  
7 riff raff?  
8 THE WITNESS: Rip rap is a kind of medium, large  
9 rocks that are put into a channel to attempt to prevent  
10 erosion of a stream bank or a channel and this is, what I'm  
11 referring to here is a head water of Silver Creek which is  
12 part of Rock Creek. And it consist of a pipe that  
13 discharges runoff from the part of the parking lot and  
14 routes of the Costco and other parts of at least this  
15 section of the Westfield Mall. And so to answer your  
16 question, there already is an ongoing storm water runoff and  
17 erosion problem and issue, and so this rip rap, a placing  
18 of, loading rocks into this channel is an attempt to  
19 mitigate erosion from this runoff and it's not the most  
20 green solution, if you will. There are more green solutions  
21 that I have studied that are more effective in infiltrating  
22 runoff rather than just discharging it. And so that's an  
23 ongoing concern.  
24 MR. GROSSMAN: How does that relate to the  
25 proposed gas station?

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1 THE WITNESS: The proposed gas station is, my  
2 understanding has been proposed to have some additional  
3 storm water management measures built along with it,  
4 however, even those measures, they can mitigate runoff, they  
5 can't completely prevent it, especially for larger storms.  
6 MR. GROSSMAN: Well, will they make the situation  
7 worse than the current situation that you're observing or  
8 say has been observed?  
9 THE WITNESS: Well, I -- in terms of -- there is a  
10 potential for making it worse in terms of the additional  
11 amount of chemical pollutants that might be in the runoff  
12 from the additional number of vehicles that would be queuing  
13 because the exhaust that those vehicles are emitting will  
14 make its way into runoff eventually. So, in other words,  
15 what goes up into the air does come down in the rain and  
16 ends up in our streams in terms of polluted runoff. And,  
17 again, more modern storm water management measures can  
18 filter some of these pollutants out, but they cannot --  
19 they're not 100 percent efficient, so they don't filter all  
20 the pollutants out. And during larger storms, there is  
21 still a discharge that can be erosive.  
22 MR. GROSSMAN: All right. Additional questions,  
23 Ms. Adelman?  
24 MS. ADELMAN: Yes. Most of my questions have been  
25 asked, but I do have one more.

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1 REDIRECT EXAMINATION  
2 BY MS. ADELMAN:  
3 Q Ms. Cameron, are tailpipe emissions from idling  
4 cars in a queue able to affect existing foliage, trees,  
5 bushes in the forest buffer?  
6 A My understanding is, yes, there can be an effect  
7 on foliage --  
8 Q A negative effect?  
9 A -- a negative effect. I have not studied that  
10 issue in depth, but that is my understanding.  
11 Q Thank you.  
12 MR. GROSSMAN: Ms. Duckett, did you have any  
13 questions?  
14 MS. DUCKETT: No.  
15 MR. GROSSMAN: Ms. Sheard, did you have any  
16 questions?  
17 MS. SHEARD: No questions.  
18 MR. GROSSMAN: Okay.  
19 MS. HARRIS: Recross?  
20 MR. GROSSMAN: Ms. Harris, do you have --  
21 MS. HARRIS: Yes.  
22 MR. GROSSMAN: Okay.  
23 RECROSS EXAMINATION  
24 BY MS. HARRIS:  
25 Q Ms. Cameron, you noted, you expressed some concern

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1 about the erosion problem and I assume -- were you referring  
2 to the erosion problem to the extent one exists in the  
3 Kensington Branch, is that correct?  
4 A Yes, and in this particular headwater of the  
5 Kensington Branch.  
6 Q Okay. And were you aware that upon the  
7 redevelopment of the gas station site, if it were to  
8 redeveloped, that all the storm water would actually be  
9 flowing into the Wheaton Branch?  
10 A I don't think I was aware of that.  
11 Q Okay.  
12 A Of that plan.  
13 Q Thank you. And then you noted that you had, based  
14 upon your understanding there could be some potential impact  
15 to the foliage of the trees, and what's the basis for that  
16 opinion?  
17 A Just, I just know in general that air pollutants  
18 can, they tend to settle on the leaves of, you know, when  
19 trees are in leaf --  
20 Q Okay.  
21 A -- the leaves are, can be very efficient  
22 collectors of air pollutants which has like a, has a  
23 positive and a negative effect. And, actually, could I go  
24 back to your previous question to clarify?  
25 MR. GROSSMAN: Sure.

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1 MS. HARRIS: Certainly.  
2 THE WITNESS: When you said all the runoff would  
3 be discharged to Wheaton Branch, what are you referring to,  
4 all the runoff from what, from what facility?  
5 MS. HARRIS: Am I able to answer?  
6 MR. GROSSMAN: Go ahead.  
7 MS. HARRIS: All the runoff within the special  
8 exception area --  
9 THE WITNESS: Uh-huh.  
10 MS. HARRIS: -- will be redirected to the Wheaton  
11 Branch.  
12 THE WITNESS: Okay. Yes, I was aware of that. I  
13 thought you were referring to --  
14 MS. HARRIS: Well, I thought you --  
15 THE WITNESS: -- the whole, the entire Costco --  
16 MS. HARRIS: -- had previously testified that the  
17 development of the gas station will, in fact, cause  
18 increased erosion at the Kensington Branch. That was your  
19 testimony, correct?  
20 THE WITNESS: Yes. Okay. So --  
21 BY MS. HARRIS:  
22 Q But if we're not flowing into the Kensington  
23 Branch, how could we increase the erosion?  
24 A Okay. So I stand, I am corrected on this point.  
25 Q Okay.

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1 A So the additional runoff from, or any runoff from  
2 the proposed gas station would be affecting Wheaton Branch  
3 of Sligo Creek, which is part of the Anacostia.  
4 Q All right. Right. Okay. And then to the extent  
5 there may be damage from, to the trees, is there any impact  
6 currently from the existing surface parking lot and the cars  
7 that are coming to the Wheaton Mall on the foliage?  
8 A I have not examined that, so I'm not able to  
9 answer that.  
10 Q And so you really don't know if the increased  
11 traffic attributable to the gas station will, in fact, have  
12 any effect on the trees?  
13 A I think it's reasonable to -- it's, I think it's a  
14 reasonable environmental science principle that additional  
15 traffic beyond what's already there now will be adding more  
16 greater air pollution loading per day or per unit of time to  
17 that area and, therefore, there will be additional air  
18 pollutants that will be transported downwind and so to the  
19 extent that foliage is affected by vehicle exhaust, it's  
20 reasonable to, in my view, to have that as a concern.  
21 Q But we don't know if the existing amount of  
22 traffic to the Wheaton Mall is causing any damage to the  
23 foliage currently, is that correct?  
24 A I do not know the answer --  
25 Q Okay.

