

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
:
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A hearing in the above-entitled matter was held on
October 21, 2013, commencing at 9:39 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:
 Patricia Harris, Esq.
 Michael Goecke, Esq.

On Behalf of Kensington Heights Civic Association (KHCA):
 Michele Rosenfeld, Esq.
 Lerch Early & Brewer
 3 Bethesda Metro Center, Suite 460
 Bethesda, Maryland 20814

On Behalf of Stop Costco Gas Coalition (SCGC):
 Larry Silverman, Esq.
 Abigail Adelman
 Mark Adelman

Also Present:
 John Eshave, Videographer - Blue Lagoon
 Eric Brann, Costco Representative
 Joanna Foronda
 David Sullivan

E X H I B I T S

Exhibit No.		Marked/Received
346(c)	Elkridge Costco Gas Station Color Ground Photo with Cars in Queue	249
346(d)	Elkridge Costco Gas Station B & W Ground Photo with Cars in Queue	249
346(e)	Elkridge Costco Gas Station Color Ground Photo of Front of Cars	250
346(f)	Elkridge Costco Gas Station Color Ground Photo of Front of Cars	250
347	Elkridge Costco Gas Station Queues	255
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350	2008 Frederick Costco Gas Station Aerial Photo	266
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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Larry Silverman	12			
By Mr. Goecke:			81	
By Ms. Rosenfeld:			115	
Jim Core				190
By Ms. Rosenfeld:	124			
By Ms. Harris:			150	
By Mr. Adelman			186	
Elena Sheveiko	203			
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E X H I B I T S

Exhibit No.		Marked/Received
342	11/2012 CRC Report, No. A-79	107
343	Aerial Photo of Sterling Gas Station	175
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P R O C E E D I N G S

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

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1 MR. GROSSMAN: All right.
2 MR. GOECKE: Mike Goecke for Costco. Good
3 morning.
4 MR. GROSSMAN: Good morning.
5 MS. CORDRY: Karen Cordry, Kensington Heights.
6 MR. GROSSMAN: Ms. Cordry.
7 MR. ROSENFELD: Michele Rosenfeld with Kensington
8 Heights. And Ms. Savage will not be here today. She has
9 personal conflicts.
10 MR. GROSSMAN: All right.
11 MR. SILVERMAN: Larry Silverman, the Stop Costco
12 Gas Coalition. Good morning, sir.
13 MS. ADELMAN: Abigail Adelman, Stop Costco Gas
14 Coalition.
15 MR. GROSSMAN: Good morning.
16 MR. ADELMAN: Good morning, Mr. Grossman. Dr.
17 Mark Adelman for the coalition.
18 MR. GROSSMAN: All right. And I don't see anybody
19 from Kensington View.
20 MS. CORDRY: Eleanor Duckett let us know that she
21 was not able to be here today and no one else would be here
22 today for that.
23 MR. GROSSMAN: All right. Okay. A few
24 preliminary matters. Since our last session, in terms of
25 filings, Exhibit 341, a submission from Ms. Harris on

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1 October 17, a letter from the Wheaton Mall property owner
2 authorizing Costco to install the proposed pedestrian path,
3 and I think that's the only -- there were, I know there were
4 some e-mail exchanges this weekend regarding documents that
5 Ms. Cordry intends to rely on in her traffic presentation.
6 Other than that, there were no, no exhibits and that those
7 have not been processed into exhibits yet.
8 MR. ADELMAN: Mr. Grossman, is the digital version
9 of 341 available?
10 MR. GROSSMAN: I don't have one available but Ms.
11 Harris --
12 MS. HARRIS: I can certainly make one available.
13 MR. GROSSMAN: Okay.
14 MS. ADELMAN: We've got the hard copy. We have a
15 hard copy.
16 MR. ADELMAN: Oh. I didn't know.
17 MS. ADELMAN: Yeah.
18 MR. GROSSMAN: All right. The witnesses scheduled
19 for today are the return of Mr. Silverman regarding
20 regulatory compliance; Jim Core regarding traffic,
21 pedestrians and queuing; Ms. Cordry on the same general
22 subject; Elena Sheveiko who was also listed as, as a
23 possible witness; and a back-up of Dr. Adelman regarding the
24 sector plan.
25 MS. CORDRY: If I might clarify, mine is the

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1 queuing today.
2 MR. GROSSMAN: Okay.
3 MS. CORDRY: I think I had made clear that the
4 more generalized traffic and pedestrian safety and so forth
5 was going to be done at a later point. Especially that I
6 would be presenting, you know, substantial exhibits and so
7 forth there so it's just going to be a short part on, which
8 will complement Mr. Core's testimony on queuing issues.
9 MR. GROSSMAN: All right. And Mr. Core is not
10 going to address traffic and --
11 MS. CORDRY: I think he is going to address the
12 entirety of that part of his testimony there.
13 MR. GROSSMAN: And Mr. Core is whose witness
14 today?
15 MS. ROSENFELD: He's with Kensington Heights.
16 MR. GROSSMAN: Okay.
17 MS. ROSENFELD: He's actually here this morning.
18 MR. GROSSMAN: Mr. Core.
19 MS. ROSENFELD: Mr. Core is here.
20 MR. CORE: Good morning, sir.
21 MS. ROSENFELD: And then he plans to return on the
22 24th to talk specifically about home values. And, Mr.
23 Grossman, I do, we have spent time organizing, coordinating
24 witness order.
25 MR. GROSSMAN: Okay.

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1 MS. ROSENFELD: And so I have a handout that we
2 can use.
3 MR. GROSSMAN: All right.
4 MS. ROSENFELD: To sort of -- and I have Ms.
5 Sheveiko down for today. I don't, I do not know what time
6 she will be here.
7 MR. GROSSMAN: Okay.
8 MS. ROSENFELD: We do expect her at some point.
9 MS. CORDRY: I believe I told her late morning
10 probably to be safe.
11 MR. GROSSMAN: Okay.
12 MS. ROSENFELD: And Marianne Carter, who is listed
13 on the 24th, she's not a witness for either Stop Costco or
14 Kensington Heights but she has reached out to us and
15 indicated that she would like to testify and she's available
16 that day, so I just noted that we, just to let you know that
17 we expect her here. I do not know what her testimony is
18 about.
19 MR. GROSSMAN: Okay.
20 MS. CORDRY: She is with, at Stephen Knolls. I
21 expect that she's talking -- she has testified before with
22 respect to conditions with the Stephen Knolls School and the
23 children and so forth.
24 MR. GROSSMAN: I'm sorry. What's her name again?
25 MS. CORDRY: Marianne Carter.

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1 MS. ROSENFELD: Marianne Carter. She's listed --
2 MR. GROSSMAN: Okay. I see her on October --
3 MS. ROSENFELD: -- under the 24th.
4 MR. GROSSMAN: Okay. And you're saying that she
5 is not a witness being called by KHCA or she is a witness
6 being called by --
7 MS. ROSENFELD: She's not called by any --
8 MR. GROSSMAN: Okay.
9 MS. ROSENFELD: By KHCA, Kensington View or Stop
10 Costco.
11 MR. GROSSMAN: She's just an independent.
12 MS. ROSENFELD: She's independent.
13 MR. GROSSMAN: Okay.
14 MS. HARRIS: Could I clarify something on the
15 schedule? Two things. One is I had understood during the
16 last hearing that Dr. Cole was going to testify on the 5th
17 and 6th. Now he's on the 19th and 21st?
18 MS. ROSENFELD: Yes. Thank you. Dr. Cole called
19 me after the hearing and advised me that there were two
20 depositions he, depositions he was supposed to attend
21 somewhere like Wyoming or Wisconsin, somewhere out in the
22 Midwest. They were rescheduled. So he is available to
23 testify on the 19th and the 21st. We can move him back to
24 December if these dates are a problem.
25 MR. GROSSMAN: That, I think that will work. Is

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1 that correct, Ms. Harris?
2 MS. HARRIS: Yes. I'm looking at Mr. Sullivan but
3 I believe that works. And then the other thing is I don't
4 see December 5th on this schedule.
5 MS. ROSENFELD: Oh, you're correct. My oversight.
6 So we will, it will just be completion of witnesses.
7 MS. HARRIS: On the 5th.
8 MS. ROSENFELD: On the 5th.
9 MR. GROSSMAN: Okay.
10 MS. CORDRY: In theory.
11 MR. GROSSMAN: All right then. Any other
12 preliminary matters?
13 MS. ROSENFELD: None from Kensington Heights.
14 Thank you.
15 MR. GROSSMAN: All right. Then I think we're
16 ready to resume Mr. Silverman's testimony. And, Mr.
17 Silverman, you're still under oath.
18 MR. SILVERMAN: Yes, sir.
19 MR. GROSSMAN: And I'm glad to see that Blue
20 Lagoon is here today to record you properly.
21 MR. SILVERMAN: Yeah.
22 MR. GROSSMAN: We wouldn't want to have this
23 hearing without a photographic record of your participation
24 as a witness.
25 MR. SILVERMAN: Well, I appreciate that. I think

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1 I do. I'll see how I do today.
2 (Witness previously sworn.)
3 DIRECT EXAMINATION
4 MR. GROSSMAN: All right. So where did we leave
5 off, Mr. Silverman?
6 MR. SILVERMAN: I think the last statement was,
7 really addressed the question of how a finder of fact deals
8 with a situation as we have here where there's a major error
9 discovered in the course of proceedings and where as a
10 result of the error, a number of changes were made. I have
11 to say, I've not been in this situation before but I've
12 thought a lot about it. The, the, I think it goes to the
13 issue how to deal with expert testimony and how to weight
14 it. In my practice and experience over the years, that's a
15 critical thing that I've had to do. I deal with scientists
16 all the time. I am not a scientist and will try not to
17 attack Mr. Sullivan's or Dr. Chase's science, there are
18 others to do that, but I do have a sense of process and, and
19 a lot of experience evaluating the credibility and the
20 weight to be given to --
21 MR. GROSSMAN: Well, is this --
22 MR. SILVERMAN: -- scientific evidence.
23 MR. GROSSMAN: Is this testimony or a legal
24 argument that you're making?
25 MR. SILVERMAN: No. This is -- well, it's, it's

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1 really testimony because it deals with, it deals with policy
2 and procedure issues that are referenced in the, that are
3 part of the Environmental Protection Agency and other, other
4 rules and approaches.
5 MR. GROSSMAN: Well, I asked the question because
6 you couched it in terms of how to handle expert testimony --
7 MR. SILVERMAN: I did. Yeah.
8 MR. GROSSMAN: -- a general proposition.
9 MR. SILVERMAN: Well, yeah. The -- and what I'm,
10 what I'm thinking about is we've had a discussion already
11 about the approving authority, you know, and I brought lots
12 of experts in front of approving authorities, usually the
13 EPA or the state agency, and over time, you get a sense of
14 what it is you're looking for. Now, you, according to Mr.
15 Sullivan, you are the approving authority or the Board is
16 right now.
17 MR. GROSSMAN: The Board is.
18 MR. SILVERMAN: Yeah. Okay. So the, the first
19 thing I will say is that the, that in general, the approving
20 authority expects the experts to consult with them in
21 advance and the, I'm looking at --
22 MR. GROSSMAN: What does that mean in the context
23 of a hearing process?
24 MR. SILVERMAN: Well, for example --
25 MR. GROSSMAN: I mean, the experts cannot consult

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1 with the Board in advance here because they must, the Board
2 must only consider the record which is produced at the
3 hearing at which they are not present.
4 MR. SILVERMAN: Well, I think in, I think it would
5 have been appropriate for the protocols used by the expert
6 to have been reviewed with, for example, the Planning Board
7 staff. Now, early in the case, there was some effort on the
8 part of Mr. Sullivan and Costco, which was commendable, to
9 speak with our expert and we met with, for six hours to
10 discuss protocols and as a result of that meeting, a number
11 of those protocols were changed. The -- but after that, I
12 think largely as a result of the error that was discovered,
13 some of those changes were changed again. The, and the
14 question is is this an appropriate way to move forward in a
15 case such as this. I'm looking at the, the revisions of the
16 guidelines on air quality models which is an EPA document
17 from the Federal Register.
18 MR. GROSSMAN: Is this the one that's in the
19 record?
20 MR. SILVERMAN: It's in the record. Yeah. I
21 think it's in the record.
22 MR. GROSSMAN: As --
23 MR. SILVERMAN: It's November 9th, 2005. I'm
24 sorry. I do not have the, the number.
25 MR. GROSSMAN: Yes. I remember it being

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1 introduced in Mr. Sullivan's testimony I believe. Let's
2 see. EPA Guidelines on Air Quality Models, 40 CFR Part 51,
3 Appendix W. That's Exhibit 285.
4 MR. SILVERMAN: Yes. 285. Thank you.
5 MR. GROSSMAN: All right.
6 MR. SILVERMAN: And you have it, the document you
7 have, is it in the Federal Register format or is it --
8 MR. GROSSMAN: I, I don't remember what format
9 it's in.
10 MR. SILVERMAN: I mean, does it look like, is it
11 three columns? Oh, do you have it?
12 MR. GROSSMAN: It will probably be in the, it will
13 be in one of these files. Let's see. It would be too easy
14 for it -- does it matter which format it's in?
15 MR. SILVERMAN: Well, I have, well, I have page
16 numbers.
17 MR. GROSSMAN: Because I've got to go through the
18 cartons to pull out the exhibit.
19 MR. SILVERMAN: That's all right. Don't, don't.
20 I'll read from the, I'll give the Federal Register sections.
21 And the -- I'm reading from, of that, of that rule, Section
22 3.0, recommended air quality models.
23 MR. GROSSMAN: You're not reading from Appendix W?
24 You're reading from --
25 MR. SILVERMAN: No, no. This is -- excuse me. In

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1 Appendix W.
2 MR. GROSSMAN: Okay.
3 MR. SILVERMAN: Which is 40 CFR Part 51.
4 MR. GROSSMAN: Right.
5 MR. SILVERMAN: There is a Section 3.
6 MR. GROSSMAN: Okay.
7 MR. SILVERMAN: Which -- and the main title is
8 recommended air quality models.
9 MR. GROSSMAN: Okay.
10 MR. SILVERMAN: And under that three, there's
11 Sections A through E and I want to read from Section C.
12 MR. GROSSMAN: Okay.
13 MR. SILVERMAN: Agreement on the databases to be
14 used, modeling techniques to be applied in the overall
15 technical approach prior to the actual analysis helps avoid
16 misunderstandings concerning the final results and may
17 reduce the later need for additional analyses. And then
18 they suggest a, an air quality analysis checklist which I
19 haven't read. It's under, it's in EPA's internal SCRAM, S-
20 C-R-A-M, website. And the preparation of a written protocol
21 will help to keep misunderstandings to a minimum.
22 So that's, that is the preferred approach and
23 that's not unusual. I can't site you chapter and verse but
24 in many respects when you're dealing with experts and you're
25 trying to get objective, scientific testimony, before they

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1 have the answers, they have to set out their approach to the
2 answers, and there was some effort on Costco's part, their
3 expert's part to do that early on when we met with Dr. Cole
4 and Mr. Sullivan.
5 But what the, the agencies don't like and really,
6 in my experience, are not too courteous when you do it, is
7 to, you know, come up with a number and you don't like the
8 number you came up with and then to change all that. Say
9 oh, well. We assumed a certain queuing and a certain other
10 things, other important factors, certain backgrounds and so
11 forth, but now that, now that the number is not what I hoped
12 it would be, we, I want to change that. That generally is,
13 is poor practice. This is not to say you're stuck with your
14 first shot. Typically --
15 MR. GROSSMAN: As I recall Mr. Sullivan's
16 testimony, he testified yes, you start out with a very
17 conservative model. Then under the usual procedures, if
18 there are issues regarding the results there, you can relax
19 certain assumptions as long as you are, you know, within,
20 within the general parameters of what you should be
21 following until you, if you can achieve compliance under the
22 models as modified, then that's okay. If you can't, then
23 you have to take some remedial action or propose some other
24 remedial action to comply and if you can't, then you have to
25 make a decision as to whether or not the expense is worth it

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1 to try to comply or you give up the effort. But there are a
2 continuing series of levels, as I recall his testimony, of
3 how you approach this, this sort of compliance modeling.
4 MR. SILVERMAN: Well, that's sort of right but
5 typically, you start with what's called a screening which
6 you're using extremely conservative numbers and it's kind of
7 a rough cut, and if you, if you find a problem, you go on.
8 And then you, you have another discussion and you reach
9 agreement as to where you go.
10 In this case, we have a rather full, a fulsome
11 presentation to start with. The November report was really
12 very, 8100 receptors and so on, it was a very, it was a
13 complete treatment. It was what you call tier 2 treatment.
14 And whether or not they did the tier 1, which is sort of the
15 general screening, I don't know. I did not see that if it
16 was done. But typically when you're in the tier 2 and the
17 numbers don't come out the way you like, your, you've got to
18 explain any change you make and, and, you know, for
19 example --
20 MR. GROSSMAN: Well, he testified as to explaining
21 the changes he made.
22 MR. SILVERMAN: Yeah. Well, I mean --
23 MR. GROSSMAN: You may not have liked his
24 explanation but --
25 MR. SILVERMAN: No. Well, I think you not only

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1 have to explain it but you have to, you have to go to an
2 approving authority with knowledge and get their, their
3 sign-off on it. That's typically what happens. We don't
4 have that here.
5 MR. GROSSMAN: Right.
6 MR. SILVERMAN: Which, which makes it difficult,
7 you know, to, I mean, you have to decide, which makes it
8 hard to, to think through those changes. Now, one of the
9 problems in this case is that there have been a number of
10 changes. One of them, for example, with regard to
11 background levels, PM2.5, a lot of discussion about that.
12 In earlier iterations, Mr. Sullivan showed numbers above 12
13 parts per billion. And then in the course of these
14 hearings, and although it had been advertised very widely to
15 people who keep up with these things, the number changed,
16 the standard changed from 15 to 12 and so at that point, Mr.
17 Sullivan, as I understood, made some changes to his
18 background calculations.
19 And typically, again, that is, that is a, that is
20 a very, the selection of background concentrations is,
21 usually takes quite a lot of effort and planning and
22 consultation. You know, if -- and I just, let me just check
23 to give you some chapter and verse here.
24 I'm reading from, from the same Appendix W, 8.2.1.
25 Background concentrations are an essential part of the total

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1 air quality concentration to be considered in determining
2 source impacts. Background air quality includes pollutant
3 concentrations due to natural sources, nearby sources other
4 than the one currently under consideration and unidentified
5 sources. Typically, air quality guide is to be used to
6 establish background concentrations in the vicinity of the
7 sources under consideration. The monitoring network used
8 for background determination should conform to the same
9 quality assurance and other requirements as those networks
10 established for prevention of significant deterioration
11 purposes. And there's a long footnote about that. An
12 appropriate data validation procedure should be applied to
13 the data prior to use. So I didn't, when he changed his
14 background numbers, I didn't see that happening.
15 MR. GROSSMAN: When you say he changed his
16 background numbers, why were the background numbers changed
17 in, for PM2.5 from 15 to 12?
18 MR. SILVERMAN: The, well, the background -- the
19 standard was changed but he had, he had, in his original
20 report, he had developed background concentrations and came
21 up with factors for what the addition is and said it's about
22 12.1. And then when he realized that the standards had
23 changed, he went back and he said well, I didn't do the
24 backgrounds the best way so I'm going to do it again.
25 MR. GOECKE: Objection. That's not what he

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1 testified.
2 MR. GROSSMAN: All right. I understand that this
3 is his recollection of it so.
4 MR. SILVERMAN: Right. Well, it is -- you know,
5 the life of a non-scientist in a field so scientifically
6 permeated is difficult so you try to develop techniques for
7 spotting questionable credible, you know, to spot problems.
8 Sometimes people, often when I read these science reports or
9 engineering reports, the word anomalous, I always circle
10 that because that's a little hint to me.
11 And so these changes were made and I did question
12 Mr. Sullivan about, about which monitoring locations were
13 used by the Council of Governments and others in determining
14 the, both compliance or attainment or nonattainment with air
15 quality standards and, and to get background and he was, he,
16 I don't think he had a full grip. He was not able to answer
17 that question with regard to what the Council of Governments
18 did.
19 But just to put it, just to set it in the record,
20 there, as I understand it, there are eight air monitoring
21 locations in this region which that both the Council of
22 Governments in the state and federal government and various
23 agencies and scientists, research scientists, rely on. They
24 are at Beltsville, Rockville, Arlington, 34th Street, D.C.,
25 1st Street, D.C., Van Buren Street, D.C. and now Alexandria

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1 has one. So now they all show -- we have a chart which Dr.
2 Cole will talk about showing some of the readings over the
3 last several years as to what those, those monitors show and
4 I won't, that's beyond me.
5 But I will say they show significant differences
6 and even within a station such as Beltsville, I think they
7 have three monitors there. One of them is every day and one
8 of them is intermittent but the everyday one shows pretty
9 high, high readings for PM2.5. And the question is why did,
10 why did the expert choose one of these to use over another.
11 I think he was questioning about why he used Arlington, for
12 example, for CO monitoring. What does Arlington have to do,
13 how is it similar or different, and I don't think we got a
14 satisfactory answer.
15 So that is a concern of mine and the concern is
16 magnified by, by the recent changes in the, in the PM2.5
17 standard and also, 2010 changes in the nitrogen oxide
18 standards. And as I think I pointed out last time, they,
19 when they promulgate these standards, they write thick
20 books, and there's quite a lot of, there's even thicker
21 books written in correspondence and comments and the clean
22 air, the Clean Air Science Advisory Committee, they have
23 lots of back and forths and so on. And, and what the thrust
24 of the, of the new PM2.5 standard was not just to lower the
25 standard in the same way the thrust of the 2010 changed to

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1 NOx. It was not just to lower the standard but it was to
2 rethink the approach to the standard entirely.
3 And one of the things that EPA has called for is
4 a, a change in the approach to background monitoring, a very
5 drastic change. Most of the -- the Beltsville station, I've
6 been there, I can just testify what I saw, we'll have aerial
7 photos and things like that, you'll see it yourself, but
8 that's really near the Beltsville Agricultural Station.
9 It's a very, it's, you think of Beltsville as urban but that
10 particular spot is not where the heavy traffic is likely to
11 be so you don't, you don't find it. So what, so what EPA is
12 saying is that the, the states and the local governments
13 have got to set up monitors that are near road monitors.
14 Now, with regard to PM2.5 and in fact, with regard
15 to NO2, that has not been done or is in the process of being
16 done. So we're in a situation where we don't, we don't
17 quite know what the correct background is. Mr. Sullivan
18 used a background I think of 10.8 and then he used another
19 one for PM2.5, 10.8 and then 10.6 later. I don't know why
20 he changed it but they both appear in his documents. And he
21 said this is the design standard. And what I understand --
22 MR. GOECKE: Again, just for the record, I'd like
23 to object to his characterization of the witness' testimony.
24 MR. GROSSMAN: I understand. I'm taking Mr.
25 Silverman's summary, to the extent he summarizes Mr.

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1 Sullivan's testimony, as his recollection.
2 MR. SILVERMAN: Yeah.
3 MR. GROSSMAN: Not necessarily --
4 MR. SILVERMAN: That's the way I understand.
5 MR. GROSSMAN: -- as factually what the transcript
6 says.
7 MR. SILVERMAN: Well, I do think he --
8 MR. GROSSMAN: We'll govern in terms of Mr.
9 Sullivan's --
10 MR. SILVERMAN: Right.
11 MR. GROSSMAN: -- testimony as what he said in his
12 reports and what he testified to.
13 MR. SILVERMAN: Right. And again, I spent a lot
14 of time really trying to kind of nail this down but I don't
15 think that's quite my role. My role is to talk about policy
16 and the general rules and the right way of going about these
17 things, and I'll let Dr. Cole nail it down for you.
18 MR. GROSSMAN: What you've been discussing thus
19 far sounds to me more like something that is not really
20 before me. This is something in terms of what --
21 MR. SILVERMAN: No.
22 MR. GROSSMAN: -- EPA is, is talking about as a
23 better approach to get a more accurate sense of what
24 background is and so on.
25 MR. SILVERMAN: No. It is.

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1 MR. GROSSMAN: But that's not what's before me.
2 MR. SILVERMAN: No. It is before you because
3 what's before you is whether, whether the actual air quality
4 or the model of air quality in, as a result of this gas
5 station will cause a health problem, and whether it causes a
6 health problem is a function of what the final number is.
7 And the final number is a combination of factors taken for
8 emission factors from the station based on queuing data and
9 other things plus background levels. So if the background
10 levels are higher than Mr. Sullivan estimates, then we're
11 likely to find a violation, and the question is are they
12 higher than he estimates.
13 Well, I'm saying, I'm saying two things about his
14 estimation of background levels. First of all, he changed
15 them for reasons that are not clear to me except that in one
16 case, there was a health problem and in the other case,
17 there was not a health problem. So there was a, there was a
18 change and a, and a large part of that change was, as I
19 understand, was based on his understanding of background
20 levels. What I'm saying is that at least I think, I think
21 that, and I'm trying to channel here, I think that an EPA
22 authority, an expert in this area, would have a lot of
23 questions about why did you make the changes and what's the
24 justification for it.
25 And then I'll add a second thing that there's

1 particular uncertainty about it and there's, and that EPA
2 has said, and the states and Council of Governments are
3 trying to catch up with this, that the, the background
4 levels they're measuring are probably too low because
5 they're not being measured in the right places and in the
6 right way so that it, it becomes particularly important to
7 really scrutinize how Mr. Sullivan arrives at his background
8 numbers.

9 It really has to be looked at very closely in a
10 careful scientific and objective way because the numbers,
11 and my, if I'm making myself clear, I'm not sure I am but
12 I'm trying, the numbers, the actual numbers, according to
13 EPA, are probably, background numbers, are probably higher
14 than the regional monitoring system is showing you.

15 MR. GROSSMAN: Well, you're telling me now what
16 you think the EPA is saying. What is the documentation from
17 the EPA --

18 MR. SILVERMAN: Okay.

19 MR. GROSSMAN: -- that says that the actual
20 numbers are actually higher?

21 MR. SILVERMAN: Yes. Give me a second. I'll take
22 one -- the

23 MR. GROSSMAN: First of all, what are you looking
24 through, Mr. Silverman?

25 MR. SILVERMAN: I'm looking through notes and I

1 will, and I'll --

2 MR. GROSSMAN: Your own notes?

3 MR. SILVERMAN: These were notes that my, Ms.
4 Cordry helped me put together. Which there is a citation.

5 MS. ROSENFELD: Mr. Grossman, while he's doing
6 that, a comment you made just a few moments ago about
7 looking at the scientific report and your role, I might have
8 misunderstood what I thought you were saying. Do you view
9 your role as accepting the scientific evidence that Mr.
10 Sullivan has provided or do you also see yourself as looking
11 at the report with respect to what weight and credibility
12 those assumptions have in light of other testimony?

13 MR. GROSSMAN: Of course the latter. I didn't --

14 MS. ROSENFELD: I'm --

15 MR. GROSSMAN: I didn't say anything that --

16 MS. ROSENFELD: Okay.

17 MR. GROSSMAN: -- would have implied the former.

18 MS. ROSENFELD: Okay. Okay.

19 MR. GROSSMAN: I don't know what you heard.

20 MR. SILVERMAN: Yes. The Federal Register Notice
21 dealing with the, the lowering of the standard for PM2.5.

22 MR. GROSSMAN: Is that in evidence?

23 MR. SILVERMAN: I don't know if it's in evidence.

24 I think Ms. Harris has it. Let's see.

25 MS. ROSENFELD: What is the citation?

1 MR. SILVERMAN: It's, it's January of 2013.
2 January 15th, 2013. And it's entitled, it's 40 CFR Parts
3 50, 51, 52, et al., National Ambient Air Quality Standards
4 for Particulate Matter Final Rule. And this is a legal
5 document and it's available, and I do think it was shared.
6 I'm not sure.

7 MS. ROSENFELD: This was given to the opposition.
8 I'm not sure if it's in the record yet or not. 40 CFR Part
9 51?

10 MR. SILVERMAN: Yes. 50, 51, 52.

11 MS. ROSENFELD: Yes.

12 MR. GROSSMAN: We have 40 CFR Part 51, Appendix W.

13 MR. SILVERMAN: Right. So this is --

14 MR. GROSSMAN: And we may have other parts in the
15 record too. I don't remember. If some of these cites lead
16 to an exhibit number.

17 MR. SILVERMAN: This, I don't think it's an
18 exhibit yet. This document and this document is, is --
19 Appendix W is an appendix to this as I understand it.
20 The --

21 MS. CORDRY: Just to clarify, the CFR, the Federal
22 Register, this is the notice in which they explain what
23 they're doing with the rule, give the background, discuss
24 it, put out their rationales, do all their explanations.
25 And then at the end of it, there's the actual, much shorter

1 changes to the rules and the standards and the requirements.
2 So that's why we refer to it as a book, but this is where
3 the actual notice of the change that was being made that is,
4 includes the dropping in the standard to the, from the 15 to
5 12 and these new requirements about monitors that he's
6 talking about.

7 MR. GROSSMAN: I understand but actually, Mr.
8 Silverman said that the EPA, he represented that the EPA has
9 indicated that the background level measurements are, are
10 not fully indicative of reality and I wanted to know what,
11 what he's referencing actually from the EPA that says that.

12 MS. CORDRY: Right.

13 MR. SILVERMAN: Right.

14 MS. CORDRY: And that will be discussed in this
15 Federal Registry Notice. He'll find us the right page.

16 MR. SILVERMAN: Yeah. For example, on page 3124,
17 prior to this January document, there was a technique that
18 was used called spatial averaging where you had different
19 monitors that sort of take averages between them. And one
20 of the changes that -- this is just one example of many --

21 MR. GROSSMAN: Well, just try and answer my
22 question first.

23 MR. SILVERMAN: Yeah.

24 MR. GROSSMAN: Find the language you implied that
25 the EPA says that the process for measurement of background

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1 yields levels that are lower than actuality, and I want to
2 know where it is that the EPA says that
3 MR. SILVERMAN: Well, that's a very good question
4 and I'm sure they say it and I'm having a little trouble
5 finding it.
6 MR. GROSSMAN: Well, you want to move onto
7 something else and tell me after a break?
8 MR. SILVERMAN: Yeah. We'll have a break.
9 MR. GROSSMAN: Because I can't --
10 MR. SILVERMAN: Yeah, I know.
11 MR. GROSSMAN: Your recollection of what EPA may
12 have said --
13 MR. SILVERMAN: Yeah.
14 MR. GROSSMAN: -- is not going to govern.
15 MR. SILVERMAN: Yeah. Okay. All right. Give me
16 just one second. Well, I'll, I'll have a --
17 MR. GROSSMAN: I mean, I have to tell you that if
18 the EPA says that, I'm not even exactly sure how I factor
19 that in in terms of evaluating this case. That is, they
20 have a process for determining background but they say
21 they're not sure, if what you say is accurate, that their
22 process is so hot. I don't know how I factor that in. I
23 mean, I have to use the best evidence that I have which
24 would be some version of background. You --
25 MR. SILVERMAN: Well, I --

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1 MR. GROSSMAN: That's, you know, by measurement.
2 I don't know how else I can factor it.
3 MR. SILVERMAN: I, I think the, I think what, what
4 it means initially is that when you look at background
5 levels, you have to take what they call a hard look, look
6 very skeptically and carefully at that and make a judgment.
7 MR. GROSSMAN: Well, I'm going to hear from,
8 presumably, the opposition experts on this point.
9 MR. SILVERMAN: Right.
10 MR. GROSSMAN: And then I'll evaluate the combined
11 combination of that testimony.
12 MR. SILVERMAN: Yeah. The -- yeah. I'm
13 embarrassed here because it's all over the place but I'll,
14 we'll, we'll bring that out. We'll give you the chapter and
15 verse on that but clearly, the Council of Governments and
16 other agencies, they're changing their monitoring networks.
17 The state is changing its monitoring networks to conform to
18 the new rules, but that means what background numbers did
19 the applicant use and did they, did their, was their
20 selection of those numbers in accordance with even previous
21 EPA rules, is it in accordance with their own statements.
22 There's a lot in Mr. Sullivan's reports saying that he's,
23 he's looking for the highest number in Montgomery County.
24 Sometimes he uses the highest single number, sometimes he
25 uses the highest average number and we'll try to nail that

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1 down very carefully.
2 But the, the addition of the changes in the rules
3 should signal that these background numbers should be looked
4 at very, very hard and, and we need to have, I think a fact
5 finder would want to know what the basis for them is, given,
6 given the shifting rules and what the conservative approach
7 is to finding those background numbers and after a break,
8 I'll try to -- there's so much, there's so much data here.
9 Let me go onto another subject. The, the
10 communication of uncertainty. One of the, one of the major
11 points that, that an approving authority wants from an
12 expert is a clear statement of uncertainty and error charts,
13 and that's not surprising. That's -- most scientists start
14 out or end up or include in a very prominent place that this
15 calculation is subject to the following variables or
16 uncertainties or unknowns, and that is commonly done.
17 And going back to Appendix W, if you go to the
18 Section 9 which is called uncertainty, uncertainty, both
19 accuracy and uncertainty are models and it's in this section
20 that, that we discover that these models, even if, even if
21 done as impeccably as possible, are subject to a 50 percent
22 uncertainty and there was some, I think you'll hear some
23 testimony that the uncertainty factor may be greater.
24 MR. GOECKE: I'm sorry, Mr. Silverman. Which
25 section are you reading from?