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1 A -- to that question.  
2 Q Thank you.  
3 MS. HARRIS: No other questions.  
4 MR. GROSSMAN: In effect, you're saying that the  
5 addition of a gas station inherently would add more fumes  
6 and potential damage to the environment?  
7 THE WITNESS: Yes.  
8 MS. ADELMAN: Mr. Grossman --  
9 MR. GROSSMAN: All right.  
10 MS. ADELMAN: -- my question really was specific  
11 towards the idling in the queue. Those become more or less  
12 stationary cars that will be adjacent to the foliage in the  
13 forest buffer. That was my point, not that the parking lot,  
14 which is a distance and, secondly, those cars are turned off  
15 in theory hopefully in the parking lot and I'm more  
16 concerned about idling cars on or near the ring road and  
17 adjacent to the property.  
18 MR. GROSSMAN: I understand your concerns, but I  
19 have additional --  
20 MS. ADELMAN: That was my question to Ms. Cameron  
21 to ask her opinion on that.  
22 MR. GROSSMAN: Right, but I have an additional  
23 question --  
24 MS. ADELMAN: Not on the parking lot.  
25 MR. GROSSMAN: -- which I asked which was --

1 MS. ADELMAN: Right.  
2 MR. GROSSMAN: -- which I took it the sense of Ms.  
3 Cameron's answer to Ms. Harris was that, in effect, if you  
4 add a gas station and as cars come in, additional cars  
5 coming, that that automatically is going to mean that there  
6 is going to be additional pollution and that's going to have  
7 some adverse consequences.

8 MS. ADELMAN: Right.

9 MR. GROSSMAN: And you may not be familiar with  
10 the standards how we operate under here, but one of them is  
11 the question of inherent versus non-inherent adverse  
12 consequences. And the concept behind a special exception is  
13 that the Council has decided that they know that there are  
14 going to be some inherent adverse effects from a special  
15 exception on the community. They decided that the benefits  
16 will outweigh the inherent adverse effects. So we're  
17 expressly prohibited from denying a special exception based  
18 solely on inherent adverse effects of a potential special  
19 exception.

20 We can, or the Board of Appeals can deny a special  
21 exception based on non-inherent effects, as well as a  
22 combination of inherent and non-inherent adverse effects.  
23 But, anyway, I thought you ought to know that.

24 MS. CORDRY: Can I ask one follow-up question?

25 MR. GROSSMAN: Sure.

1 BY MS. CORDRY:

2 Q From your experience, Ms. Cameron, is it inherent  
3 in gas stations to have 20, 30, 40 cars lined up for eight  
4 to 10 hours a day or more? Is that your experience with  
5 other gas stations you have observed?

6 A I have not made personal observations and counts,  
7 so I'm not able to answer your question.

8 MR. GROSSMAN: All right. Well, anyway, thank you  
9 very much, Ms. Cameron, for taking your time to come down  
10 and sharing your views and the views of the Audubon  
11 Naturalist Society.

12 THE WITNESS: Thank you.

13 MR. GROSSMAN: Appreciate it. Okay. Back to Ms.  
14 Cordry. And you're more than welcome to stay and watch the  
15 further festivities if you'd like. It's a public session.

16 MS. CORDRY: All right. I think I was still at  
17 the point of working through Mr. Flynn's report. I was at a  
18 point of saying that in terms of the station impact, which  
19 was Section 3.2.3, it is interesting that there is no effort  
20 in this report to estimate what volume the station would  
21 sell which, again, is very unusual compared to other special  
22 exception reports I've read because it's awfully difficult  
23 to tell what kind of impact you're going to have or what  
24 kind of need you have if you don't assess what you're  
25 actually going to put on the market.

1 So his report in terms of impact just says, well,  
2 if everybody has a great station, they won't be impacted.  
3 That's nice, but it doesn't really prove a whole lot there.  
4 But we did try to determine from this report whether there  
5 was any attempt to quantify where Costco expected the sales  
6 to come from from this 12 million gallons and the only thing  
7 that's really in this report is the statement that they  
8 expect about 4.2 to 4.8 million gallons of sales at  
9 Beltsville would transfer to here. There's no real  
10 indication, though, whether those are sales around the  
11 Beltsville area, whether they are sales from this  
12 neighborhood area that would be coming back here. So you  
13 really can't tell too much from that. You can't tell  
14 anything from this report about the remaining, whatever that  
15 would be, seven to eight million gallons of sales, whether  
16 they would be coming from far outside this area, in which  
17 case you would be bringing in, you know, sales into this  
18 area, whether they would be coming from other stations that  
19 are already here in which case you would, if we get to this  
20 need gap in a moment, if you're diverting sales from  
21 stations that are already here in this area, you're not  
22 closing the need gap, you're just taking it away.

23 If you're taking it from somewhere outside of this  
24 area and bringing it in here then, again, you aren't closing  
25 the need gap, but you are making it look like you are

1 filling the need gap because we're selling more gas here,  
2 but we're not necessarily selling more to the people who  
3 live right here. So you really can't tell any of that from  
4 this report because it doesn't really address that at all.

5 So basic point, if you can sell this 12 million  
6 gallons without harming the local stations, which is sort of  
7 the import of this report, that's presumably because you're  
8 bringing the sales in from someplace else and that will use  
9 up this need gap which I will talk about more in just a  
10 minute. But that means, again as I say, that if there is a  
11 station that comes here that does try to actually sell to  
12 the local neighborhood, just the neighborhood, operate a  
13 convenience store, whatever, and needs to make the same kind  
14 of analysis to show that it has a need to satisfy the entire  
15 neighborhood, it will be handicapped in doing so by virtue  
16 of the sales being brought in from the outside.

17 Conversely, if it is taking sales away from  
18 stations in this area, then we're right back at the point  
19 that I've probably made ad nauseum at this point, that --

20 MR. GROSSMAN: I would never say that.

21 MS. CORDRY: I will say it because it's a point  
22 about which we are deeply concerned, that -- we live in this  
23 neighborhood. We don't want to have to go outside of our  
24 neighborhood and go 10 or 15 minutes away to find something.  
25 And if our stations are being taken away, then we are losing

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1 the benefits that we would otherwise have.  
2 Just the last couple points on his report. He  
3 talked about customers interviews. In the first set he said  
4 he talked to 24 people buying gas in this local area. And  
5 that 16 said they would likely purchase gas at Costco  
6 assuming its price was competitive. Now I think the,  
7 probably the really interesting point of this interview  
8 selection was he said as a total group, most were already  
9 Costco members. So I don't know how he picked his group,  
10 but if you've only got a 23 percent local membership here  
11 and you manage to find that most of the people you talk to  
12 were already Costco members, something a little skewed about  
13 that group there.  
14 MR. GROSSMAN: I don't place much credence in --  
15 MS. CORDRY: Right.  
16 MR. GROSSMAN: -- on scientific --  
17 MS. CORDRY: Exactly.  
18 MR. GROSSMAN: -- survey. That's hearsay.  
19 MS. CORDRY: I would agree, especially one that is  
20 clearly from however it happened has a rather biased sample  
21 there. His other sample was he talked to 40 people buying  
22 gas at Beltsville and found they typically bought most of  
23 their gas there. Now I think he wants to extrapolate from  
24 that that most people going to Costco buy their gas there,  
25 but since he only talked to people already buying gas, what

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1 he got his answers from there tells you nothing about how  
2 many people going to store.  
3 MR. GROSSMAN: Yes, I don't this his interviews  
4 are going to play a part --  
5 MS. CORDRY: Fine.  
6 MR. GROSSMAN: -- in my analysis.  
7 MS. CORDRY: Right. I just wanted to make clear  
8 that -- because, see, actually he will get to that somewhat  
9 in his supplemental need report he put in and I think you  
10 will see there that he has misconceived his statistics on  
11 that point, another mathematical error we'll get to in a  
12 little bit.  
13 All right. So let's turn to Section 4, which is  
14 when he finally actually does address need and this is  
15 really the only point at which he actually is talking about  
16 need in terms of any kind of, try to calculate what this  
17 area actually needs in the way of gas. Now, of course, as  
18 we all, I think, understand, he is, as he said in his  
19 testimony, he is not addressing in any way, shape or form  
20 the question of need as necessity. Nothing in the  
21 suggestion that this area cannot supply the gasoline here.  
22 Rather, what he is doing is he's going to this organization  
23 called Neilson Claritas and asking them for a report on what  
24 they describe as, quote, an actionable portrait of sales  
25 opportunity so marketers can maximize gross strategies by

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1 accurately targeting the sales gaps that exist in the  
2 marketplace.  
3 Leaving aside the jargon of what an actionable  
4 portrait is, I think what we can understand from that is  
5 that this is a marketing tool. This is a way in which  
6 someone seeking to operate a business attempts to determine  
7 is there some kind of niche into which I can fit myself and  
8 find a way to operate and make a profit, which is not at all  
9 necessarily the same question as does an area need another  
10 store?  
11 MR. GROSSMAN: I think we have an imperfect  
12 tools --  
13 MS. CORDRY: Okay.  
14 MR. GROSSMAN: -- for this.  
15 MS. CORDRY: So in his testimony, Mr. Flynn  
16 suggested he perhaps had carried a lot of independent  
17 analysis to get to these supply and demand figures, but it's  
18 actually clear that he simply submitted his report to  
19 Claritas, he asked for the seven minute figures and got back  
20 a set of numbers. And you can tell that because the County  
21 staff was able to generate exactly the same figures  
22 themselves by submitting their own request. And,  
23 presumably, they had not done Mr. Flynn's analysis, so we  
24 both submitted a report, we both get the same thing back.  
25 It's tell me what need there is -- what's his gap within the

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1 seven minute area?  
2 If you want to look, their report is mentioned on  
3 page 52 of the staff attachments which is Exhibit 70 again.  
4 I can put that in if you want, but it's in there and just  
5 goes through and shows that they came up with the exact same  
6 numbers that he came up with. Okay.  
7 MR. GROSSMAN: The staff found that there was a  
8 demonstrated need.  
9 MS. CORDRY: Well, the staff found that when you  
10 submit a request to Claritas, you get a set of numbers back  
11 that were the same numbers he did. I will talk in a minute  
12 about what his actually demonstrates.  
13 MR. GROSSMAN: Well, you can challenge the basis  
14 for it, but they're, they did make a finding that in their  
15 opinion there was a demonstrated need.  
16 MS. CORDRY: Well, they made a finding that --  
17 MR. GROSSMAN: You consider it erroneous.  
18 MS. CORDRY: Okay. No, I'm not saying erroneous,  
19 I'm saying you have to understand what it actually  
20 represents. And what they are saying is, yes, we submitted  
21 the same thing, we got the same numbers back from Claritas.  
22 And what I'm going to discuss in just a minute is what, what  
23 those numbers actually mean from what Claritas itself says.  
24 I'm not debating them. I'm not fighting with them about  
25 what they do.

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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

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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.

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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

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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

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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 --

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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

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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?

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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



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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

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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

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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

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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.

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1 MR. GROSSMAN: -- so I make sure I understand.  
2 MS. HARRIS: The Board of Appeals denied the  
3 special exception based on the number of reasons, including  
4 need.  
5 MR. GROSSMAN: Okay.  
6 MS. HARRIS: The circuit court found that -- the  
7 circuit court affirmed the Board of Appeals' action, but  
8 specifically found that the applicant had proven a need.  
9 MR. GROSSMAN: Okay. All right. Do you accept  
10 that gloss or you don't know?  
11 MS. CORDRY: I have not actually been able to find  
12 the Court of Appeals opinion yet. I will accept that, but I  
13 will point out that as we go through you will see that the  
14 need shown in this analysis is dramatically more complete  
15 and provides background that this report does not.  
16 MR. GROSSMAN: Right.  
17 MS. CORDRY: In any case, I would put that in for  
18 the point that 65 percent is an established industry kind of  
19 standard capture rate.  
20 MR. GROSSMAN: By the way, going back to the  
21 Henderson Corner opinion that I wrote in 2743, I note on  
22 page 32 that it could well be argued that the case law  
23 definition of need eliminates, or at least reduces the  
24 utility of supply and demand market analysis of the kind  
25 employed in this case and other similar cases. We need not

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1 decide that issue now as I said there and leave it, go on,  
2 you know.  
3 MS. CORDRY: Right.  
4 MR. GROSSMAN: But the point is now I will have to  
5 decide --  
6 MS. CORDRY: Right.  
7 MR. GROSSMAN: -- or at least make a, or I may  
8 have to, I'm not sure I have to, but this may be that, that  
9 case, the Henderson Corner case that I just read from, you,  
10 of course, had no opposition, so nobody was there to  
11 challenge this process or to say it's useful or not useful  
12 in making a determination of need in accordance with what  
13 the courts have defined need as.  
14 MS. CORDRY: Right. I will say that the Cloverly  
15 one was one where, as I say, there was an enormous amount of  
16 information placed in the record on the basis of need and  
17 there was a determination that it was not sufficient. The  
18 fact that that level of information, which I will tell you  
19 when you read the information there, is vastly beyond what  
20 you will find in this case, I don't think is inconsistent  
21 with finding no need shown here. And I will certainly say  
22 that it is --  
23 MR. GROSSMAN: Well, I don't know, but that, I  
24 don't think that sentence delivers any information to me.  
25 The fact that there was a larger amount, volume of

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1 information in this other Cloverly case then there is here  
2 does not mean that what was shown here is not demonstrated.  
3 MS. CORDRY: I understand.  
4 MR. GROSSMAN: So one does not follow the  
5 premise --  
6 MS. CORDRY: We are getting there. We are getting  
7 there.  
8 MR. GROSSMAN: Okay.  
9 MS. CORDRY: And you did ask me is there  
10 information that indicates that the Claritas number, that  
11 100 percent is not the right number for gasoline stations  
12 and I am saying to you that, yes, I am showing you that  
13 other experts in this field who have been qualified as  
14 experts, and I will note that I am dealing with all the ones  
15 where these people were qualified as experts, including Mr.  
16 Cronin, Mr. Giegerich and so forth, all --  
17 MR. GROSSMAN: One said 60 percent and one said 65  
18 percent --  
19 MS. CORDRY: Right.  
20 MR. GROSSMAN: -- in terms of applying to. So,  
21 presumably, if you applied that, you would multiply 60  
22 percent or 65 percent times the 13 point whatever it was?  
23 MS. CORDRY: No, no, no. You --let me put all of  
24 these in and then I'll come back and say what they are.  
25 MR. GROSSMAN: Well, they answered that question.