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1 MR. SILVERMAN: We're talking about Section 9, and
2 9., 9., 9.1.1, overview of model uncertainty. Then they
3 talk about, they say even with a perfect model that predicts
4 the correct ensemble average, there are likely to be
5 deviations from the observed concentrations to individual
6 repetitions of the event due to variations of the unknown
7 conditions. The statistics of these concentration residuals
8 are termed inherent uncertainty. Available evidence
9 suggests that this source of uncertainty alone is
10 responsible for a typical range of variation and
11 concentrations by as much as plus or minus 50 percent.
12 Now, and I don't, I think Mr. Sullivan agreed with
13 that but to me, I was very surprised when I first heard
14 about this uncertainty level which I heard at a public
15 hearing from another person, another doctor. I was very
16 surprised by that. I didn't know it. And I think when it
17 was brought up here, I think you may have been surprised.
18 You appeared to be little bit surprised to know that. Now,
19 the proper procedure is, is for the expert to be sort of
20 above board and, and reveal the uncertainty. You sort of
21 expect them to do it. And in fact, there's a -- yeah.
22 Let's see.
23 MR. GROSSMAN: Well, let me ask you this.
24 MR. SILVERMAN: Yeah.
25 MR. GROSSMAN: What do I do with that piece of

1 information? Let's say there is an uncertainty level in
 2 general in modeling --
 3 MR. SILVERMAN: Right.
 4 MR. GROSSMAN: -- that in 50 percent or in
 5 purchased 50 percent level, how do I deal with that in terms
 6 of this analysis? Don't I have to deal with whatever the
 7 results are as critiqued, perhaps, by other experts that
 8 come in?
 9 MR. SILVERMAN: Well --
 10 MR. GROSSMAN: Don't I have to deal with the best
 11 evidence I have to make the best estimate I can based on the
 12 evidence that's in here regardless of whether there is,
 13 potentially, a significant error of possibility?
 14 MR. SILVERMAN: I think, I think -- there's two
 15 points to be made. Yes, you look at the best evidence but
 16 you know, you, how much, how reliable is it? I mean, have
 17 they met their burden of proof. That's one thing. But
 18 there's the other point which is really what I'm trying to
 19 make is that a scientist or an expert who does not
 20 communicate uncertainty is less credible than a scientist or
 21 expert who does.
 22 MR. GROSSMAN: Okay.
 23 MR. SILVERMAN: That's, that's -- and I'll give
 24 you some more -- on 9.1.3, use of uncertainty in decision
 25 making which deals exactly with your question. The accuracy

1 of model estimates that varies with the model used, the type
 2 of application site characteristics, specific
 3 characteristics. Thus, it is desirable to quantify the
 4 accuracy or uncertainty associated with the concentration
 5 estimates used in decision making. Communications between
 6 modelers and decision makers must be fostered and further
 7 developed. And they go on. They say it's really hard.
 8 They say just what you said, you know, but in the end, you
 9 have to make your best estimate. But what I'm trying to say
 10 is that it's a responsibility of the, of the expert to come
 11 in before an approving body to uncover these issues and I'll
 12 tell you this from my experience. When you don't do it,
 13 they don't give you a lot of tolerance.
 14 MR. GOECKE: Objection. Hearsay.
 15 MR. SILVERMAN: Well --
 16 MR. GROSSMAN: I'm going to --
 17 MR. SILVERMAN: -- that's my observation.
 18 MR. GROSSMAN: I'm going to sustain that.
 19 MR. SILVERMAN: Right. Okay.
 20 MR. GROSSMAN: But I understand your point.
 21 MR. SILVERMAN: Yeah.
 22 MR. GROSSMAN: And I would of course expect the
 23 opposition's experts, based on what you said, to also
 24 indicate the level of their uncertainty.
 25 MR. SILVERMAN: Certainly. Yeah. And of course,

1 you have to --
 2 MR. GROSSMAN: But, I mean, there is a process
 3 here of cross-examination which allows this sort of thing to
 4 be brought out. That's the nature of the hearing process
 5 and so you did, and you have in fact brought it out on
 6 cross-examination and here in your testimony so that is a
 7 leavening part of this kind of process.
 8 MR. SILVERMAN: Right. And, you know --
 9 MR. GROSSMAN: I'm not sure that that's available,
 10 that the nature of this process may not be available in the
 11 same way in terms of, of other approval formats.
 12 MR. SILVERMAN: Well, you know, I think from your
 13 point of view, there are two, there are two issues, you
 14 know. What is the facts. You know, based on everything
 15 I've heard, what's the true levels. That's one thing. And
 16 the second thing is is the witness credible.
 17 MR. GROSSMAN: I understand. You made your point
 18 about that.
 19 MR. SILVERMAN: Okay. All right. All right. And
 20 incidentally, I think from your point of view that the
 21 second question is the one you're more qualified to answer.
 22 Let's talk a little bit about receptor sites. Now, in Mr.
 23 Sullivan's November report, which I think if we stick with
 24 it and correct the numbers, it shows that there's a problem,
 25 he had I think 8100 receptor sites and that's --

1 MR. GROSSMAN: 8150 something or something like
 2 that.
 3 MR. SILVERMAN: Yeah. It was -- right. So then
 4 when, when we asked for the receptor sites for his, when he
 5 changed from rural, which I'll talk about in a moment, from
 6 urban, we asked for receptor sites, I think Ms. Rosenfeld
 7 asked quite a lot, and it took a long time, we got 11
 8 receptor sites. So we don't really, based on 11 receptor
 9 sites, we don't really know what --
 10 MR. GROSSMAN: I don't know what you mean by we
 11 got 11 receptor sites. What do you mean you got 11?
 12 MR. SILVERMAN: That the -- our request for
 13 information about the what is, what, if you do the, if you
 14 do the urban run, which he says he prefers the urban run --
 15 MR. GROSSMAN: Right. Well, no. That's, I think,
 16 a mischaracterization of what he said. Go ahead.
 17 MR. SILVERMAN: Well, the -- we asked the urban
 18 run and I haven't seen it. I haven't. All I saw is some 11
 19 sites listed in what he sent. Now, maybe I missed it but I
 20 didn't, I didn't see the 8100 plus sites and just to, again,
 21 to get back to where I'm comfortable, which is in policy,
 22 let me read from 7.2.2 if I can find it.
 23 MR. GROSSMAN: Of Appendix W?
 24 MR. SILVERMAN: Of Appendix W, yes.
 25 MR. GROSSMAN: Okay.

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1 MR. SILVERMAN: Yeah. Critical receptor sites.
2 Receptor sites or refined modeling should be utilized in
3 sufficient detail to estimate the highest concentrations in
4 possible violations of National Ambient Air Quality
5 Standards or prevention of significant deterioration
6 increment. In designing a receptor network, the emphasis
7 should be placed on receptor resolution and location not
8 total number of receptors. The selection of receptor sites
9 should be a case-by-case determination taking into
10 consideration the topography, the climatology, monitoring
11 sites, the result of initial screening procedures.
12 So my sense of it and Dr. Cole -- that's the
13 standard. That's what I can --
14 MR. GROSSMAN: Right.
15 MR. SILVERMAN: -- testify to. My, my -- the
16 reason it's relevant is because my sense of it is that the,
17 the thoroughness suggested by that language was not present
18 in his August report which modified his numbers. That's,
19 that's -- I just want to give you the chapter and verse for
20 that. You have to be really careful about the, the receptor
21 sites.
22 Now, this goes to the -- then in 7.2.3 deals with
23 the dispersion coefficients. That's its title but it's
24 really talking about whether you can consider an area urban
25 or rural and what are the considerations. And in Section B,

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1 the selection of either rural or urban dispersion
2 coefficients to the specific act location should follow one
3 of the procedures suggested by Irwin and briefly described
4 in paragraph C to F of the subsection. It does include a
5 land use classification procedure or population-based
6 procedure to determine whether the character of an area is
7 primarily urban or rural.
8 The land use procedure. Classify the land use
9 within the total area circumscribed by a three kilometer
10 radius circle about the source using a meteorological land
11 use typing scheme proposed by hour. If -- I'm skipping some
12 things which are very technical. If land use types, well, I
13 won't skip it, I-1, I-2, C-1, R-2 and R-3 accounts for 50
14 percent or more of the area, use urban dispersion
15 coefficients. Otherwise, use appropriate rural dispersion
16 coefficients.
17 So there's a, there's a pretty fixed rule about
18 how to do it and where to use it. And in fact, in his
19 earlier report, Mr. Sullivan writes, this is page 26 of
20 what, November 12th, November 2012 report, he says the
21 determining factor in the selection of rural or urban
22 conditions is the EPA hour land use analysis which I just
23 referenced. When applying this method within a standard of
24 a three kilometer radius, as clearly shown on figure 1.8,
25 this area is generally rural for modeling purposes, i.e.,

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1 less than 50 percent urban. Based on standard methodology
2 using this hour technique, it was confirmed that the rural
3 land use feature is appropriate and consistent with EPA
4 modeling guidelines. Per standard guidance rule option was
5 used to conform to EPA modeling guidelines.
6 And he did throw in some reference to the urban.
7 Then he said that rural is more conservative. He said, I
8 think, in that same document that maybe you could average
9 them although the averaging, I haven't found that in any of
10 the EPA documents that you could do that. But he was, he
11 did not, he made very clear statements and was in his
12 November report. And then when that, because of an error,
13 when that proved to be inconvenient, he then says well, in
14 my professional judgment, I think this is right, it's
15 really, it's really urban and I think Dr. Chase testified he
16 and Mr. Sullivan walked around the mall and it all looks
17 urban to me. But that's, I think that's --
18 MR. GROSSMAN: Well, I think he did both. He said
19 that overall, over a three mile radius, it's rural but --
20 MR. SILVERMAN: Three kilometers.
21 MR. GROSSMAN: Three kilometers, I'm sorry.
22 Correct.
23 MR. SILVERMAN: Yeah.
24 MR. GROSSMAN: It's rural but right in the
25 immediate area of the mall, it's urban and so he adjusted

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1 and made, he gave figures for both so.
2 MR. SILVERMAN: Well, I didn't, I didn't -- there
3 is some discussion in the regulation as to areas that are
4 heavily urban but don't, for example, they talk about
5 industrial areas that don't have population but in those
6 cases, they talk about how you can, in those instances, the
7 part from the Auer, A-U-E-R, numbers and, or approach and
8 say well, this is, we'll call this, we'll call this urban,
9 and that's discussed but that's, you know, they actually,
10 and right after the section I just read, they actually
11 discussed it but nothing like what Mr. Sullivan said he was
12 doing is discussed in the rules.
13 So, you know, and his, why is the number three
14 kilometers and not some other number, I don't know. Perhaps
15 Dr. Cole has some ideas about it but I'm just saying the
16 standard way of doing these things is to decide whether it's
17 urban rule using the Auer calculations.
18 MR. GROSSMAN: Well, he pointed me -- I asked
19 specifically. He mentioned that, at the beginning of his
20 July 30 testimony, I believe that's when it was, he
21 indicated that EPA had, had specified that the important
22 thing is accuracy so you could modify these things as
23 necessary for accuracy and I asked him for specific
24 locations which he pointed out in the, in this Appendix W
25 where it said something to that effect. I don't recall the

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1 exact location.
2 MR. SILVERMAN: Well, I, I read it and I haven't
3 found it. Maybe, maybe he could --
4 MR. GROSSMAN: That's my recollection of it.
5 MR. SILVERMAN: All right.
6 MR. GROSSMAN: I'd have to look back at the --
7 MR. SILVERMAN: Okay.
8 MR. GROSSMAN: -- at the testimony.
9 MR. SILVERMAN: All right.
10 MR. GROSSMAN: And I think it was September 20
11 testimony if I recall.
12 MR. SILVERMAN: Right.
13 MR. GROSSMAN: I may have said July 30th. I think
14 I meant September 20th.
15 MR. SILVERMAN: Yeah. And I think it was after
16 the --
17 MR. GROSSMAN: Right.
18 MR. SILVERMAN: After the August recantation.
19 The -- I wanted to, there was -- I think we've discussed
20 that when, when there's a violation of an air quality
21 standard, even if it's a small violation, it is considered a
22 violation and it's, and it's a --
23 MR. GROSSMAN: You submitted a discussion on that.
24 MR. SILVERMAN: Yes. That's right.
25 MR. GROSSMAN: A written submission.

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1 MR. SILVERMAN: A written submission. Well, let
2 me, let me -- so I want to read from the Federal Register,
3 Volume 70, Number 216, November 9, 2005. This is the, this
4 is the --
5 MR. GROSSMAN: What's the cite for that again?
6 MR. SILVERMAN: It's 40 CFR Part 51. This is
7 Appendix W, and I think it's actually the introduction to
8 Appendix W.
9 MR. GROSSMAN: This is 2005?
10 MR. SILVERMAN: Yeah, 2005. And it's on page 682,
11 I'm sorry, 682 -- let me try again. 68226. And there are
12 three paragraphs which I would like to read which sort of
13 make the point. I mean, it will -- with appropriate
14 qualifications which you should be aware of, but I think the
15 point's clear. One, where a dispersion modeling shows no
16 violation of a NACS or PSD, prevention of significant
17 deterioration increment, in the impact area of proposed
18 source, a permit may be issued and no further action is
19 required. Where dispersion modeling predicts a violation of
20 the NACS or PSD increment within the impact area but it's
21 determined that the proposed source will not have a
22 significant impact on one, i.e., will not be above de
23 minimis levels at the point in time at the model violation,
24 a permit may be issued immediately but the state must take
25 appropriate actions to remedy the violations within a timely

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1 manner. In other words, if you can't do it yourself, the
2 state has got to have someone else do it and you don't have
3 those powers but, so you can't do that. You're just stuck
4 with a violation.
5 Where a dispersion modeling predicts a violation
6 of the NACS or PSD increment within the impact area and it
7 is determined that the proposed source will have a
8 significant impact at the point and time of the modeling
9 violation, the permit may not be issued until the source
10 owner or operator eliminates or reduces that impact level
11 below significant levels through additional controls or
12 emissions offset. Once it does so, then the permit may be
13 issued even if the violation persists after the source owner
14 or operator eliminates its contribution but the state must
15 take further appropriate actions at nearby sources to
16 eliminate the violations within a timely manner.
17 So now that's, that's a qualified statement but
18 still, unless you have the power, you have to get below the
19 standard or else something's got to happen and, and of
20 course, state governments will work with, with, you know,
21 factories or others to see if they can find another way
22 around it. They can offset, they can do this, they could
23 change their implementation plan if this happens, you know,
24 to work with people but if you don't have the power of the
25 state, which you don't have here, then you're stuck with a

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1 violation is a violation is a violation. And if you find
2 that there's a violation or a reason to believe there's a
3 violation, you have to say there's a health affect. So
4 that's just, that's chapter and verse and I didn't try to,
5 and I read you the qualifications and everything else so you
6 have it complete. Make your own judgments. Let's see.
7 Yeah. I would like -- yes. I think the point, I can give
8 you other citations but I think the point is made. Okay.
9 The, now with regard to the significant impact
10 levels, you know, what is, what's de minimis and what is not
11 de minimis, the thrust of the Sierra Club case, which the
12 expert was not familiar with until we brought it to his
13 attention, is that the de minimis rules for PM2.5 are, were
14 withdrawn by the agency and the reason they withdrew it was
15 because they were very concerned about cumulative impacts
16 and the straw that breaks the camel's back.
17 MR. GROSSMAN: Well, once again, you're referring
18 to a case that was analyzing a section of the regulations
19 that deal with major producers and not with smaller sizes.
20 MR. SILVERMAN: Yes. But what my focus is, it was
21 Mr. Sullivan who raised the issue of significant impact
22 levels and de minimis. He said if it's not, EPA doesn't
23 worry about it. Now if you look at his testimony, you can
24 see just how he put that but the point is, that's the,
25 that's the standard that he invoked, there's the thing so

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1 small you don't worry about them and he referenced them with
2 regard to the PM2.5. And then the points that I think we
3 made before, and I'll just say it again, is that that
4 standard that he, he invoked is no longer operative. It's
5 not operative. We don't really know how to deal with the
6 significant impact levels, what they are and what they're
7 not PM2.5. This is, this is, this is subject to
8 determination and I was doing additional research about this
9 and found some questions and answers, you know, what should
10 people do to, how to deal with the Sierra Club case and so
11 forth but I really couldn't find an answer to that question
12 although EPA is working on it.

13 MR. GROSSMAN: Is there anything else, Mr.
14 Silverman?

15 MR. SILVERMAN: Yes. The -- yeah. With regard to
16 nitrogen oxides -- oh, yeah. I do need to make an easier
17 point. We've had a lot of discussion of clean diesel and
18 Dr. Chase seemed to know a lot about diesel, all of his
19 references were to diesel. But there's an aspect of clean
20 diesel which I think is very relevant to this case, you
21 know, that the, the staff found that, that nitrogen dioxide,
22 NO2, was the problem and --

23 MR. GROSSMAN: The staff found that NO2 was the
24 problem.

25 MR. SILVERMAN: Yeah.

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1 MR. GROSSMAN: You mean technical staff's
2 rejection or recommendation of denial --

3 MR. SILVERMAN: Yeah.

4 MR. GROSSMAN: -- was based on their perception of
5 an NO2 problem --

6 MR. SILVERMAN: NO2, yeah.

7 MR. GROSSMAN: -- in a specific (indiscernible)

8 MR. SILVERMAN: Yeah. Which was, I think, very
9 perceptive of them. I wish they had more time to really
10 study it but anyway, they did the best they could. The --
11 and it's the issue that we're discussing and, and Mr.
12 Sullivan's error dealt with NO2 so it's an important subject
13 as well. So clean diesel and NO2. So how does, how does
14 clean diesel and NO2 interact? Well, it turns out that the
15 controls that they use for clean diesel do reduce the, the
16 NOx, that's the all the, all the oxides of nitrogen, but
17 that the percentage of NO2 actually increases.

18 MR. GROSSMAN: And you're citing what authority
19 for that?

20 MR. SILVERMAN: I -- the, the --

21 MR. GROSSMAN: I just don't want you to move out
22 of --

23 MR. SILVERMAN: Yeah. Let me --

24 MR. GROSSMAN: -- the area that you claim that you
25 have knowledge in.

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1 MR. SILVERMAN: No. I -- what I'm citing is a
2 technical bulletin which if we could take a little break, I
3 could get you the number of it. It just came out.

4 Technical bulletin from the EPA.

5 MR. GROSSMAN: You don't have that with you.
6 You're just --

7 MR. SILVERMAN: I don't have it with me. I have
8 it on my, my phone.

9 MR. GROSSMAN: -- bringing this up. Have you
10 notified the other side that you're going to cite a
11 technical bulletin? Don't try to pull it up on your phone
12 right now.

13 MR. SILVERMAN: Okay. Right. But I have it. I
14 saved it. But I'm just saying --

15 MR. GROSSMAN: Have you notified the other side
16 that you --

17 MR. SILVERMAN: No.

18 MR. GROSSMAN: No. Well, I have a problem with
19 doing that. Once again, I don't like surprises because I
20 think that's unfair to the other side and I was, I've been
21 very rigid in requiring the other side to produce
22 documentation of what their witnesses heavily rely on.

23 MR. SILVERMAN: All right. Fair enough.

24 MR. GROSSMAN: I'll also say that are you
25 suggesting here and do you have evidence that the use of the

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1 clean diesel trucks to deliver, deliver fuel here are going
2 to create higher levels of NO2. Is that what you're --

3 MR. SILVERMAN: Yes.

4 MR. GROSSMAN: I'm taking the implication from
5 what you've said. Do you have evidence of that?

6 MR. SILVERMAN: Well, I will, I'll share all this
7 but, I mean, I looked into it. There's lots of stuff on,
8 lots of scholarly discussion about the problem of NO2 and
9 clean diesel, and EPA is trying to work on it and trying to
10 figure out how to solve this problem, but it is a problem.
11 And all I'm saying is that it's something that ought to have
12 been raised and dealt with in some way and I hope they to,
13 and I'll let Dr. Cole --

14 MR. GROSSMAN: Right. You have experts on --

15 MR. SILVERMAN: Right. We have experts on it. I
16 just --

17 MR. GROSSMAN: Rather than testify on the point.

18 MR. SILVERMAN: Right.

19 MR. GROSSMAN: So let them, let them --

20 MR. SILVERMAN: Let them, yeah.

21 MR. GROSSMAN: -- deal with it.

22 MR. SILVERMAN: Okay. I really would like to --
23 I'm sorry. I'm, I did put a lot of time preparing but I'm
24 not quite ready on the issue of monitoring sites but I'll,
25 if we can have a break, I can deal with that. I don't want

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1 to take a break now because I, there are other things I want
2 to deal with. The -- so we, we have been -- oh, yeah.
3 Okay.
4 The -- Mr. Sullivan testified in answer to me that
5 he thought even if, if there was a federal action involved
6 so as to trigger the National Environmental Policy Act, he
7 wouldn't do a National Environmental Policy Act analysis
8 because there's not a significant impact on the human
9 environment which is the standard. In other words, if
10 there's, if there's a major federal decision that
11 significantly impacts the human environment, you have to do
12 an environmental impact statement. That is the, that is the
13 rule of NEPA. The basic, most basic. And the question is -
14 - and that's his preliminary judgment.
15 And he also, I asked him about, about gas stations
16 that may be 50 feet away from, from houses, Costco stations,
17 which Costco's attorneys brought up and would that be a
18 problem. Oh, it probably wouldn't be a problem except in
19 very unusual circumstances. So --
20 MR. GOECKE: Again, Mr. Grossman, the record will
21 speak for itself.
22 MR. SILVERMAN: Okay.
23 MR. GROSSMAN: Right.
24 MR. SILVERMAN: All right. All right. I think it
25 will speak for itself. Now in the determining what's

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1 significant, I think you have to, you have to take guidance
2 from a number of different sources but one thing you look
3 at, you might look at, for example, school siting guidelines
4 which say that whenever a school is within 1,000 feet of a,
5 of a gas station of 3.6 million gallons per year, you must
6 do, either give up that site or do a thorough analysis. In
7 other words, that would be a standard that would trigger,
8 that would be a guidance from a reputable source, the Office
9 of Children at EPA.
10 MR. GROSSMAN: Mr. Sullivan's response was yes,
11 and he did that study which you have in front of you.
12 MR. SILVERMAN: Yeah. Well, yeah, but, yeah.
13 That's true. He did. But he also said, and this is what
14 troubles me, he also said apart from his particular study,
15 he thought that we were, that there was a waste of money
16 here, that there was, that this case had been analyzed much
17 too, had been excessively analyzed and I think that is
18 based, first of all, on that, on the guidance. I think
19 that's a mistake. And secondly, we have the, the County
20 Council expressing concerns that, about school children and
21 coming up with the 300 foot rule which Mr. Sullivan
22 testified against and --
23 MR. GROSSMAN: But they also have, I mean, that's,
24 once again, that's another double-edged sword. We have the
25 Council rejecting the 1,000 foot setback which was in the

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1 initial zoning text amendment proposal so --
2 MR. SILVERMAN: You know, I think you're wrong --
3 MR. GROSSMAN: -- I have to --
4 MR. SILVERMAN: -- you're wrong about that if I
5 can say so.
6 MR. GROSSMAN: All right. Tell me how I'm wrong.
7 MR. SILVERMAN: Yeah. I think there's a lot of,
8 there's a lot of law about how to interpret the failure of a
9 legislative body to act. They didn't cover this, they
10 didn't cover that, and what do you draw from it. And mostly
11 what the courts say is not much. You really can't draw a
12 lot and I could, I could brief that if you'd like, if it
13 would be helpful.
14 MR. GROSSMAN: Well, I think that that's one of
15 the areas in which I would expect the parties to address in
16 whatever their closing statements are that they wanted to
17 file.
18 MR. SILVERMAN: Okay. Right.
19 MR. GROSSMAN: Is to address that issue of how I
20 am to deal with the Council's decisions regarding the ZTA.
21 MR. SILVERMAN: Well, one thing that is --
22 MR. GROSSMAN: I don't expect you to testify about
23 that.
24 MR. SILVERMAN: Right. I got you.
25 MR. GROSSMAN: That's a matter of argument.

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1 MR. SILVERMAN: Okay. Well, this, in any case,
2 just the existence of that, a rule which is based on health
3 as we said over and over and has the documents which were
4 admitted saying, just the fact that that rule is there is,
5 suggests it should be taken, either you could say well, the,
6 the Council was, if I'm going too far, tell me. I'll wait
7 for another occasion but --
8 MR. GROSSMAN: Right. I mean, right now you're
9 arguing.
10 MR. SILVERMAN: Okay. I won't argue.
11 MR. GROSSMAN: I'm not really --
12 MR. SILVERMAN: All right. All right.
13 MR. GROSSMAN: If you want to -- I mean, much of
14 what you have said really I think fairly could be said to be
15 argument.
16 MR. SILVERMAN: Okay.
17 MR. GROSSMAN: As opposed to -- but I've allowed
18 you up here to testify because you indicated that, you know,
19 you wanted to testify about the process that, that EPA uses
20 in terms of evaluating, and that's something that's more of
21 an area of knowledge rather than argument so I think you,
22 you may have completed that portion of your testimony.
23 MR. SILVERMAN: Right.
24 MR. GROSSMAN: Is there anything else that's
25 really not argument that you want to testify about?

1 MR. SILVERMAN: Yes. Two other things which are
2 separate subjects.

3 MR. GROSSMAN: All right.

4 MR. SILVERMAN: One is emergency preparedness. I
5 want to, I don't want to repeat Ms. Mulready's testimony but
6 in the, in the school siting guidelines, one of the
7 recommendations that they make to local governments is be
8 aware of emergency situations and emergency planning. And
9 here they're talking about homeland security types of things
10 and floods and terrible things of that sort. I think in, in
11 this case, the, the issue of -- and one of the reasons they
12 say that is that schools are often places where people go
13 for shelter.

14 But in this case, we've heard testimony from
15 Costco and it is in fact the case that, that during these
16 storms, I think there was testimony during Sandy, Costco
17 stations are the ones that are open. And I think I
18 submitted early on a photograph of a large, not Costco, a
19 Hess station in New York which lines and lines of cars
20 around the block in case of emergency and I think if we have
21 an emergency in, in this area, what you'll see is lines and
22 lines of cars at the Costco station. Why there, because if
23 they can only make so many deliveries of fuel, they'll go to
24 the place that holds the most fuel which is certainly Costco
25 so that in an emergency situation --

1 MR. GROSSMAN: Well, I don't think you're, you're,
2 you weren't listed as somebody testifying about emergency.
3 Ms. Mulready was the one listed as testifying about --

4 MR. SILVERMAN: Well, I -- really it's about air
5 pollution because what I'm saying is what will happen in an
6 emergency. What will happen in an emergency is that
7 hundreds of cars will flock to Costco which in a way is a
8 good thing because they'll get their gas, they'll get their
9 milk in the store and whatever.

10 MR. GROSSMAN: Right.

11 MR. SILVERMAN: But what does that mean for the
12 neighborhood. It means you'll have very severe, during
13 those periods of time, you'll have very, very severe impacts
14 and, and, you know, deciding to put a facility like this,
15 which does have a wonderful capability to be a great
16 resource in emergency, if you put it where you're putting
17 it, here, you're really saying well, in cases of emergency,
18 we'll sacrifice the interest and the health of the people in
19 the neighborhood for the greater good. That's one of the
20 things that's happening. I just wanted to make that point.

21 MR. GROSSMAN: Okay.

22 MR. SILVERMAN: And secondly, I would like to say
23 something about the, the water resource issue and the, the
24 storm water management and so forth, and I realize that
25 they, you know, they got all their permits and that you are

1 most reluctant to, to second guess the permitting thing so
2 you think you may not have authority to do it, it's the
3 Office of Permitting Services, and I certainly respect that.

4 I just want to, just really for the record, I hope
5 I'm not wasting your time but just express some of my
6 concerns. Let me say water and storm water management have
7 been the centers of my professional career for many years.
8 There are, there's a major consent decree with, between WSSC
9 and, and the state about their sewer systems. I managed
10 some of that litigation for one of the parties. There is a
11 major consent decree with, with WASA in D.C. and I managed
12 that, so I know a lot about it.

13 And some years ago, I wrote an article for the,
14 for the Takoma Voice which was then reprinted in the
15 Washington Post about Montgomery's, it was called, I think,
16 Montgomery, Silver Springs and Sparkling Waters. And one of
17 the things I discovered by looking at all the USGS reports
18 was that the Wheaton Mall is, used to be a, this used to
19 have, before development, it housed many springs and was
20 really the source water for --

21 MR. GROSSMAN: Once again, I think you're beyond
22 what you're listed for. In fairness, I think your, you have
23 somebody who is going to be testifying from your
24 organization about that, do you not? About, isn't that,
25 isn't that what Mr. Sheveiko is going to be testifying

1 about?

2 MR. SILVERMAN: Yeah. He will, yeah.

3 MR. GROSSMAN: So he's the --

4 MR. SILVERMAN: Okay. All right.

5 MR. GROSSMAN: -- person. Since you're an
6 organizational witness, the organization asked me to, to
7 allow it to be split up this way.

8 MR. SILVERMAN: Okay. All right.

9 MR. GROSSMAN: So in fairness, let's address it
10 when the person who is an expert or professes a level of
11 competence in that area is testifying.

12 MR. SILVERMAN: Yeah. He's certainly very
13 competent. Well, in that case, if I can, if I can at some
14 point, an appropriate point, if I can have a few minutes to
15 find the references to the monitoring networks --

16 MR. GROSSMAN: All right.

17 MR. SILVERMAN: -- otherwise I'd be finished with
18 my direct.

19 MR. GROSSMAN: Let's take a five minute break
20 here.

21 MR. SILVERMAN: Okay.

22 MR. GROSSMAN: And we'll come back at 10 after 11.
23 That gives you a little bit more than five minutes, okay?

24 MR. SILVERMAN: Okay. Thank you very much.
25 (Whereupon, at 11:15 a.m., a brief recess was

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1 taken.)
2 MR. GROSSMAN: All right. We're ready to go back
3 on the record now. Mr. Silverman?
4 MR. SILVERMAN: Yes.
5 MR. GROSSMAN: Have you had an opportunity to
6 review your materials?
7 MR. SILVERMAN: I have. I have.
8 MR. GROSSMAN: Okay.
9 MR. SILVERMAN: So --
10 MS. ROSENFELD: Mr. Grossman, just if I may.
11 MR. GROSSMAN: Ms. Rosenfeld.
12 MS. ROSENFELD: I believe when I was out of the
13 room, there was a discussion as to whether Mr. Silverman or
14 Mr. Sheveiko would be talking about water quality issues.
15 MR. GROSSMAN: Oh, I -- you were out of the room?
16 When was that?
17 MS. ROSENFELD: I was out of the room just --
18 MR. GROSSMAN: Just now?
19 MS. ROSENFELD: No, no. During the testimony for
20 just a few moments.
21 MR. GROSSMAN: Oh, I wasn't even aware. You must
22 have walked, I must have been looking in this direction so I
23 wasn't aware that you walked out.
24 MS. ROSENFELD: Well, I'm glad you were intent on
25 the witness. Mr. Silverman is, is the witness on water

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1 quality and not Mr. Sheveiko.
2 MR. GROSSMAN: Oh, okay.
3 MS. ROSENFELD: Okay.
4 MR. SILVERMAN: All right. Thank you.
5 MR. GROSSMAN: If you have -- I thought that Mr.
6 Sheveiko was but --
7 MR. SILVERMAN: Mr. Sheveiko --
8 MR. GROSSMAN: -- apparently, I was mistaken.
9 MS. ROSENFELD: I don't believe he is going to be
10 testifying on water quality.
11 MR. GROSSMAN: Okay.
12 MR. SILVERMAN: Mr. Sheveiko has many observations
13 he can relate to --
14 MR. GROSSMAN: Okay.
15 MR. SILVERMAN: Firsthand observations and will
16 share them, what he saw.
17 MR. GROSSMAN: All right. Then I will certainly
18 allow you to go into that, that area.
19 MR. SILVERMAN: Before I do, I apologize. You
20 know, the rule for, the new rule for National Ambient Air
21 Quality stands for particulate matter. The final rule,
22 January 15th, 2013 has many pages but the pages that I was
23 searching for I did not have because I stopped on page 3231
24 and it goes way on beyond that. So I have found the pages
25 and I apologize I didn't have them here in front of me.

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1 MR. GROSSMAN: All right. So now what's the, what
2 are we looking at now?
3 MR. SILVERMAN: The issue is the change of
4 monitoring approaches.
5 MR. GROSSMAN: Okay. And what's the citation
6 again?
7 MR. SILVERMAN: The citation is Federal Registry,
8 FR, Volume 78, Number 10, Tuesday, January 15th, 2013.
9 MR. GROSSMAN: Tuesday, January 10.
10 MR. SILVERMAN: January 15.
11 MR. GROSSMAN: January 15, 2000 --
12 MR. SILVERMAN: 13.
13 MR. GROSSMAN: 13.
14 MR. SILVERMAN: Yeah.
15 MR. GROSSMAN: Okay.
16 MR. SILVERMAN: This is a quickly changing world.
17 So --
18 MR. GOECKE: Is there a page number?
19 MR. SILVERMAN: Yes. The page number I'm going to
20 give you is -- it's a long discussion. I won't do all of it
21 but it sort of starts on page 3124 but what I want to, what
22 I want to read is, is on page 3239. It says, and prior to
23 that, there is a, quite a discussion of near road monitors
24 and a discussion of the existing monitoring system
25 nationwide. And there's also a reference to the changes

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1 proposed for, for NOx monitoring which was done in 2010 and
2 where they also called for near road monitors, and there's a
3 lot of discussion about co-locating the two types of
4 monitors. And there's also a clear statement that the, that
5 the implementation of the new NO2 monitoring station is not,
6 is just starting and it really hasn't gone too far.
7 And I'll read you from page 3239. Ideally, near
8 road sites would be located at the elevation distance from
9 the road where maximum PM2.5 levels occur in this
10 environment representing locations where populations are
11 exposed, and it talks further about that. And then it talks
12 about the time line for doing this because this is, this is
13 significant change. This was not the case prior to this.
14 In fact, prior to this, they had, and there's discussion of
15 that also. I won't go into spatial averaging because it
16 really isn't of my pay grade, but there is a discussion of
17 that in the previous pages.
18 Then on, in that same page, 3239, it says the time
19 lines implement the near road PM2.5 monitor should be as
20 minimally disruptive to ongoing operations of monitoring
21 agency programs as possible recognizing monitoring agency
22 resource constraints while still meeting the need to collect
23 for near road PM2.5 data in a timely fashion. Since the
24 near road PM2.5 monitors were proposed to be co-located with
25 the merging near road NO2 network that was scheduled to be

1 operational by January 1st, 2013, the EPA believes it is
2 appropriate to wait until after the near road NO2 network is
3 established before implementing the near road PM2.5
4 monitors. Therefore the EPA proposed that each PM2.5
5 monitor planned for co-location with the near road NO2
6 monitoring site be implemented no later than January 1st,
7 2015.

8 So in other words, the correct monitoring system
9 to determine, this is to determine attainment to air quality
10 standards and essentially, background levels, is unfolding.
11 It's not done. It's just getting started. In this region,
12 it's, I, my, my state officials tell me they're just
13 starting to do some of this.

14 MR. GROSSMAN: Did I hear you correctly to say
15 that they would like to see this implemented by January of
16 2015?

17 MR. SILVERMAN: 15. That's right.

18 MR. GROSSMAN: I see.

19 MR. SILVERMAN: So that means we're, we're --
20 clearly, the near road monitors are going to get, capture
21 more stuff than the far off monitors, the ones in the
22 Beltsville agricultural station or the one in Rockville and
23 so on. They're going to find, they're going to find higher
24 levels. A lot of people complained that the, that the, by
25 changing the monitoring station, essentially, you're

1 reducing the standards and EPA says no, the standards are
2 based on health and it wasn't, a lot of populations that
3 live near roads were not being protected because what was
4 being measured at the, at the existing network of stations
5 was lower than what people were experiencing right by the
6 roadside.

7 MR. GROSSMAN: Okay.

8 MR. SILVERMAN: So, so the point here is it's
9 changing. It's becoming more stringent. Any change that an
10 expert might make in his choice of background monitors to
11 determine background, ought to be in the direction of being
12 more stringent, not being less stringent. That, as I
13 understand, is not the direction Mr. Sullivan went but Dr.
14 Cole can talk further about that. So that's my point. And
15 I expect there will be, there's quite a long discussion.

16 The other point about that is that in the setting
17 of the standards, and there's a lot of, there's discussion
18 with the CASAC, there's letters back and forth, in the
19 setting of the standards, there's, there's a concern that
20 how you set the standard depends on where you put the
21 monitors.

22 So, for example, it's very hard to put a monitor
23 in the middle of the highway. I don't know if it's
24 impossible but it's hard I'm sure. So if you set a standard
25 at the edge of the highway, does that mean you're not

1 protecting the people in the middle of the highway? No.
2 What they say is set the standard low enough considering
3 that the pollution will dissipate somewhat, that the people
4 in the middle of the highway, people in their cars are not
5 being subjected to, to excessively high levels. So there's,
6 there's that kind of calculation and again, Dr. Cole can
7 discuss that at greater length. Just this is, this is the
8 direction of thought. This is where things are going with
9 EPA and as I said to Mr. Sullivan when, under cross-
10 examination, it's a big, big opportunity for people like him
11 because it's all changing.

12 MR. GROSSMAN: Also, I presume that people
13 standing in the middle of the highway have more things to
14 worry about immediately than --

15 MR. SILVERMAN: Exactly.

16 MR. GROSSMAN: -- air pollution.

17 MR. SILVERMAN: Yes. That's right. Yes. Do you
18 die now or die later. Yes. That's exactly right. So
19 anyway, that's, that is the source for that and I, there are
20 other sources which Dr. Cole will reference but, and if I
21 find them, I will send them in to, to --

22 MR. GROSSMAN: Once again, it's a hard thing to
23 factor in a standard or a concept of how they're going to
24 change the standards that are not going to be effective
25 until January of 2015 in how to monitor background, but I

1 understand your central point there which is that the
2 tendency that you're suggesting from EPA is to go with a
3 more stringent analysis of the monitoring of background
4 because of this direction and that's, that's the central
5 point you're making.