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1 MS. CORDRY: Okay. Well --  
2 MR. GROSSMAN: You wouldn't do that?  
3 MS. CORDRY: Okay. Okay. No, no, because that is  
4 the gap. What you would need to say is, okay, and I do say  
5 this -- let's say potential sales in the area were 100  
6 million gallons. That's the total that the people in the  
7 area might buy would be 100 million gallons.  
8 MR. GROSSMAN: Right.  
9 MS. CORDRY: Let's say they buy 80 million  
10 gallons. That's a 20 million gap.  
11 MR. GROSSMAN: Right.  
12 MS. CORDRY: But if I'm going to capture,  
13 remember, the question of capture is how much of the 100  
14 million am I capturing? If it's reasonable to assume that  
15 I'm capturing 60 percent of that, then that would be 60  
16 million gallons that I should be expected to capture. I'm  
17 already capturing 80 million in this example. Do you follow  
18 that?  
19 MR. GROSSMAN: No, I don't.  
20 MS. CORDRY: Okay. Let me start again. The  
21 capture rate is the difference between the total that I  
22 might expect to sell --  
23 MR. GROSSMAN: Yes.  
24 MS. CORDRY: -- and the amount that's actually  
25 being sold there. In my example with the 100 million and

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

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?

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

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

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1 area, actually not, not the total for you. You would  
2 actually probably apply that just against the 37 million of  
3 the households in this area. So I would take 60 percent of  
4 that and then I might add some passersby and so forth.  
5 There's various things you could do and you could come up  
6 with a top line number. It didn't get done.  
7 MR. GROSSMAN: Okay.  
8 MS. CORDRY: So I can't really give you a good  
9 example, but I can tell you Mr. Flynn hasn't given it to you  
10 either and I can tell you that simply assuming that you're  
11 going to capture 100 percent in this area is not what they  
12 do. And let me put in three more exhibits if I could?  
13 MR. GROSSMAN: Okay.  
14 MS. CORDRY: The --  
15 MS. ADELMAN: Did I hear my name?  
16 MS. CORDRY: Yes.  
17 MR. GROSSMAN: Silently called out.  
18 MS. CORDRY: Why don't you bring all three of them  
19 and just let's hand them all in at one time?  
20 MS. ADELMAN: So N, O and --  
21 MS. CORDRY: P, yes.  
22 MS. ADELMAN: -- is that right?  
23 MS. CORDRY: Yes. It's just my -- the N, O and P  
24 is just my internal note keeping, help me keep --  
25 MR. GROSSMAN: Right.

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1 MS. CORDRY: -- track of them.  
2 MR. GROSSMAN: It doesn't add up to nope.  
3 MS. CORDRY: No, no, no, no, not yet.  
4 MR. GROSSMAN: Thank you.  
5 MS. CORDRY: Okay. And I will be describing them  
6 as we go. The next one would be Board of Appeals No. S-  
7 2631. It's the Germantown Walter Johnson property.  
8 MR. GROSSMAN: Okay. So I'll take -- so this is  
9 not, this is also the Hearing Examiner's report?  
10 MS. CORDRY: Right.  
11 MR. GROSSMAN: Okay. So --  
12 MS. CORDRY: Yes, I'm just giving you the Board of  
13 Appeals. Yes, again, it's a hearing examiner report.  
14 MR. GROSSMAN: I'm sorry, you're giving me the  
15 Board of Appeals opinion or you're giving me the hearing  
16 examiner's report?  
17 MS. CORDRY: The hearing examiner's report. I was  
18 just saying Board of Appeals Case No. --  
19 MR. GROSSMAN: Okay.  
20 MS. CORDRY: -- S-2631.  
21 MR. GROSSMAN: Okay. So Exhibit 300, thank you --  
22 MS. HARRIS: I'm sorry, which one is 300?  
23 MR. GROSSMAN: Exhibit 300 is the hearing examiner  
24 report in S-2631.  
25 (Exhibit No. 300 was marked for

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1 identification.)  
2 MS. CORDRY: Right.  
3 MR. GROSSMAN: And we don't have a date on that  
4 one either.  
5 MS. HARRIS: I have the document. That's August  
6 8, 2005.  
7 MR. GROSSMAN: August 8, 2005. Okay.  
8 MS. CORDRY: All right. And this was by a firm  
9 called the Sherwood Consultancy. And Mr. Sherwood  
10 testified, again, about need if you look back on page 25 in  
11 that report.  
12 MS. ADELMAN: What's that one?  
13 MS. CORDRY: This is the S-2631. And, again,  
14 looking at the neighborhood, residents and so forth, again,  
15 estimates the number of households and so forth, converts  
16 the number into a gasoline demand figure by, in this case he  
17 used per capita gasoline purchases, multiplied 465 by the  
18 population estimate, arrived at a total demand for gasoline  
19 among the area as 10.9 million gallons. And then based on  
20 the number of stations and so forth, and elsewhere in here  
21 he says, I think, that there were 16 stations and based on  
22 those number of stations and so forth, he indicated he  
23 estimated the trade area residents would, again, purchase  
24 about 65 percent of their gasoline within the trade area and  
25 the rest elsewhere. So, again, a 65 percent likely capture

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1 rate for residential use and that resulted in, again, about  
2 7 million gallons being the demand he was working with, not  
3 10.7, which is the, or 10.9, which would have been the  
4 starting point if you used 100 percent of the demand.  
5 The next exhibit is actually, it was put in as an  
6 exhibit in that S-2631 case. It itself actually came from  
7 S-2299. It's the one labeled Exhibit No. 30 at the bottom.  
8 It has automobile filling station, proof of need analysis,  
9 IO limited partnership.  
10 MR. GROSSMAN: Okay. Hold on. I'm sorry, what  
11 are we looking at now?  
12 MS. CORDRY: This one says automobile filling  
13 station --  
14 MR. GROSSMAN: Okay.  
15 MS. CORDRY: -- IO limited partnership.  
16 MR. GROSSMAN: All right. That will be Exhibit  
17 301.  
18 (Exhibit No. 301 was marked for  
19 identification.)  
20 MR. GROSSMAN: It is -- that's the holding  
21 analysis or just the --  
22 MS. CORDRY: I'm not sure if it's the whole need  
23 analysis or not. I think it may be. A couple pages in  
24 general about the thing. It goes to neighborhood market  
25 area definition. Then Part 4 there is demographic profile

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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.

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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

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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

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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.

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

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

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

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 --

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1 MR. GROSSMAN: Where are you looking?  
2 MS. CORDRY: Okay. We talked about that a little  
3 earlier, but in Exhibit Q, let's see where he did his  
4 calculations here, okay, page 4-1. I'm sorry, yes, the need  
5 report there that you're looking at, yes.  
6 MR. GROSSMAN: Well, okay, Exhibit 4-1, yes.  
7 MS. CORDRY: Okay. Page 4-1, actually.  
8 MR. GROSSMAN: Well, I don't have a page 4-1.  
9 MS. ADELMAN: Which exhibit are we on now?  
10 MS. CORDRY: Okay. We are on the 2012 need report.  
11 MS. ADELMAN: And that's 302?  
12 MS. CORDRY: Okay. I will give you my page. As I  
13 say, this is all --  
14 MR. GROSSMAN: No, not 302, this is the, this is  
15 from Mr. Flynn's report.  
16 MS. CORDRY: Yes, and the --  
17 MS. ADELMAN: Oh, I see.  
18 MS. CORDRY: No. I'm back to his report in this  
19 case.  
20 MR. GROSSMAN: Right.  
21 MS. CORDRY: Okay. Yes. All right. I don't know  
22 why that was done, but in any case the entirety of it, as I  
23 say, is in, is part of Exhibit 88(h). But --  
24 MR. GROSSMAN: Okay.  
25 MS. CORDRY: -- 4-1, if you see at the bottom