6 MR. SILVERMAN: That's the central point. And
7 also, the standard is in effect now. The standard is
8 effect. The question is --

9 MR. GROSSMAN: I understand.

10 MR. SILVERMAN: -- yeah, whether you're --

11 MR. GROSSMAN: How you monitor.

12 MR. SILVERMAN: How you monitor the --

13 MR. GROSSMAN: I understand.

14 MR. SILVERMAN: Okay. So but which leads me to
15 the, you know, we hear a lot the use of the word
16 conservative and I think there's been really, well, we've
17 had a very typical conversation about this. I've rarely
18 been to a hearing or a meeting where there's discussion of
19 compliance with standards where someone doesn't say well,
20 the standard is, is premised on you being in the same place
21 for 70 years and so forth, or the super fund case dealing
22 with PCBs and, you know, if a kid eats a pound of PCBs over
23 a course of ten years, PCB-laced soils, you know, then
24 they'll get sick and that's the basis of the standard.
25 People say that's crazy, you know. Well, you know what,

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1 that's how they do it. You could argue with it but that's
2 how they do it.
3 And I think the important thing about these
4 standards and these rules is, is it's sort of comparative.
5 If I give you a simple analogy, I did a lot of work in the
6 fishing town of New Bedford and so the fishermen were always
7 complaining that the NOAA was taking samples of fish, the
8 number of fish in the sea at sites where they, where the
9 fishermen would never fish.
10 MR. GROSSMAN: For the record, identify NOAA.
11 MR. SILVERMAN: NOAA is the National Oceanographic
12 and Atmospheric Administration. They have the National
13 Marine Fishery Service. They set, they set catch limits. So
14 the fishermen in New Bedford, I heard them all the time
15 saying it's ridiculous, they're going to a place where
16 there's not a lot of fish, but the answer to that is they go
17 to that place every year and that's what's, that's what's
18 telling. Is it going up or is it going down.
19 And this, you know, the, make the argument oh,
20 well, you have to be 70 years there, it's just, it's just
21 the way they do it. You know, you could say they're all
22 screwed up, they don't know what they're doing, but that's
23 the way they do it and that's they're always going to do it
24 and you just have to live with that and assume the standards
25 the standard. Particularly with NO2 where you have a one

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1 hour standard. Now, they didn't used to have a one hour
2 standard. They do now. They don't have a one hour standard
3 for the PM2.5. They have a one day standard Maybe they'll
4 move, they'll change that too.
5 But that's just the way it is and to say well, we
6 shouldn't take these things too seriously because, you know,
7 it's so constrained, I think it's a misapprehension of how
8 environmental policy is done. It's just, I can't, I can't,
9 you know, sometimes it says you have to sacrifice a red cow,
10 you don't know why it's red, you just do it. That's the way
11 they do it. That's just the way it is.
12 Okay. The -- oh, yeah. One other thing about,
13 I'd like to add one thing to the, the discussion of the
14 National Environmental Policy Act, and this is probably the
15 most important point. What the National Environmental
16 Policy Act decreed, you know -- President Nixon signed that
17 law January 1st, 1970, I had just arrived in Washington and
18 I thought after he signed that law it was all over, I
19 couldn't do anything, the war had been fought and won but it
20 was not the case.
21 But anyway, the key, the key thing about that law,
22 it says you have to think first before you act. It says,
23 what it says is that if you're going to hire experts, hire
24 them before you make your decision and let them do your work
25 and typically, in making a decision, you should sort of, you

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1 should take a number of alternatives including a no-action
2 alternative and array them together and come up with the
3 best decision. That's how they, that's how they decide
4 whether there's a market or not and so on. They think
5 before they act.
6 In this case, majority of Costco's experts are
7 after-the-fact experts and inherently, after-the-fact
8 experts who are paid and so forth have less credibility than
9 the people who were brought in before the fact to, to
10 determine whether there's going to be a problem or not or to
11 compare, particularly people who are to compare
12 alternatives. Had, had Mr. Sullivan been hired before the
13 decision to locate here and made, had done his reports, his
14 reports would be much more credible to anybody, any
15 professional in the environmental policy field. Just the
16 way it is. So that's a point about the National
17 Environmental Policy Act I wanted to make.
18 Now on the water resource --
19 MR. GROSSMAN: Does that apply, that applies to
20 experts on both sides.
21 MR. SILVERMAN: Yes, it does.
22 MR. GROSSMAN: In most cases, I think that is,
23 it's always an issue.
24 MR. SILVERMAN: Of course it is. But in
25 environmental cases, it's particularly. I mean, to me, I

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1 was surprised. I had learned from Mr. Ishida that, that
2 there is, that for the most part, the real estate section of
3 Costco does not have any environmental folks.
4 MR. GOECKE: Objection. Hearsay.
5 MR. SILVERMAN: Well, you can, you can --
6 MR. GROSSMAN: All right. Hold it. Hold it.
7 MR. SILVERMAN: Yeah.
8 MR. GROSSMAN: I'm going to sustain that
9 objection.
10 MS. CORDRY: Well, is not that a statement by Mr.
11 Ishida who works for Costco, wouldn't that not be an
12 admission of statement of a party opponent? Whatever
13 hearsay --
14 MR. GROSSMAN: I don't know who Mr. Ishida is.
15 MR. SILVERMAN: Mr. Ishida is --
16 UNIDENTIFIED SPEAKER: Vice-president of real
17 estate.
18 MR. SILVERMAN: -- vice-president of real estate.
19 MR. BRANN: He would be my boss.
20 MR. SILVERMAN: Yes.
21 MR. GROSSMAN: I see.
22 MR. SILVERMAN: Yeah.
23 MR. GROSSMAN: If Mr. Ishida made a statement,
24 then that would be an admission --
25 MS. CORDRY: I think --

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1 MR. GROSSMAN: -- which would be admissible.
2 MR. SILVERMAN: Right. Yes. He and I had many
3 nice conversations. Then after a while, I --
4 MR. GROSSMAN: All right. So what was Mr.
5 Ishida's statement?
6 MR. SILVERMAN: Ishida, I-S-H-I-D-A. His
7 statement was that they do have a person that looks for a
8 potential super fund type liability before they settle on
9 real estate but for the most part, but they do not otherwise
10 have environmental experts to guide their choice of real
11 estate places.
12 MR. GROSSMAN: Okay.
13 MR. SILVERMAN: And in fact, when they had one of
14 their open houses, I brought my class of graduate students
15 to the open house, introduced them to Mr. Ishida and said
16 you need to hire these kinds of people so that you can, you
17 can evaluate the environmental impacts before you make a
18 decision because after you make a decision, then you're
19 just, you know, it's just, it's less credible.
20 MR. GROSSMAN: I understand. I understand.
21 MR. SILVERMAN: Okay. All right. Good. So with
22 regard to -- and this, this segues into the water resources
23 issue. One of the -- Mr. Sullivan made a very clear case
24 about the pre, earlier automotive use of portions of the
25 mall. I think it was one of the tire companies. I forget

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1 which one. One of, Sears or somebody had an auto --
2 UNIDENTIFIED VOICE: Montgomery Ward.
3 MR. SILVERMAN: What's that? Somebody --
4 MR. GROSSMAN: Let's not --
5 MR. SILVERMAN: Yeah. Somebody --
6 MR. GROSSMAN: Let's not have calling out.
7 MR. SILVERMAN: Right. Somebody, a large company
8 had a tire and battery facility. And Mr. Sullivan said, he
9 pointed out, and very correctly I think, that the tire and
10 battery facilities have lots of hazardous materials,
11 particularly solvents, and it's a serious problem,
12 particularly after they close down. So I agreed with that
13 statement. I agree with a lot of the things he says but I
14 agreed with that in particular. And yet, if you look at the
15 geological reports that were submitted by Duke Engineering,
16 they say there's an exception and their report said that no
17 investigation was made for toxic substances in the soil and
18 that's, that's in their report.
19 So and that, I think, is sort of typical of the,
20 the, how Costco engineers have treated the water resource
21 problems. And Heaven knows whether in the construction of
22 the Costco itself or where, or in the construction of these
23 tanks or placement of these tanks, whether any of that,
24 whether there are toxic substances in the soil or it whether
25 they will be stirred up or where they'll go I have no idea

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1 but in normally, in dealing with things like that, you have
2 what's called a phase 1 investigation where essentially, you
3 look at the history of the site and say is there a potential
4 problem and then you investigate to see how you can avoid it
5 if there's a problem, how you can avoid it or minimize it.
6 MR. GROSSMAN: Well, do we know that this kind of
7 investigation won't be done as part of the permitting
8 process for sinking the tanks and so on?
9 MR. SILVERMAN: It won't be done.
10 MR. GROSSMAN: How do you know? Because this is,
11 this is a land use proceeding.
12 MR. SILVERMAN: Right.
13 MR. GROSSMAN: Not, not, which is essentially a
14 surface --
15 MR. SILVERMAN: Right.
16 MR. GROSSMAN: -- proceeding. It's not the
17 permitting process and they would be, if a special exception
18 were granted, they would be required to follow all
19 applicable local, state and federal regulations --
20 MR. SILVERMAN: Well --
21 MR. GROSSMAN: -- including any Clean Water Act
22 regulations, Clean Air Act regulations and so on.
23 MR. SILVERMAN: Well, the state, the state has a
24 lot of regulations about, you know, how you put a tank in,
25 how much gravel you put in the bottom of it and so forth.

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1 MR. GROSSMAN: Right.
2 MR. SILVERMAN: They do not, they do not, to my
3 knowledge, and I think I know it, have a regulation to the
4 effect that you need to do a phase 1 investigation to see if
5 you're disturbing toxic substances.
6 MR. GROSSMAN: And what about the Maryland
7 Department of the Environment?
8 MR. SILVERMAN: They certainly don't.
9 MR. GROSSMAN: Okay.
10 MR. SILVERMAN: The -- in general, this whole area
11 in general is, is a, the controls that we have are
12 technology-based controls. You say you have to have a
13 certain amount of pumps and a certain kind of tank and so
14 forth. It's entirely that. And in areas which are more
15 directly regulated, you have a dual approach. One is
16 technology-based. Every power plant has to have so many
17 electrostatic precipitators and other, other devices to get
18 the best available technology but even after you've done
19 that, you ask yourself some questions will it violate air
20 quality or water quality standards after it's put in. And,
21 you know, when I, when I started, the only regulation was
22 air and water quality standards based on the ambient
23 environment.
24 MR. GROSSMAN: Right.
25 MR. SILVERMAN: General environment. There were

1 no technology standards and my critique at that time was
2 that this was crazy because nothing was getting done because
3 there were too many models and too much uncertainty, and
4 there was a lot of study and lots of investigation, nothing
5 ever happened. So they imposed technology-based standards
6 which were good, and they got a lot done real quick in ten
7 years. It was a huge improvement.

8 MR. GROSSMAN: Right.

9 MR. SILVERMAN: But, you know, when we talking to
10 the members of the Congress at the time and, you know, they
11 said well, do we need the air quality and water quality, we
12 said yes, but that's really the name of the game. You know,
13 it's just they're harder to do. Well, we've seen why. It's
14 very complex. They're much harder to do, and so we don't
15 have that for gasoline stations and maybe someday we will
16 have some way of analyzing but right now, you're the only,
17 you're the only one to do that

18 MR. GROSSMAN: Well, once again --

19 MR. SILVERMAN: Yeah.

20 MR. GROSSMAN: -- I mean, I, I think you may want
21 this process to do more than it is designed to do. I cannot
22 elevate this process into the functions of the Department of
23 Permitting Services, which reviews storm water management,
24 and the Planning Department that reviews other aspects of
25 it. That's not the appropriate part of, of the function

1 that we do here.

2 MR. SILVERMAN: I understand.

3 MR. GROSSMAN: Especially when there's already, if
4 there is in place a finding of adequate public facilities.
5 So you're trying to superimpose over this process something
6 that's more than designed to do.

7 MR. SILVERMAN: Well, I appreciate that and I
8 just --

9 MR. GROSSMAN: That's why there's a technical
10 staff that, you know, supports that part of the process and
11 there's a department, and there's a department in the
12 environment that's supposed to deal with the county and the
13 state so it's not, not everything. This tail can't wag the
14 entire government dog.

15 MR. SILVERMAN: I appreciate the fact but I, you
16 know, your interest, you have a simple question, is it safe.
17 I'm not asking you to overrule anybody, just to see is it
18 safe, is it healthy or is it, does it pose a threat.

19 MR. GROSSMAN: But I have to rely on the standards
20 that are imposed in other parts of government for that
21 proposition. I can't have -- everything cannot be an
22 independent study that's done as part of this process.

23 MR. SILVERMAN: Well, all my -- with regard, I'll
24 say with regard to the air pollution process, the state, in
25 its letter, said don't count on us, we don't guarantee this,

1 so they made that clear. They'll issue a permit based on
2 the technology standard but they have made it clear, don't
3 count on us. They punted like, like everybody else. On the
4 water, we've covered that point but on the water issue, to
5 me, it just seems like it was, I just kind of want to say
6 this because I think it was really poorly done. There are a
7 couple tip-offs.

8 MR. GROSSMAN: What was poorly done?

9 MR. SILVERMAN: The planning of storm water and
10 the placement of tanks in relationship to, in relation to
11 the water -- the gasoline tank's one place and, you know,
12 not very far away, water tanks in this environment. And
13 what I was saying before is that the -- I think their, the
14 geologist for, for Costco seemed like a very capable person.
15 He questioned my use of the word, I said the mall, the hill
16 is permeating with honeycomb, honeycombed with, with
17 groundwater. He didn't like that word and he questioned it.
18 Maybe it was not that, you know, we lawyers, we get poetic
19 sometimes, but there's a lot of groundwater there.

20 If you walk up to, if you go to take the Sligo
21 Creek Trail and you cross University Boulevard to get to the
22 Arcola area and you walk in the woods there and the trail
23 sort of ends, it's just woods, you see, you better wear
24 boots because your feet get muddy because there's seeps
25 coming up, just natural seeps that feed the Sligo Creek.

1 Well, those same seeps used to exist in the Wheaton Mall so
2 there's groundwater there. We don't know. We don't know
3 what it's doing now. It's been changed a lot and there are
4 a lot of pipes. We don't, we don't really know what's going
5 on.

6 When, when the engineers, Duke Engineers did the
7 work for, for, I'm not sure because so much was done,
8 whether it was the store or the, or the gas station but
9 they, you know, they, their work was premised on, on all the
10 water going to or some of the water draining to, to an
11 outfall which drains into Silver Creek which goes right by
12 people's homes. And Dan Sheveiko, being the boy scout that
13 he is, he went and actually looked at that, that storm water
14 pipe and it was totally destroyed. It was, it was wrecked
15 and he was the first one to bring that to the attention of
16 both the County and Costco and they subsequently tried to
17 improve it although I understand the improvements are not
18 working so well.

19 So how is this relevant? Just to me, you don't
20 design a storm water system if you don't know where it's
21 ending. It just seems like poor, a poor process, and that's
22 what I've seen. If you have evidence that there was, there
23 was uses that contained hazardous substances, you should
24 check that out before you go and dig up the ground. Another
25 poor process.

1 The, the storm water system for the, the gas
2 station is better than the storm water system for the mall
3 because it incorporates environmentally sensitive design
4 facilities which is a good thing. Although the existence of
5 those facilities was not, was not dealt with or, by Mr.
6 Sullivan, in determining whether the area was urban or
7 rural. He said we didn't know about those. And I think
8 that that has some significance in coming up with your
9 dispersion coefficients.

10 But the original facility for the store, and I
11 think originally for this, the gas station, was done under a
12 grandfathered provision. They came in at the last minute
13 and they kind of avoided that requirement which to me, was
14 very disappointing for a company as large as Costco and
15 impact that they have to not be embracing Montgomery
16 County's requirements.

17 MR. GROSSMAN: Well, I don't, I mean --

18 MR. SILVERMAN: I'm just --

19 MR. GROSSMAN: What you're --

20 MR. SILVERMAN: I'm just trying to make the point
21 that in my opinion, the storm water planning has been poor
22 in general and I just, I don't know if anybody can, you
23 know, if you can do anything about it, whether you have the
24 authority to do it but I want to say it because I've been
25 working this venue for a long time and it really, it really

1 disturbs me and it's one of the reasons I'm here.

2 MR. GROSSMAN: Have you said this to the
3 Department of Permitting Services?

4 MR. SILVERMAN: I have, yes.

5 MR. GROSSMAN: And what was their reaction?

6 MR. SILVERMAN: They said we've issued the permit.
7 Oh, another, another point on this same, same -- I asked if
8 the Duke, had he looked at the flood map, the FEMA flood
9 maps for the area before designing the system and he said
10 yes. Well, you know, what, there are no FEMA flood maps for
11 the area. We don't really know what a hundred year flood
12 is. We do know that a lot of people live downhill, downhill
13 from these folks, from the mall and that a stream goes right
14 by people's houses within feets, feet of their homes.

15 MR. GROSSMAN: If I recall, his testimony was that
16 these tanks could be completely submerged in water without
17 any issue.

18 MR. SILVERMAN: That's what he said.

19 MR. GROSSMAN: I'm just --

20 MR. SILVERMAN: That's what he said. Yes, no.

21 MR. GROSSMAN: Do you have to have a --

22 MR. SILVERMAN: That's true. He did.

23 MR. GROSSMAN: -- contrary expert here to --

24 MR. SILVERMAN: Well, I think we put in our, if we
25 didn't put it in, we discussed the Jacksonville case where,

1 where a tank was punctured, there was a problem. The thing,
2 accidents do happen.

3 MR. GROSSMAN: Right.

4 MR. SILVERMAN: And the question, real -- you do
5 the best you can to stop accidents and I suspect Costco does
6 a reasonable job trying to stop accidents but what happens
7 when they do happen? That's the -- who gets hurt? And who
8 will get hurt will be the opponents. They will be hurt if
9 there is an accident. That's the question. That's why you
10 put things far away, as far away as you can from people and
11 that's why most gas stations of this sort are in fact 1,000
12 feet or more away from folks because there's, you know,
13 things happen. So anyway, that's --

14 MR. GROSSMAN: Okay.

15 MR. SILVERMAN: That's what I wanted to say about
16 the water part of it.

17 MR. GROSSMAN: Okay.

18 MR. SILVERMAN: And one other thing. I mean, I
19 don't know if this is probative. It's sort of emotional
20 but, you know, there are a lot of people like me and Mr.
21 Sullivan and others in Montgomery County who are experts in
22 air/water quality and it's so disappointing to me that they
23 weren't consulted and their views weren't respected. It,
24 it's -- I find it very disappointing if you can do, if you
25 can get away with this kind of thing in Montgomery County,

1 where --

2 MR. GROSSMAN: I don't know what you're talking
3 about.

4 MR. SILVERMAN: Okay. All right.

5 MR. GROSSMAN: I mean, you say not consulted. You
6 have a process here that's been going on for years.

7 MR. SILVERMAN: After the fact. After the fact.

8 MR. GROSSMAN: That's the process I'm in.

9 MR. SILVERMAN: I know.

10 MR. GROSSMAN: Okay.

11 MR. SILVERMAN: I understand, but it's just, it's
12 kind of disappointing. All right. So that's my, that's my
13 direct testimony.

14 MR. GROSSMAN: All right. Cross-examination.

15 MR. SILVERMAN: Thank you. Thank you for your
16 patience

17 MR. GOECKE: Thanks, Mr. Grossman.

18 CROSS-EXAMINATION BY MR. GOECKE

19 MR. GOECKE: So, Mr. Silverman, you take issue
20 with the fact that Mr. Sullivan revised his modeling?

21 MR. SILVERMAN: Yes.

22 MR. GOECKE: It's your testimony that he was not
23 permitted to do that?

24 MR. SILVERMAN: Oh, I think he did not justify the
25 revisions and I think in a normal situation when these

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1 revisions happen, you generally -- I can cite the, in the,
2 in --
3 MR. GOECKE: Well, let me ask you this.
4 MR. SILVERMAN: Yeah.
5 MR. GOECKE: To whom must he justify the
6 revisions?
7 MR. SILVERMAN: Well, in a typical situation, when
8 you make these types of revisions --
9 MR. GOECKE: Not in -- in this situation, to whom
10 is he justified?
11 MR. SILVERMAN: Well, you see, the problem is
12 there's no one here to, to do it. In a typical situation,
13 you go to an authority, an agency and you have big
14 discussions with them before you revise things.
15 MR. GROSSMAN: You say a typical situation.
16 MR. SILVERMAN: Yes.
17 MR. GROSSMAN: You're talking about a typical gas
18 station situation or a typical major source of pollution
19 situation?
20 MR. SILVERMAN: A typical modeling situation. A
21 typical modeling situations are, are usually done, they
22 don't just do them. They do them to satisfy regulatory
23 requirements. A typical modeling situation. When you
24 change your assumptions, you go back to the authority and
25 you say well, here's why I changed them. Now --

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1 MR. GROSSMAN: No, but what I'm asking you, you
2 said typical so I just want to make sure that the record is
3 clear as to what you mean by that. Is it, is modeling
4 typical for gas station (indiscernible)?
5 MR. SILVERMAN: No. It is not.
6 MR. GROSSMAN: And so when you say typical, you're
7 talking about large pollution sources, are you not?
8 MR. SILVERMAN: I'm talking about any situation
9 where you would use an air mod, for example, model or --
10 MR. GROSSMAN: And where would that ordinarily be
11 used?
12 MR. SILVERMAN: Well, they use them for highways.
13 They use them for transportation. But they use them for,
14 for highways and other things. They use them for federally
15 funded facilities. There's something called a conformity, a
16 conformity determination where you look at a facility,
17 usually a transportation facility, it could be a bus garage,
18 it could be other things like that where they use them, but
19 there's a federal, the federal government is mixed up in
20 that. Here, we don't have that so it's, this is a unique
21 situation. Nobody's quite done this before so how do you
22 deal with it.
23 And the question is -- it's not, it's not as if
24 you, you can't say changes, you can't change anything. You
25 know, you have a model, you stated your assumptions, now you

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1 can't change it. I'm not saying that but unless you have
2 someone to oversee that change, I think the decision-maker,
3 with appropriate humility, should kind of stick with the
4 first detailed investigation unless he or she feels like
5 they can do the job that the EPA or the MDE could do in
6 assessing whether it's urban or rural. I mean, clearly, the
7 rule is under these circumstances. I read the rule. Mr.
8 Sullivan saw the rule. The rule is it's rural. Now, is it
9 possible to make a change? Yeah. I suppose it is and you
10 can do it in a conscientious way but in this case, who is
11 going to judge that?
12 MR. GROSSMAN: Well, I suppose once again, we have
13 to assess it based on all the evidence that comes in
14 including Mr. Sullivan's explanation as to why he made the
15 changes, his reference to the EPA guidelines, Appendix W,
16 which say the important thing is the most accurate model you
17 can, and he read me those portions of the, of the Appendix
18 W, and then as (indiscernible) did in whatever way by the
19 testimony from opposition experts.
20 MR. SILVERMAN: Well, I, you know, I --
21 MR. GROSSMAN: I don't -- there's no other way to
22 do it. That's what I'm required to do is to look at all the
23 evidence.
24 MR. SILVERMAN: You know, I think --
25 MR. GROSSMAN: I can't ignore his evidence. I

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1 have to look at the evidence.
2 MR. SILVERMAN: Well, you know, if you have, if
3 you have guidelines or ordinances for, or a statement and
4 the rules say this is, this is the way you approach it, you
5 do it in a certain way and then someone says well, I want to
6 refine it and if you're not as a decision-maker, not in a
7 position to really evaluate those, then I think you have to
8 say I'm sorry, I'm sort of stuck with -- I agree with EPA
9 that if you're, if you're 1,000 feet within a school and you
10 have a facility of 3.6 million gallons per day, there may be
11 a problem. I agree with the county, the government that if,
12 that large gas stations should be more than 300 feet away
13 from children playing. I mean, you're kind of stuck with
14 the, with the first respectable cut. He took a respectable
15 cut, he was wrong, and it's really, you know --
16 MR. GROSSMAN: I don't agree that I'm stuck with
17 a, with any first cut. I'm stuck with looking at all the
18 evidence --
19 MR. SILVERMAN: All right.
20 MR. GROSSMAN: -- and giving it whatever weight
21 seems appropriate under all the evidence. That's --
22 MR. SILVERMAN: But, you know, in one of the cases
23 I cited, the judge, the judge talked about humility. He
24 said I'm the first. And I think it's --
25 MR. GROSSMAN: I have a lot of experiences with

1 judges and I haven't found any humble ones.
 2 MR. SILVERMAN: All right.
 3 MR. GROSSMAN: I've been practicing law for a long
 4 time and as a trial attorney, et cetera so.
 5 MR. SILVERMAN: Okay.
 6 MR. GROSSMAN: But all right.
 7 MR. GOECKE: Back to where you were a minute ago,
 8 when you're talking about typical situations, you're talking
 9 about situations in which an air quality permit is required.
 10 MR. SILVERMAN: Or a conformity determination.
 11 MR. GOECKE: And neither of those situations apply
 12 to this gas station.
 13 MR. SILVERMAN: It does not apply here.
 14 MR. GOECKE: And as you agree, this type of
 15 modeling is atypical for a gas station.
 16 MR. SILVERMAN: Absolutely.
 17 MR. GOECKE: Are you familiar with any other gas
 18 station that has been modeled this extensively?
 19 MR. SILVERMAN: No. The question is was it done
 20 right.
 21 MR. GOECKE: Are there certain assumptions that
 22 Mr. Sullivan made in his refined analysis that you disagree
 23 with?
 24 MR. SILVERMAN: Well, he changed the, he changed
 25 the --

1 MR. GOECKE: Is this a yes?
 2 MR. SILVERMAN: Yes.
 3 MR. GOECKE: And what are they?
 4 MR. SILVERMAN: He changed the, the estimate of
 5 the queuing in number of cars. He changed the, he changed
 6 the rural to urban. He, he did not look at, at worst case
 7 situations such as Thanksgiving, Christmas rush. Typically
 8 in -- and again, this is all by analogy but if you're
 9 dealing with like a power plant, the EPA will say well,
 10 what's it going to be when you're operating at maximum
 11 capacity. In other words, they're looking for the worst
 12 case. And earlier, Mr. Sullivan was so confident in his
 13 numbers, they were so low, he said oh, you're going to, you
 14 know, yeah, we could, we could go up, we can multiply
 15 several times but then later in September when he testified,
 16 he said no, it is not necessary to do that. So I disagree
 17 with that. I think he should have looked at the worst
 18 cases.
 19 MR. GOECKE: Okay. Anything else?
 20 MR. SILVERMAN: I think that's the -- the, I think
 21 the, my sense and Dr. Cole can testify more but my general
 22 sense of it is that his August analysis was not nearly as
 23 thorough as his November analysis.
 24 MR. GOECKE: And you testified that this is a
 25 situation that you think that EPA would have a lot of

1 questions about, is that correct?
 2 MR. SILVERMAN: If they were, if they were, if he
 3 was presenting these changes to a regulator at EPA, I think
 4 he would, they would, they would have some questions, yes.
 5 MR. GOECKE: And did you try to present his
 6 calculations to an EPA regulator?
 7 MR. SILVERMAN: Well, we're working on that. We
 8 did try to go to EPA and they sent us to MDE and we are now
 9 in discussions with MDE and sending over his reports and Mr.
 10 Cole's reports to sort of get their view on this. Their
 11 initial cog when we talked to them was that this -- well,
 12 they are letters. They speak for themselves. They said
 13 this is, there are risks that we don't, that's, they sort of
 14 said it's prudent to keep the distance so, but we're, we're
 15 in discussions with them. I hope that at some point, it
 16 will happen. I don't know if it will happen before the case
 17 is over but it's -- they work very slowly.
 18 MR. GOECKE: But at this point, both the EPA and
 19 MDE have declined to get involved.
 20 MR. SILVERMAN: Well, the MDE has not declined.
 21 The EPA has said go to, go to MDE so to the extent they said
 22 that, they are, they are involved. And MDE is, we're in,
 23 they have not declined. We, Abigail and I and Dr. Cole met
 24 with them very recently and they were very forthcoming.
 25 MR. GOECKE: Who did you meet with?

1 MR. SILVERMAN: We met with Angelo Bianca who is
 2 the, who I think runs the air program at EPA, and he's the
 3 one who wrote one of those letters that are in the record.
 4 MR. GOECKE: And when did you meet with Mr.
 5 Bianca?
 6 MR. SILVERMAN: About three weeks ago. We owe him
 7 a letter but I was so busy preparing for this I haven't had
 8 a chance to draft it, but he asked us for a, for a letter
 9 and he asked us for the background information.
 10 MR. GOECKE: And what is your letter supposed to
 11 address?
 12 MR. SILVERMAN: To raise some of these questions
 13 that, these technical questions as to whether the modeling
 14 was properly done, whether the urban and rural decisions
 15 were properly made, whether the changes were, were
 16 appropriate in the assumptions and whether this, whether
 17 this type of modeling, which again has not been done in a
 18 facility like this, it's just not done, whether this is,
 19 this first-time effort is a worthy effort or not. And
 20 that's, that's what I hope he'll will begin to tell us and
 21 maybe he'll suggest ways in which you can place these
 22 stations.
 23 I mean, they're very concerned you know. Maryland
 24 I think was, had the most air pollution health effects of
 25 any state in the nation. They, they're not happy about

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1 that. They're very concerned and they're also trying to,
2 just getting used to these near road monitors and trying to
3 look for hotspots and seeing what they find. So they, they
4 do have an interest in it. They, they don't have a, they
5 don't have full jurisdiction over it yet.
6 MR. GOECKE: I'm sorry. They do or do not have
7 full jurisdiction?
8 MR. SILVERMAN: They don't. They can't, they
9 can't tell you anything. The only thing they can do is
10 provide advice, and I think they will provide that to us. I
11 hope we get it in a timely way but we don't have it yet.
12 MR. GOECKE: But he has provided you with advice?
13 MR. SILVERMAN: Well, he provided the County
14 Council with advice. He sent -- this was early on. He gave
15 us a letter saying, since he's saying it, there's a lot of
16 unknown risks and it would be better to keep the gas station
17 away. Further is better than closer.
18 MR. GOECKE: And this is --
19 MR. SILVERMAN: And they repeated that advice when
20 we went to state legislature. We didn't have great luck at
21 state legislature. We went before the Business Affairs
22 Committee. For some reason, we got there. But they, the
23 agency then speaking as the agency, not just Mr. Bianca,
24 wrote a letter to the legislature saying 1,000 foot rule
25 would be more protective of public health.

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1 MR. GOECKE: That's your interpretation of what he
2 said.
3 MR. SILVERMAN: Well, you can read. Anybody --
4 MR. GROSSMAN: I mean, the letters we're talking
5 about, just for the record, are --
6 MS. ROSENFELD: The letters are in the record.
7 MR. GROSSMAN: -- in the record --
8 MR. GOECKE: I just want to make sure.
9 MR. GROSSMAN: -- here as part of the, a
10 legislative history of the ZTA.
11 MR. SILVERMAN: Right.
12 MR. GOECKE: I understand.
13 MR. SILVERMAN: Yeah.
14 MR. GOECKE: But you're not, those are the letters
15 you're referring to.
16 MR. SILVERMAN: That's the ones I'm referring to.
17 MR. GOECKE: You're not talking about any comments
18 he made or additional letters.
19 MR. SILVERMAN: No. I'm not talking about his
20 comments. He was concerned but he did not, he wasn't, he's
21 a good scientist and as a good scientist, he was not going
22 to give us a definitive opinion. He just said he was
23 interested enough to look at it, the information.
24 MR. GOECKE: You testified about the background
25 levels in the area. What do you think the appropriate

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1 background level is for PM2.5 at the proposed Costco gas
2 station?
3 MR. SILVERMAN: Well, we have measurements.
4 MS. ROSENFELD: Mr. Grossman, I think this is well
5 beyond the scope. He said he is not testifying on the
6 science.
7 MR. SILVERMAN: Right. I agree with you.
8 MR. GOECKE: He's testified that he thinks the
9 limits are wrong, so what does he think is correct?
10 MR. GROSSMAN: I would tend to agree that he went,
11 probably went beyond where he, he has expressed comfort
12 level but he did say, he did go into this area so I'm
13 hesitant to cut off a cross-examination about what he did
14 testify about, so I'll overrule the objection.
15 MR. SILVERMAN: Thank you. What I intended to say
16 was that, that the approach to this, the choice of monitors
17 did not seem to, did not, were not internally consistent.
18 Sometimes he picks the highest monitor for some things and
19 then he picks another monitor like Arlington which is much
20 lower than others.
21 MR. GOECKE: Mr. Sullivan, you're not answering my
22 question. Do you, do you have a number that you think is
23 the appropriate background level for PM2.5?
24 MR. SILVERMAN: I do not. I do not. I do, I do
25 know that the Beltsville station, it's daily records were,

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1 were quite high. They're at 11.7 or 8 I think and one of
2 their stations so I think there's cause for concern. And I
3 also know that the future monitors that, that will give a
4 more accurate prediction of things will be more stringent.
5 Higher levels.
6 MR. GROSSMAN: Just so I understand your question,
7 are you asking about what the monitored level of background
8 is or are you asking about what the standard is?
9 MR. GOECKE: The monitor level.
10 MR. GROSSMAN: Okay.
11 MR. SILVERMAN: And I will tell you that this
12 region is non-attainment for PM2.5 so speaking as a lawyer,
13 we're non-attainment.
14 MR. GOECKE: So you --
15 MR. GROSSMAN: I think I asked back when that
16 statement was originally made some months ago, you know,
17 what is the impact on the community for that nonattainment
18 in terms of what can be approved and not approved. Does
19 that mean that everything stops, that no further development
20 at all is permitted in this area if in fact we are at
21 nonattainment for PM2.5?
22 MR. SILVERMAN: I think the answer is no, not
23 everything stops but I think when we had this discussion,
24 particularly about prevention of significant deterioration,
25 you correctly said this, this is a, this is a policy issue,

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1 sort of beyond this particular deliberation. Now, the, the
2 Council of Governments, and I think it was in the evidence,
3 put in, put in a document asking that the nonattainment be
4 lifted based on the 15 parts per billion standard and that
5 that's under consideration by EPA and they may lift that but
6 they have to do the whole process over again on the, on the
7 12. They're going to start not exactly from scratch but
8 they have to do that as well.
9 MR. GROSSMAN: Okay.
10 MR. SILVERMAN: But, you know, if -- no. That's
11 all.
12 MR. GOECKE: Do you agree, Mr. Silverman, that the
13 level of PM2.5 in the atmosphere, in the ambient air
14 regionally is decreasing?
15 MR. SILVERMAN: Well, if you look at the -- I
16 heard that stated and they should be decreasing because the
17 controls are greater but if you look at some of the
18 stations, it's not, to me, it's not a pattern. I don't, I,
19 it's not for me to interpret. I think Mr. Grossman, when
20 this was discussed and we were looking at the charts, you
21 know, some of them went up, some of them went down and I
22 can't -- it's a concern, and I'll leave it for Dr. Cole or
23 others to say what the actual trend line is because
24 sometimes things go up, it's anomalous. You just don't
25 know.

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1 So I hope they're decreasing. One doesn't know.
2 I don't know let me say. Somebody knows. But they, I wish
3 they would decrease, and we've certainly done a lot to, to
4 -- I don't mean to say we're not making progress in air
5 pollution control. We're definitely making a lot of
6 progress. Since I started, my God, what a difference. It's
7 very satisfying to me to look back on it. I had a little
8 bit to do with it. Not much but it's very satisfying. It's
9 getting better. And maybe in some future date, we can put a
10 gas station in where you want, it won't matter, but it ain't
11 today. Can I reclaim my water?
12 MR. GROSSMAN: That seems fair.
13 MR. GOECKE: You testified about the level of
14 uncertainty that's inherent in some of the modeling. Have
15 you ever seen an applied model analysis that shows a
16 specified uncertainty level?
17 MR. SILVERMAN: I have to think about that a
18 little bit.
19 MR. GOECKE: So nothing comes to mind as you sit
20 here?
21 MR. SILVERMAN: Nothing comes to mind, no.
22 MR. GOECKE: And so if I understand you correctly,
23 you were criticizing Mr. Sullivan for not identifying the
24 specified level of uncertainty in his modeling, is that
25 correct?

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1 MR. SILVERMAN: I criticize him for not even
2 suggesting there was any uncertainty. Mr. Sullivan was a
3 very confident man. I thought he was too confident.
4 MR. GOECKE: But as you sit here, you can't think
5 of one single air analysis or air modeling analysis that
6 you've seen in which the level of uncertainty was
7 identified.
8 MR. SILVERMAN: When you say identified.
9 MR. GOECKE: Quantified.
10 MR. SILVERMAN: Well, I read the rule. It says
11 you're supposed to communicate about it. There should have
12 been a lot of communication on this subject. It's very,
13 they say it's very hard to quantify because it's like Donald
14 Rumsfeld, the known knowns, the unknown unknowns and the
15 known unknowns. Well, you've got all those things at work
16 here but generally --
17 MR. GROSSMAN: Well, you said you could plan for
18 the known unknowns but not for the unknowns that you don't
19 know about.
20 MR. SILVERMAN: Yes. So I, I think particularly
21 when you're doing something, a case of first impression like
22 this, I think it's appropriate to communicate uncertainty
23 and, and most -- Dr. Adelman can testify. He's a scientist.
24 I mean, you know, I have, I've done a lot of writing about
25 environment. Most, some academic but mostly for popular

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1 publications. I've been in the Washington Post or New York
2 Times or other places, lesser known likes, and I always
3 quote a scientist and it drives me crazy because I, I can
4 never get a clear statement.
5 You know, I'm looking for something. This is bad,
6 you know. I never quite find it because, you know, assuming
7 this and assuming that and given this level of uncertainty,
8 that's how scientists write and although it frustrates me a
9 lot as a sort of popular writer, I respect it and I just
10 didn't see that in his, in his, in his whole presentation
11 and I question his credibility because of that. That's just
12 my response.
13 MR. GOECKE: What do you mean when you say this is
14 a case of first impression.
15 MR. SILVERMAN: Well, we just talked about not
16 having -- I don't know. Perhaps you know of other gas
17 stations that have been analyzed in this way using these
18 facilities. Well, using not these facilities, using these
19 techniques. Air mod, CALPUFF and other things, and I, I
20 can think of some analogous situations but I've never seen
21 one like this and so normally, if you're testing these kind
22 of things out, you would have, you would have some stated
23 hypothesis, this could work for facilities of this sort in
24 these types of situations and then you would try to test it
25 in some way, usually by some direct monitoring over a period

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1 of time until you get some certainty. These models are all
2 so they can test it.
3 MR. GOECKE: Are you aware that Costco has
4 approximately 362 gas stations in North America?
5 MR. SILVERMAN: I am.
6 MR. GOECKE: And you're not aware of any modeling
7 that took place to this degree at any of those stations.
8 MR. SILVERMAN: I am not.
9 MR. GOECKE: Or any other large gas station.
10 MR. SILVERMAN: I am not.
11 MR. GOECKE: So when you say this is atypical or a
12 case of first impression, aren't you really saying that no
13 one has ever gone this far to show the levels of emissions
14 from a gas station of this size?
15 MR. SILVERMAN: Yes, indeed.
16 MR. GOECKE: Hasn't Costco gone above and beyond
17 what they're required to do?
18 MR. SILVERMAN: Well, they put a lot of work into
19 it. The question is what does it show, what does it prove?
20 I, listen, I respect the fact that they started this
21 process. I hope it starts to happen enough. I hope we can
22 rouse the feds and states from their slumber and have them
23 supervise a process like this so we can, we don't have to go
24 through these convolutions, we will have some real guidance
25 as to how to handle these situations, and I'm glad they did

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1 it. I think what we're doing here is a very worthwhile
2 exercise, and I appreciate that Mr. Grossman is open to all
3 of this and we have these discussions. I think it is a good
4 thing and I don't have any problem with Costco doing it. I
5 just think that they don't prove what they set out to prove.
6 MR. GOECKE: But you agree that they've done this
7 voluntarily.
8 MR. SILVERMAN: No. I mean, I don't know what
9 voluntary means. They, they --
10 MR. GOECKE: There was no legal obligation for
11 them to do this.
12 MR. SILVERMAN: I think they would have lost.
13 This hearing would have been over a long time ago. I think
14 what --
15 MR. GOECKE: Well, that's, I'm not asking your
16 opinion on what would have been the outcome.
17 MR. GROSSMAN: You are asking his opinion. There
18 was no legal obligation for them to do that. I mean, I
19 think, it hasn't been objected to but I think that it's an
20 objectionable question as to what their legal obligation is.
21 MR. SILVERMAN: Voluntary and legal obligation are
22 different. My experience with Costco is, is we first met
23 with them and they made lots of statements which were then
24 questioned and then they went back and they revised.
25 They're -- Mr. Sullivan's 2011 report has queuing numbers

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1 which are silly. I mean, there's just not, there's no basis
2 for them. And I think their hope was that they would quell
3 the concerns of the community but it didn't. It just
4 ignited them because everybody who has been to, to
5 Beltsville has sat in lines, you know, knows something
6 different than what that report is. And then they withdrew
7 those and they came up with some other numbers which they're
8 now changing a third time so.
9 I mean, I think, I think they have been, I think
10 the more we push, the more you guys have improved. That's
11 the nature of -- I've been in this business for a long time.
12 I find that's usually how it works and you're doing it. You
13 know, I don't think you're bad guys. I think -- I like you
14 guys. I think you're doing what's -- I hope you get to
15 build a gas station in Montgomery County. I really do. Not
16 everybody in my group feels that way but I do personally so.
17 I just don't think you, I think you're taking too big a risk
18 to put it so close to people. That's all.
19 MR. GOECKE: You testified that you're unaware or
20 I think you believe -- let me try that again. It's your
21 belief that Costco is not going to perform a phase 1
22 environmental site assessment at this location?
23 MR. SILVERMAN: Well, that's what their geologist
24 said. He had not performed it and, and the phase 1 should
25 have happened before they built the warehouse because they

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1 did a lot of digging for that warehouse.
2 MR. GOECKE: So it would surprise you then if you
3 were to find out if Costco did in fact do a phase 1
4 environmental assessment.
5 MR. SILVERMAN: I'd be very -- it would surprise
6 me and I'll stand corrected if they did, yeah.
7 MR. GOECKE: And if they did that, let's assume
8 they did that before they signed the lease for the property.
9 Then would that address your concerns that they had an
10 adequate undue diligence?
11 MS. ROSENFELD: Objection. Well beyond the scope
12 of direct.
13 MR. GOECKE: He testified that Costco lacks
14 credibility because they didn't do any environmental due
15 diligence at the site before entering into it and that as a
16 result, all of their expert's testimony is --
17 MS. ROSENFELD: And if --
18 MR. GROSSMAN: I'm going to --
19 MS. ROSENFELD: And if they would like to submit
20 evidence to that point, that's great but asking this witness
21 to speculate --
22 MR. GOECKE: I can ask assumptions.
23 MS. ROSENFELD: -- as to something that --
24 MR. GROSSMAN: Right. I'm going to, I was going
25 to say I'm going to overrule the objection because --

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1 MS. ROSENFELD: He's not an expert.
2 MR. GROSSMAN: -- I think it's a legitimate part
3 of cross-examination in a sense, the area is, but I'd say
4 that the question as to whether or not it would surprise him
5 or alleviate his concerns or whatever, I don't see how that
6 helps me in deciding this case.
7 MR. GOECKE: I agree.
8 MS. CORDRY: I guess I would still say if they're
9 going to say an assessment --
10 MR. GROSSMAN: All right. You won, Ms. Cordry,
11 so --
12 MS. CORDRY: Okay.
13 MR. SILVERMAN: Yeah, you know --
14 MR. GROSSMAN: No, no. Now there's no --
15 MS. CORDRY: Sorry.
16 MR. GOECKE: You sustained --
17 MR. GROSSMAN: There's no question. I'm going to
18 sustain the question because I don't really think it's going
19 to lead anywhere. I mean, I think it's an area in which he,
20 he touched on but I, what difference does it make if it
21 satisfies him or not?
22 MR. GOECKE: Because his premise that Costco's
23 experts are not to be trusted, that they're not credible
24 because Costco made up its mind before, before it did its
25 due diligence, if that's --

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1 MR. GROSSMAN: But if you introduce evidence --
2 MR. GOECKE: Yes.
3 MR. GROSSMAN: -- that in fact they did do this,
4 then that's going to have whatever impact.
5 MR. GOECKE: It has on his premise.
6 MR. GROSSMAN: It's not whether or not he really
7 changes his, his opinion or not because much of what he
8 testified was really argumentative more than testimony.
9 MR. GOECKE: I agree.
10 MR. GROSSMAN: So that's why I say it's hard to
11 govern this cross-examination. That's why I say I don't
12 really see a big point of going further along this line.
13 MR. GOECKE: Okay. Thank you. Moving along to
14 the Clean Air Act and the EPA, you agree that the Clean Air
15 Act requires EPA to set standards that protect public
16 health.
17 MR. SILVERMAN: Yes.
18 MR. GOECKE: And that there is a margin of safety
19 built into their standards.
20 MR. SILVERMAN: Yes.
21 MR. GOECKE: And in fact, that margin of safety is
22 intended to address uncertainties associated with
23 inconclusive scientific and technical information.
24 MR. SILVERMAN: Yes.
25 MR. GOECKE: Do you also agree that those

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1 standards are intended to provide a reasonable degree of
2 protection against hazards that research has not yet
3 identified?
4 MR. SILVERMAN: Well, yes and no. I think I'll
5 give you an example on nitrogen dioxide. So EPA said to
6 CASAC should we set the standard at 80 or 100, and the CASAC
7 said well, we know if it's 100, you're causing damage. We
8 do not know if it's 80 whether you're causing damage. So
9 it's, what they said, they said it's a policy issue and EPA
10 chose to set it at 100. So, so sometimes, you know, also,
11 there's a -- it's a real world we're living in. There's a
12 time line and they deal with, every five years they review
13 these things and they look at all the new research but then
14 there's what they call a new new research which comes out
15 as, it's happened here, in the middle of the proceedings and
16 they typically set that aside but they're trying, yes. They
17 also, they're trying to keep their, they're trying to do
18 protective standards but it's a, it's a, it's evolutionary.
19 It's moving along at a certain pace so, yes. I think
20 they're, they're doing the best they can. I have a lot of
21 respect for what they do but it's not perfect.
22 MR. GOECKE: And not to belabor the point but not
23 only doing the best they can, but some of the best people in
24 the country in terms of qualifications who deal with these
25 issues --

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1 MS. ROSENFELD: Objection.
2 MR. GOECKE: -- are the ones addressing this
3 issue, do you agree?
4 MR. GROSSMAN: No. That's fair.
5 MR. SILVERMAN: Yes.
6 MR. GROSSMAN: I'll --
7 MR. SILVERMAN: I'll agree. I notice that -- if
8 you'll look at the footnotes for Appendix W, Dr. Cole is
9 referenced there so he's one of the best people in the
10 country so they're trying to get, they're trying to get the
11 best people.
12 MR. GROSSMAN: Aren't you sorry you objected?
13 MS. ROSENFELD: I'm --
14 MR. GROSSMAN: Do you want to withdraw your
15 objection?
16 MS. ROSENFELD: I'm so glad you overruled my
17 objection. Thank you, Mr. Grossman.
18 MR. SILVERMAN: Dr. Breyesse too was one of our
19 witnesses in one of the cases I tried.
20 MR. GROSSMAN: All right. All right. Don't gild
21 the lily too much.
22 MR. SILVERMAN: Yeah. I don't want to gild the
23 lily, right.
24 MR. GROSSMAN: You had a good, you made a good
25 point.

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1 MR. GOECKE: And in preparation for today's
2 testimony, you circulated several documents that you were
3 relying on and might introduce those exhibits. And I'd like
4 to show you, Mr. Silverman, a document -- and also have this
5 marked as an exhibit, please.
6 MR. GROSSMAN: This is CRC report no. A79?
7 MR. GOECKE: I don't believe it's an exhibit, yes.
8 MR. GROSSMAN: Okay. It's dated November 2012.
9 MS. CORDRY: Is this -- this is not something we
10 forwarded, right?
11 MR. GOECKE: Yes. This is something you provided.
12 MS. CORDRY: Okay.
13 MR. GROSSMAN: Okay. This will be Exhibit 342.
14 MR. GOECKE: Is that not right?
15 MR. SILVERMAN: I've never seen it. I'd like read
16 it but I've never seen it.
17 MR. GOECKE: Okay. I'm sorry. This is not
18 something the opposition has provided. This is something
19 that we --
20 MS. CORDRY: Oh, okay.
21 MR. GROSSMAN: Okay. So this is CRC --
22 MS. ROSENFELD: Could you clarify where you got
23 this document again?
24 MR. GOECKE: Not from you.
25 MS. CORDRY: And for the first time being

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1 presented now?
2 MR. GOECKE: On cross-examination.
3 MR. GROSSMAN: First of all, let me, let me mark
4 the exhibit --
5 MS. CORDRY: Okay.
6 MR. GROSSMAN: -- and identify it so we know what
7 we're talking about. CRC Report, No. A-79. It's an
8 assessment of near roadway NO2 concentrations final report
9 dated November 2012.
10 (Exhibit No. 342 was marked
11 for identification.)
12 MR. GROSSMAN: Okay.
13 MR. SILVERMAN: Just, just looking at the first
14 page, the Coordinating Research Council is a non-profit
15 corporation supported by petroleum and automotive equipment
16 industries.
17 MS. ROSENFELD: Mr. Grossman.
18 MR. GROSSMAN: Yes.
19 MS. ROSENFELD: Will you entertain an objection at
20 this time?
21 MR. GROSSMAN: I certainly will.
22 MS. ROSENFELD: I object to the applicant cross-
23 examining Mr. Silverman on this document before he has an
24 opportunity to review it. It is an extensive three-quarters
25 of an inch thick document with a lot of information,

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1 detailed scientific data and --
2 MR. GROSSMAN: I think that's very fair.
3 MR. ADELMAN: The coalition objects also.
4 MR. GROSSMAN: I'm sustaining the objection and
5 will give him time to examine the document, so do you have
6 any other cross-examination before we get into this because
7 we can, we can have, well, we can give him the lunch hour to
8 go over it. So when we --
9 MR. SILVERMAN: I appreciate that.
10 MS. CORDRY: This is a very extensive document to
11 try to look at on a 45 minute lunch hour and be able to --
12 this is something, I don't know how long they've had it but
13 I would be surprised if they got it between, you know, a
14 couple days ago and now and --
15 MS. ROSENFELD: Well, it was published November
16 6th, 2012.
17 MS. CORDRY: To, to wait and put a document like
18 this in and say let's look at it over the lunch hour, I
19 don't think Mr. Sullivan was required to deal with documents
20 on a 45 minute basis.
21 MR. GOECKE: I think he was actually. He was
22 handed legal cases and handed several documents on cross-
23 examination that he had never seen before that they asked
24 him questions about on the spot.
25 MS. ROSENFELD: I think he was handed --

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1 MS. CORDRY: And he was allowed to come back as
2 well.
3 MS. ROSENFELD: He was allowed to come back and I
4 think that he was handed EPA regulations about which he had
5 testified.
6 MS. ADELMAN: That's right. And --
7 MR. GROSSMAN: All right. Well --
8 MS. CORDRY: It would be well within his area of
9 expertise.
10 MR. GROSSMAN: Here's, here's the thing.
11 Ordinarily on cross-examination, you are allowed to bring in
12 a document. However, we have tried to follow a procedure
13 here to avoid surprise and to make sure that the witnesses
14 have an opportunity to respond intelligently to any
15 documents in a complicated area like this so I am going to
16 give him time to look at this. And since we are coming back
17 on Thursday, we can, we can do that. We can have Mr.
18 Silverman --
19 MR. SILVERMAN: That would be good.
20 MR. GROSSMAN: -- respond on Thursday to any
21 cross-examination questions regarding Exhibit 342. Would
22 that satisfy your concerns?
23 MS. ROSENFELD: Depending on Mr. Silverman's
24 availability.
25 MR. GROSSMAN: He just said he'll be here.

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1 MS. ROSENFELD: He has been here every day almost.
2 MR. GROSSMAN: So why don't we do that. Do you
3 have other areas to, in which to cross-examine?
4 MR. GOECKE: I think just a few, Mr. Grossman.
5 MR. GROSSMAN: Okay.
6 MR. GOECKE: Indulgence.
7 MR. GROSSMAN: Sure.
8 MR. GOECKE: Okay. I'd like to pass out a
9 document that everyone has seen before. This is one of the
10 slides from Mr. Sullivan's Power Point presentation.
11 MR. GROSSMAN: Okay. Is this from the amended
12 Power Point presentation?
13 MS. ROSENFELD: Do we have an exhibit, from which
14 exhibit?
15 MR. GOECKE: This is Sullivan's main Power Point
16 presentation from June 2013.
17 MR. GROSSMAN: Okay.
18 MS. CORDRY: That's probably Exhibit 174.
19 MR. GOECKE: After you've had a chance to look
20 that over, can you let us know whether you recall seeing
21 that slide as part of Mr. Sullivan's testimony?
22 MR. SILVERMAN: Yeah. I do recall.
23 MS. ROSENFELD: Mr. Grossman, just one moment,
24 please.
25 MR. GROSSMAN: Yes.

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1 MR. ADELMAN: Mr. Grossman, would it be
2 appropriate to give Mr. Silverman the lunch break to look at
3 that graph?
4 MR. GROSSMAN: Pardon me?
5 MR. ADELMAN: Would it be appropriate--
6 MR. SILVERMAN: I'm fine.
7 MR. GROSSMAN: All right. So this exhibit, part
8 of Exhibit 174, slide, and this is slide 7. Okay.
9 MR. GOECKE: And what this slide purports to show,
10 Mr. Silverman, is the levels of the VOCs from gas stations,
11 and it has three different lines for three different levels
12 of gas stations if you will.
13 MR. SILVERMAN: Right.
14 MR. GOECKE: A gas station that sells about 1.5
15 million gallons of gas, one that sells 3 million and the,
16 the conservative estimate of 12 million gallons of gas for
17 the proposed Costco gas station.
18 MR. SILVERMAN: Right.
19 MR. GOECKE: And in -- earlier, you testified that
20 we have made great strides in air quality control.
21 MR. SILVERMAN: Yes.
22 MR. GOECKE: Would you agree with the conclusion
23 or the demonstration I guess on this chart that in 1987,
24 where the red circle is, that the VOCs coming from a gas
25 station that sold 1.5 million gallons of gas is comparable

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1 to what the proposed Costco gas station will sell in the
2 year 2013 approximately?
3 MR. SILVERMAN: Yes.
4 MR. GOECKE: Okay. Thank you.
5 MR. SILVERMAN: Can I say something about this?
6 MR. GROSSMAN: Sure.
7 MR. SILVERMAN: You know, early on, we, you'll
8 hear more about this from the health people, we tried to
9 introduce studies from Greece and Spain and we had this
10 discussion at County Council and various places, and what
11 everybody said was oh, you can't take those seriously
12 because they didn't have any, they don't have any controls.
13 We actually corresponded with the people in Spain, asked
14 them what kind of controls they had and those, those were
15 not 1.5 million gallons. They were very small stations in
16 urban areas and basically, the controls they have are what,
17 what an average small, smaller station, one-and-a-half
18 million gallon station, that the United States had 1985 and
19 yet, the, the researchers at the University of Mercia and
20 from, there was also some London researchers and I forget
21 the university, they said you know what, even these small
22 stations create a health hazard.
23 So when I saw this chart the first time, I thought
24 well, so you're comparable to what a small station without,
25 without all the controls, had some controls but without most

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1 of them now, and Europe is doing it and there's some
2 evidence, there's medical evidence that those, those create
3 some hazards. Now, as a hazard it's great as it, you know,
4 if, if, I mean, they're comparable so suddenly, some of
5 those earlier studies, they're not early, they're very
6 recent studies but studies of, of the evolution of gas
7 stations, you know, an earlier stage in time because the
8 southern Europeans are well behind us but they're not zero,
9 they're someplace. They're comparable to what a 1985 or '86
10 standard would be in the United States. They showed a
11 health effect. So my thought was well, maybe there's a
12 health effect here as well.
13 MR. GROSSMAN: Okay.
14 MR. GOECKE: Do you know if those gas stations had
15 service stations there?
16 MR. SILVERMAN: No, they didn't.
17 MR. GOECKE: They did not.
18 MR. SILVERMAN: They did not.
19 MS. CORDRY: I'm sorry. Did they have what?
20 MS. ADELMAN: Service stations.
21 MR. GROSSMAN: What does that mean?
22 MR. GOECKE: The mechanics. The mechanic service
23 station for automobiles.
24 MR. GROSSMAN: Oh, I see.
25 MS. CORDRY: You mean service bays?

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1 MR. GOECKE: Yes.
2 MS. CORDRY: Okay.
3 MR. SILVERMAN: I mean, we have --
4 MR. GROSSMAN: There's no question pending.
5 MR. GOECKE: I have no further questions at this
6 time.
7 MR. GROSSMAN: Okay. Since you're going to have,
8 I presume you still want to do a cross-examination on --
9 MR. GOECKE: If he's, if he feels comfortable
10 after lunch and --
11 MR. GROSSMAN: No, no. He said, they said
12 Thursday.
13 MS. ADELMAN: Thursday.
14 MR. GOECKE: Oh, Thursday. Thursday is fine.
15 MR. GROSSMAN: So okay. So then we won't have a
16 redirect now. What we'll do is I guess, I guess we can move
17 onto the next witness rather than --
18 MS. ROSENFELD: Well, Mr. Grossman.
19 MR. GROSSMAN: Yes.
20 MS. ROSENFELD: I have cross-examination. He is a
21 coalition witness and Kensington Heights has cross.
22 MR. GROSSMAN: All right. You may cross-examine.
23 MS. ROSENFELD: Thank you.
24 CROSS-EXAMINATION BY MS. ROSENFELD
25 MS. ROSENFELD: Mr. Silverman, you've talked about

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1 the, the --
2 MS. HARRIS: Mr. Grossman, may I just raise one
3 level of concern?
4 MR. GROSSMAN: Yes.
5 MS. HARRIS: The -- Ms. Rosenfeld at the same time
6 is over, is suggesting that evidence be, she's objecting to
7 certain testimony and so is he her witness or is he not?
8 MR. GROSSMAN: Apparently not and but she can
9 raise an objection even if it is not her witness. She has a
10 right to raise an objection and as another organization, she
11 has a right to cross-examine as well. I admit that this is
12 a less than --
13 MS. HARRIS: Getting your cake and eat it too sort
14 of.
15 MR. GROSSMAN: This is a less than perfect
16 situation or let's put it this way. It's a less than clear
17 dividing line, certainly, in the opposition but they are
18 separate organizations and she does have the right to cross-
19 examine, so you may proceed.
20 MS. ROSENFELD: Mr. Sullivan, Silverman, I keep
21 doing that, I apologize, you've raised this concept that
22 changes to the modeling assumptions need to be justified by
23 some reviewing authority.
24 MR. SILVERMAN: Yes.
25 MS. ROSENFELD: Is that correct?

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1 MR. SILVERMAN: Yes.
2 MS. ROSENFELD: And that typically would be the
3 EPA, is that correct?
4 MR. SILVERMAN: That's right.
5 MS. ROSENFELD: And in the absence of this, in the
6 absence of the EPA, would that information be reviewed in
7 this case by the Hearing Examiner and the Board of Appeals?
8 Is that your understanding?
9 MR. SILVERMAN: Well, I don't know how they can
10 review it. I mean, the only thing we, they'll have is our,
11 our own, you know, our own testimony you'll have from Dr.
12 Cole, but I don't know. I do not think that the, the -- I
13 don't know how you're going to do that really. Really.
14 Because, I mean, the level of -- I mean, I've been through
15 the meetings. My eyes roll. I mean, when someone says
16 we're changing, we're changing this assumption, I sit there
17 and I just okay guys, go at it. They get very complex. I
18 don't know.
19 MS. ROSENFELD: Well, there's -- are you familiar
20 with the Zoning Ordinance standards that apply to the gas
21 station or are you generally familiar with them?
22 MR. SILVERMAN: I am.
23 MS. ROSENFELD: And is it your understanding that
24 one, one element is that the applicant must prove that the
25 proposed special exception will not have adverse health

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1 effects on residents, visitors and workers --
2 MR. SILVERMAN: Yes.
3 MS. ROSENFELD: -- to the neighborhood? And in
4 measuring the impact on health, who decided to use the NAAQS
5 as the ruler that you use to measure health standards in
6 this case? Was it the applicant or was it the opposition?
7 MR. SILVERMAN: It was the applicant.
8 MS. ROSENFELD: Okay. And yet, you noted earlier
9 that while the applicant chose to use that ruler, there
10 certainly some --
11 MR. GROSSMAN: Well, this is not speech making.
12 You have a cross-examination question, you can make it, ask
13 it.
14 MS. ROSENFELD: Are there -- is it your
15 understanding the applicant at times has argued that the
16 NAAQS standards in fact don't or should not apply to this
17 case?
18 MR. GROSSMAN: Well, I'm going to -- whether it's
19 his understanding of that or not is not really the question.
20 The have made whatever arguments they've made.
21 MS. ROSENFELD: Okay. Were you, were you part of
22 the discussions in establishing the protocols that would be
23 followed in the modeling assumptions?
24 MR. SILVERMAN: I was there six hours.
25 MS. ROSENFELD: Okay. And is it your

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1 understanding that at this point, the modeling assumptions
2 used in the latest air quality analysis follows that
3 protocol?
4 MR. SILVERMAN: No, they don't.
5 MR. GROSSMAN: I take it that you weren't asked to
6 participate in the revisions of the protocol.
7 MR. SILVERMAN: No. More importantly, nor was Dr.
8 Cole which would indicate, been something important.
9 MS. ROSENFELD: And yet, that, that discussion
10 could have served, to some degree, the role of, of reviewing
11 authority participating in that analysis.
12 MR. SILVERMAN: Yes.
13 MS. ROSENFELD: Is that correct?
14 MR. SILVERMAN: Yeah.
15 MS. ROSENFELD: Mr. Goecke had asked you about
16 some of the changes to the protocol, the latest, to the
17 latest study from some of the original studies. In addition
18 to those that were mentioned, do you know if Mr. Sullivan
19 changed the monitors that he selected to measure background
20 levels?
21 MR. SILVERMAN: I believe he did.
22 MS. ROSENFELD: Do you know if he reduced the
23 estimated amount of time that trucks would idle at the mall
24 parcel?
25 MR. SILVERMAN: I believe he did.

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1 MS. ROSENFELD: Do you know if there was a factor,
2 a multiplier of 10 in his most recent calculation of
3 emissions that was not demonstrated or shown in the formulas
4 previously explained?
5 MR. GROSSMAN: I don't understand that question.
6 MR. SILVERMAN: Neither do I?
7 MS. ROSENFELD: Okay. All right.
8 MR. GOECKE: In addition, his calculations speak
9 for themselves so what mister, I mean, just as I was
10 precluded from asking him about what his understanding was,
11 it seems like we're getting into an inappropriate area.
12 MR. GROSSMAN: I would agree with that, but she's
13 going to obviously have to rephrase the question if she
14 wants to ask it anyway so.
15 MS. ROSENFELD: When the EPA reviews changes to
16 modeling assumptions, do they, or -- I'm sorry. I thought
17 it was off.
18 MR. GROSSMAN: Okay.
19 MS. ROSENFELD: When EPA reviews modeling
20 analysis, do they have a right to demand all of the backup
21 data?
22 MR. SILVERMAN: Yes.
23 MS. ROSENFELD: Is that sort of the notice to
24 discovery rule in essence?
25 MR. SILVERMAN: Yes.

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1 MS. ROSENFELD: And so in assessing whether or not
2 modeling assumptions can or should be changed, they get to
3 review the data and determine whether or not in their view
4 it's reasonable?
5 MR. SILVERMAN: They're quite insistent.
6 MS. ROSENFELD: And do we have all of that backup
7 data in this case do you know?
8 MR. SILVERMAN: I haven't found it.
9 MS. ROSENFELD: There was a question regarding the
10 nonattainment status of, of the area and the prevention of
11 significant deterioration. There is a suggestion, there was
12 a question as to whether or not that would stop all new
13 projects from occurring, and with respect to the
14 nonattainment status that we're in and the COG request to
15 have us out of, to bring the area out of that determination,
16 do you have an opinion as to what the background readings
17 will be once the new near road monitors are in effect?
18 MR. GROSSMAN: Well, how could he -- he's not
19 offered as an expert in that area in any event.
20 MR. SILVERMAN: I have a guess but it's not
21 probative.
22 MS. ROSENFELD: Okay. With respect to the 362
23 other Costco gas stations that exist, how many others are
24 you aware of that went through a special exception process,
25 review process?

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1 MR. SILVERMAN: Well, I think there are a lot that
2 went through some sort of zoning review.
3 MS. ROSENFELD: Okay. And have you been here when
4 the stations at, for example, Sterling and Elkridge were
5 discussed --
6 MR. SILVERMAN: Yes, I have.
7 MS. ROSENFELD: -- and Beltsville?
8 MR. SILVERMAN: Yes.
9 MS. ROSENFELD: Do you know if any of those were,
10 went through the special exception process or were they by-
11 right?
12 MR. SILVERMAN: I think the ones at Prince
13 George's are by-right. I don't know about Sterling.
14 MS. ROSENFELD: So if there was a, there -- Mr.
15 Goecke asked you whether there was no legal obligation for
16 Costco to go through this level of analysis. Is it your
17 understanding Costco has to prove the health effects
18 positively or negatively?
19 MR. SILVERMAN: Well, I'm in a room with ex
20 outstanding zoning lawyers but that's my understanding, yes.
21 They have the burden of proof on health.
22 MS. ROSENFELD: And if I could turn your attention
23 to Hearing Examiner Exhibit No. 174 excerpted from
24 Sullivan's Power Point --
25 MR. SILVERMAN: Yes.

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1 MS. ROSENFELD: -- which was just handed out to
2 you.
3 MR. SILVERMAN: Yeah.
4 MS. ROSENFELD: If you could take a look at the
5 green line which --
6 MR. GROSSMAN: That's slide 7 just so --
7 MS. ROSENFELD: Okay. Thank you. If you could
8 take a look at the green line to the far right which, as I
9 under, as I read this reflects Costco.
10 MR. SILVERMAN: Yes.
11 MS. ROSENFELD: And it looks like that line starts
12 around 2013 or so.
13 MR. SILVERMAN: Yes.
14 MS. ROSENFELD: If you read that chart, the
15 emission levels for Costco in 2013 would be equivalent to
16 what, what year of level of emissions for those, for the 1.5
17 and the 3 million gas stations?
18 MR. SILVERMAN: Well, it looks to me like 1984 for
19 the, for the 1.5 and it looks like 1997 or 8.
20 MS. ROSENFELD: And even projecting out to the
21 year --
22 MR. GROSSMAN: Let him finish the answer. 1978
23 for?
24 MR. SILVERMAN: For the, the three million.
25 MS. ROSENFELD: And projecting out to the year

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1 2020, it would be comparable to what?
2 MR. SILVERMAN: To a three million gallon gas
3 station, 2006 and to w 1.5 million gas station, the year
4 2000.
5 MS. ROSENFELD: So even with the ARID permeator,
6 the 12 million gallon gas station has more significant
7 emissions effects than the smaller stations, is that
8 correct?
9 MR. SILVERMAN: yes.
10 MS. ROSENFELD: Under, under -- reading this
11 chart.
12 MR. SILVERMAN: Yeah.
13 MS. ROSENFELD: I have no further questions.
14 MR. GROSSMAN: Okay. I'm not going to have you do
15 a redirect now because you still have conditional cross-
16 examination questions so if you have any redirect, I guess
17 we'll save that for after you finish your direct, your
18 cross-examination. All right.
19 MR. SILVERMAN: Thank you very much, sir.
20 MR. GROSSMAN: Thank you, Mr. Silverman. And so
21 what's the, what's the pleasure of the group? Shall we go
22 to our next witness now or break for lunch now? What do you
23 think? I would just assume go to the next witness I suppose
24 but.
25 MS. ROSENFELD: Mr. Core can testify.

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1 MR. GROSSMAN: Okay. Mr. Core, would you step
2 forward, please? Hop onto the hot seat.
3 MR. CORE: Well, as long as it's not rigged for
4 electricity, Mr. Grossman.
5 MR. GROSSMAN: I don't know about that. Mr.
6 Silverman warmed it up for you.
7 MR. CORE: Great.
8 MR. GROSSMAN: Would you state your full name and
9 address, please?
10 MR. CORE: Sure. My name is Jim Core, and I live
11 at 8 Torrance Court in Kensington, Maryland
12 MR. GROSSMAN: All right. And you spell your last
13 name C-O-R-E?
14 MR. CORE: Correct.
15 MR. GROSSMAN: All right. Would you raise your
16 right hand, please?
17 (Witness sworn.)
18 MR. GROSSMAN: All right. You may proceed.
19 MR. CORE: Great.
20 DIRECT EXAMINATION
21 MS. ROSENFELD: Mr. Core, would you please just
22 briefly describe your, your educational and work history?
23 MR. CORE: Sure. So I have a bachelor's in
24 international studies and a master's degree in international
25 affairs from the George Washington University. I currently

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1 work at the U.S. Department of State where I'm a senior
2 management analyst. My primary responsibility is how we
3 support and operate our consulates and embassies overseas
4 and effectively, how we support 100,000 employees at 274
5 locations at 180, in 180 countries. My main area of focus
6 is the resources of the organization, I hold the
7 department's vote on an interior agency committee, which is
8 a \$3 billion portfolio of administrative services around the
9 world, and advising undersecretary for management on a whole
10 host of issues regarding how we support foreign affairs
11 agencies.
12 Prior to joining the State Department, I was with
13 the Department of Housing and Urban Development. I did a
14 couple of other things during the intervening years. I had
15 begun my career back in the 1990s at the Resolution Trust
16 Corporation.
17 MS. ROSENFELD: Okay. Thank you very much. And I
18 think you testified you live at 8 Torrance Court, is that
19 correct?
20 MR. CORE: Sure thing. Yes.
21 MS. ROSENFELD: If you see Exhibit No. 159 up
22 there on the easel, would you please just point, for the
23 benefit of the Hearing Examiner, to where you live?
24 MR. CORE: Sure thing. Would you like to see my
25 deck or the front door?

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1 MS. ROSENFELD: Both. How's that?
2 MR. CORE: It's -- so here we are. We've got the
3 cul-de-sac so the stairs going up so I'm right about there.
4 MS. ROSENFELD: Okay. So yourself --
5 MR. GROSSMAN: All right. So you're showing this
6 --
7 MS. RO: -- self --
8 MR. GROSSMAN: I'm sorry. Just south of the,
9 southeast of the warehouse location?
10 MR. CORE: Correct, sir. Yes.
11 MR. GROSSMAN: All right. Just south of the Ring
12 Road.
13 MR. CORE: Yes.
14 MS. ROSENFELD: And does anyone live at 8 Torrance
15 Court with you?
16 MR. CORE: Yes. My wife.
17 MS. ROSENFELD: Okay.
18 MR. CORE: Happily I'm happy to report.
19 MS. ROSENFELD: There has been discussion about
20 the scope of the neighborhood in this case. The applicant
21 has argued that the neighborhood would be the mall
22 delineation which is the brighter fuchsia outline on Exhibit
23 159, and others have argued that it should include the
24 larger geographic area, the deeper purple shown on 159. In
25 your opinion as a resident, what do you consider to be the

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1 neighborhood?
2 MR. CORE: I consider the mall to be part of my
3 neighborhood. We're very much affected by what happens on
4 that parcel, whether it's traffic, noise or pollution, you
5 know, and what happens on the mall parcel does affect the
6 broader ecosystem of the neighborhood, whether it's traffic
7 on University and Georgia, whether it's noise that comes
8 from just normal course of business, special events, there's
9 an annual fair, or pollution, idling trucks, traffic, things
10 like that.
11 MS. ROSENFELD: And --
12 MR. CORE: So I'm very clear. I consider the mall
13 to be part of my neighborhood.
14 MS. ROSENFELD: And do you consider your
15 neighborhood to stop at the mall boundary or do you consider
16 it to include your property and that of your neighbors?
17 MR. CORE: And that of my neighbors as well
18 because what happens at the mall is as important to me as
19 what happens with the neighbors that are in front of me or
20 on either side.
21 MS. ROSENFELD: And what kinds of things would it
22 be that would happen on the mall parcel that affect you as a
23 neighbor?
24 MR. CORE: Traffic. As I mentioned, some
25 pollution, events. It just had the Susan G. Komen event

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1 there which was a laudable event. There's an annual fair.
2 yeah.
3 MS. ROSENFELD: And do --
4 MR. CORE: I hope that answered your question.
5 MS. ROSENFELD: Yes. It does. Thank you. Do you
6 visit the mall parcel on a regular basis?
7 MR. CORE: Yes. I walk through the mall to go to
8 the Metro station every morning at about 7:00. I think my
9 boss would like it to be a little earlier but it's right
10 around 7:00. And then I transit the mall in the evening at
11 about 7:00 p.m. coming home.
12 MS. ROSENFELD: And could --
13 MR. CORE: And I shop there.
14 MS. ROSENFELD: And on Exhibit 159, could you just
15 show generally where you walk when you walk from your home
16 to the Metro?
17 MR. CORE: Sure. Being creature of habit, I go up
18 to the cul-de-sac and go up the stairs, walk over by the
19 Sears, cross the Ring Road here and go over by the former
20 movie theater.
21 MR. GROSSMAN: So you walk east along --
22 MR. CORE: Correct.
23 MR. GROSSMAN: -- the parking lot.
24 MR. CORE: Yes. And then cross over by the Metro
25 station.