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1 there, he says there's a \$71 million gap and that  
2 corresponds to the gasoline stations, the top line gasoline  
3 stations, dash 447 in Exhibit A-2.  
4 MR. GROSSMAN: Okay. Hold on.  
5 MS. CORDRY: It's most the way down at the bottom  
6 of the page.  
7 MR. GROSSMAN: Okay. Gasoline stations, 447, is  
8 that what you're saying?  
9 MS. CORDRY: Right. Yes.  
10 MR. GROSSMAN: Okay.  
11 MS. CORDRY: Right. So the top line category is  
12 gasoline stations. That's all gasoline stations. And he  
13 calculates a \$71 million gap there.  
14 MR. GROSSMAN: Right.  
15 MS. CORDRY: Okay. Then underneath that, that  
16 breaks down into two subcomponents, gasoline stations with  
17 convenience stores, gasoline stations without convenience  
18 stores.  
19 MR. GROSSMAN: Right.  
20 MS. CORDRY: Okay. Now in terms of getting from  
21 the 71 million into gallons, if we start at the bottom of  
22 page 4-1 --  
23 MR. GROSSMAN: Right.  
24 MS. CORDRY: -- he says I take a third off of that  
25 for the non-gasoline sales.

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1 MR. GROSSMAN: Right.  
2 MS. CORDRY: Which gets you to whatever that may  
3 be, 48ish or something million gallons and then he goes over  
4 and starts talking about he divided that by -- it goes on to  
5 the top of the next page, 4-2 -- and he says, when I divide  
6 that number of dollars by the price of gasoline, which was  
7 3.55 at the time, that's how I get to 13.1 million gallons.  
8 So all I did was say if 13.1 million gallons corresponds to  
9 \$71 million, then nine million gallons corresponds to the  
10 same nine over 70 once.  
11 MR. GROSSMAN: But I don't, see, I don't see the  
12 logical in that. I mean --  
13 MS. CORDRY: Okay.  
14 MR. GROSSMAN: -- you're, he's listing two types  
15 of gas stations, and I'm not saying, I don't think he's  
16 saying that in terms of determining need that if you  
17 categorize this as one that doesn't have a convenience store  
18 that somehow that means that you would look at the reduced,  
19 the smaller number of stations in that category and say that  
20 determines --  
21 MS. CORDRY: Well, it's not a smaller number of  
22 stations. This has nothing to do with stations. This is  
23 just breaking the \$71 million into two categories of money.  
24 MR. GROSSMAN: Yes, or the smaller amount of  
25 money. It doesn't matter to me --

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1 MS. CORDRY: All right.  
2 MR. GROSSMAN: -- whether you --  
3 MS. CORDRY: Even if I say that for a gasoline  
4 station --  
5 MR. GROSSMAN: It's not --  
6 MS. CORDRY: -- without a convenience store, but  
7 that doesn't mean they don't sell anything else but  
8 gasoline. There is -- Costco may be the only station in the  
9 country that only sells gasoline. Convenience stores are a  
10 little bigger category. There's tires, there's batteries,  
11 there's services, all those kind of things that fall into  
12 it. But even if you took that \$9 million and said 100  
13 percent of that was gasoline sales, which clearly would not  
14 be the case, you would still have a figure that is vastly  
15 smaller than 13.1 million gallons.  
16 MR. GROSSMAN: I understand what you're saying  
17 mathematically, I just don't know that I follow the logic of  
18 applying it that way, that that means that --  
19 MS. CORDRY: Well --  
20 MR. GROSSMAN: -- that there is this reduced  
21 amount of demand actually, but --  
22 MS. CORDRY: Well, I, well, it's just saying that  
23 there's a demand, there's two kinds of demand here which are  
24 being lumped together in the category, the overall  
25 category --

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1 MR. GROSSMAN: Right.  
2 MS. CORDRY: -- of all gasoline stations has two  
3 kinds of demand --  
4 MR. GROSSMAN: Right.  
5 MS. CORDRY: -- demand for gasoline stations  
6 without convenience stores and demand for gasoline  
7 stations --  
8 MR. GROSSMAN: Yes, I mean I --  
9 MS. CORDRY: -- with convenience stores.  
10 MR. GROSSMAN: -- my inclination would be to look  
11 at the entire demand and make adjustments --  
12 MS. CORDRY: Well --  
13 MR. GROSSMAN: -- from there.  
14 MS. CORDRY: -- except that those are two  
15 different things and people use them in different ways and  
16 the main point is Claritas, which is where he's drawing his  
17 data from --  
18 MR. GROSSMAN: Yes.  
19 MS. CORDRY: -- divides these into two different  
20 places. And to make clear that I am not suggesting that  
21 it's just me who says you can divide this up, I would go  
22 back again to Mr. Flynn's report --  
23 MR. GROSSMAN: I understand he divided them up.  
24 MS. CORDRY: No, no, no, no. He did not divide  
25 them up. That's the point.

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1 MR. GROSSMAN: Well, he divided them up in his  
2 Figure A.  
3 MS. CORDRY: He did there, but what I'm saying, he  
4 didn't divide in his demand. What I'm saying is --  
5 MR. GROSSMAN: Right.  
6 MS. CORDRY: -- if you look at the 2699 report,  
7 the Exhibit 302, this also is one where there is a, if you  
8 go to page 3-4 --  
9 MR. GROSSMAN: Okay. I'm looking at it.  
10 MS. CORDRY: Actually, I'm sorry, it's not 304.  
11 Let me find it, his -- okay. His total figure there, yes,  
12 it's on page 3-4. Again, it's the same kind of chart,  
13 gasoline stations in total, 20 million, gasoline stations  
14 with convenience stores and other gasoline stations.  
15 MR. GROSSMAN: Okay.  
16 MS. CORDRY: So he takes the \$17 million there and  
17 when he translates it all back, it translates -- I've got to  
18 find this, but these are right, but he, he is, he divides up  
19 himself between the gasoline stations with convenience  
20 stores and, you know, for gasoline stations without  
21 convenience stores. On page 3-3, he shows that a  
22 difference -- okay. He says Exhibit 3-3 shows a difference  
23 between demand measured by potential sales and supplies  
24 which represents actual estimated sales. The gas station  
25 gap in this market area for stations with convenience stores

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1 amounts to 8.4 million gallons.  
2 So that's what he's taking. He's not taking the  
3 entire amount, he's taking the amount of gas stations with  
4 convenience stores. I'm sorry, yes, and that's right. It  
5 translates over into here. The -- I was reading the wrong  
6 number. I was reading the sales. If we go back to page 3-  
7 4, I'm sorry.  
8 MR. GROSSMAN: All right.  
9 MS. CORDRY: Let me do this clearly now so I'm not  
10 messing this up. The column labeled or the row labeled  
11 gasoline stations in total was 35 million; retail sales, 20  
12 million; a total gap of 14.987 million. Do you see that?  
13 MR. GROSSMAN: Sorry, no, I don't.  
14 MS. CORDRY: Right in the middle of page 3-4 --  
15 MR. GROSSMAN: Yes?  
16 MS. CORDRY: -- and the chart there has gasoline  
17 stations kind of right in the middle of that chart?  
18 MR. GROSSMAN: Okay.  
19 MS. CORDRY: Okay. If you read across the top  
20 line number, the gasoline stations, 447.  
21 MR. GROSSMAN: Right.  
22 MS. CORDRY: Okay. 35 million potential  
23 expenditures, 20 million in actual sales, gap of roughly \$15  
24 million.  
25 MR. GROSSMAN: Right.