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1 MS. ROSENFELD: And do you cross at a crosswalk at
2 that location?
3 MR. CORE: Yes. Yeah.
4 MS. ROSENFELD: And in the morning and in the
5 evening, can you describe how much traffic you typically
6 see?
7 MR. CORE: So in the morning, there's little to no
8 traffic that's going on, you know, except seeing some trucks
9 that are transiting through to make deliveries. In the
10 evening, there's a bit more traffic now that the warehouse
11 is opened.
12 MS. ROSENFELD: And what experience do you have
13 while you try to cross the crosswalk?
14 MR. CORE: Yeah. So generally, it's pretty okay
15 but I have noticed in the last, you know, several months,
16 there's a little more aggressive pattern with folks that are
17 making the right-hand turn coming out around the Sears
18 outlet and not nearly as universal respect for the
19 crosswalks as we would like.
20 MS. ROSENFELD: And could you explain which right-
21 hand turn you're talking about?
22 MR. CORE: Right over by the Sears outlet, making
23 the right turn onto the Ring Road.
24 MS. ROSENFELD: From the parking lot between the
25 warehouse and the Sears outlet?

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1 MR. CORE: From the roadway that runs between the
2 office building.
3 MR. GROSSMAN: Mr. Core, why don't you point to
4 it.
5 MR. CORE: Oh, forgive me, sir. It's like coming
6 right down here and then turning right.
7 MS. ROSENFELD: Oh, I see. Okay.
8 MR. CORE: Yeah.
9 MR. GROSSMAN: All right. So this is, once again,
10 to the east. What's the building next to the east of the
11 warehouse there?
12 MR. CORE: The Sears outlet.
13 MR. GROSSMAN: The Sears outlet. So you're
14 actually east to the Sears outlet and then south of it, is
15 that correct?
16 MR. CORE: Correct.
17 MR. GROSSMAN: Okay.
18 MS. ROSENFELD: So traveling from the Sears outlet
19 toward the Costco warehouse.
20 MR. CORE: Sure.
21 MS. ROSENFELD: Okay. And what is the speed of
22 traffic along the Ring Road?
23 MR. CORE: Certainly, I think faster than I
24 believe it ought to be. I haven't actually gone out there
25 with a radar gun, I think that would be strange, but

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1 certainly, I would say 30-ish, faster than it ought to be.
2 MS. ROSENFELD: And in, have you --
3 MR. CORE: But that's an opinion.
4 MS. ROSENFELD: Have you observed the traffic in
5 the parking lot area near the Target and the warehouse where
6 this special exception is proposed to go?
7 MR. CORE: Yes.
8 MS. ROSENFELD: And based on your observations,
9 what is the speed of traffic in the parking lot itself?
10 MR. CORE: Yeah. That's a very different beast
11 because it's a very utilized, I believe a highly utilized
12 parking lot. I find that it's slow. There's a fair bit of
13 folks just kind of creeping along, lurking, looking for a
14 parking spot.
15 MS. ROSENFELD: More stop and go than --
16 MR. CORE: Yeah, yeah.
17 MS. ROSENFELD: -- flow?
18 MR. CORE: Yeah.
19 MR. GROSSMAN: And this is the parking lot to the
20 west of the Costco warehouse you're talking about?
21 MR. CORE: Yes, sir.
22 MR. GROSSMAN: Okay.
23 MR. CORE: Yeah. That's, you know, shared.
24 Target's at the north end, the Costco would be at the east
25 end and then the Ring Road and the Kenmont pool.

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1 MR. GROSSMAN: Okay. I just want to make sure
2 we're talking about the same parking lot.
3 MR. CORE: Yeah.
4 MR. GROSSMAN: Okay.
5 MS. ROSENFELD: And you testified you walked to
6 the Metro station. Do you walk to the mall, to the
7 warehouse area or the mall entrance near the Target and the
8 warehouse?
9 MR. CORE: Yeah. So that's where, you know, we
10 changed our behavior since the mall, sorry, since the
11 warehouse opened. Now I exclusively will walk through the
12 mall itself going in through the J. C. Penny or over by the
13 DSW because it's really no longer safe to transit over along
14 the Ring Road over to the Target, which was one of the
15 things that I would do, because there's no walkway and it's
16 not particularly safe to transit along that way anymore.
17 MS. ROSENFELD: Is there a crosswalk anywhere in
18 that location? Aside from the crosswalk that you use to
19 walk to the Metro, is there another crosswalk on the western
20 side of the Ring Road?
21 MR. CORE: Not that I'm aware of, and I wouldn't
22 access that anyway coming from my home. So in terms of
23 walking from where I live over, it's simply not safe to
24 transit along the Ring Road anymore.
25 MS. ROSENFELD: When, with respect to the mall

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1 parcel and, are you generally familiar with the location of
2 the special exception?
3 MR. CORE: Yeah.
4 MS. ROSENFELD: And are you generally location
5 with the special exception application itself?
6 MR. CORE: Yes. I've read the --
7 MS. ROSENFELD: You've followed these proceedings.
8 MR. CORE: -- documentation, yes.
9 MS. ROSENFELD: And do you, in your opinion, does
10 the proposed special exception comport with the general
11 character of the neighborhood?
12 MR. CORE: Absolutely not.
13 MS. ROSENFELD: And why not and in what ways?
14 MR. CORE: As I say, there are some really non-
15 inherent characteristics that don't comport with past or
16 present use. It's a very busy mall parking lot. I would
17 suggest that this special exception's proposed gas station
18 is going to create exceptionally long queues that I have not
19 observed at other gas stations or in other parts of the
20 mall. It's going to bring dozens of cars, if not hundreds
21 of -- I'm sorry. It's going to bring hundreds of cars with
22 dozens queuing at any given time.
23 I think this is a very, very, very busy mall.
24 That parking lot that serves the Costco and the Target is a
25 highly utilized parking area. I just don't, it's just too

1 intensive to insert a mega gas station in this type of
2 parcel. It's going to upend the traffic and parking
3 conditions at the mall. There will be effects that spill
4 over into the neighborhood, and I don't think it comports
5 with the Zoning Ordinance and the language that's in there.

6 MS. ROSENFELD: And when you say there would be
7 spillover effects into the neighborhood, what effects are
8 you talking about?

9 MR. CORE: Sure. When you look at traffic that
10 will be slowing down and there will be more traffic on the
11 Ring Road, I can say now that I believe we do have spillover
12 when we look at traffic that is now backing up onto
13 University Boulevard with the store now, you know, trying to
14 come off of University up onto that roadway, and if you
15 start adding hundreds of cars in queuing, this simply
16 exacerbates what's already a challenging parking
17 environment.

18 MS. ROSENFELD: And you have mentioned queuing. I
19 -- have you made some personal observations about queuing
20 and have some personal factual testimony on that point?

21 MR. CORE: Sure. And, you know, I do and, you
22 know, those observations underscore that traffic in this
23 area is going to go slower. There will be more cars in
24 line. There will be more traffic. There will be more cars
25 waiting for gas than I believe the applicant has estimated,

1 so there will be more emissions and there will be more
2 idling.

3 MR. GROSSMAN: What do you base your assertion on
4 that there will be more queuing than the applicant has
5 estimated?

6 MR. CORE: Sure. So I believe it has been entered
7 into the record, some observations that I made at the
8 Columbia Costco, so I'd like to perhaps take a moment to
9 look through that. This --

10 MS. ROSENFELD: Mr. Grossman, Mr. Core is handing
11 out courtesy copies of Exhibit 80(j) which has been in the
12 record for some time.

13 MR. CORE: So I would like to suggest that I don't
14 think the filing is a reasonable basis for decision making.
15 When we go to the top, first slide, my fundamental
16 conclusions are that the cars don't stack up with, as neatly
17 as Costco suggested. It does not comport with human
18 behavior. Drivers often leave extra space between vehicles
19 and frankly, motorists will also avoid queuing at gas
20 stations where the pumps are on the opposite side of the
21 fuel tank. People do prefer to fuel on the right side of
22 the gas tank despite the long hoses. This creates
23 additional stacking. I will say that I did not observe
24 attendants directing traffic. It results --

25 MR. CORE: You didn't reserve them at the, at

1 another Costco

2 MR. CORE: That's right. Forgive me. This is
3 based on observations on February 17th --

4 MR. GROSSMAN: Okay.

5 MR. CORE: -- 2013 at the Columbia gas station,
6 Columbia, Maryland Costco which has a gas station.

7 MR. GROSSMAN: Okay.

8 MR. CORE: I did not observe attendants directing
9 traffic. This, again, results in more idling times, traffic
10 spillage into the roadway and more emissions. And the next,
11 sir, will help you see this of how traffic spills into the
12 roadway. We've got cars, moving onto the next slide, cars
13 in the roadway, no attendants directing traffic. This was a
14 Sunday afternoon. There was uneven queuing. Again, no
15 attendants. We have -- forgive me. I apologize, sir, for
16 not numbering these slides, but we also see where cars are
17 blocking the street. Again, this slows down the traffic,
18 multiple examples of that in just one afternoon. We have
19 cars that will stack up into the roadway.

20 So there's what I saw and then here's what we get
21 from satellite imagery and if we move over to the evidence
22 at Google Maps shot of the Beltsville gas station, we see
23 the same activity, the same patterns being presented.
24 Motorists will allow additional space, it's typical, typical
25 of how drivers behave in lines, and it's not consistent with

1 the queuing model that I observed, that I read in the
2 applicant's filing which illustrates cars being nicely
3 stacked and getting maximum utilization of that space that
4 is planned for that type of behavior. And I just want to
5 suggest that changing driver behavior is difficult and I
6 don't think it's going to start in Wheaton, Maryland.

7 MS. ROSENFELD: And in your, in your report, there
8 is a slide about four from the back. It says not attendants
9 directing traffic, cars stacked in roadway.

10 MR. CORE: Yeah. Yes, ma'am.

11 MS. ROSENFELD: When you, when you observed this,
12 did you observe whether these cars in this turning lane in
13 fact were headed to the Costco or did you see if they --

14 MR. CORE: So some were headed for the gas
15 station. Others were trying to exit and move onto the other
16 shops. The net effect was the same. It slowed down traffic
17 flow. Some cars were stuck trying to make the left. Other
18 cars would just slow down, they were not able to complete or
19 get to where they needed to go in an unimpeded fashion. So
20 the conclusion here is, you know what? Cars are going to be
21 stuck there longer, they're going to be idling longer and
22 I'm respectfully suggesting that any of the analysis that's
23 based upon the queuing model is frankly not, doesn't comport
24 with how people behave. And I've got some photos here from
25 what I've observed at the gas station, we've got Google

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1 satellite, Google Map satellite imagery but you don't have
2 to rely on this. Just think about it on your way home. How
3 do people behave when you get to an intersection. People
4 are going to leave extra room.
5 MS. ROSENFELD: So, so based on your observation,
6 the efficiencies of the queuing model in the record you
7 think are overstated.
8 MR. CORE: Correct.
9 MS. ROSENFELD: Is that a fair characterization?
10 MR. CORE: I believe that the queuing efficiency
11 is overstated and thus, they are understating the emissions
12 from idling and ergo the health problems associated with
13 those emissions.
14 MS. ROSENFELD: Thank you. One of the Zoning
15 Ordinance standards that the applicant must prove is that
16 the proposed special exception will not be detrimental to
17 the use, peaceful enjoyment, economic value or development
18 of surrounding properties to the general neighborhood at the
19 subject site, 59-G-1.21(a)(5). You will be back later to
20 talk about economic value, but do you have an opinion as to
21 whether or not the proposed use will be detrimental to the
22 use and peaceful enjoyment of your property in particular
23 and the properties in your residential neighborhood?
24 MR. CORE: Sure. So I think this needs to be
25 answered two ways. First, we can take the definition of the

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1 mall, of the neighborhood as only being the mall parcel.
2 Well, I respectfully disagree with that narrow definition
3 but let's, let's run with that for a moment. Idling
4 vehicles are going to back up on the Ring Road. We're going
5 to see that we're adding existing fuel deliveries and
6 existing tractor trailer deliveries are going to be funneled
7 into what is already a reasonably tight system. There's,
8 it's just you're going to be funneling more into what I
9 think is already slowing down because of how things are
10 constructed. It's a constrained, constrained space.
11 I suggest that the delivery trucks are going to
12 have a heck of a time at the loading dock. The turning
13 radius is tight now. Any stroll around that area is going
14 to show where the trucks are coming up onto the islands
15 adjacent to the loading dock. You can see the gullies, if
16 you will, of where the trucks are having difficulty getting
17 into the loading dock space because it's so constrained that
18 they already have to go up on the existing traffic islands.
19 MR. GROSSMAN: There was testimony that's not
20 going to change. That, the special exception will not
21 further limit the turning radius of the trucks going to the
22 docks.
23 MR. CORE: So we have a situation, you know,
24 running with that, sir, respectfully, that we're going to
25 have an already tight situation that is difficult and we're

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1 going to add more vehicles and more fuel deliveries, and I
2 recall from the testimony on August 2nd that they could have
3 as little as a foot of clearance with the modifications. If
4 I understand --
5 MR. GROSSMAN: Foot of clearance --
6 MR. CORE: Yes.
7 MR. GROSSMAN: -- between what and what?
8 MR. CORE: From the testimony that was --
9 MR. GROSSMAN: Clearance between what and what?
10 When you say a foot of clearance, between what and what?
11 MR. CORE: Between the islands and as the trucks
12 are turning.
13 MR. GROSSMAN: You're talking about the, the
14 trucks coming into the Costco warehouse delivery docks or
15 are you talking about trucks delivering fuel?
16 MR. CORE: I'm talking about trucks coming into
17 the loading dock.
18 MR. GROSSMAN: Okay.
19 MR. CORE: And as I recall from the testimony that
20 I reviewed here, that we also have a situation where the
21 cabs of the fuel delivery trucks are going to have to
22 basically go into the pedestrian walkway in order to make
23 the deliveries to get in and out which I hardly find to be
24 contributing to a pedestrian-friendly environment.
25 MR. GROSSMAN: I don't know if that's the case but

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1 in any event, go ahead.
2 MR. CORE: All right. Forgive me, sir. I was
3 working off the testimony that's in the record.
4 MR. GROSSMAN: What's the date of the testimony?
5 MR. CORE: August 2nd. And it is page 186.
6 MR. GROSSMAN: All right. Thank you.
7 MR. CORE: So what I'm going to suggest here is
8 we've got a fairly constrained environment. We're going to
9 add hundreds of cars, we're going to be adding more tractor
10 trailers coming in to do fuel deliveries that effectively
11 what we have is a situation that's going to make the mall
12 relatively less attractive for people to shop there. So by
13 definition, and 75 percent of the neighborhood does not
14 belong to Costco so what we have is a situation where the
15 mall becomes relatively less attractive, it becomes more
16 difficult to find parking, it becomes a less pleasant
17 shopping experience. I think they, they're externalizing
18 costs onto the other stores in the neighborhood and
19 certainly onto the folks that live adjacent to the property.
20 So when we think about the definition of
21 neighborhood that includes adjacent property, which is I
22 think the second way that the question needs to be answered,
23 and that is I think a mega gas station is inconsistent with
24 how the mall has been used in the past. There are some non-
25 inherent effects associated with this type of activity that

1 I believe the Planning Board staff ably documented with the
2 queuing, the idling, the emissions, the traffic, and this is
3 an intensity of use that's going to bring traffic and idling
4 cars and negatively affect the experience of people that
5 live next to the mall.

6 MS. ROSENFELD: So you're fine with the mall but
7 you have concerns about the proposed special exception
8 itself, correct?

9 MR. CORE: Oh, absolutely. Yeah. I mean, I
10 bought the house knowing that the mall was there. Eyes wide
11 open. No problem. A gas station is a different thing, and
12 a gas station of this size is an entirely different thing
13 together. I mean, quite honestly, I think this is more
14 aptly described, and I know you'll object, as a regional
15 fuel depot. This is 16 pumps pumping \$12 million, 12
16 million gallons a year. This is a big deal. This is a gas
17 station on steroids and to answer the question directly,
18 yeah. I've got a problem with the gas station.

19 MS. ROSENFELD: When you --

20 MR. CORE: Mall is fine.

21 MS. ROSENFELD: When you bought your property, did
22 you anticipate that a mega gas station --

23 MR. CORE: Absolutely not.

24 MS. ROSENFELD: -- would be located here?

25 MR. CORE: No.

1 MS. ROSENFELD: Have you ever seen a gas station
2 located within a mall parking lot?

3 MR. CORE: Yeah. There's a gas, there was a gas
4 station, a small one, that was right there where the Wendy's
5 is located right now. That was fine. It was just off the,
6 it was just off Georgia Avenue. People would go in, get the
7 gas and they'd go out, didn't really bring a whole lot of
8 traffic onto the Ring Road. And as I recall, there is a gas
9 station on the property at Westfield Montgomery, right at
10 Democracy, Democracy Boulevard is it? Is that what they
11 call it? And again, it's on a corner as I recall so you're
12 able to get in and you're able to get out. We also, we need
13 to think about --

14 MR. GROSSMAN: There are actually two gas stations
15 there.

16 MR. CORE: Okay. Great. Obviously, you're a
17 little more familiar with the area than I am. Fortunately,
18 I don't buy a lot of gas. I just take the Metro back and
19 forth, sir. But I would respectfully suggest that those are
20 very different situations, the two that I just, that I'm
21 familiar with. Because they were small gas stations, they
22 weren't generating a whole lot of traffic on the Ring Road
23 and certainly, we didn't have queuing for 15 minutes at a
24 time.

25 MS. ROSENFELD: And did people --

1 MR. CORE: We don't.

2 MS. ROSENFELD: And for those two examples that
3 you gave, did people or do people have to drive through the
4 interior of the mall parking lots to access those gas
5 stations or do they have road access?

6 MR. CORE: So the gas station that -- the first
7 example that I was familiar with, that gas station is no
8 longer there.

9 MS. ROSENFELD: Okay.

10 MR. CORE: The second one, again, I don't buy a
11 whole lot of gas over in that part of the county. Perhaps
12 you shop there, sir, but I just, I know that you've been
13 able to go in and go out. I did buy gas there once.

14 MS. ROSENFELD: Are you familiar with the term
15 nuisance as it relates to property?

16 MR. CORE: Yes.

17 MS. ROSENFELD: Okay. Do you think the proposed
18 gas station will constitute a nuisance with respect to the
19 use and enjoyment of your property?

20 MR. CORE: I do.

21 MS. ROSENFELD: And could you explain?

22 MR. CORE: So think about the traffic. We
23 demonstrated we're going to add hundreds of cars into an
24 already constrained environment. We're going to add tractor
25 trailers. Okay. That's going to slow things down. People

1 like to drive fast around tractor trailers. As much as
2 people like to open the throttle on Ring Road, I think they
3 will slow down. It's going to increase fumes and odors as
4 cars longer, as cars idle longer than you would expect at a
5 typical gas station. It's going to bring more fuel trucks
6 rumbling into the neighborhood and I can tell you that
7 sitting in my home, sitting on my deck, you can hear and
8 sometimes feel the large vehicles that are transiting on the
9 Ring Road. It's going to slow progress on the mall.

10 Emissions will go up from both the trucks and the cars.

11 And frankly, I'm going to suggest it brings an
12 intensity of activity that was never intended and is
13 probably not safe in that space. I mean, we've demonstrated
14 that they've got a heck of a time making the deliveries
15 right now. That's going to slow things down a lot and it's
16 going to exacerbate traffic even further. You know, again,
17 I've observed more traffic, my opinion, my personal opinion,
18 trying to get up from University Boulevard into the mall.
19 more queuing up there on University Boulevard. It takes
20 longer to get to the light, and there's going to be noise.
21 There's going to be more noise so I'm pretty confident about
22 that. And I, frankly, just don't understand how this can
23 possibly be a good idea, adding a regional fuel depot in
24 this small spot this close to homes in an area that is
25 intensely used already.

1 MS. ROSENFELD: You testified that you can hear
2 the delivery trucks. Did you testify you could hear them
3 idling?

4 MR. CORE: I can testify that I've heard the
5 idling.

6 MS. ROSENFELD: Do you hear them idle?

7 MR. CORE: Yeah. I do hear car, trucks idling.
8 Yeah.

9 MS. ROSENFELD: And Costco, the applicant has
10 testified that trucks will idle for maybe a five or ten
11 minute maximum. Has, has that been your experience?

12 MR. GROSSMAN: Excuse me a second. You're talking
13 about trucks delivering to the warehouse, correct?

14 MS. ROSENFELD: That's correct.

15 MR. GROSSMAN: Because the fuel trucks are not
16 supposed to be idling as I understand it, but we're not
17 really discussing the warehouse trucks here because the
18 warehouse has nothing to do with --

19 MS. ROSENFELD: Well, the idling --

20 MR. GROSSMAN: -- in a direct way, with what we're
21 reviewing.

22 MS. ROSENFELD: The idling is important because
23 Mr. Sullivan has premised his emissions calculations on
24 certain fixed idling times and so I do think that the actual
25 factual information regarding idling at the property is

1 highly relevant.

2 MR. GROSSMAN: You mean -- so you're saying the
3 idling of the trucks at the Costco warehouse are in a sense,
4 part of the background emissions.

5 MS. ROSENFELD: That's correct.

6 MR. GROSSMAN: Okay. I'll, I'll withdraw my
7 concern about that. You may answer that question.

8 MR. CORE: So what was the question again?

9 MS. ROSENFELD: In your, in your experience, what
10 time frames have you heard trucks idling?

11 MR. CORE: So we'll hear trucks in the evening and
12 we'll hear trucks in the morning. Fairly consistent.

13 Couple times a week. I mean, again, I'm not home all that
14 often. I leave at 7:00 a.m., I get home at 7:00 p.m. and my
15 wife is happy to go out with me every so often so sometimes
16 I get home a little later than that. But a couple times a
17 week, I will observe trucks idling and I'll hear them as I'm
18 getting ready to go to bed or if I'm out doing some errands
19 in the back of the house.

20 Last Saturday, for example, no, I'm sorry, two
21 Saturdays ago to be exact, there was a truck that was idling
22 right up on the Ring Road for about three-and-a-half, three
23 hours and ten minutes. I was doing some writing, I was
24 doing some work and there was a truck idling there for three
25 hours.

1 MR. GROSSMAN: Do we know if that was a Costco
2 delivery truck?

3 MR. CORE: I don't know if it was a Costco
4 delivery truck or not but for the purposes of scientific
5 examination, I guess they're looking at some baseline
6 numbers, and I would suggest that the actual behavior of how
7 truckers are behaving should factor into that. I mean,
8 let's get a real solid baseline.

9 MS. ROSENFELD: And where was that truck parked
10 while it was idling?

11 MR. CORE: It was just up on the Ring Road. Up
12 over here. And I could tell -- sorry. I've just got to re-
13 orient myself here. Just this right up along here, kind of
14 opposite where, where I live. And you can tell that it was
15 up there for quite a while because as I walked over the cul-
16 de-sac, because I went, I went out to do some errands and I
17 walked over to the mall, and you could smell the carbon
18 monoxide or whatever the emissions are.

19 MR. GROSSMAN: I don't think you could smell
20 carbon monoxide.

21 MR. CORE: Carbon monoxide, whatever. You can
22 smell the truck, the truck fumes.

23 MR. GROSSMAN: But the area you pointed to was the
24 Ring Road just south of the Sears.

25 MR. CORE: Yes.

1 MR. GROSSMAN: Okay.

2 MS. ROSENFELD: And where were you when you could
3 smell those fumes?

4 MR. CORE: It's when I walked on over towards the
5 cul-de-sac to go up and do my errand.

6 MS. ROSENFELD: So you were on or near your
7 property?

8 MR. CORE: Yes. And, you know, I think, it was
9 last week, you know, a laudable event. They had the Susan
10 G. Komen walk, a three-day walk which was, this is National
11 Breast Cancer Month which is, you know, laudable in terms of
12 the corporate philanthropy and I guess they had a whole lot
13 of people involved with supporting that. And there was a
14 bus that was idling there when I got home at about 8:00 the
15 night before the event and it was idling there in the
16 morning when I went to go to work at 7:00 a.m. the following
17 day. So there's, there's activity going on there that
18 really should be factored into --

19 MS. ROSENFELD: So in --

20 MR. CORE: -- the analysis.

21 MS. ROSENFELD: So in your experience, there is
22 long term vehicular idling.

23 MR. CORE: Yes.

24 MS. ROSENFELD: At least from time to time.

25 MR. CORE: Yeah. Certainly more than 10 minutes

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1 at a time, correct.
2 MS. ROSENFELD: Okay. I have no further
3 questions.
4 MR. GROSSMAN: All right. Cross-examination?
5 MS. HARRIS: Yes. Thank you.
6 CROSS-EXAMINATION BY MS. HARRIS
7 MS. HARRIS: Mr. Core, you're aware that after
8 discussions with, Costco's discussions with the neighbors
9 that Costco decided to propose a screen wall to block the
10 views of the gas station, is that correct?
11 MR. CORE: Yes, I'm am aware of that.
12 MS. HARRIS: And are you --
13 MR. CORE: And I understand that that wall -- I'm
14 sorry. Am I allowed to make sure we're clear about --
15 MR. GROSSMAN: Go ahead. Sure.
16 MR. CORE: Okay. That the proposal for that wall
17 has shifted a few times.
18 MS. HARRIS: And were you aware that it extended
19 26 feet further to the east in order to ensure that the gas
20 station will be visually blocked from the residential area?
21 MR. CORE: Yes. Now, I would add that that's a
22 really great question but it raises a concern as it relates
23 to the other parts of the neighborhood. Mr. Sullivan, when
24 he proposed this, first heard about this was a community
25 meeting in October of 2012, talked about how with the

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1 weather patterns, and forgive me, I --
2 MS. HARRIS: That's sort of outside the scope of
3 what my question is.
4 MR. GROSSMAN: Well, I'm going to let him finish.
5 Go ahead.
6 MR. CORE: Thank you. Basically, he said that
7 because of the way the air works that the emissions will go
8 into the, kind of like valley, will fall into the lower
9 areas adjacent to the mall. Yes, ma'am. I was there. And
10 my concern about this wall is that effectively what we're
11 going to be doing is driving the emissions and driving the
12 pollutants that are emitted into the cul-de-sac down there
13 closer to my home.
14 MS. HARRIS: Do you have a scientific background?
15 MR. CORE: I do not.
16 MS. HARRIS: And on what basis, what scientific
17 basis did you reach the conclusion that you just testified
18 to?
19 MR. CORE: So Mr. Sullivan's commentary at the
20 October 2012 Kensington Heights Civic Association meeting
21 indicated that there were certain atmospheric patterns and I
22 am simply suggesting, based on common sense, that if you put
23 up a wall, air will blow. And depending upon where that
24 wall ends, air is going to go down.
25 MS. HARRIS: Have you read Mr. Sullivan's report?

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1 MR. CORE: I have. It's common sense.
2 MS. HARRIS: Were you also aware that the Sullivan
3 environmental measured the impact of a station on the
4 school, park, excuse me, the school, pool and residences?
5 MR. CORE: I'm aware that he wrote a paper, I'm
6 aware that he attempted to assess the impact on those areas
7 but as I suggested with my observations, I think he
8 underestimated.
9 MS. HARRIS: But you're aware that he evaluated
10 the impact of the station on the surrounding area.
11 MS. ROSENFELD: Asked and answered.
12 MR. GROSSMAN: True, but he can answer that.
13 MR. CORE: I'm aware that he did a study.
14 MS. HARRIS: Okay. Thank you. And are you also
15 aware that the architect studied the lighting levels as they
16 relate to the proper, residential properties to the south of
17 the Ring Road?
18 MR. CORE: Yes. I read that.
19 MS. HARRIS: And you're also aware that the
20 traffic engineer evaluated the traffic along the surrounding
21 road surrounding the Wheaton parcel.
22 MR. CORE: I'm aware that he did a study, and I'm
23 also willing to pause it based on my observations of being a
24 reasonable human being that people don't necessarily behave
25 the way that the analysts have suggested they will.

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1 MS. HARRIS: So irrespective of the applicant's
2 definition of neighborhood, you agree that that did evaluate
3 the potential impacts of the station on the surrounding
4 neighborhood, is that correct?
5 MR. CORE: No, that is not correct.
6 MS. HARRIS: You're --
7 MR. CORE: I am, I am --
8 MS. HARRIS: If I'm understanding, you're saying
9 that the applicant has not evaluated the impact of the
10 station on the adjacent neighborhood.
11 MR. CORE: I'm acknowledging that studies were
12 prepared, I'm acknowledging that I read those studies, but
13 I'm being clear that I don't believe the studies comport
14 with reality of how people behave, of how people drive, of
15 how people queue and therefore, anything that's based upon
16 those studies is, by definition, incomplete and not a good
17 basis for anyone to make a decision in a proceeding such as
18 this.
19 MS. HARRIS: If I understood your testimony, you
20 were concerned that the petitioner's definition of
21 neighborhood did not include this residential area to the
22 south and west of the mall parcel.
23 MR. CORE: Help me understand.
24 MS. ROSENFELD: I don't think that was his
25 testimony.

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1 MR. CORE: Where is this going?
2 MR. GROSSMAN: No. I think he, what he testified
3 to --
4 MS. HARRIS: At the beginning of his testimony, he
5 said --
6 MR. GROSSMAN: What he testified to was that he
7 believed that the mall is part of the neighborhood. I think
8 there was a little bit of confusion in the way the question
9 was asked but that was, he said it was part of the
10 neighborhood and that he believes that the residence area
11 around it is also part of the neighborhood.
12 MS. HARRIS: Okay.
13 MR. GROSSMAN: So let me just ask you a question.
14 MR. CORE: Yes, sir.
15 MR. GROSSMAN: You said that you don't believe
16 that the studies that were made are a reasonable basis for
17 making a decision in this type of proceeding. What would be
18 a reasonable basis for making a decision? What should you,
19 what evidence should you base it on?
20 MR. CORE: Sure. So when you think about what
21 facts need to be assessed, you know, we're looking at, and I
22 think I need to, should I limit it to --
23 MR. GROSSMAN: You can answer it. Just answer
24 that question. I mean --
25 MR. CORE: Okay.

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1 MR. GROSSMAN: -- should I base it on anecdotal
2 evidence such as yours or should I base it on the scientific
3 study whether it has impurities or not?
4 MR. CORE: So if we're going to -- so let's run
5 with it this way. I believe you have to look at both,
6 frankly. You know, economics and theory, fine. You know,
7 it's really great until you introduce the human factors into
8 something. So I would suggest that we need to have some
9 sort of reasonable framework but the framework that's been
10 presented to you, sir, respectfully, I believe is
11 inadequate. The baseline emission numbers need to be
12 higher. We need to add, account for more emissions from
13 trucks and cars that are idling.
14 MR. GROSSMAN: But how do I quantify that?
15 Assuming you're correct, that the reports that have been
16 given to me by the applicant do not fully represent the
17 situation, how do I quantify the, the accurate numbers?
18 MR. CORE: So when I think about the standards
19 that are presented to you that are in the Zoning Ordinance
20 and that the applicant needs to prove that there's no
21 adverse effect on the neighborhood, there's no adverse on
22 economic value, and forgive me for paraphrasing, and that
23 there's no adverse impact on health, when we think about
24 that, the burden of proof being with the applicant, frankly,
25 I don't think they meet that standard. They can't prove

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1 that.
2 MR. GROSSMAN: That's actually not the question I
3 asked.
4 MR. CORE: I'm sorry, sir.
5 MR. GROSSMAN: I asked, I asked -- you said that
6 you think that the studies that have been submitted
7 understate the impacts. What countervailing studies do I
8 rely on to scientifically estimate what the actual impacts
9 are?
10 MS. ROSENFELD: Well, I think you're asking him a
11 legal question.
12 MR. GROSSMAN: No. I'm asking factually. He's
13 made a statement that, that the evidence that has been
14 submitted in the reports is not adequate or at least is
15 misleadingly low, so I want to know what the evidence is.
16 He's given me anecdotal evidence himself as to what he's
17 observed and I think that ought to be considered as part of
18 what I evaluate, but I want to know are there other studies
19 that he can point to that more accurately reflect reality
20 as, as he sees it.
21 MS. ROSENFELD: But the, but the --
22 MR. CORE: So I'm not familiar --
23 MR. GROSSMAN: That's a factual question.
24 MS. ROSENFELD: But the burden of proof is on the
25 applicant and it's not --

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1 MR. GROSSMAN: Evidence is evidence, and I'm
2 asking him a question.
3 MR. CORE: Okay. And I'm happy to, I wish I had a
4 clear answer for you, sir. So we'll think about the use.
5 So I've done some -- I'm just a reasonable observer here.
6 I'm a resident. I'm not an expert.
7 MR. GROSSMAN: Right.
8 MR. CORE: I've done some reading, done some
9 research, talked to people and I just can't find a situation
10 where a mega gas station, a regional fuel depot of this
11 nature is being wedged into an existing mall just a few
12 hundred feet from existing homes so I'm not sure you have
13 any example of, something to use as a comparison. This is
14 simply unprecedented and frankly, I don't understand why it
15 needs to be. I'm, I wish I had --
16 MR. GROSSMAN: There's an application you have.
17 MR. CORE: Okay.
18 MR. GROSSMAN: There's an application. They want
19 it.
20 MR. CORE: You're right.
21 MR. GROSSMAN: They submit a study and --
22 MR. CORE: Okay.
23 MR. GROSSMAN: -- or a series of studies and we
24 have to analyze the evidence.
25 MR. CORE: Yes.

1 MR. GROSSMAN: The totality of the evidence.
 2 MR. CORE: So I would say --
 3 MR. GROSSMAN: Not only their evidence but your
 4 evidence.
 5 MR. CORE: Yes.
 6 MR. GROSSMAN: So I have to somewhat balance a lot
 7 together and see where it all comes out.
 8 MR. CORE: Okay. So I don't have an exact study
 9 that I can point you to because I think this is such
 10 uncharted ground, but their preponderance of the evidence
 11 suggests that there is, there are real problems and when we
 12 look at the evidence that they've presented, I'm going to go
 13 back to the point that anything that they have said needs to
 14 be plussed up because when we look at the human factors and
 15 how people line up at major intersections, how they line up
 16 at gas stations, it doesn't comport with the data in the
 17 nice graphs that were presented in the special exception
 18 application.
 19 MR. GROSSMAN: They contend, by the way, that they
 20 have plussed it up as you say. They've conservatively
 21 estimated the number of users. One could argue with this
 22 and --
 23 MR. CORE: Sure.
 24 MR. GROSSMAN: -- certainly, the opposition does
 25 but they contend that in fact, they have done that plussing

1 up as you suggest. Okay. Further cross-examination?
 2 MS. HARRIS: Yes. If I understood you correctly,
 3 your concern has to deal with, one of your concerns is the
 4 number of cars that will be generated by the gas station, is
 5 that correct?
 6 MR. CORE: Yes. That's correct.
 7 MS. HARRIS: And are you aware that the Wheaton
 8 Mall has rights to build approximately 180,000 square feet
 9 of additional development irrespective of the gas station?
 10 MR. CORE: Yes. I have heard that they do have an
 11 exemption.
 12 MS. HARRIS: And are you aware that that level of
 13 development would generate approximately 650 peak hour
 14 trips?
 15 MR. CORE: I'm, I've heard numbers like that but
 16 I've not, I've not jumped into that.
 17 MR. SILVERMAN: Objection. This is purely
 18 speculative. We don't know what they're going to build.
 19 MR. GROSSMAN: No. The question is whether they
 20 have the right to do it based on their, the authorization
 21 they already have. They have an authorization for, in terms
 22 of adequate public facilities. I think that's what you're
 23 getting at.
 24 MS. HARRIS: Correct.
 25 MR. CORE: So let, so let's do a reasonable plus-

1 up over time where they're adding square footage to the
 2 mall. Fine. Cars drive in, they park. They're not sitting
 3 there for 15 minutes waiting to get to a fuel tank.
 4 MS. HARRIS: And --
 5 MR. CORE: That's a qualitative difference.
 6 That's a material difference between the behavior of going
 7 to the mall and shopping.
 8 MS. HARRIS: Have you studied the traffic report
 9 or have you read the traffic report?
 10 MR. CORE: I read it.
 11 MS. HARRIS: And do you recall how many peak hour
 12 trips expect to be generated by the traffic report, by the,
 13 excuse me, by the station?
 14 MR. CORE: Not off the top of my head.
 15 MS. HARRIS: Would 138 surprise you?
 16 MR. CORE: I believe that's a figure that I've
 17 seen.
 18 MS. HARRIS: And wouldn't you agree that 138 peak
 19 hour trips is considerably less than 650 peak hour trips?
 20 MR. CORE: Um, it's not necessarily the traffic
 21 volume, it's the behavior when the cars get onto the mall
 22 parking lot and they are stuck on the Ring Road and they are
 23 idling.
 24 MS. HARRIS: So a --
 25 MR. CORE: Waiting to get to --

1 MS. HARRIS: -- car pulling in, off University
 2 Boulevard to go down to Ring Road to the gas station is
 3 going to have noticeably different driving behavior than
 4 another car pulling onto the Ring Road that's not going to
 5 the gas station? Are you suggesting that the driver going
 6 to the gas station is going to be, have a different driving
 7 pattern or --
 8 MR. CORE: Sure.
 9 MS. HARRIS: -- drive at different speeds?
 10 MR. CORE: Actually, that's a really great
 11 question. Thank you very much for asking that, Counsel.
 12 What we have here is a situation where you're concentrating
 13 the traffic in one spot. So let's say we have vehicles
 14 coming in from University and we've got vehicles coming in
 15 from Veirs Mill and we've got vehicles coming in on, yeah,
 16 so it's Veirs Mill, the two entrances and University
 17 Boulevard. That's great. Let's add the shopping trips.
 18 They'll go to the parking deck, they'll go over to the
 19 office, two office buildings, they'll go to the strip mall
 20 on the side whereas at the gas station, boom. All going to
 21 one spot. Thus, you have concentration and indeed,
 22 different behavior.
 23 MS. HARRIS: If in fact part of that 183,000
 24 square feet was a pad site or an office building built in
 25 the southeast corner of the shopping center, I'm not, I'm

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1 not following you how the gas, people going to the gas
2 station is a concentrated level of traffic going to a
3 specific spot but additional traffic going to a new use on
4 the, on the mall site wouldn't be, also be a concentrated
5 level of traffic going to that --
6 MR. CORE: Sure. We can --
7 MS. HARRIS: -- new development.
8 MR. CORE: Madam, we can speculate all day long
9 about where they're going to build the additional square
10 footage but I think you'd have a heck of a time trying to
11 convince Target and Costco that they're going to give up
12 their surface lot, so I think your supposition is weak.
13 MS. HARRIS: Have you read the leases of Target or
14 any of the other leases?
15 MR. CORE: I have not.
16 MS. HARRIS: In terms of the queuing area, you
17 speculate that, that the, that they'll be more cars outside
18 of the anticipated queue area, is that correct?
19 MR. CORE: Yes.
20 MS. HARRIS: And are you aware that Mr. Guckert
21 testified that 50 percent of the times, there will be an
22 average of two cars in the queue area?
23 MR. CORE: I read what Mr. Guckert wrote and
24 again, I will acknowledge that a report was submitted by
25 your consultants.

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1 MS. HARRIS: And if in fact the queuing, the
2 queue, the queuing for the gas station is contained within
3 the special exception area, how does that adversely affect
4 the neighborhood?
5 MR. CORE: Well, so you have cars and you have
6 cars that are idling and they're producing emissions, and
7 those emissions will waft over to the residential areas
8 adjacent to the special exception site. And you also have a
9 gas tank that is going, even with the best environmental
10 controls, there will be some emissions coming out of that
11 large underground gas tank.
12 So to answer your question directly, there will be
13 emissions that will waft over, there will be more traffic on
14 the Ring Road,. there will be more cars on, more trucks and
15 fuel deliveries on the Ring Road and therefore, it will
16 affect the adjacent area.
17 MS. HARRIS: And are you aware of any studies that
18 show that the level of emissions in fact will be adverse to
19 health?
20 MR. CORE: Yes, I am but I'm not prepared to
21 testify to that. There are things that I have read that are
22 commonly shared that are on the Stop Costco Gas website
23 concerning the adverse effects.
24 MS. HARRIS: Can you identify those studies for
25 us, please?

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1 MR. CORE: Um --
2 MS. ROSENFELD: He can --
3 MR. GROSSMAN: If he knows, he can say. If he --
4 MS. ROSENFELD: -- supplement the record if he
5 knows but he's certainly not here testifying --
6 MR. GROSSMAN: Well, he can answer that. If he
7 doesn't, if he doesn't remember, he can say that.
8 MR. CORE: Okay. I don't remember.
9 MR. GROSSMAN: Okay.
10 MS. HARRIS: But --
11 MR. CORE: There's enough that I read.
12 MS. HARRIS: -- nonetheless, you concluded that
13 the level of emissions here will be harmful to the
14 neighborhood but you can't recall the studies that you read
15 that you're relying on to reach that conclusion?
16 MR. GROSSMAN: I don't think you should have that
17 much surprise in your voice. I mean, I wouldn't necessarily
18 remember the names of the, of the studies I might have
19 gotten an impression from so.
20 MS. HARRIS: Okay.
21 MR. CORE: Thank you.
22 MS. HARRIS: Do you know who wrote them?
23 MR. CORE: I would have to go back to my notes.
24 MS. HARRIS: Was it Mr. Silverman, Costco's
25 expert?

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1 MR. ADELMAN: Objection. The question has
2 fundamentally been answered.
3 MR. GOECKE: No, it hasn't.
4 MR. GROSSMAN: He's --
5 MS. HARRIS: And since when can anyone object?
6 MR. GROSSMAN: She can pursue it. It's cross-
7 examination. She can pursue it. I don't see where it gets
8 us, Ms. Harris. So what if he remembers it or doesn't
9 remember it, the name of the person who wrote the studies.
10 MS. HARRIS: I'm --
11 MR. GROSSMAN: Does it --
12 MS. HARRIS: There was, there was a conclusion
13 stated with such strength in the conclusion and it would be
14 nice to know the reports on which he's basing that
15 conclusion.
16 MR. GROSSMAN: All right, but, I mean, he said he
17 has read them but he cannot recall the names of the people
18 who did. They were on the Stop Costco Gas Coalition
19 website. I would assume that's something from Dr. Hisey
20 (phonetic sp.) or one of the other experts, or Dr. Cole. I
21 don't know, but I don't know that the name is going to make
22 a big difference.
23 MR. CORE: So --
24 MR. GROSSMAN: There's no question pending right
25 now.

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1 MR. CORE: Okay. Thank you, sir.
2 MS. HARRIS: Would you agree that the, that
3 there's an expectation of cars in a mall parking lot?
4 MR. CORE: Yes. I'm not being unrealistic in
5 recognizing that I live next to a mall. We bought next to a
6 mall. That's fine. I actually consider the mall an
7 amenity. The challenge is with putting in a large regional
8 fuel depot on a parcel adjacent to my home.
9 MS. HARRIS: And I believe you testified that
10 there would be emissions from the underground storage tank,
11 is that correct? Did I understand you correctly?
12 MR. CORE: I've read that gas storage tanks,
13 notwithstanding the leading-edge technology that Costco
14 utilizes, that there are emissions that come from this type
15 of activity.
16 MS. HARRIS: And what type of emissions are those?
17 MR. CORE: Volatile organic compounds. I'm not a
18 scientist so I'm getting beyond my --
19 MS. HARRIS: Do you know whether the level of, the
20 number of accidents has increased since the warehouse has
21 opened?
22 MR. CORE: I don't monitor that type of activity.
23 I'm here to testify based upon my own personal observations
24 of what I've seen at the mall parcel and what I've seen at
25 other Costco gas operations and to draw the conclusion that

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1 what has been represented isn't necessarily how people
2 behave.
3 MS. HARRIS: But you testified that it, it clearly
4 seems unsafe now to walk along the southeast portion of the
5 parking lot, correct?
6 MR. CORE: I did testify that transiting from
7 where I access the Ring Road off Torrance Court to walk over
8 to the Target is no longer a safe activity.
9 MS. HARRIS: And --
10 MR. GROSSMAN: But I think he premised it, at
11 least in part, on the fact there's no sidewalk along the
12 Ring Road, correct?
13 MR. CORE: Correct. Yes.
14 MR. GROSSMAN: Something that may be corrected --
15 MS. HARRIS: And do you think --
16 MR. GROSSMAN: -- if this special exception is
17 granted.
18 MS. HARRIS: Right. Do you think the addition of
19 the pedestrian path would increase the level of safety?
20 MR. CORE: I have not seen the design for the
21 pedestrian path so I'm not in the position to comment. I
22 can comment that motorists do drive along both lanes of the
23 Ring Road including that area that is marked for parking, so
24 I'm simply going to make a statement that one would hope
25 that if designed properly, it would create a safe walking

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1 environment but I've not seen that design.
2 MS. HARRIS: And if you heard that it was an
3 elevated path which was five feet wide, would that allay
4 some of your concerns?
5 MR. CORE: Again, I would want to see the drawing
6 in order to be able to comment.
7 MS. HARRIS: And with the gas station as I, the
8 138 peak hour trips, assume for a moment that 50 percent of
9 them are coming from the east and 50 percent of them are
10 coming from the west to the gas station. Do you agree that
11 that means that approximately, there will be a new car
12 attributable to the gas station every 50 or 50 minute, 50
13 seconds or so? Want me to break that down for you?
14 MR. CORE: Sure. If you'd like to write that
15 down.
16 MR. GROSSMAN: I don't know where that, I don't
17 know where that number came from exactly.
18 MS. HARRIS: There's 138 peak hour trips
19 associated with the gas station.
20 MR. GROSSMAN: Yes.
21 MS. HARRIS: If you assume that half of them are
22 coming from the east and half of them are coming from the
23 west, that means that you have 70, 69 vehicles coming from
24 the east and 69 coming from the west.
25 MS. CORDRY: I think that was actually --

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1 MR. GROSSMAN: During the peak hour?
2 MS. HARRIS: During the peak hour. And so if you
3 have 69 cars per hour, how many cars is that, how many
4 additional cars is that?
5 MR. GROSSMAN: I'm --
6 MS. CORDRY: I think --
7 MR. GROSSMAN: Just a minute. I don't know that
8 that's going to get me anywhere.
9 MS. HARRIS: Okay.
10 MR. GROSSMAN: I mean, that's --
11 MS. HARRIS: You testified you had some concerns
12 about the Beltsville station, is that correct?
13 MR. CORE: Right.
14 MS. HARRIS: And did you personally observe that
15 station?
16 MR. CORE: Yes.
17 MS. HARRIS: And did you see how many queuing
18 lanes were in that, at that station?
19 MR. CORE: Yes. I bought gas there.
20 MS. HARRIS: And how many queuing lanes are there?
21 MR. CORE: Um, I'd have to look at the picture
22 again.
23 MS. HARRIS: Okay.
24 MR. CORE: Forgive me. Or maybe you'd like to
25 tell me because obviously --

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1 MS. HARRIS: Would four surprise you?
2 MR. CORE: No. That wouldn't surprise me. Sure.
3 MS. HARRIS: And do you know how many queuing
4 lanes are going to be associated with this station?
5 MR. CORE: So we're talking 16 pumps, right? So
6 we're talking how many?
7 MS. HARRIS: Eight. Would eight surprise you?
8 MR. CORE: Eight, great. No. I mean, let's just
9 deal with the facts. So we've got eight lanes but a
10 materially different site. You've got the gas station I
11 think off further away from homes. I --
12 MS. HARRIS: But I'm just, I want to concentrate
13 on the queuing picture and --
14 MR. CORE: Okay.
15 MS. HARRIS: -- the configuration. So would you
16 not, would you agree that a configuration that has eight
17 lanes is very different than a configuration that has four
18 lanes?
19 MR. CORE: I will concur that they are different
20 but not very different and not necessarily enough to ensure
21 that people are going to get over that inhibition or that
22 desire to make sure they only fuel on the side where their
23 gas tank is located.
24 MS. HARRIS: Did you observe -- now, that's your
25 personal opinion that people don't like to --

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1 MR. CORE: Yes. And I'm testing, and I'm here
2 testifying based on my observations.
3 MS. HARRIS: So you've never seen anyone pull the
4 hose over to the other side.
5 MR. CORE: That's not what I'm saying. I'm
6 stating a preference. I believe people are more inclined to
7 fuel on the side where their gas tank is located, less
8 likely to want to fuel and pull the hose over their car, and
9 that affects the queuing behavior. That's what I'm
10 testifying to.
11 MS. HARRIS: I want to show you a number of
12 pictures.
13 MR. GROSSMAN: Ms. Harris, how much longer do you
14 think your cross-examination will be? I ask because it's
15 1:30 and I want people to be able to get some food in the
16 cafeteria.
17 MS. HARRIS: About 20 minutes. Should we --
18 MR. GROSSMAN: Maybe we should break so that
19 people will not miss their lunch.
20 MS. HARRIS: Okay. Certainly.
21 MR. GROSSMAN: So if that's all right with you,
22 Mr. Core, can you --
23 MR. CORE: Sure. Whatever is the pleasure of the
24 Hearing Examiner.
25 MR. GROSSMAN: You don't talk about food and my

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1 pleasure. That's a bad, that's a bad subject. Sore
2 subject. But in any event, it's 1:30 now so we'll come back
3 at 2:15 and break for lunch. Thank you.
4 MR. CORE: Thank you, sir.
5 (Whereupon, at a 1:30 p.m., a luncheon recess was
6 taken.)
7 MR. GROSSMAN: All right. Are we all ready to
8 resume? Mr. Core.
9 MR. CORE: Yes, sir.
10 MR. GROSSMAN: Would you be so kind as to resume
11 the stand? All right. Mr. Core, you're still under oath.
12 Would you like to resume your cross-examination?
13 MS. HARRIS: Yes. Thank you. Did you get the
14 packet of pictures, Mr. Core?
15 MR. CORE: I did not get a packet of pictures.
16 MS. HARRIS: I distributed some.
17 MR. GROSSMAN: I don't think I got a packet of
18 pictures either.
19 MS. HARRIS: No? Then I may have to recall one
20 packet to make sure that you get a packet, Mr. Grossman.
21 MR. GROSSMAN: You can take Michele's to keep her
22 out of trouble.
23 MS. HARRIS: Are there two packets over there and
24 if so -- I thought I have five copies.
25 (Discussion off the record.)

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1 MR. CORE: Is this the right time to give -- I
2 made a mistake in a citation earlier.
3 MR. GROSSMAN: Oh, all right. Sure. Go ahead.
4 MS. HARRIS: I'm sorry, what?
5 MR. CORE: I was asking, and forgive me, I was
6 asking Mr. Grossman how I made, I need to clarify a
7 reference that I made as we were talking about turning
8 radiuses earlier.
9 MR. GROSSMAN: Yes.
10 MR. CORE: And I cited page 188 --
11 MR. GROSSMAN: Okay.
12 MR. CORE: -- of a hearing that took place on
13 August 2nd.
14 MR. GROSSMAN: Yes.
15 MR. CORE: And in fact, it's pages 191 and 192
16 that same day.
17 MR. GROSSMAN: Okay. I don't know if that was
18 before or after there was some revisions in the plans, and
19 I'm not sure, I can't recall in terms of the timing of that
20 whether that was before or after the revised plans were
21 filed.
22 MS. CORDRY: August would have been after all the
23 revisions were in.
24 MR. GROSSMAN: Okay, great.
25 MR. CORE: So I apologize for having the incorrect

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1 page referenced.
2 MR. GROSSMAN: Don't sweat the small stuff.
3 MR. CORE: All right, sir.
4 MS. HARRIS: I'm handing out a Google picture of
5 the Sterling gas station which in fact, I believe may have
6 been submitted previously by permits but I can't recall. At
7 least it was distributed by e-mail yesterday.
8 MR. ADELMAN: We did, we did distribute that.
9 MS. HARRIS: Mr. Core --
10 MR. GROSSMAN: I'm sorry. Dr. Adelman?
11 MR. ADELMAN: We did distribute that photo of the
12 Sterling station.
13 MR. GROSSMAN: You're saying you didn't? I
14 couldn't --
15 MR. ADELMAN: We did distribute a photo of the
16 Sterling --
17 MR. GROSSMAN: You did.
18 MS. HARRIS: Okay.
19 MR. GROSSMAN: Was it --
20 MS. HARRIS: Is it an exhibit?
21 MR. GROSSMAN: -- marked as an exhibit previously?
22 MS. ADELMAN: I don't know.
23 MR. GROSSMAN: Okay. Do you wish to mark is as an
24 exhibit?
25 MS. HARRIS: Yes, please.

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1 MR. GROSSMAN: Okay. All right.
2 MS. HARRIS: So this is exhibit number?
3 MR. GROSSMAN: Let's see. Grab the right exhibit
4 list here. This will be Exhibit 343.
5 (Exhibit No. 343 was marked
6 for identification.)
7 MR. CORE: I hope your exhibit system goes up to
8 four digits because you might need it at the rate this is
9 going.
10 MR. GROSSMAN: You're inspiring fear in my heart
11 Mr. Core.
12 MR. CORE: I retract that observation, sir.
13 MR. GROSSMAN: Thank you.
14 MS. HARRIS: Mr. Core, do you have a copy?
15 MR. CORE: I do have a copy of this. It's the
16 first time that I'm seeing this.
17 MS. HARRIS: Okay. And this is the Sterling
18 station which, Mr. Core, you, are you aware that that
19 station does approximately 30 percent more business than
20 what's expected at the Wheaton station?
21 MR. CORE: I understand that that is the highest
22 per volume gas station on the East Coast. I believe that
23 testimony.
24 MR. GROSSMAN: And Exhibit 343 is an aerial
25 photograph of the Sterling station?

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1 MS. HARRIS: Of the Sterling, yes.
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: And you'd agree it looks like a
4 pretty busy station, yes.
5 MR. CORE: Yes.
6 MS. HARRIS: And can you count how many cars are
7 in the queue in that aerial photo?
8 MR. CORE: No, I can't because one, this is the
9 first time that I'm seeing this. The resolution is not
10 something, the resolution could be problematic because you
11 really could not tell if there were a black or dark blue
12 vehicle queued up here. I will make an observation that
13 this is very different than what the proposed special
14 exception would look like. This is quite further away from
15 the store than what we're talking about and thus, would
16 probably be quite far away from the loading docks and
17 appears to be quite close to some significant roadways.
18 MS. HARRIS: And but you would agree even if you
19 can't count the number of cars that there's certainly a lot
20 of cars there, correct?
21 MR. CORE: Again, I can't make any comments on the
22 picture because of the quality.
23 MS. HARRIS: Here. Perhaps, let me show you one
24 that has better resolution.
25 MS. ROSENFELD: Could I see that first, please,

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1 Pat? Thank you.
2 MR. GROSSMAN: Ms. Harris, what does it establish
3 if there are a lot of cars queued up at Sterling?
4 MS. HARRIS: I want to make the point that a lot
5 of cars doesn't necessarily translate into a nuisance in
6 effect, so I'd like the witness to identify whether in fact
7 it doesn't look like there's any nuisance occurring activity
8 based on that photo.
9 MR. CORE: Could someone define for me what
10 definition, the definition of nuisance is in relation to
11 property?
12 MR. GROSSMAN: Well, I don't think anybody can at
13 this point. The point is what your understanding of it is
14 because it can be, it's a technical term in some, in some
15 aspects but your attorney or the attorney for Kensington
16 Heights, asked you what you considered a nuisance.
17 MR. CORE: Yes. In --
18 MR. GROSSMAN: So it's whatever you consider a
19 nuisance is is what it is.
20 MR. CORE: My understanding of the definition of
21 nuisance, and I want to make sure that I'm responding in a
22 way that's going to be helpful for the proceedings, and my
23 understanding of a nuisance is that it's something that
24 detracts from the enjoyment or the value of property.
25 MR. GROSSMAN: Okay. So in terms of that, your

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1 understanding of nuisance?
2 MR. CORE: Is I wouldn't be able to comment on
3 this because I don't see any homes here. If my home was
4 right there, I would say that is likely to be a nuisance.
5 MS. HARRIS: And on what basis would that be a
6 nuisance?
7 MR. CORE: Um, traffic, idling, all the items that
8 we suggested are problematic with inserting a regional fuel
9 depot inside a post-war community that has been established
10 since the '40s or earlier.
11 MS. HARRIS: Is there already a nuisance occurring
12 on the Ring Road at the mall given the existing level of
13 activity that occurs at the mall presently?
14 MR. CORE: No. I think that was a baseline that
15 property owners knew about when they purchased the home.
16 MS. HARRIS: Even, even those property owners that
17 purchased their home prior to the redevelopment of the
18 Wheaton Mall?
19 MR. CORE: What -- help me understand. I didn't
20 understand that question.
21 MS. HARRIS: Did the property owners that
22 purchased their property prior to the addition of the, for
23 instance, the most recent, the Costco warehouse?
24 MR. CORE: I'm -- help me understand what's the
25 question again.

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1 MS. HARRIS: Your statement was that there's not a
2 nuisance currently on the mall because people purchased
3 their property with recognition of the mall property. Is
4 that a correct understanding of what you said?
5 MR. CORE: Yeah. That is a fair statement.
6 Speaking from my experience, I bought a home near a Metro
7 station next to a mall that has certain baseline of
8 activities. It did not include a gas station.
9 MS. HARRIS: But you did purchase prior to the
10 construction of the Costco warehouse, correct?
11 MR. CORE: Correct.
12 MS. HARRIS: And you testified, I believe, that
13 the Costco warehouse has increased the level of traffic at
14 the mall, correct?
15 MR. CORE: Correct.
16 MS. HARRIS: And you also testified that you're
17 aware that the mall itself has rights to another 183,000
18 square feet.
19 MR. CORE: Correct.
20 MS. HARRIS: But none of that is a nuisance.
21 MR. CORE: I'm suggesting that being a reasonable
22 consumer, a reasonable economic actor, we bought a home near
23 a regional mall, not next to a gas station which is not
24 ceteris paribus. That is a completely different thing.
25 It's a game changer.

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1 MS. HARRIS: Can you repeat, what's a game -- I'm
2 sorry.
3 MR. GROSSMAN: Ceteris paribus. It's not -- it's
4 a term in economics used. All conditions being equal.
5 MR. CORE: Yes. Adding a gas station is a
6 different activity, it's a different condition.
7 MS. HARRIS: Because of the number of cars coming
8 from to gas station?
9 MR. CORE: I would suggest the number of cars as
10 well as the presence of idling, the presence of lots of fuel
11 deliveries, more tractor trailers. What we have here is not
12 just a gas station but an intensity of use that is orders of
13 magnitude larger than one could expect from a regular gas
14 station. I testified earlier today that there are gas
15 stations in malls. Would I like to live next to a gas
16 station? Absolutely not. Is this special exception
17 proposal different than a regular gas station? Absolutely.
18 MS. HARRIS: Is it the 138 --
19 MR. CORE: And I believe there are non-inherent
20 effects.
21 MS. HARRIS: Is it the number of customers coming
22 to the station itself that would create a nuisance?
23 MR. CORE: So let's look at the non-inherent
24 effects that the Planning Board staff --
25 MR. GROSSMAN: Let's answer her question.

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1 MR. CORE: Okay.
2 MR. GROSSMAN: Is it the number of people coming.
3 MR. CORE: Sorry. Do you want to rephrase the
4 question again because I want to make sure I answer it.
5 MS. HARRIS: The number of trips generated by the
6 gas station, is that what is going to contribute to the
7 nuisance?
8 MR. CORE: It is a contributing factor.
9 MS. HARRIS: And if the same number of cars were
10 coming to a different kind of retail establish on the mall,
11 would that be a nuisance?
12 MR. CORE: I don't believe you would have the same
13 nuisance being created because it would be distributed over
14 the 80 acre parcel depending upon where the development
15 occurs.
16 MS. HARRIS: If a -- assume for a moment that the
17 special exception was not being built and instead, a pad
18 site is going exactly in that same location so you have an
19 independent retailer at the location where the special
20 exception is currently being proposed.
21 MR. CORE: Yes.
22 MS. HARRIS: And so people are driving to that
23 specific location. How is that any different than if it's a
24 gas station? I'm confused about why if it's one use --
25 MR. GROSSMAN: You asked the question. Don't tell

1 him what you are confused about.
 2 MS. HARRIS: Okay.
 3 MR. GROSSMAN: How is it different if they had a,
 4 if instead of on the special exception site, instead of a
 5 gas station, they had some other use. A McDonald's.
 6 MR. CORE: Sure.
 7 MR. GROSSMAN: Would that be different in terms of
 8 a nuisance to you?
 9 MR. CORE: I believe that would be different in
 10 terms of a nuisance because of the fundamental activity
 11 that's taking place on the site. So I am being clear that
 12 nuisance is not just the traffic that's a contributing
 13 factor. It's also the type of activity and, so I'm leaving
 14 it at that. There are a number of factors that are part of
 15 this.
 16 MS. HARRIS: So if 2,000 cars came to the gas
 17 station a day and 2,000 cars came to the McDonald's, it's
 18 your view that the 2,000 cars coming to the gas station
 19 would be a contributing factor to a nuisance but not if
 20 2,000 cars going through another use. I'm just trying to be
 21 clear on my understanding.
 22 MR. CORE: So 2,000 cars. I would want to
 23 hopefully be the franchisee on that McDonald's but, because
 24 that's a lot of, a lot of business. To be clear, I believe
 25 the use, because we can assume, again running with the

1 hypothetical, that if we were going to have 2,000 cars
 2 coming to the McDonald's, not all of those cars would be
 3 going through the drive-thru, some would. They certainly
 4 would not all be idling and they certainly not would all,
 5 they would not be jockeying with tractor trailers and they
 6 would not be jockeying with the trailers that are trying to
 7 pull into the loading dock at the same time and it's not
 8 likely that there would be that type of backup on the Ring
 9 Road.
 10 So it's -- while convenient to try to identify one
 11 particular variable that I may have a problem with, we need
 12 to take a whole systems approach. And my whole, my concept
 13 is that we've got the traffic, we've got the idling, we've
 14 got the emissions. We just have use that's intense and
 15 it's not consistent with that particular parcel. That's
 16 based on my observation and how I feel as being someone who
 17 lives in that neighborhood.
 18 MS. HARRIS: Coming back to the Sterling photo for
 19 a moment, would you agree that the cars in the queue look
 20 fairly orderly and are spaced fairly evenly?
 21 MR. CORE: Yeah.
 22 MS. HARRIS: And is there reason to believe that
 23 that same level of order in terms of queuing will not occur
 24 at the Wheaton site?
 25 MR. CORE: Yeah. Based on my observations in

1 Columbia, again, just my experience, and again, even my
 2 experience buying gas in Beltsville, that that type of
 3 activity, people don't behave that way.
 4 MS. HARRIS: And how many queues again does
 5 Beltsville have?
 6 MR. CORE: I think you gave me that number, and
 7 that was four.
 8 MS. HARRIS: And do you know how many Columbia
 9 has?
 10 MR. CORE: I'd have to look back at my pictures.
 11 MS. HARRIS: Would six surprise you?
 12 MR. CORE: No. That would not surprise me.
 13 MS. HARRIS: And how many are on the Sterling
 14 photo?
 15 MR. CORE: Well, we could probably save everyone
 16 some time if you told me. It looks like eight.
 17 MS. HARRIS: Eight. Thank you. And, and you're
 18 aware that the Wheaton special exception will have eight as
 19 well.
 20 MR. CORE: Correct. Again, however, I would
 21 suggest, respectfully, that the design of the special
 22 exception that we're looking at is very different than the
 23 design of this particular photo that we are examining here.
 24 MS. HARRIS: Are you aware that one of the
 25 conditions of approval from the Planning Board is that

1 Costco will be required to have a second attendant to manage
 2 queues during the peak hours of the gas station?
 3 MR. CORE: I am aware of that
 4 MS. HARRIS: And wouldn't you agree that that in
 5 fact would ensure that there would be an orderly management
 6 of the queue, similar to what you see at Sterling where
 7 there is no manager organizing the queue?
 8 MR. CORE: No. Not necessarily because I don't
 9 think your fellow standing out there in his reflective vest
 10 is going to get people to behave much more differently than
 11 they want to, so I don't accept the premise of the question.
 12 MS. HARRIS: So you're suggesting that if you have
 13 a Costco attendant there waving someone in or telling
 14 someone to stop, that they'll totally ignore that
 15 individual?
 16 MR. CORE: I'm not saying that everyone will but I
 17 think a proportion of people will not conform with what the
 18 attendant is directing them to do. It's human nature. You
 19 know, my pump is on the left side. I don't want to pull
 20 into a spot where you know, the gas, I have to put the hose
 21 over the car. I think we just have to deal with human
 22 nature, how people behave.
 23 MS. HARRIS: So are you suggesting that it be,
 24 that it's a condition that shouldn't be included if in fact
 25 this were to be approved?

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1 MR. CORE: No. I'm not suggesting that at all.
2 I'm suggesting that if it were approved, having a second
3 attendant would, would alleviate some of the non-inherent
4 characteristics but it's still not going to get us to a good
5 baseline of what the numbers ought to be for the background
6 emissions.
7 MS. HARRIS: Okay. No further questions.
8 MR. GROSSMAN: Okay. Any re -- well --
9 MR. ADELMAN: The coalition, coalition has a few.
10 CROSS-EXAMINATION BY MR. ADELMAN
11 MR. ADELMAN: Excuse me, Mr. Core. Can you hear
12 me?
13 MR. CORE: I can.
14 MR. ADELMAN: Okay. I have just a few questions
15 having to do with your observations of a Costco station in
16 Columbia. How close, in your observation, is the Costco
17 warehouse to the gas station?
18 MR. CORE: In Columbia, it's totally across the
19 parking lot. You know, I didn't measure it but there is a
20 significant distance, there's -- so you've got the gas
21 station facility. Do we have a map of the Columbia site so
22 that I can answer your question?
23 MR. ADELMAN: I would settle for a ballpark
24 estimate.
25 MR. CORE: Okay. Well, so you have the gas area,

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1 you've got a roadway and you've got a parking lot and then
2 you've go into the store.
3 MR. ADELMAN: So --
4 MR. CORE: So it's a distance.
5 MR. ADELMAN: It's a distance. All right. What
6 would you -- did you observe any other stores in close
7 proximity to the gas station and if so, roughly how close to
8 the gas station are they?
9 MR. CORE: So there are some stores again
10 separated by a roadway and then another parking lot, like a
11 strip mall type component. I think there's a sub shop
12 there. But really, the gas station I would characterize as,
13 you know, being an independent amenity component that is
14 separated from the store and separated from the other retail
15 establishments that are there.
16 MR. ADELMAN: If a car enters the Columbia Gateway
17 gas station, does it enter through another parking lot, a
18 parking lot that serves other stores?
19 MR. CORE: Um, to answer your question, there's a
20 road -- yeah. They come off the highway and you go into
21 like a drive area. And then there's an internal road
22 probably analogous to the Ring Road that we're talking about
23 here, and then you proceed and then you have to make a left
24 into another roadway to make another left into the gas
25 station. That's what I observed. I believe there's also

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1 another entrance coming from another direction.
2 MR. ADELMAN: When a car leaves that gas station,
3 does that car, is that car required to drive through a
4 parking lot in order to leave the gas station?
5 MR. CORE: I don't know. I'd have to look at my
6 photos, but I, it's my, and this is where a map would be
7 handy, my recollection is you've got much easier egress
8 coming out of the Columbia gas station than you would have
9 coming out of the proposed special exception which is
10 another material difference here in terms of traffic flow
11 and how fast traffic will move or slow traffic will move.
12 MR. ADELMAN: Okay. Now, with respect to your
13 photographs, the photograph near the end of your packet with
14 the red dots on but again, the resolution --
15 MR. CORE: Is this the photo of the Beltsville
16 station, sir?
17 MR. ADELMAN: Yes. Exactly. The red dots, as I
18 understand it, indicate places where cars are not bumper to
19 bumper (indiscernible).
20 MR. CORE: Yeah. Well, they're not -- there's
21 additional space between the vehicles that reflects
22 additional, that they're not queuing in a manner consistent
23 with what was detailed in the Costco special exception
24 application.
25 MR. ADELMAN: So --

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1 MR. CORE: Yes. Additional space.
2 MR. ADELMAN: I'm not sure of the exact number.
3 Would you estimate how many cars in that, the combined
4 queuing area? Just --
5 MR. GROSSMAN: Well, you don't have to estimate.
6 You can count them up yourself on the document.
7 MR. ADELMAN: I just thought that he would do it
8 rather than --
9 MR. CORE: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
10 13, 14, 15, 18, 19 -- probably 22 or 23, give or take.
11 MR. ADELMAN: So 22. Okay.
12 MR. CORE: Yeah. I'm sorry. We can take a moment
13 and I can count.
14 MR. ADELMAN: That's fine. Twenty-two is good
15 enough.
16 MR. CORE: Okay. Good.
17 MR. ADELMAN: If based on your reading of Costco's
18 traffic impact statement and the queuing map that was
19 distributed as part of that packet, how many cars would
20 Costco propose are going to be in the Wheaton station in
21 that much fueling space?
22 MR. CORE: Oh, I'm sorry. I don't have that map
23 with me and I don't want to hazard a guess that's going to
24 be inadequate.
25 MR. ADELMAN: Okay. Well, then let me phrase the

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1 question in a different way. If you look at the red dots
2 and sort of mentally estimate how much space is there that's
3 not occupied by cars and then mentally fill in the space
4 with cars, how many cars would be in that queuing area?
5 MR. GROSSMAN: I think this is too -- why do we
6 want to speculate on that anyway? What is that going to do
7 for me?
8 MR. ADELMAN: I was hoping that Mr. Core could
9 give you an answer to a question you asked but I'll withdraw
10 the question.
11 MR. GROSSMAN: Okay. Thank you.
12 MR. ADELMAN: And I have no further questions.
13 Thank you.
14 MR. CORE: Sorry. I wish I could have been --
15 MR. GROSSMAN: Any redirect?
16 MS. ROSENFELD: Some redirect, yes. Thank you.
17 Mr. Grossman, the Costco gas Sterling photo, does that
18 exhibit have a number?
19 MR. GROSSMAN: It does. It's Exhibit 343.
20 MS. ROSENFELD: I was so focused on four digits
21 that --
22 MR. GROSSMAN: You almost paralyzed us.
23 MR. CORE: I'm sorry, sir.
24 REDIRECT EXAMINATION
25 MS. ROSENFELD: Mr. Core, Exhibit No. 88(j), the

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1 presentation with the photographs that you've been speaking
2 about --
3 MR. CORE: Yeah.
4 MS. ROSENFELD: -- did you personally take the
5 photographs that are in this exhibit?
6 MR. CORE: I took all of the photographs in this
7 exhibit except for the Google Maps shot of the Beltsville
8 station which I secured from an internet search of Google
9 Maps.
10 MR. GROSSMAN: You took a picture of Einstein?
11 MR. CORE: Oh, forgive me. I did not take that
12 picture of Einstein.
13 MS. ROSENFELD: And --
14 MR. CORE: In the interest of full disclosure.
15 MS. ROSENFELD: And they accurately reflect your
16 observations --
17 MR. CORE: Correct. Yes.
18 MS. ROSENFELD: -- that afternoon. And --
19 MR. CORE: But I did, all I added was some of the
20 explanatory notes to illustrate how, the effects, the
21 queuing behavior.
22 MR. GROSSMAN: And since we're identifying the
23 photographs, I think it would be helpful since you took
24 them, I don't recall if you said what date you took these
25 on.

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1 MR. CORE: I believe they were taken on February
2 17th which was a Sunday.
3 MR. GROSSMAN: Of?
4 MR. CORE: 2013.
5 MR. GROSSMAN: Okay.
6 MS. ROSENFELD: Ms. Harris asked you about the
7 impact of the number of trips generated by this station
8 compared with other types of uses. For example, other uses
9 that are located on the mall parcel include such uses as
10 office buildings and retail stores. In your experience in
11 observing those more traditional retail types of uses, is
12 there extensive queuing associated with traffic going to,
13 for example, the Sears or the Giant or the Starbucks?
14 MR. CORE: No.
15 MS. ROSENFELD: Is there queuing associated with
16 vehicles traveling to those uses?
17 MR. CORE: No.
18 MS. ROSENFELD: Is --
19 MR. CORE: With exception, there is more queuing
20 on the Ring Road now. I'm sorry. Not the Ring Road but the
21 roadway from University up to the Ring Road now that the
22 warehouse is opened.
23 MS. ROSENFELD: And the testimony previously given
24 has been that when the queues within the gas station are,
25 are full, there could be as long as 15 or more minutes while

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1 cars approach the gas tanks. Have you noticed idling of
2 cars for 15 minutes, for example --
3 MR. CORE: Right now?
4 MS. ROSENFELD: -- going to the retail stores?
5 MR. CORE: No.
6 MS. ROSENFELD: If I can direct your attention to
7 Exhibit 343 and the manner in which those cars are queued.
8 I'd like you to take a look at that exhibit 88(j) and go
9 back to the picture with the red dots.
10 MR. CORE: Right.
11 MS. ROSENFELD: And in looking at the entrance to
12 that particular station, is there unimpeded perpendicular
13 access to the pumps as there is in Exhibit 343?
14 MR. CORE: So in terms of access to the queuing?
15 MS. ROSENFELD: Right. Can you describe the
16 entrance at Beltsville?
17 MR. CORE: Yeah. So there are, there are two
18 parts to the parking lot and there's a bit of a roadway that
19 leads into the gas queuing area, and there's two exit, exit
20 lanes on what appear to be the right side of this photograph
21 in Beltsville.
22 MS. ROSENFELD: And is it, for example, the Costco
23 Sterling filling gas station, cars drive in directly
24 perpendicular.
25 MR. CORE: Yeah.