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1 MS. CORDRY: Okay? But underneath that for  
2 gasoline stations with convenience stores, 26 million of  
3 potential expenditures, 17 million of supply, 17.6, 8.5  
4 million roughly of opportunity.  
5 MR. GROSSMAN: Right.  
6 MS. CORDRY: That's the number that then back on  
7 page 3-3, that's the number he uses to work with, not the  
8 entirety, but only the portion of gasoline sales, stores  
9 with convenience -- gasoline stations with convenience  
10 stores because that's the kind of store they were proposing  
11 to build in this case.  
12 MR. GROSSMAN: I understand that. I'm just not  
13 sure that of the logic of saying that the demand doesn't  
14 slosh between those two types of gas stations, ones with  
15 convenience stores and ones that not in a way that makes  
16 this kind of distinction, a distinction without a difference  
17 in terms of people who are going to buy gasoline. So --  
18 MS. CORDRY: Well --  
19 MR. GROSSMAN: -- I just don't see that.  
20 MS. CORDRY: Okay. If that --  
21 MR. GROSSMAN: I'm not sure I see the logic in  
22 making, I agree with you, they made the distinction in  
23 this --  
24 MS. CORDRY: And --  
25 MR. GROSSMAN: -- but I don't necessarily buy the



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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

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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?

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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?

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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

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1 sales volume in the County for all gasoline stations. And  
2 that -- then if you turn back to page 33 and 34, it breaks  
3 out to the other gasoline stations --  
4 MR. GROSSMAN: I don't understand. So where is  
5 this figure about 38 percent? I don't know.  
6 MS. CORDRY: In, at the bottom under retail  
7 activity there.  
8 MR. GROSSMAN: Oh, I see.  
9 MS. CORDRY: Yes. Right.  
10 MR. GROSSMAN: Gasoline stations, capture ratio or  
11 rate is 38 percent?  
12 MS. CORDRY: Correct. If you turn --  
13 MR. GROSSMAN: Okay.  
14 MS. CORDRY: -- back to page 33, most of the way  
15 down the page is other gasoline stations and that's the  
16 equivalent of the gasoline stations without convenience  
17 stores. Actually, they're both on that page. About a third  
18 of the way down it says gasoline stations with convenience  
19 stores on page 33.  
20 MR. GROSSMAN: Mine, for some reason, my pages  
21 went from, or what you gave me, went from page 30 and the  
22 next page after that is page 29.  
23 MS. CORDRY: Let me see if, you know, I --  
24 MR. GROSSMAN: Okay. Again, going backwards here.  
25 MS. CORDRY: Perhaps. I think there might be a

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1 blank page in there or something, but let me --  
2 MR. GROSSMAN: All right. Let's see.  
3 MS. CORDRY: It's right here.  
4 MR. GROSSMAN: All right. So 22, 26 --  
5 MS. CORDRY: Do you have page 33?  
6 MR. GROSSMAN: -- 29. Hold on a second. 30, oh,  
7 I see. This one doesn't have a page number on it, it's been  
8 chopped off. So, okay, now what, which page am I looking  
9 for now?  
10 MS. CORDRY: Well, I think it would be another  
11 page or two down, page 33 is what you're looking for.  
12 MR. GROSSMAN: 33? Okay. 32 --  
13 MS. CORDRY: Yes, there we go.  
14 MR. GROSSMAN: -- 33. Okay.  
15 MS. CORDRY: A whole page of numbers to make you  
16 squint.  
17 MR. GROSSMAN: Right.  
18 MS. CORDRY: So about a third of the way down,  
19 gasoline stations with convenience stores.  
20 MR. GROSSMAN: Yes.  
21 MS. CORDRY: We only capture 29 percent here  
22 which --  
23 MR. GROSSMAN: Right.  
24 MS. CORDRY: -- again, is an indication of the  
25 fact that this County doesn't have a lot of the typical kind

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1 of, the Wawa's, the Royal Farms, any of those, and so forth.  
2 MR. GROSSMAN: Right.  
3 MS. CORDRY: But then you go down to other  
4 gasoline stations about two-thirds of the way down --  
5 MR. GROSSMAN: Right, I see it.  
6 MS. CORDRY: -- and you see we capture 66 percent.  
7 MR. GROSSMAN: Right.  
8 MS. CORDRY: So we have a lot more of those kind  
9 of stations and we capture that, and that's pretty much just  
10 right about in the general range of what everyone said you  
11 capture here. Then if we go back a little bit further in  
12 there, we come to District 5, I'm sorry, District 4 figures  
13 which is where Wheaton is now.  
14 MS. ADELMAN: What page is it?  
15 MS. CORDRY: It would be page 76. I'm using the  
16 equivalent kind of numbers --  
17 MR. GROSSMAN: Okay.  
18 MS. CORDRY: -- for that.  
19 MR. GROSSMAN: Gasoline stations.  
20 MS. CORDRY: Okay. So gasoline stations are,  
21 again, all totaled, only 30 percent in this district.  
22 MR. GROSSMAN: All right.  
23 MS. CORDRY: But gasoline station with convenience  
24 stores as low as 16 percent. Again, we really have nothing  
25 of that nature here. But other gasoline stations, 70

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1 percent. So we have an abundance of other gasoline stations  
2 in this area, more than the County as a whole. We don't  
3 have gasoline stations with convenience stores. It might be  
4 a nice thing if we had some of those, but we don't have them  
5 and that's not what we're proposing to build here. And I  
6 think to use market demand for gasoline stations without,  
7 with convenience stores, which is what clearly it shows the  
8 County is short of and this district is short of, and to use  
9 that to support a need for a gasoline station without a  
10 convenience store is a, just a misuse of the need figures  
11 and the data that's being supplied.  
12 It just doesn't really match. You know, if you  
13 had data that said we need restaurants and of that category  
14 we need a whole lot of Italian restaurants and we have a  
15 full supply of Cambodian restaurants, you can't come in and  
16 say, well, because we need restaurants in this area in  
17 total, I should build another Cambodian restaurant. We need  
18 Italian restaurants or whatever.  
19 MR. GROSSMAN: Okay. Point taken.  
20 MS. CORDRY: All right. In terms of whether or  
21 not those distinctions are appropriate as well, Mr. Flynn  
22 attempted to suggest that perhaps there really was these,  
23 these categories were out of date and there really should be  
24 some new category for warehouse stores with gas stations,  
25 which there isn't one. I would like to put another exhibit