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1 MS. ROSENFELD: Are they driving in, is the
2 entrance perpendicular at the Beltsville location?
3 MR. CORE: No. You're proceeding down a roadway
4 and then bearing right to queue up to get into the gas
5 lines.
6 MS. ROSENFELD: So the cars need to make some
7 turns --
8 MR. CORE: Yes.
9 MS. ROSENFELD: -- in order to maneuver into the
10 lanes?
11 MR. CORE: Yeah. They need to maneuver to the
12 right in order to get into the gas lane or to get out and
13 get into the lanes that exit onto the roadway so that you
14 can leave the station.
15 MS. ROSENFELD: Okay. And I'd like to direct your
16 attention to exhibit number --
17 MR. CORE: Which is different from what we're
18 talking about here in Sterling.
19 MR. GOECKE: I don't know if that's an exhibit.
20 MS. ROSENFELD: This is not an exhibit?
21 MR. GOECKE: It should be.
22 MS. ROSENFELD: This is the redline overlay dated
23 7/31/13.
24 MR. GROSSMAN: Then it would be an exhibit. Are
25 you trying to figure out what the number is?

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1 MS. ROSENFELD: Sheet number 1 of 1.
2 MR. GROSSMAN: Do you have a number that you're
3 writing down?
4 MS. ROSENFELD: I will once I get it.
5 MR. GROSSMAN: Oh, okay.
6 MS. ROSENFELD: It's dated 7/31/13.
7 MR. GROSSMAN: All right. Let's see if we can
8 pull it back up.
9 MS. HARRIS: It's the redline overlay.
10 MR. GROSSMAN: Right. All right.
11 MS. CORDRY: Somewhere in the range of 230 to 233
12 or something like that.
13 MR. GROSSMAN: Here it is. I think it's 231.
14 Redline overlay of special exception plan dated July 31,
15 2013. It's 231.
16 MS. ROSENFELD: Directing your attention to
17 Exhibit No. 231, which is the special exception layout as
18 currently proposed, would you compare the entrance to the
19 proposed special exception with the way cars access through
20 the entrance at Sterling?
21 MR. CORE: Sure. Do you want me to stand up?
22 MS. ROSENFELD: If you're more comfortable,
23 certainly.
24 MR. CORE: So I think what we have here, again,
25 I'm not an expert on these things, just testifying as a

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1 reasonable person who made some observations at another gas
2 Costco operation in Columbia, that what we have here is a
3 situation that's very different. This appears to have
4 multiple --
5 MS. ROSENFELD: This?
6 MR. GROSSMAN: This being?
7 MR. CORE: I'm sorry, being the Sterling, the --
8 MR. GROSSMAN: The Sterling.
9 MR. CORE: The Exhibit 343 suggests that there are
10 multiple ways to get in and there's more space for queuing
11 up and getting into the queuing area. There's less going on
12 here. It's a little easier for people to know what's
13 happening and where to go. This is very different than what
14 we see here in this Exhibit 231 in Wheaton where you're
15 going to have cars coming in and making a left, cars coming
16 this way are going to stop in order to make, I'm sorry,
17 they're going to make a left.
18 MR. GROSSMAN: This way. Coming in either
19 direction on Ring Road.
20 MR. CORE: Cars coming in either direction,
21 there's going to be additional conflicts. This is going to
22 slow down traffic that's coming from this direction and then
23 gosh by golly, I feel that this is just very different when
24 you look at the Sterling compared to Wheaton because now
25 they're going to be exiting right up into the parking area

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1 and that I think is just going to slow things down. So I'm
2 going to suggest that we're going to have some real
3 conflicts and things slowing down right here trying to get
4 into this reasonably narrow area.
5 MS. ROSENFELD: And in terms of the way people
6 would queue -- may I see a better copy of Exhibit 343? Mr.
7 Grossman, is yours easier to --
8 MR. GROSSMAN: Mine is relatively dim but I can --
9 MS. ROSENFELD: May I see it? Okay.
10 MR. CORE: It's much better. All right.
11 MS. ROSENFELD: All right. Mr. Core, when you
12 take a look at the Sterling gas station, are cars limited to
13 one narrow entrance in order to queue within the special
14 exception area?
15 MR. CORE: No. It appears that there are multiple
16 ways of accessing the gas station in Sterling, and there is
17 only one way of accessing the gas station here.
18 MS. ROSENFELD: And in comparing the layout at the
19 Beltsville station and the layout at the Costco, at the
20 Sterling station, which is more similar to the Wheaton
21 design in terms of vehicular access to the queues?
22 MR. CORE: So I would say that while they're not
23 completely analogous, if I had to choose one, I would say
24 that the Beltsville is more similar because you've got
25 multiple activities going on in Beltsville. It's people

1 going in to get gas but it's also kind of the direction you
2 go in order to exit the Costco facility, in order to get out
3 to the street, whereas this is very different in a sense.
4 In Sterling, there are multiple ways of getting into the
5 area and it's all very clear, clear line of sight.

6 MS. ROSENFELD: And in terms of, again, the
7 comparison as between the Beltsville and the Sterling, which
8 one appears to be easier to queue in straight lines?

9 MR. CORE: Certainly, I would suggest the Sterling
10 because it's a much wider space. There are more ways of
11 getting in. I would say that this is, Sterling is not a
12 good comparison for this because we've got one choke point
13 here that's going to hold things up over here. And then I
14 think --

15 MS. ROSENFELD: By here you mean the entrance from
16 the Ring Road --

17 MR. CORE: Correct.

18 MS. ROSENFELD: -- to the special exception.

19 MR. CORE: Yeah.

20 MS. ROSENFELD: And --

21 MR. GROSSMAN: Mr. Core, may I have that better
22 picture because Ms. Harris didn't give me the good picture
23 for the exhibit. I want to use the good picture as the
24 actual exhibit. Thank you.

25 MS. ROSENFELD: And so in terms of the way that

1 people would likely queue, do you have an opinion as to
2 whether at Wheaton, the queues would look more like the
3 queues on your exhibit in Beltsville or more like the one in
4 Sterling?

5 MR. CORE: I actually think people will end up
6 queuing irregularly like I observed in Columbia because
7 you've got a similar activity where folks are coming into a
8 particular entrance, they're trying to figure out what line
9 do I get into, what side is, where is the hoes relative to
10 my gas tank. And so I would go not with a Sterling or a
11 Beltsville. I would go with a Columbia as being the model
12 and traffic spilling out into the roadway.

13 MS. ROSENFELD: I have no further questions.

14 MR. GROSSMAN: Any recross?

15 MS. HARRIS: Can you give me just a moment?

16 MR. GROSSMAN: Sure.

17 MS. HARRIS: No questions. Thank you.

18 MR. GROSSMAN: All right. Thank you very much,
19 Mr. Core.

20 MR. CORE: Thank you, sir.

21 MR. GROSSMAN: You're done for today I guess, but
22 you're more than welcome to stay and watch the rest of the
23 festivities.

24 MR. CORE: Sadly, the people's business calls so I
25 have to --

1 MR. GROSSMAN: But I expect you're coming back on
2 the 24th. Is that --

3 MS. ROSENFELD: And one procedural point on that.
4 Mr. Core has business travel the following week. Would it
5 be possible for him to testify first in the morning on
6 Thursday so that he could get back to the office and wrap up
7 before he --

8 MR. GROSSMAN: As far as I'm concerned, if it were
9 okay with Ms. Harris, he could finish his testimony today.

10 I don't know about --

11 MS. ROSENFELD: Well, I don't think he's prepared.
12 We don't have his exhibits for today.

13 MR. GROSSMAN: Okay.

14 MS. ROSENFELD: And we weren't quite sure how long
15 things would go.

16 MR. CORE: I appreciate the courtesy.

17 MR. GROSSMAN: Absolutely, sir. We appreciate you
18 coming down here.

19 MR. CORE: Thank you.

20 MS. ROSENFELD: Thank you.

21 MS. HARRIS: Michele, actually on that note, you
22 identify someone from Sierra Club. Do you have a name or
23 not?

24 MS. CORDRY: Ethan Goffman, G-O-F-F-M-A-N.

25 MS. HARRIS: Okay. Thank you. Efran?

1 MS. CORDRY: Ethan.

2 MS. HARRIS: Uh-huh.

3 MS. ROSENFELD: And, and we're not calling him as
4 a Kensington Heights witness. He advised us he would like
5 to testify and he's available. We're trying to make sure we
6 have witnesses.

7 MR. GROSSMAN: Hold on while I pull out that
8 little -- oh, you have somebody else that you're adding on?
9 I didn't --

10 MS. ROSENFELD: This is for Thursday.

11 MR. GROSSMAN: Yes. But there was a Marianne
12 Carter but I didn't hear an Ethan somebody.

13 MS. CORDRY: It's the Sierra Club.

14 MS. ROSENFELD: The Sierra Club.

15 MS. ADELMAN: The Sierra Club.

16 MS. ROSENFELD: She asked the name of the person
17 from the Sierra Club.

18 MR. GROSSMAN: Oh, I see. Okay. That's Ethan --

19 MS. CORDRY: Goffman. I guess it is G-O-F-F-M-A-
20 N.

21 MR. GROSSMAN: All right. So now we have Mr. Core
22 to start out with, then Mr. Silverman.

23 MS. ROSENFELD: Oh, Mr. Adelman.

24 MS. ADELMAN: No, that's right. No. Mr.
25 Silverman. He has to come back.

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1 MR. GROSSMAN: Mr. Silverman hasn't his --
2 MS. ROSENFELD: Oh.
3 MS. ADELMAN: So he'll be second then.
4 MR. GROSSMAN: I guess that makes sense unless we
5 have somebody who's got a tight time frame that we have to
6 accommodate. Okay. So now are we ready to move onto Ms.
7 Sheveiko?
8 MS. ROSENFELD: Yes, we are.
9 (Discussion off the record.)
10 MR. GROSSMAN: Ma'am, would you state your full
11 name and address, please?
12 MS. SHEVEIKO: My name is Elena Sheveiko. I live
13 at 10812 Melvin Grove Court, Kensington, Maryland.
14 MR. GROSSMAN: All right. Would you raise your
15 right hand, please?
16 (Witness sworn.)
17 MR. GROSSMAN: You may be seated.
18 MS. SHEVEIKO: Okay.
19 MR. GROSSMAN: And are you being called by a party
20 here or is she independent?
21 MS. ROSENFELD: She is here on behalf of KHCA.
22 MR. GROSSMAN: Okay. So do you wish to question?
23 MS. ROSENFELD: But she will be testifying in the
24 narrative.
25 MR. GROSSMAN: Okay. You may begin, ma'am.

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1 DIRECT EXAMINATION
2 MS. SHEVEIKO: Everybody before me was so well-
3 educated, well-spoken. It's hard for me to follow --
4 MR. GROSSMAN: You're going to do just fine. You
5 did fine --
6 MS. SHEVEIKO: -- with my heavy Russian accent.
7 Okay. I want you to see my Exhibit 1.
8 MR. GROSSMAN: Well, I --
9 MS. SHEVEIKO: Of 20 years.
10 MR. GROSSMAN: I can't, I can't see what it is
11 that you're showing. Costco --
12 MS. CORDRY: Show it to him.
13 MS. SHEVEIKO: Costco executive --
14 MR. GROSSMAN: It's a Costco --
15 UNIDENTIFIED SPEAKER: A Costco executive
16 membership card.
17 MR. GROSSMAN: I see. Okay.
18 MS. SHEVEIKO: I've been with Costco since it was
19 Price Club and I, I know all good things about it.
20 Otherwise, I wouldn't be a member. I've been shopping
21 around the country with my membership card, including
22 Hawaii. I've been using gas station so I know all about it.
23 I have enough experience. And I want to start very simple
24 thing, like I never remember numbers, I'm bad with names but
25 I always, first of all, trust people. I believe. And also,

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1 I always use common sense. And I was, I've been listening
2 all day long and I realize that I had not heard the most
3 important thing about Costco gas station. I mean what is
4 most important for me.
5 Each gas station, including Costco, must display a
6 sign. Turn off engine. Is it superstitious or it's a law?
7 It is a law. Why so? Because there is a hazard. Each gas
8 station is potentially dangerous place to begin with. I
9 know that Costco will make sure nothing ever goes wrong but
10 so was Titanic creators. Please remember doesn't matter how
11 many cars in queues, how bad traffic is, how noisy it is or
12 it's silent. It's a hazard place. It's the nature of this
13 place to be hazard and unless you prove it's not. In this
14 case, please remove the sign from your gas station.
15 MR. GROSSMAN: I must say I do want you to
16 understand that you're saying all gas stations are hazards
17 in fact.
18 MS. SHEVEIKO: It's in nature of gas station.
19 MR. GROSSMAN: Right. And but the point is that
20 the Council, Montgomery County Council, has said that gas
21 stations can exist in the county in the zone with a special
22 exception even though they recognize that they are
23 hazardous. That's an inherent character --
24 MS. SHEVEIKO: Okay.
25 MR. GROSSMAN: That's an inherent characteristic

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1 of gas stations.
2 MS. SHEVEIKO: Yeah. Uh-huh.
3 MR. GROSSMAN: And so what we have to look at is
4 something beyond that
5 MS. SHEVEIKO: Okay.
6 MR. GROSSMAN: Okay. That's, that's it.
7 MS. SHEVEIKO: Okay. But also, I'd like to make a
8 point. When it is about human's lives or health, we have to
9 be very careful. We have to be very careful. It's up to
10 people to decide if they take risk or not, just buying a
11 house next to the gas station, but in this case, we have no
12 choice.
13 Even I consider it extremely dangerous for myself,
14 for my neighbors, especially for children in my
15 neighborhood. On my court, there's five children playing
16 under age of seven. Three boys and two girls. And if it's
17 dangerous, okay, there is a chance of accident or something.
18 If it's your child, would you take an estimated risk or not?
19 Probably not. We are not given this choice. We cannot
20 decide. Because doesn't matter what I think dangerous or
21 not. They're going to come. And open please to page 1.
22 MR. GROSSMAN: Is this -- you handed something
23 out. Has this been marked as an exhibit before do you know?
24 MS. SHEVEIKO: Oh, it's been shown so many times
25 on each presentation.

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1 MR. GROSSMAN: Well, I'm not arguing about that.
2 I just want to know if it's been marked as an exhibit.
3 MS. SHEVEIKO: No.
4 MR. GROSSMAN: All right. So let's, we're going
5 to mark it as an exhibit.
6 MS. SHEVEIKO: Okay.
7 MR. GROSSMAN: So hold on a second. That will be
8 344.
9 (Exhibit No. 344 was marked
10 for identification.)
11 MS. SHEVEIKO: Okay.
12 MR. GROSSMAN: Hold on one second. I have --
13 MS. SHEVEIKO: Oh, I'm sorry, sir.
14 MR. GROSSMAN: I have to identify what it is. 344
15 is Elena Sheveiko's --
16 MS. SHEVEIKO: Some of them even been displayed
17 today but I put them together so --
18 MR. GROSSMAN: Okay. Elena Sheveiko's photos of
19 the site.
20 MS. SHEVEIKO: Yes. The first one, the photo of
21 the site.
22 MR. GROSSMAN: Okay.
23 MS. SHEVEIKO: So the first picture --
24 MR. GROSSMAN: Yes.
25 MS. SHEVEIKO: -- my husband took a couple years

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1 ago and we, like it represents the distance between my
2 property and, and Costco gas station. So I will be living
3 in the same proximity --
4 MR. GROSSMAN: When you say --
5 MS. SHEVEIKO: -- to the proposed --
6 MR. GROSSMAN: Let me say that you are showing a
7 picture of a different Costco gas station.
8 MS. SHEVEIKO: Yeah. It's Beltsville.
9 MR. GROSSMAN: In Beltsville. Okay.
10 MS. SHEVEIKO: In Beltsville. And I am sitting at
11 exact distance from this gas station as I will be living
12 next to the proposed gas station if it happens.
13 MR. GROSSMAN: And how many feet are you aware
14 from that gas station?
15 MS. SHEVEIKO: I'm away 125 feet. My, my house
16 away 125 feet.
17 MR. GROSSMAN: Okay.
18 MS. SHEVEIKO: And here, we didn't use a ruler
19 because it was a, we didn't want to attract too much
20 attention. My husband measured it with steps. So it could
21 be not significant difference. And in my case, there is no
22 such direct view because we're on the slope.
23 MR. GROSSMAN: Right. And there will be a wall.
24 MS. SHEVEIKO: Which actually, which in this case,
25 even worse because, because of the landscape and the climate

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1 and the weather and et cetera, but I'm not talking about
2 right now. I just want you to understand my position.
3 MR. GROSSMAN: Okay.
4 MS. SHEVEIKO: My actual physical position and my
5 position as a person. My, like my point of view. When 18
6 years ago, exactly this time of year, I started looking for
7 home to buy, I knew exactly where I wanted to live.
8 Kensington Heights. It took me one day to find a home
9 because I knew.
10 My real estate agent was the best at Long and
11 Foster and she, she wanted to make sure that I am doing
12 right decision so she did all kind of research. She checked
13 zoning, she checked her plan and she said probably it's all
14 fine. It's very reputable mall with nice stores and it is,
15 um, arts and entertainment district how it's listed like in
16 Montgomery County and it has smart development, transit-
17 oriented so you will be fine probably.
18 The reason why I choose my home because of perfect
19 location. I prefer to walk to the Metro. It's what I do
20 every day. I like simple walking to stores, have like
21 exercise like a normal life. Not to be attached to, to my
22 cars. And so it was the main reason why I want it. The
23 community is wonderful, very diverse. Very green area, very
24 close to the city. What else? It's a perfect spot.
25 So I knew that it's, it's a mall and it could be

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1 all kind of development. I even expected that we will be
2 losing our green space because of we are so in proximity to
3 D.C., it will be more development, maybe like apartment
4 building, something like this what's happened but we were
5 expecting it. And what else we were thinking about, my
6 family and my real estate agent. We are less than 10 miles
7 away from the White House. What could be wrong? We're not
8 in West Virginia where, or in Pennsylvania, rural areas
9 where people come and cut mountaintops or start fracking,
10 and people able to ignite the water from the kitchen faucet.
11 It couldn't happen to us because we're here by subway and by
12 the White House, just less than 10 miles away.
13 Other than that, yes. Hecht's was very well-lit
14 and at night, it was like light pollution. It was too
15 bright. Yes. We, Montgomery Ward had a store which sell
16 batteries and tires. First of all, it was much more far
17 from our homes than this proposed gas station and also, we
18 checked. It looked fine. So we bought a house. And I
19 bought my house to die in it, to spend my life in it. I
20 planted a garden. I, you know, I love my place and I love
21 people around.
22 So and now, I've been involved in this moment all
23 this four years, almost four years. I, I talked to hundreds
24 of people because I was canvassing. I was doing
25 fundraising. I talked to people and I know what they say

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1 and what they think. And really at the beginning, some
2 people were in doubt if there should be against gas station
3 because Costco said that they will not come without gas
4 station and like, they were convinced that it's a good thing
5 for the county to get another Costco in the middle of like
6 development, old, old neighborhood. So like we were in hard
7 position and I heard all kind of opinions. And, and I've
8 been participating in all meetings. I've been talking to
9 people, Costco people.

10 So I got very much involved and from the
11 beginning, I was very much open so whatever people told me,
12 I trusted and little by little, my opinion, like,
13 crystallized form because of all this information and I will
14 come to it later because like I know that I supposed to also
15 remember to talk about our, like today's issues like
16 traffic, parking, noise, what else I, safety, pedestrian
17 safety and I am ready to talk about it first.

18 About traffic and parking. Traffic is bad in my
19 neighborhood in general. We find a way how to cross the
20 neighborhood just to get to Connecticut and Kensington
21 because, because it's too hard. Sometimes it takes 15
22 minutes. My doctor seven minutes away but it takes me 15
23 minutes just to pass this congestion, University Boulevard
24 and Connecticut as bad as it is.

25 MR. GROSSMAN: Is there any connection between

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1 where you are --

2 MS. SHEVEIKO: Well, you know, people --

3 MR. GROSSMAN: Well, let me finish the question.
4 Let me finish the question.

5 MS. SHEVEIKO: Yeah. Uh-huh.

6 MR. GROSSMAN: Is there any connection, automotive
7 connection between where your house is and the mall where
8 the gas station would be?

9 MS. SHEVEIKO: Okay. I can show you it on a map.
10 Okay. This is our court.

11 MR. GROSSMAN: Okay. Just due south of --

12 MS. SHEVEIKO: Yes.

13 MR. GROSSMAN: -- the gas, the location of the gas
14 station.

15 MS. SHEVEIKO: Gas. Just --

16 MR. GROSSMAN: South of the Ring Road.

17 MS. SHEVEIKO: -- 125 feet away from the proposed
18 gas station.

19 MR. GROSSMAN: You're the closest house.

20 MS. SHEVEIKO: Yes. One of the closest.

21 MR. GROSSMAN: Okay.

22 MS. SHEVEIKO: Yeah. So here we are. And traffic
23 already bad in our neighborhood in general.

24 MR. GROSSMAN: Right.

25 MS. SHEVEIKO: So of course, it didn't cost all

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1 these customers. Of course they didn't make it easy but we
2 are in like an urban district. What expect. But what is
3 going on on this entrance? It's horrible.

4 MR. GROSSMAN: By this entrance, you're talking
5 about?

6 MS. SHEVEIKO: Meaning from University into the
7 Ring Road.

8 MR. GROSSMAN: Right. But that's -- is there any
9 entrance to the mall close to your house, any --

10 MS. SHEVEIKO: No.

11 MR. GROSSMAN: -- automotive?

12 MS. SHEVEIKO: No, no. No.

13 MR. GROSSMAN: Okay.

14 MS. SHEVEIKO: From Veirs Mill or from University.

15 MR. GROSSMAN: Right.

16 MS. SHEVEIKO: That's it. And --

17 MR. GROSSMAN: So what makes you think the traffic
18 to the gas station is going to affect where you live in
19 terms of traffic?

20 MS. SHEVEIKO: Okay. May I say now it's very bad.
21 It, it's much worse. No comparison compared to what was
22 before their house. So now it's already bad. If it becomes
23 worse, I don't know how we can handle it all together and if
24 it's -- of course it will become worse. How much worse?
25 But it's already very bad.

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1 And so honestly, what I do and now parking. Some
2 days, actually what I noticed, since I been shopping Costco
3 for so many years, that our Costco in my backyard is much
4 busier than Beltsville or Gaithersburg during weekdays.
5 There, it's almost no one. Our Costco, our parking lot
6 always busy because of their convenient location. It's
7 close to places like Chevy Chase, like Bethesda, Silver
8 Spring, and so it's much busier. But on certain days or
9 certain time of the days, it's impossible to find a parking
10 spot so people, no gas station yet, but people already
11 idling trying to find a parking spot.

12 And I'm telling you that I walk to shop Costco.
13 It sounds ridiculous because I buy box of stuff but it's
14 easy than to spend I don't know how, how long to get in and
15 out trying to find a parking spot, walk, find it and have to
16 walk with this huge cart and be in danger because it's very
17 busy and people with car compete with cars, so I simply walk
18 there. But not last weekend but previous weekend, I decided
19 to go by car because I was buying heavy items and I was
20 laughing. I even, what I did actually, I went all around
21 and I found a spot next to my home on the Ring Road. And
22 guess what? I, I simply walked home and I grabbed a camera
23 and I asked my son to take a picture because it was
24 ridiculous. Why did I go? I had to carry heavy cases of
25 soda, that's why.

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1 And I talk to people or people talk to me now.
2 Like the first week, one lady approach me. She was --
3 MR. GROSSMAN: Well, don't tell me what the lady
4 told you.
5 MS. SHEVEIKO: Okay.
6 MR. GROSSMAN: Tell me, tell me, when you say --
7 MS. SHEVEIKO: People struggle. I'm just telling
8 you that people struggle with it in the --
9 MR. GROSSMAN: Struggle, struggle to find parking?
10 MS. SHEVEIKO: Parking, yes.
11 MR. GROSSMAN: Did you, did you try the garage
12 immediately to --
13 MS. SHEVEIKO: No, no. The --
14 MR. GROSSMAN: -- the east of it? Well, let me
15 finish the question, ma'am. Hold it. Let me finish the
16 question before you try to answer. Did you try the garage
17 to the east of the Costco warehouse?
18 MS. SHEVEIKO: You mean, you mean under, under the
19 Costco?
20 MR. GROSSMAN: Well, right next to the Costco
21 warehouse where you --
22 MS. SHEVEIKO: Here? Do you know? No.
23 MR. GROSSMAN: Okay.
24 MS. SHEVEIKO: No.
25 MR. GROSSMAN: Because there has been testimony

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1 that there are lots of open spaces.
2 MS. SHEVEIKO: Yeah. Honestly, no. I was
3 actually trying to use the garage under but it's why I
4 switch simply carrying my, I am taking cart down to the Ring
5 Road and I simply carry my stuff one by one, piece by piece,
6 down to my home because it's not a safe thing to push a cart
7 with the traffic. It's why. And because it says
8 additional, it's a huge sign, additional customer parking
9 but I apologize. It will be probably the very last slide in
10 my testimony. If you look at the last page, this is how our
11 Ring Road looks like and so there's a garage under like a,
12 at the end of the building.
13 MR. GROSSMAN: Right.
14 MS. SHEVEIKO: It's nice, safe. They have these
15 buttons, like alert buttons everywhere.
16 MR. GROSSMAN: Right.
17 MS. SHEVEIKO: I pay attention because I walk to
18 subway every night, I mean from subway, so I pay attention
19 but you have to walk with your cart without any pedestrian
20 safe path. You have to walk with traffic so I simply
21 exclude this possibility.
22 MR. GROSSMAN: Well, the, the, Costco will be, if
23 this, if this special exception were approved, there would
24 be a pedestrian sidewalk.
25 MS. SHEVEIKO: Yeah. Yeah, yeah.

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1 MR. GROSSMAN: A raised pedestrian sidewalk.
2 MS. SHEVEIKO: Yeah. I know. I'm not talking
3 about pedestrian. This is what we have now. It's how I
4 walk to subway.
5 MR. GROSSMAN: Right.
6 MS. SHEVEIKO: But I'm talking about this Costco
7 garage.
8 MR. GROSSMAN: Right.
9 MS. SHEVEIKO: And so to get, to get there with my
10 cart, I will need to walk against traffic right here, with
11 traffic. There is no walk.
12 MR. GROSSMAN: No. As I understand it from the
13 earlier testimony, there's an entrance into the garage from
14 the --
15 MS. SHEVEIKO: No. Not from this one. Not from
16 this one. It's from another one.
17 MR. GROSSMAN: No. There's an entrance into the
18 mall from the, from the garage. That's, that's my
19 understanding of the testimony.
20 MS. SHEVEIKO: No. Not this one. It is
21 underground. It doesn't have entrance.
22 MR. GROSSMAN: All right.
23 MS. SHEVEIKO: This garage have -- another garage.
24 It's like it's a different garage but this one garage
25 doesn't have it. It's for sure. I --

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1 MR. GROSSMAN: Well, let me interrupt you for a
2 second.
3 MS. SHEVEIKO: Yeah.
4 MR. GROSSMAN: Mr. Brann, is there, is there an
5 entrance from the garage to the east of the Costco
6 warehouse --
7 MS. SHEVEIKO: Is this the garage you're --
8 MR. GROSSMAN: -- into the --
9 MS. SHEVEIKO: -- talking about?
10 MR. GROSSMAN: Into the mall?
11 MR. BRANN: Well, I think, I think --
12 MS. SHEVEIKO: I'm talking about this one.
13 MR. BRANN: Yeah. I understand. What you're
14 talking about.
15 MR. GROSSMAN: Okay.
16 MR. BRANN: I think there's some confusion, Mr.
17 Grossman.
18 MR. GROSSMAN: Yes, sir
19 MR. BRANN: She's referring to -- there's actually
20 a parking area underneath the Costco building right here.
21 MR. GROSSMAN: Okay.
22 MR. BRANN: And that's the parking she's referring
23 to.
24 MR. GROSSMAN: All right.
25 MR. BRANN: There is no direct access from the

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1 Costco. You would have to walk down and down the Ring Road
2 and --
3 MR. GROSSMAN: I see. I see.
4 MR. BRANN: Or come out, ride the elevator down
5 and then you come out.
6 MR. GROSSMAN: Okay. But I was asking actually
7 about the -- I understand now. But the garage you were
8 talking about was the one immediately to the east of the
9 Costco warehouse where there is an entrance directly into
10 the, into the mall, is that correct?
11 MS. SHEVEIKO: No, I don't.
12 MR. BRANN: That parking under the building is
13 technically specified as Dick's parking.
14 MR. GROSSMAN: I see.
15 MS. SHEVEIKO: Yeah. So my answer is no. And
16 reason why because coming from Veirs Mill, it's very, it's
17 even worse than coming from University. So if I come from
18 the University, if I come from here, I have to go all around
19 to come, to enter here. If I'm coming this way, I have to
20 make a left turn. Very congested area here so it's, it's --
21 MR. GROSSMAN: Here being the most, easternmost
22 point of the mall.
23 MS. SHEVEIKO: Yeah. So I have two choices, to
24 come from here making right turn all the time or from here
25 making left turn all the time so it's why I only enter from

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1 this side. It's why for me it's not logical to go on the
2 opposite side garage but I will try.
3 MS. ROSENFELD: Mr. Grossman, can we clarify one
4 more thing that goes to your question?
5 MR. GROSSMAN: Yes.
6 MS. ROSENFELD: Which is there is a direct access
7 from that parking structure to the east to the Costco
8 through the mall.
9 MS. ADELMAN: The parking garage I think.
10 MS. ROSENFELD: The parking garage.
11 MR. BRANN: There's a, this right here --
12 MS. ADELMAN: Right. The three level.
13 MR. BRANN: This is a ramp that goes from the
14 level Costco is on directly to the second level of the
15 parking deck. And then there are elevators. There's also
16 two, two new elevators that accommodate Costco --
17 MR. GROSSMAN: But if I recollect, it's actually
18 entering, that garage is actually entering into the mall at
19 the level of the Costco.
20 MR. BRANN: Right. That is correct.
21 MR. GROSSMAN: Attaching to the mall.
22 MR. BRANN: On the second level of the parking
23 deck, you drive right up the ramp here, park on the second
24 level and you walk straight into the level Costco is on.
25 MR. GROSSMAN: Where is the entry to the, to the

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1 garage?
2 MR. BRANN: The entry to the garage is on the
3 eastern side, the southeastern corner of the building.
4 MR. GROSSMAN: And, Ms. Sheveiko was saying that
5 somehow, it's difficult to get to the entrance to the
6 garage. How do you, how do you get --
7 MS. SHEVEIKO: I --
8 MR. GROSSMAN: -- into the entrance to the garage?
9 Hold on one second, Ms. Sheveiko. I just want to see what
10 Mr. Brann says.
11 MR. BRANN: The entrance to the garage can be
12 reached from this north/south corner right here.
13 MR. GROSSMAN: Okay.
14 MR. BRANN: Which either connects with the, with
15 the Ring Road on the south end of the mall --
16 MS. SHEVEIKO: Okay.
17 MR. BRANN: -- or from up here by the Penny's near
18 the Reddie Drive entrance which comes in right here.
19 MR. GROSSMAN: Can you make a left -- if you're on
20 the southern Ring Road approaching from the west --
21 MR. BRANN: From the west.
22 MR. GROSSMAN: Can you make a left onto that --
23 MR. BRANN: You can make a left. You can make a
24 left right past the --
25 MR. GROSSMAN: Just past the --

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1 MR. BRANN: -- past the Sears building.
2 MR. GROSSMAN: Okay.
3 MR. BRANN: Head north and into the, and to make a
4 left turn into the garage.
5 MR. GROSSMAN: Okay.
6 MS. SHEVEIKO: So, so next time I will try to go
7 all around the store and, and get in there from the opposite
8 side.
9 MR. GROSSMAN: Right. That may make your life
10 easier.
11 MS. SHEVEIKO: I don't know. I never try it. But
12 now I mostly walk. Okay. Next, so this is parking and
13 traffic. Pedestrian safety been discussed already probably
14 and also, you saw my picture. I hope it will be better.
15 Now like I have a light, flashing light, because now morning
16 is dark. Soon it will be very dark in the evening. So but
17 I don't know if they want to build a very nice pedestrian
18 bridge over there but it would be nice and probably safe but
19 is it now? It's no.
20 MR. GROSSMAN: Someone may come along and try to
21 knock it down. It happened recently. I read on the
22 newspaper that there was a pedestrian bridge that somebody -
23 -
24 MR. BRANN: I believe that was this one right
25 here. A truck that was too tall tried to go under that.

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1 MS. SHEVEIKO: Oh, yeah. I saw it.
2 MR. GROSSMAN: I don't know if it was too tall but
3 he had his, it was a garbage truck that had its --
4 MR. BRANN: No. It was a garbage truck. He had
5 forks up in the air, yeah.
6 MS. SHEVEIKO: Oh. I saw it and I didn't know
7 what was it.
8 MR. BRANN: Yeah.
9 MS. SHEVEIKO: Yeah. I was there but I didn't
10 know what happened. They closed the street.
11 MR. BRANN: I just, I heard about that this
12 morning so.
13 UNIDENTIFIED VOICE: Does that qualify as a
14 pedestrian accident?
15 MR. GROSSMAN: I don't know what that qualifies
16 as. Nobody was hurt fortunately.
17 MS. SHEVEIKO: And so about safety, when it's so,
18 traffic is bad on parking and problem with parking spots, it
19 becomes dangerous to walk there with cart or without cart.
20 It is very, very busy place. What else? It's noise.
21 Before Costco started construction, I replaced all my
22 windows. I knew it will be noisy. Of course it was. Now,
23 honestly, we like live it's a war zone. Some nights it's
24 fine. It's like, it's always noisy. Always trucks idling
25 or just passing. We can hear loading dock all the time.

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1 All the time, sir. But I knew that I have to learn how to
2 live with it. Not live with it but sleep with it. But
3 sometimes, usually it starts between 2:00 and 3:00. Last
4 night it was 2:25 when they start dropping bombs into
5 loading dock. It sounds like we're under tanks attack.
6 MR. GROSSMAN: But this is not --
7 MS. SHEVEIKO: Okay. I understand.
8 MR. GROSSMAN: I have nothing to do with the --
9 MS. SHEVEIKO: I know. I know.
10 MR. GROSSMAN: -- Costco warehouse.
11 MS. SHEVEIKO: I'm just letting you know that we,
12 we accepted it all. We never fought against Costco
13 warehouse. We knew it's going to happen. We're only trying
14 to negotiate to get some, something moved, switched, turned
15 to accommodate our needs which never happened actually. But
16 so we were very open because if everybody around was so
17 heavy about Costco coming, then we had to agree to take it
18 in our backyard. No one who lives along this Ring Road
19 wanted to have big box store but we accept it. We never
20 fought it. We only been saying please no gas station,
21 please no gas station.
22 And honestly, when I learned that I had to
23 testify, I was so upset. I didn't want to do it at all
24 because I'm so tired of all this debate. I'm tired.
25 MR. GROSSMAN: You're not required to testify.