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1 in. This will be Exhibit R.  
2 MS. ADELMAN: Well, you're skipping over this?  
3 MS. CORDRY: Yes.  
4 MS. ADELMAN: Okay.  
5 MS. CORDY: We'll skip over that.  
6 MR. GROSSMAN: All right. So this will be Exhibit  
7 303.  
8 MS. HARRIS: Excuse me, Mr. Grossman. Can we take  
9 a very brief break?  
10 MR. GROSSMAN: Yes. About how much longer do you  
11 think you're going to have?  
12 MS. CORDRY: Well, if we're going to -- how late  
13 did you say you could go today?  
14 MR. GROSSMAN: 4:45.  
15 MS. CORDRY: I can probably get done, at least the  
16 direct, by 4:45 if you want, but it might go over, so it's  
17 up to you if you want.  
18 MR. GROSSMAN: Okay. Exhibit 303 is what?  
19 MS. CORDRY: This is some information from the  
20 Bureau of Labor and Statistics on producer price indexes and  
21 then the industry categories that correlate to these  
22 classifications for gas stations and so forth that I have  
23 been talking about.  
24 MR. GROSSMAN: So excerpts from Bureau of Labor  
25 and Statistics regarding, well, it looks like it's not just

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1 gas stations. What is --  
2 MS. CORDRY: Right, but I will -- it's several,  
3 several indexes were added --  
4 MR. GROSSMAN: Okay.  
5 MS. CORDRY: -- at this point.  
6 MR. GROSSMAN: Regarding trade indexes for --  
7 MS. CORDRY: Right.  
8 MR. GROSSMAN: -- gas stations? Okay.  
9 MS. CORDRY: Among others, yes.  
10 (Exhibit No. 303 was marked for  
11 identification.)  
12 MR. GROSSMAN: All right. Why don't we take a  
13 break --  
14 MS. CORDRY: Okay.  
15 excerpts from Bureau of Labor and Statistics regarding --  
16 and come back at 10 after 4:00.  
17 (Whereupon, at 4:04 p.m., a brief recess was  
18 taken.)  
19 MR. GROSSMAN: You may resume.  
20 MS. CORDRY: All right. Let's see. All right.  
21 So what this particular report goes to is that Mr. Flynn  
22 testified on, I think it was July 30th, that this really  
23 wasn't a relevant distinction any more because there were  
24 these hyper-markets or mega-retailers, whatever you want, I  
25 forget exactly what he referred to them as, started coming

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1 in in 1996 and these categories weren't now relevant any  
2 more.  
3 MR. GROSSMAN: Which categories?  
4 MS. CORDRY: The categories of gas stations with  
5 and without convenience stores.  
6 MR. GROSSMAN: I see.  
7 MS. CORDRY: All right. And this report, which as  
8 you can see at the top, BLS.gov, that's the  
9 BureauofLaborStandards.gov, these are trade indexes being  
10 added to the producer price index and talks about as a  
11 result of changes, this is at the bottom of the first  
12 paragraph there, as a result of changes in the 2002 NAICS  
13 industry definitions, new indexes were introduced for  
14 gasoline stations with convenience stores and other gasoline  
15 stations in January 2004. So these categories are updated  
16 as of at least January 2004, well after this 1996 date when  
17 he suggested that these changes started being made in the  
18 market.  
19 And then just to, just for clarification and  
20 clarity, I put in four different definitions under this  
21 North American Industry Classification System, which is what  
22 Claritas works off of.  
23 MR. GROSSMAN: Well, hold on one second. Going  
24 back to the Bureau of -- is it Bureau of Labor Standards or  
25 Bureau of Labor and Statistics?

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1 MS. CORDRY: I think it's statistics, I believe.  
2 MR. GROSSMAN: Okay. Yes, I thought you said  
3 standards.  
4 MS. CORDRY: Oh, did I? I meant statistics. I'm  
5 sorry.  
6 MR. GROSSMAN: Okay. And so going back to that,  
7 are you saying that these figures on page, in the second  
8 page of what you provided me, the NAICS standards, they were  
9 recently updated or these are just old updates? I'm not  
10 sure -- it says last modified date --  
11 MS. CORDRY: I think --  
12 MR. GROSSMAN: -- was December 13, 2012, but were  
13 these particular standards modified then, because there are  
14 many others on --  
15 MS. CORDRY: I believe, yes, I believe this is --  
16 what I am referring to is the language at the top that talks  
17 about these indexes, these new indexes were introduced for  
18 gasoline stations in January of 2004. This is a longer  
19 document that talks about some other changes and so forth  
20 and I'm not really sure when exactly they were all made or  
21 whether this was simply a, you know, the only date I see --  
22 I do see a December 2012 date on this, but I'm not sure what  
23 exactly was being updated in December 2012. But what I'm  
24 pointing to is the language that says the new indexes were  
25 introduced. There was changes in the NAICS industry

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1 definitions in 2002, well after 1996.  
2 MR. GROSSMAN: Right.  
3 MS. CORDRY: And that these new indexes were  
4 introduced in the producer price index in January 2004. So  
5 my point being if Mr. Flynn was saying that these changes  
6 were in 1996 and that somehow --  
7 MR. GROSSMAN: I see.  
8 MS. CORDRY: -- NAICS didn't know about them, this  
9 was six years later and --  
10 MR. GROSSMAN: Okay.  
11 MS. CORDRY: -- no reason to think they didn't  
12 know about them. So I put in, and these are the most up-to-  
13 date definitions. I don't know that they have been changed,  
14 but these are the most up-to-date definitions here, 2012,  
15 NAICS definitions for the sub-category 447110 gas stations  
16 with convenience stores; 447190, which are other gasoline  
17 stations. I also put in the definition for just a plain old  
18 convenience store which 44512. And then there is another  
19 classification for warehouse clubs and super centers which I  
20 believe is what the Costco warehouse fits into, which is  
21 452910. So the Claritas definitions are broken down by  
22 these kind of categories.  
23 MR. GROSSMAN: Is that the case, by the way,  
24 that -- do we know that the Claritas --  
25 MS. CORDRY: Yes, if you look at --

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1 MR. GROSSMAN: -- things are broken down by these  
2 newer categories?  
3 MS. CORDRY: Well, they update them continually.  
4 And, again, these are not new categories. These are ones  
5 they --  
6 MR. GROSSMAN: Well, they have 2012 written there.  
7 MS. CORDRY: Those are the current, existing ones.  
8 I have, from what I have been able to find, I don't see  
9 anything that suggests they have changed and I think I  
10 looked at these a couple years ago and they were the same.  
11 I could probably go back and try to find if they've changed,  
12 but they're not particularly unusual definitions for these  
13 matters. And, certainly, this report was run in 2012. And  
14 the Claritas Nielsen release notes at the end of that  
15 exhibit, they would be showing the 2012 report.  
16 It talks about at the bottom of page D-3 going to  
17 D-4 that they make these demands site estimates, they do all  
18 this to get all these estimated expenditures and make all  
19 these adjustments and bring all these things in and then at  
20 the very end of that they say these --  
21 MR. GROSSMAN: Where are you seeing D-3 and --  
22 MS. CORDRY: It's all at the very end -- it's an  
23 appendix. No, no, I'm sorry, not in that, in the 2012  
24 report.  
25 MR. GROSSMAN: Oh.

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1 MS. CORDRY: I'm sorry. Pretty much I think at  
2 the very end of it.  
3 MR. GROSSMAN: On what page?  
4 MS. CORDRY: Part of the appendix is at the end.  
5 It would say D-3 and D-4 at the top.  
6 MR. GROSSMAN: Oh, no, that didn't come with my --  
7 MS. CORDRY: All right.  
8 MR. GROSSMAN: -- copy of Exhibit 302.  
9 MS. ADELMAN: I will give you mine again.  
10 MS. CORDRY: As I stated, the entire report is in  
11 the record as --  
12 MR. GROSSMAN: Right.  
13 MS. CORDRY: -- Exhibit 88(h). Okay. So at the  
14 very bottom there of D-3 going into D-4.  
15 MR. GROSSMAN: Okay. What about that now?  
16 MS. CORDRY: It talks about how they're  
17 calculating those demands and then the very last sentence  
18 talks about we take these and these overall geographic  
19 estimates of demand and we assign them to the NAICS  
20 classifications.  
21 MR. GROSSMAN: Okay.  
22 MS. CORDRY: Okay. So, again, it appears to me  
23 that to the extent that Mr. Flynn wants to rely on the  
24 Claritas data to establish need, it should be relied on in  
25 the way it's calculated under the classifications it divides

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1 and uses the applicable data.  
2 MR. GROSSMAN: Okay.  
3 MS. CORDRY: Okay. And I guess I would just say,  
4 you know, in terms of this, again, we really are going to  
5 try to count the store, the warehouse as part of a  
6 convenience store, then fine, let's have a warehouse with a  
7 convenience store, gasoline station, let's make the whole  
8 aspect part of the special exception, but I think that would  
9 be a very different special exception than you're looking at  
10 at this point.  
11 MR. GROSSMAN: Well, it's not a special  
12 exception --  
13 MS. CORDRY: Well --  
14 MR. GROSSMAN: -- as it's recognized in the code.  
15 MS. CORDRY: But --  
16 MR. GROSSMAN: The convenience store, the store, I  
17 shouldn't say that, the warehouse is a matter of right.  
18 MS. CORDRY: I understand. But if you're trying  
19 to make it the convenience store for this station --  
20 MR. GROSSMAN: I understood. I -- your --  
21 MS. CORDRY: Right. Got it.  
22 MR. GROSSMAN: -- I took your point.  
23 MS. CORDRY: Yes. Okay. So I just wanted to --  
24 MR. GROSSMAN: You beat me into submission.  
25 MS. CORDRY: Got it. Got it on that. I try not

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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

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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.

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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

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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.

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1 MS. CORDRY: Okay.  
2 MR. GROSSMAN: So if there's an issue of something  
3 you don't know how he derived something, it's, a simple  
4 question is how did you derive that figure of 147,400  
5 gallons --  
6 MS. CORDRY: Well --  
7 MR. GROSSMAN: -- of additional demand?  
8 MS. CORDRY: I'm not positive if we asked the  
9 question or not. I will say that it is my understanding  
10 that it is the burden of proof on the applicant to really  
11 support its position and that whether or not we have asked  
12 every question that illustrates the flaws in their report  
13 doesn't change the fact that the report does not give you  
14 any basis for where those numbers come from.  
15 MR. GROSSMAN: Well, once again, it's not -- he's  
16 an expert. He doesn't necessarily have to give every  
17 background number that went into his calculations. He's  
18 made, he's offered an opinion in this particular case that  
19 demand, there would be a demand for an additional 147,400  
20 gallons per year from residents and that's been before you  
21 for a long time. You certainly can ask that question or you  
22 can gather other information and testify that it's  
23 erroneous.  
24 MS. CORDRY: Okay. I am going to be testifying  
25 for the rest of this about why that is a unrealistic,

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1 unreasonable and erroneous calculation, but I do think it is  
2 reasonable to also look at the fact that this report does  
3 not have pretty much any of the basic numbers that you would  
4 need to have to be able to actually make the determinations  
5 he is making as an expert, that being one of them. But if  
6 you don't have the base calculation, I don't know how you  
7 can apply the rest of this.  
8 He goes on to talk about the market areas. He  
9 talks about Wheaton being bigger than Elkridge or  
10 Beltsville. He doesn't really give any particular  
11 indications of why it's 12 million compared to the eight to  
12 nine million that's being sold at Elkridge, the 12 million  
13 at Beltsville. It might be that the number is higher, in  
14 which case Mr. Sullivan's number would have to be higher if  
15 it's not going to be higher than those numbers such as the  
16 12 million gallons at Beltsville or extrapolating up from  
17 Elkridge, it would suggest that perhaps it's because there  
18 are so many stations in this area that it isn't needed. But  
19 there really is no -- there's just no comparison again.  
20 These numbers are just put out there. There's nothing  
21 really giving you any clear indication of what they're  
22 supposed to prove.  
23 But, in any case, that's really kind of the end,  
24 almost the end of what he says. The last part he has in  
25 here is the future patterns driving and fuel economy. Now

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1 this is a segment that has been evolving over history  
2 reports. His first and second reports didn't address the  
3 concept at all, they just threw out the statement if sales  
4 grow at the same rate as population, then we will have this  
5 unsourced figure of so many gallons per year.  
6 The first time I read that, I though, well, gee,  
7 that's kind of unusual because, you know, we have a lot of  
8 things happening in the marketplace in terms of development  
9 new car systems, higher mileage, electric cars, so forth,  
10 that it seems to me that the assumption that everything is  
11 going to grow at the same rate is not a necessarily a  
12 particularly good assumption unless you have some basis for  
13 that.  
14 The first time this was actually dealt with by Mr.  
15 Flynn was in April of 2012 when he submitted a supplement  
16 letter to the first special exception application and I  
17 would like to put that in at this point, Ms. Adelman.  
18 MS. ADELMAN: I'm sorry. I was busy reading your  
19 testimony.  
20 MS. CORDRY: She's trying to stay up.  
21 MS. ADELMAN: The good news is I know my name.  
22 MR. GROSSMAN: That's always a good starting  
23 point. Thank you. And you want me to exhibitize this?  
24 MS. CORDRY: Yes, please. Please.  
25 MR. GROSSMAN: So this is Exhibit 304 and that's

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1 April 6, 2012 letter from Tom Flynn to Lisa Tate.  
2 (Exhibit No. 304 was marked for  
3 identification.)  
4 MR. GROSSMAN: And what's this in reference to, re  
5 his needs study?  
6 MS. CORDRY: Right. And the question of future  
7 demand, future gasoline usage.  
8 MR. GROSSMAN: Okay.  
9 MR. GOECKE: And, I'm sorry, this is 304?  
10 COURT REPORTER: Yes.  
11 MR. GROSSMAN: Yes.  
12 MS. CORDRY: And this is discussing projections  
13 coming from the U.S. Energy Information Administration.  
14 It's a publication, Short-Term Energy Outlook, January 2012,  
15 talking about what's happening with gasoline usage and  
16 what's projecting out there.  
17 MR. GROSSMAN: Okay.  
18 MS. CORDRY: Among other things, projecting that  
19 energy consumption by light-duty vehicles, cars and light  
20 trucks will decline out to 2012 and then increase from 2026  
21 to 2035. So at this point projecting a decline for the next  
22 dozen years or so from that point, 13 years at that point.  
23 MR. GROSSMAN: Okay.  
24 MS. CORDRY: And that's total energy consumption  
25 by light-duty vehicles. Even with that, it talks about

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.

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.

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

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.

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.

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.

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.

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

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.

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.

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

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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.

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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

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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

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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  
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24  
25



. Digitally signed by Tracy M. Hahn

**ELECTRONIC CERTIFICATE**

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

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

By:

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Tracy M. Hahn, Transcriber

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