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1 MS. SHEVEIKO: Yes. I know but I made promise to
2 now that I made, promise, and I always keep my promise.
3 Especially, I don't want to betray my neighbors. But, but I
4 change my mind because honestly, I came to witness a
5 historical moment. I thought that Costco will withdraw its
6 application today and, and probably you don't know the
7 reason because last Thursday, UN published health report
8 from those Cancer Institute and air pollution now officially
9 number one cause of lung and bladder cancer. And
10 particulate matter together with diesel exhaust with
11 asbestos with benzene in number one categories. It's not
12 already matter of believing it or not believing it. It's
13 science. And the studies, it's from 40 years. It's the
14 report. It took them 40 years to come to this conclusion.
15 MR. GROSSMAN: Well, it's -- I don't think anybody
16 disagrees that air pollution can be damaging to health. The
17 question is a dosage question and what, if any, effects this
18 gas station will have on the neighborhood. That's the
19 question. So the more general finding that there could be
20 health, adverse health impacts from air pollution is not in
21 dispute.
22 MS. SHEVEIKO: If you, if you interested in it,
23 it's all over the news. This is it from Reuters.
24 MR. GROSSMAN: I understand.
25 MS. SHEVEIKO: And so but like at one meeting --

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1 also, like I'm talking about children in my neighborhood
2 that we also have this school for severely disabled
3 children. And, and at some meeting when mothers were
4 testifying against the Costco gas station, they were told, I
5 can't recall who said it, that you live near Veirs Mill and
6 Georgia, it's already so polluted that you have to move your
7 school. So the situation is it's already so polluted that
8 they can dump, if we are in the war now, now they're
9 planning gas attack on us and which is accepted because we
10 have nothing to lose.
11 Do you know, I don't want to start new movement,
12 start collecting money for future fights when our children
13 will start getting sick. It's better to avoid it from the
14 beginning. And especially like when we talk to Costco from
15 the beginning, they said oh, it's not, when I said listen,
16 why do you need this gas station, please come without gas
17 station, they said it's our policy, it's for the customers.
18 But this morning I checked two gas stations, Freestate and
19 Econoway. Both have gas, gas for \$3.25 per gallon. Costco
20 today in Beltsville displayed price \$3.23. Two cents
21 difference. We're talking about saving some money but in
22 which expense. Yeah. People will be saving like \$10.00,
23 \$20.00 a month, and we will be paying with, we will be
24 living under threat.
25 I truly believe that it's dangerous and, and they

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1 cannot prove otherwise. If they have this sign, turn off
2 engine, it is a dangerous place and it's only 125 feet away
3 from my home. And so I just -- and problem is why I'm so
4 tired, why I didn't want to testify, because, and I told
5 you, and I am absolutely honest, I was so open-minded I said
6 okay. If it's so good, we have to accept it. I'm talking
7 about warehouse. And so, and I said okay, we should accept
8 it because it's so good for everybody else. But step by
9 step, word by word, I started realizing that there is a war,
10 fight, fight between reality and mythology. All this time,
11 Costco been creating myth and, you know, I drafted some
12 ideas. They're not all --
13 MR. GROSSMAN: But I think you put your finger on
14 it. The question is which is the reality --
15 MS. SHEVEIKO: Okay. Absolutely.
16 MR. GROSSMAN: -- and which is the mythology.
17 MS. SHEVEIKO: I, I --
18 MR. GROSSMAN: And that's --
19 MS. SHEVEIKO: I can talk about it.
20 MR. GROSSMAN: Well, that's --
21 MS. SHEVEIKO: No question. And I even have a
22 witness.
23 MR. GROSSMAN: You have to stop a second.
24 MS. SHEVEIKO: Eric --
25 MR. GROSSMAN: Ma'am. Hold on for one second.

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1 That's the problem that I have to face is they have produced
2 evidence, a scientific study, and I presume I'll hear from
3 the opposition scientific studies, and I have to decide
4 based on these scientific studies. I can't decide based on
5 a generalized fear --
6 MS. SHEVEIKO: Okay.
7 MR. GROSSMAN: -- that may or may not have a basis
8 in fact. I have to look at what the science shows to reach
9 a recommendation, not just because there's a fear because
10 it's a gas station. Just because there's a gas station is
11 not a reason to deny or recommend denial.
12 MS. SHEVEIKO: I respect that. Absolutely. It's
13 why you're judging us. You're judging the situation. You
14 have to be absolutely blind and just weight the facts.
15 MR. GROSSMAN: Well, I try not to be blind.
16 MS. SHEVEIKO: No. No, no. But like just, yeah.
17 MR. GROSSMAN: I get the idea, yes. Fair.
18 MS. SHEVEIKO: Yeah. And just weight it. So and
19 let me give you some facts which made me doubt in everything
20 what Costco say. I will give you the facts, and I have even
21 witness. From the beginning, I've been communicating with,
22 I mean meeting several times and had pleasant conversation
23 with Eric and so if I don't remember names, he will help me.
24 Our first meeting. When we were all invited to
25 this meeting, we received official invitations and we had

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1 our concerns and voice and we came. And they showed us the
2 initial drawing, everything and people even didn't have much
3 questions because they were observing and processing, kind
4 of in shock. And after, and I don't like to speak publicly
5 and ask questions. When I'm nervous, I'm mixing languages,
6 I, and I hate myself.
7 MR. GROSSMAN: You're doing great so don't worry.
8 MS. SHEVEIKO: Thank you. So at the end of the
9 meeting, I approach this group of handsome men in nice suit
10 and ask one question, what to, what to expect, how many cars
11 do you calculate average per day will be fueling.
12 MR. GROSSMAN: Right.
13 MS. SHEVEIKO: And they started talking to each
14 other. (Indiscernible) between 2 and 300. I said oh,
15 really. They said oh, it's not bad, and I went home. And
16 on my way home, I started calculating myself and I said how
17 come 16 pump will only serve 300 cars, and I ask is it per
18 day. They said oh, yeah, yeah, yeah and on my way home,
19 suddenly I realize that it's per pump and it changed my
20 situation.
21 Second, on some meeting and somewhere taped,
22 filmed on paper, I ask question, if they can give us
23 example, if anyway in U.S. they have already situation like
24 ours when they came to the existing neighborhood and being
25 in such proximity as my home. They said yes, and they give

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1 us example, Leesburg. You don't need to have a, like PhD to
2 be able to check. My home 125 feet away. Leesburg, the
3 nearest home 1300. If they said don't know, we don't but
4 we, we don't but we, we're trying to, we're learning, we'll
5 try to make it safe, don't worry, no. They gave me example.
6 They said oh, yeah, and they're fine.
7 So next. They declare on the spot they will never
8 come without gas station. It's out of their policy. Also
9 at some point, they said they will not without ZTA and we
10 all who were fighting against ZTA, we became like enemy of
11 people because we were blocking Costco from coming so some
12 people were against us, but they came. When we asked them
13 why do you need, and we tried to explain the savings for
14 people not significant compared to risk we were under and,
15 and they were saying that they will not have any profit from
16 it, it's pure like for our profit, customer's profit. And
17 now I don't remember numbers but if other gas station make
18 profit by selling gas for the same price, why they don't.
19 Next thing. When we asked them we even -- sir, we
20 asked for so many small things to change, consider and
21 answer was always no. They were not negotiating. And so
22 when we ask we, we'll walk around, we'll look at the plans,
23 so we were suggesting how, where to move this gas station
24 and the answer was no. And the main reason why they said no
25 because it was out of their policy. It sounds like it must

1 be in direct line of sight from the front entrance. And I
 2 have it somewhere here, you can see it, but in Minnesota,
 3 they built a gas station on very far, on other side of the
 4 road, so there could be exceptions. It's misleading. It's
 5 creating a myth.
 6 Next thing. When they were open house and there
 7 were meetings, community meetings and they were showing
 8 drawings, everything was so nice and clean and we were not
 9 existing there. There were maps without neighborhood. It's
 10 how they presented it. They didn't want to show because
 11 people were coming who had no clue about our reality. They
 12 were coming to show us this nice map looking at everything
 13 nice, pictures like, and we were not there at all. When I
 14 said it, guys, how come it's like in, like an island in the
 15 ocean but in reality, ocean is us, the neighborhood, and so
 16 they change it.
 17 Next time they showed us all one floor houses so
 18 we all were below the plaza level. We don't have any one
 19 floor houses. All our bedrooms above the ground, the plaza
 20 ground. So it's what we see. Right now just we see plaza
 21 and stores and before it was Hecht's into my windows, now
 22 it's Costco. But it's what we see. Why they perfectly knew
 23 well what, how we look like, our neighborhood. They never
 24 presented the situation constantly, constantly, and it makes
 25 me think if what they're trying to prove is really true, why

1 do they need to misrepresent the situation.
 2 Okay. There were tons of meetings you don't
 3 probably, I just mention it. It's like everybody was so
 4 excited because Costco will bring sales taxes but Costco
 5 does not produce sales taxes. It distribute from other
 6 stores around and also, it's less because we are paying more
 7 in Safeways than in Costco so tax is low.
 8 They tried to prove that it's a perfect idea to
 9 have a mega fuel station in Wheaton and we have plenty of
 10 gas stations. And if some of them will go out of business,
 11 it's problem to us. First of all, not all people are
 12 members, Costco members. Also, we have cheap stations like
 13 I just told you the same price as Costco which operate 24/7
 14 so we can do it anytime, not only during Costco operation
 15 hour.
 16 Okay. Next, myth. It's about big savings for
 17 customers but I will not go there. I just read a study
 18 recently about how to be smart Costco shoppers, not to buy
 19 to simply waste later because everything in bulk, not every
 20 cent family can consume but it, it's irrelevant.
 21 But next thing. When I learn where they take
 22 measurements for background pollution, turned out to be out
 23 of all the possible stations, they choose the most green
 24 ones. One in Rockville in the middle of forest. Another
 25 one in Beltsville, it's agricultural area or whatever, a

1 reserved for housing quality. Why if they're so honest and
 2 what they're saying is really, really true, why they didn't
 3 find a location similar to ours, like Arlington for
 4 instance, why? It's so obvious. Do you know, if I want to
 5 hide something I will try the way to hide. If I'm
 6 straightforward and honest, I will do my best to be honest.
 7 Do you know, it's very upsetting to talk to people
 8 in my neighborhood. How many times I heard give up, when
 9 money talks, no one listen to commoners.
 10 MR. GROSSMAN: Well, don't tell me what the --
 11 MS. SHEVEIKO: Okay. So --
 12 MR. GROSSMAN: -- people in the neighborhood said.
 13 MS. SHEVEIKO: Sorry, sir. And so it's very
 14 upsetting and discouraging. And I have tons of things to
 15 say but I think I made my point. And, and it's just, do you
 16 know when you say that they have signs and we have to put in
 17 signs. We're not a multi-corporation with unlimited amount
 18 of money. They can do studies on their own. We've been
 19 collecting money to pay all these procedures and we're
 20 already exhausted. It's been four years. And we can only
 21 ask questions and they're supposed to answer. They're
 22 supposed to prove that our concerns have no basis but
 23 everything what I just gave you, I hope it raise the
 24 question why, I wonder why if they should give us more
 25 proof, more opinions.

1 Do you know, like probably all people in this room
 2 donate money to good cause. Saving tigers, pandas, rain
 3 forest in, in Brazil. I think we should create a fund to
 4 help children in Wheaton because it is dangerous. It's a
 5 gas station plus idling cars. When I was shopping in
 6 Beltsville, not always I was able to guy gas because I value
 7 my time. I couldn't stay for a few minutes in queue to get
 8 \$2.00 saving. The idling. There's all kinds of problems.
 9 People spill gas so there's a wiper. Yes. I know Costco
 10 gas station attendants, they try to spray it and wash it but
 11 it, it keeps happening all the time. All kind of car come.
 12 Modern cars like hybrids and old fashion car. Even they all
 13 pass inspection but still, some of them smell.
 14 About idling trucks, they idle every night, sir,
 15 already now and first, I went there every night when, when I
 16 heard it but I cannot. I have to work. And so I stopped
 17 doing it but first I did go. I calculated. Once it was
 18 like almost four hours. Sometimes like I don't know what,
 19 which truck is it. Is it Costco? They use Swift mostly.
 20 Or it's somebody else. It's idling and what that, that why
 21 are still coming because quite often, there is no driver
 22 there. I can't talk to him and ask. I always wonder why
 23 one question, why you idling, you're burning fuel, but
 24 they're not there. It's idling truck. They can do it on
 25 the Ring Road so they woke me up, I look in the window and

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1 there is a truck before my windows. But mostly, they're
2 idling where the gas station supposed to be, the queue.
3 And also, sir, I understand that some woman --
4 MR. GROSSMAN: Perhaps if you called the police,
5 they'd tow them away because --
6 MS. SHEVEIKO: Do you know what they said?
7 MR. GROSSMAN: -- I don't think it's legal.
8 MS. SHEVEIKO: Two people supposed to complain for
9 them to react. My neighbors asleep. I don't want to wake
10 up my neighbors just to say let's go, come clean. And, and
11 it's -- so but I -- for instance, okay. Let's take like a
12 regular day. Not holiday, just regular day. At certain
13 period, it's pretty empty there. there is always customers,
14 there is always car but you can stick there about another
15 like 5,000.
16 But what about busy nights, busy days, holidays,
17 days before holidays, night before holidays when there is no
18 room for parking. How the gas station will be operating
19 during this time. If it's bad now, even not all the time,
20 but let's say like 20 percent of time, I don't have numbers,
21 just 20 percent, what's going to happen this 20 percent time
22 with gas station is there with all these cars idling.
23 MR. GROSSMAN: Okay.
24 MS. SHEVEIKO: And, and talking about nuisance.
25 Like people say sell it, sell it, sell your home, move

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1 before it's too late. Others saying oh, there is all this
2 stupid, who will buy your home anyways if you're next to a
3 gas station. But for sure, property, my property value will
4 go down. No question about it. And my home, it's only what
5 I have. It's all my value. It's my retirement. I have a
6 husband who is on disability. I can only come on my -- I
7 work two jobs and my home, which I love, it's all that I
8 have. And somebody will be buying, buying toilet paper
9 saving like \$1.00 on it and I will be losing my lifetime
10 investment. I'm ashamed to talk about it because it's like
11 I'm greedy but it's not about greed.
12 MR. GROSSMAN: Okay.
13 MS. SHEVEIKO: Probably I'm done.
14 MR. GROSSMAN: All right. Cross-examination by
15 the coalition?
16 CROSS-EXAMINATION BY MR. SILVERMAN
17 MR. SILVERMAN: Ms. Sheveiko, you said you have a
18 garden.
19 MS. SHEVEIKO: Yes. I do have a garden. I don't
20 have any lawn because I think it's just waste of resources
21 so I have a garden. I have flowers and I give them away.
22 MR. SILVERMAN: And do you have a backyard?
23 MS. SHEVEIKO: No. I don't have backyard. I have
24 a side yard. Backyard is Costco. No, I don't because I
25 have a very, it's like a few feet and it would be my own

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1 property.
2 MR. SILVERMAN: And do you have, you have -- you
3 spend a lot of time outdoors?
4 MS. SHEVEIKO: Yes. I -- yeah. And there's
5 exhibit, the last exhibit. It's what people in hotspots
6 using. Hotspots was air pollution and how do they call it,
7 cancer hubs or clusters. It's what they're using. And I
8 have concern. I have enough for all of you to try.
9 MR. GROSSMAN: You're holding up a mask.
10 MS. SHEVEIKO: Yes.
11 MR. GROSSMAN: What are you saying --
12 MS. SHEVEIKO: I'm just selling zip. If you ask
13 me do I smell plaza, yes, I do. No all the time but I do.
14 But if there's idling truck, I smell it. It's just a point
15 that at some point if gas station comes, we will need to
16 wear it. And again, like as a Costco group mentioned it,
17 that how you can prove that if they build a wall. First of
18 all, even Mr. Sullivan mentioned that wall does not protect
19 against air pollution. It's what he, not the meet. He
20 actually stated it.
21 But how we can prove this wall, it's good for me
22 personally but for my neighbors along the Ring Road, it's
23 worse because it will be fueling air, dirty air along the
24 Ring Road. It's no doubt about it. And I don't know the
25 terms but believe me, because I used to be a physics

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1 teacher.
2 MR. GROSSMAN: Any other questions?
3 MS. SHEVEIKO: I know what I'm talking about.
4 MR. GROSSMAN: Mr. Silverman, any other questions?
5 MR. SILVERMAN: No. I -- she's given a very
6 complete statement. Thank you.
7 MR. GROSSMAN: Okay. Cross-examination from the
8 applicant?
9 MS. HARRIS: No, thank you.
10 MR. GROSSMAN: Okay.
11 MS. ROSENFELD: Can we take a five minute break or
12 three minutes?
13 MR. GROSSMAN: Any redirect, by the way, based on
14 Mr. Silverman's questions? No. Okay. Thank you, Ms.
15 Sheveiko. I appreciate very much --
16 MS. SHEVEIKO: My pleasure.
17 MR. GROSSMAN: -- you coming down here --
18 MS. SHEVEIKO: My pleasure. Thank you for
19 listening.
20 MR. SILVERMAN: -- sharing your thoughts.
21 MS. SHEVEIKO: Let's give you probably you will be
22 interested to read.
23 MR. GROSSMAN: Yes. We'll --
24 MS. SHEVEIKO: It's just I didn't plan to
25 distribute it but you, you can, you can find more

1 information if you follow these links.
 2 MR. GROSSMAN: We'll take a break until 4:00.
 3 Don't forget, folks, I have my cardiac rehab so we have to
 4 leave at 4:45 today.
 5 (Whereupon, at 3:52 p.m., a brief recess was
 6 taken.)
 7 MR. GROSSMAN: We're back on the record now.
 8 MS. CORDRY: Okay.
 9 MR. GROSSMAN: Ms. Cordry has taken the stand, and
 10 you are still under oath.
 11 MS. CORDRY: Okay. And I would just say I printed
 12 some of these in black and white and Michele printed some in
 13 color. Now, hers are smaller than mine so --
 14 MR. GROSSMAN: So we have to choose between the
 15 large black and white or small color versions.
 16 MS. CORDRY: We can put them both in.
 17 MR. GROSSMAN: What do you, well, what do they
 18 convey.
 19 MS. CORDRY: Well, I will, I will get to you what
 20 they convey but, I will get to you what they convey but
 21 perhaps we'll just put them both in --
 22 MR. GROSSMAN: Whatever you --
 23 MS. CORDRY: Sometimes it's easier to do that way.
 24 MR. GROSSMAN: We wouldn't want to have less
 25 paper.

1 MS. CORDRY: No. Never. Never. All right.
 2 MR. GROSSMAN: All right.
 3 (Witness previously sworn.)
 4 DIRECT EXAMINATION
 5 MS. CORDRY: I will endeavor to be substantially
 6 briefer than I was in talking about need.
 7 MR. GROSSMAN: Bless your heart.
 8 MS. CORDRY: And I still live at 10705 Torrance
 9 Drive.
 10 MR. GROSSMAN: All right.
 11 MS. CORDRY: And I am making this statement from
 12 my own personal knowledge and observations, and today I'm
 13 just pretty much just going to talk about queuing, some of
 14 the same kinds of issues Mr. Core was going to talk about
 15 and supplement some of those and give my own observations.
 16 At the time this station was first proposed, I
 17 have a number of occasions and again, I think I mentioned
 18 the last time that hadn't ever really heard much about the
 19 Beltsville and the Costco station there and people said
 20 there's big, long lines and I said fine. So the next time I
 21 went over to Behnke's on Route 1 or the IKEA store a number
 22 of times when I'd get over --
 23 MR. GROSSMAN: Behnke's, isn't that the guy who is
 24 doing the, what do you call the stuff on the walls.
 25 MS. CORDRY: Oh, no. That's Banksey (phonetic

1 sp.) I think.
 2 MR. GROSSMAN: Banksey, yes.
 3 MS. CORDRY: Banksey, the lovely, the nursery over
 4 there, I buy my fall bulbs and spring flowers from and so
 5 forth which is, you go right by the Costco at Beltsville to
 6 go up to those places. So I had occasion to just drive into
 7 the area there or drive down the road and look at the
 8 station just to see what was going on. Um, I did indeed see
 9 large numbers of cars idling in line that would generally be
 10 there on a Saturday afternoon. I'd see 20, 30, 40 cars or
 11 so, was not really trying to make any detailed count. I was
 12 just trying to just get a look at it and see what, what I
 13 saw. Others told me that number was low. I've looked at
 14 some aerial photos. I've seen some that show in excess of
 15 50 and perhaps even 75 cars at one time so.
 16 In our discussions over the, over the last almost
 17 four years with some of the Costco officials, they made
 18 somewhat the same point that I think is being made here
 19 today, that while that wasn't an optimal station design
 20 because that has four lanes with three cars lined up in a
 21 row there, so it has 12 pumps but they're, instead of two
 22 and two and two, they're three and three and three and
 23 three, so they said well, that, that might not work as well
 24 because people might have a harder time seeing to move up so
 25 that might slow things down a little bit.

1 They said well, what's really more comparable is
 2 the one that's up at Elkridge near Columbia, you should go
 3 look at that one, also known as the Gateway station which is
 4 the name of the shopping mall there. I was told that one
 5 had 12 pumps compared to the 16 pumps proposed here but that
 6 it probably pumped about eight to nine million gallons a
 7 year which would be comparable to the 12 million gallons
 8 that they said was being proposed for the Wheaton Station.
 9 So 12 to 9 million gallons is about the same as 16 pumps to
 10 12 benefitted, okay? That sounds like they should have
 11 comparable degrees of congestion so to speak.
 12 So I decided to go make some observations of the
 13 Elkridge station. The first time I went up there was on
 14 April Fool's Day in 2012. It was a Sunday. I didn't have a
 15 lot of time so I just drove by for kind of a quick overview
 16 of it and looking to see what I could kind of observe. I
 17 was there for about 45 minutes from about 2:45 to 3:30 in
 18 the afternoon. There was indeed a large number of idling
 19 cars at that station throughout the period, generally never
 20 less than 20. Most of the times, it appeared to be in the
 21 range of 30 to 35 cars or so throughout that time period.
 22 On several occasions, cars were unable to enter
 23 the queuing area because it was full. I did see on that, on
 24 that occasion an attendant come back to the back of the line
 25 and try to direct the cars away so that it didn't block the

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1 cross lanes of traffic that were trying to pass behind the
2 station. And I do actually have here shots of the, the
3 Elkridge station so if you want to go ahead and mark that.
4 MR. GROSSMAN: And Elkridge is called Gateway
5 because of the Gateway Shopping Center?
6 MS. CORDRY: Yes. Right.
7 MR. GROSSMAN: Okay.
8 MS. CORDRY: And --
9 MR. GROSSMAN: So I think we're good enough with
10 this one. They're the same size. Just put it the color
11 one.
12 MS. CORDRY: Oh, that's right. I'm sorry. This
13 one, the black and white and color are pretty much the same.
14 MR. GROSSMAN: Okay. So this will be exhibit --
15 MS. ROSENFELD: We're going color?
16 MR. GROSSMAN: We're going color on this one.
17 MS. CORDRY: All right.
18 MR. GROSSMAN: This will be Exhibit 345(a) I guess
19 we'll say, and this is the Elkridge --
20 MS. CORDRY: Costco, yes. And this in fact is a
21 Google Earth shot. This is not one I took.
22 MS. ROSENFELD: Did you say 345(a)?
23 MR. GROSSMAN: Yes. Elkridge Gateway Costco gas
24 station Google --
25 MS. CORDRY: If you're really, since they're the

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1 same size and about the same degree of clarity, you could
2 probably just make it plain 345. I guess you don't need the
3 black and white as well.
4 MR. GROSSMAN: Right. But I was, I was going to
5 use all the photos. How many photos do you have here?
6 MS. CORDRY: Probably about six or eight, and some
7 of them are some different things so you probably may need
8 to make --
9 MR. GROSSMAN: Oh, different ones. Okay. So
10 we'll just make --
11 MS. ROSENFELD: In this one, the color and black
12 and white are the same size.
13 MS. CORDRY: Right.
14 MR. GROSSMAN: Yes. So we'll just make this 345
15 itself.
16 MS. CORDRY: And the others maybe can go together
17 then.
18 MR. GROSSMAN: Costco gas station Google Earth.
19 (Exhibit No. 345 was marked
20 for identification.)
21 MR. GROSSMAN: Okay.
22 MS. CORDRY: So just to point out some of the
23 features of this one, the actual main entrance road, the
24 closest entrance road is at the top of this photo, just the
25 road that, kind of curving road that goes through the center

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1 of the photo, goes out to a main entrance road there. So
2 cars come in directly there. They peel off to go to the, to
3 the gas station. There is -- if they make a complete right
4 turn, they go down in that white area at the bottom, I'm
5 sorry, the top left corner there.
6 MR. GROSSMAN: I'm confused.
7 MS. CORDRY: I'm sorry. Okay, here. I'm sorry.
8 Here. Hold it in this orientation.
9 MR. GROSSMAN: Yes. Okay. I've got that
10 orientation now.
11 MS. CORDRY: All right.
12 MR. GROSSMAN: Where's, where is -- I see the, the
13 lay that says Costco there.
14 MS. CORDRY: Okay. That's, that's actually --
15 MR. GROSSMAN: I don't see any pumps in there.
16 MS. CORDRY: That's actually the warehouse there.
17 MR. GROSSMAN: Oh, okay.
18 MS. CORDRY: The Costco station is over here to
19 the, in the top left corner.
20 MR. GROSSMAN: Okay.
21 MS. CORDRY: And although I did not try to put a
22 scale on that, as I recall, that station across there, well,
23 let's see, I think the 16th pump is supposed to be about 120
24 feet so this 12th pump is probably 90 feet, so you can do
25 several 90 feet over there from the edge of the station over

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1 to the warehouse itself.
2 MR. GROSSMAN: All right. I'm going to put an
3 arrow on there that says Costco station.
4 MS. CORDRY: Right. So I would guesstimate it's 4
5 to 500 feet from the station over to the warehouse itself
6 and although it doesn't show here, I believe the loading
7 docks are at the backside of that Costco warehouse, again
8 outside of the picture itself.
9 Cars come from two different directions. They can
10 come either from the bottom left-hand corner there and come
11 up towards the station from I guess, I'm not sure. We'll
12 call the top of this north anyway. Close enough.
13 MR. GROSSMAN: Yes. They have, yes. The top is
14 north.
15 MS. CORDRY: Oh, the top is -- right. Okay. All
16 right. So they can come from the east so that will be
17 southwest corner up alongside the station and curve around
18 and go in, or they can come from outside, from outside of
19 this picture and come south and come in that way yet. I
20 think more of the cars tend to come from that way but they
21 do come from both directions. And then they go around there
22 and --
23 MR. GROSSMAN: When you say from the southeast,
24 the southwest, do you mean the road to the southeast of the
25 station?

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1 MS. CORDRY: Yes. This road that starts here in
2 the southwest corner --
3 MR. GROSSMAN: Okay.
4 MS. CORDRY: -- and curves up through the picture.
5 MR. GROSSMAN: Okay. I see.
6 MS. CORDRY: And goes on out to the top. So cars
7 come from both directions on that road.
8 MR. GROSSMAN: Okay.
9 MS. CORDRY: And of course, the parking for the
10 store, as you can see, is off to the right-hand side of that
11 road so that the, it is not being impacted by cars going to
12 the gas station. They go by on this side road next to the
13 gas station.
14 MR. GROSSMAN: Right.
15 MS. CORDRY: Okay. And then they, as I said, they
16 peel off, come around and come into the entrance there. And
17 that entrance, it's somewhat like this in that it has a
18 narrow area, a somewhat straightaway and then it widens out
19 for the cars to go through into the queuing lanes, and this
20 particular one shows pretty much full area there.
21 I haven't exactly counted up exactly how many cars
22 there are but I may do that at a later point, but I don't
23 believe there's actually 34 cars there, and I'll get to that
24 in my testimony, because 34 is the number that they have
25 used other times as being how many you can line up. I think

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1 Mr. Guckert talked about that, how many you could line up at
2 the, at the Columbia store. But you can see, it's actually
3 out to the end of that straightaway there.
4 And as I said, I was seeing 30 to 35 cars and I
5 was seeing cars already spilling over out into that cross
6 area. And I think, again, Mr. Core testified the white area
7 that's in the top left-hand corner, that is another small
8 shopping area there. There's a Trader Joe's and a few other
9 stores there, and cars do need to go past that but they do
10 have the two different ways to get past there to go down to
11 that small shopping area there. But for most cars, they
12 come in, go through the station, go right back out on the
13 main drive aisle there and go back out either to the north
14 or to the south, in either direction. And generally, people
15 in the shopping area going to and from the Costco store will
16 not be interacting with the gas station there.
17 What I did see when I was there, these pictures
18 were taken that same day on April 1. Maybe we can make
19 these all one exhibit. I guess we'll start with these three
20 which would be, this one with the trees, this one with the
21 cars here, this one with the cars coming into the lot.
22 MR. GROSSMAN: Okay. So we'll start out with the
23 trees. 346(a) and (b).
24 (Exhibit Nos. 346(a) and (b)
25 were marked for

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1 identification.)
2 MR. GROSSMAN: And what are we seeing in 346?
3 MS. CORDRY: Okay. Let's see. We're going to
4 have the trees first. Okay. This is one where, this is
5 somewhat also illustrative of what Mr. Core was speaking
6 about. You can see the cars are backed all the way down in
7 the straightaway but that more towards the left-hand side of
8 the picture, there is space there that the cars are not
9 being able to get to because they're being blocked by the,
10 the long lines of cars at the first couple of pumps.
11 MR. GROSSMAN: Which station is this?
12 MS. CORDRY: This is at Elkridge.
13 MR. GROSSMAN: Okay.
14 MS. CORDRY: And the second one with the cars.
15 MR. GROSSMAN: All right. So 346(a) and (b) are
16 photos of Costco Elkridge station ground level.
17 MS. CORDRY: Right. And 346(c) is also, which is
18 this one we're looking at, this one is 346(c).
19 MR. GROSSMAN: Is that different from this one?
20 MS. CORDRY: Yes.
21 MR. GROSSMAN: You already gave me this one.
22 MS. CORDRY: Okay. Yes. That's 346(c).
23 MR. GROSSMAN: Okay. And am I looking at the same
24 station here?
25 MS. CORDRY: This is -- yes. This is the backside

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1 view. These are the cars. You saw one sort of three-
2 quarter view, one from a full on view and this is from the
3 backside. These are the cars pulling in and getting ready
4 to pull up into that long queue line.
5 MR. GROSSMAN: Okay. So (c) and (d).
6 (Exhibit Nos. 346(c) and (d)
7 were marked for
8 identification.)
9 MS. CORDRY: And the two cars that are parked
10 there that are perpendicular or I guess parallel to the long
11 line of the station canopy there, those cars are parked in
12 that drive aisle that is going down to the other stores and
13 until they move out of there, they are blocking that aisle
14 for people going by. There is some room to get by them but
15 they're in the drive area there.
16 MR. GROSSMAN: All right. And then this last one
17 is a head-on of pictures in the line. Is that the idea?
18 MS. CORDRY: Let me see that one there. Okay. I
19 thought that --
20 MR. GROSSMAN: No. That's not a --
21 MS. CORDRY: -- I that was (b). That should be
22 (b) I believe.
23 MR. GROSSMAN: (B), no.
24 MS. CORDRY: What do you have as (b)?
25 MR. GROSSMAN: No, (b) was the black and white.

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1 MS. CORDRY: Oh, I -- okay. All right. Which
2 was, is (b). I mean, I have a black, a color and a black
3 and white of each one of those shots so --
4 MR. GROSSMAN: Right.
5 MS. CORDRY: Okay.
6 MR. GROSSMAN: So this is --
7 MS. CORDRY: So then you have (c) and (d) and (e)
8 and (f) I guess.
9 MS. ROSENFELD: I'm confused.
10 MS. CORDRY: Okay.
11 MR. GROSSMAN: Good.
12 MS. CORDRY: Let's start over again. 346(a) and
13 (b) are the color and black and white of the shot with the
14 trees.
15 MS. ADELMAN: That's right.
16 MS. CORDRY: So I guess 346(c) and (d) will be of
17 the two cars --
18 MR. GROSSMAN: (c) and (d) are these.
19 MS. CORDRY: Right. These ones, the two cars
20 blocking traffic.
21 MR. GROSSMAN: And (e) and (f) are --
22 MS. CORDRY: The head-on shots of the cars, right.
23 (Exhibit Nos. 346(e) and (f)
24 were marked for
25 identification.)

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1 MS. ADELMAN: (e) and (f) what? Did we get (e)
2 and (f) yet?
3 MS. ROSENFELD: No. And I don't, I don't think
4 you gave me 346(d). I don't have that in black and white.
5 MS. ADELMAN: I got it.
6 MR. GROSSMAN: (d) is the black and white of also
7 the ground level of the Costco station.
8 MS. ADELMAN: I got it.
9 MS. ROSENFELD: All right.
10 MS. CORDRY: And just showing the cars lined up
11 to, the line closest to us only has three cars in line
12 although theoretically, there's room for at least four cars
13 there but that fourth car is not being able to access that
14 line there. These are all taken on the same day, these
15 shots.
16 MR. GROSSMAN: So (e) and (f) are the cars from
17 the front. Okay.
18 MS. CORDRY: So what I could see was that, yes,
19 the cars weren't necessarily all lined up efficiently, they
20 weren't all moving up efficiently, that there was some
21 overflow going on and it indicates that there was definitely
22 long lines at this station as well despite having six lines
23 of cars as opposed to four.
24 MR. GROSSMAN: Okay.
25 MS. CORDRY: So to get a little better idea, when

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1 I had a little more time, was a little more organized, I
2 came back on another day in April, April 11th which I
3 believe was a Wednesday, on a weekday morning. I brought
4 with me a pad of paper and wrote down 7:00 a.m. or 7:28 I
5 guess I started, 7:29, 7:30. On a minute-by-minute basis I
6 sat there across the way from the station and wrote down how
7 many cars were in line by direct observation. I wish I had
8 a computer but I didn't so I sat there and kept track of
9 them for, from 7:28 to 8:36, so for a little over an hour to
10 see how that would develop. And this, of course, was at a
11 time when the store was not open yet so this is just, just
12 cars coming to the station itself.
13 During that time period, there was always pretty
14 much cars lined up and waiting, and even though as I say,
15 the store wasn't open and even though this is strictly, you
16 know, gasoline purchase, or just strictly coming to the
17 store, coming to that station just for gasoline purposes.
18 There was a low of one I believe at one point. I don't know
19 if you can see that but --
20 MR. GROSSMAN: What was the date on this again?
21 MS. CORDRY: This was April 11th. And I'm sorry.
22 I have a chart here actually. Let me hand you that one.
23 MR. GROSSMAN: April 11th, 2012?
24 MS. CORDRY: Yes.
25 (Discussion off the record.)

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1 MS. CORDRY: Okay. At 7:41, there was a low of
2 one car waiting. Now, this is on top of the cars, the pumps
3 all being full. These are queuing numbers in addition to
4 the pumps and so forth or at least as you will see, I assume
5 they were pretty much full. That actually turned out to be
6 probably an incorrect assumption, but there was one point at
7 7:41 where there's only one car waiting, and there was, from
8 7:46 to 7:50, there were four minutes when there was no one
9 waiting. All the rest of time it varied from 2 to as high
10 as 15 cars waiting in line at that time of day.
11 MR. GROSSMAN: Okay. So cars waiting and pumping
12 at --
13 MS. CORDRY: So this particular day, all I kept
14 track of was just the waiting cars. I did not try to make a
15 separate count and look at, to be sure that all the pumps
16 were actually full. I was assuming they were because I
17 would have thought people wouldn't be backing up if pumps
18 were empty but.
19 MR. GROSSMAN: At Elkridge, 4/11/12, 7:28 to 8:36.
20 But I also see you have February 11.
21 MS. CORDRY: Right. There's three separate days
22 actually on this chart all together.
23 MR. GROSSMAN: All right. So you also have --
24 MS. CORDRY: And actually, if, I see if I go down
25 the second page, it actually runs out to 8:45. A few more

1 minutes.

2 MR. GROSSMAN: February 11, '13 and 3/10. I
3 presume that's '13, is that correct?

4 MS. CORDRY: Yes. Uh-huh. Yes.

5 MS. GROSSMAN: '13. And February 11, you did it
6 8:00 --

7 MS. CORDRY: 8:00 a.m., um, through 10:10. I
8 stayed for a longer time period that day.

9 MR. GROSSMAN: And March 10, you did it from, in
10 the afternoon?

11 MS. CORDRY: No. This is in the morning again.

12 MR. GROSSMAN: I see 3:15.

13 MS. CORDRY: Oh, I'm sorry. March, yes. March.
14 That would have been in the afternoon, yes.

15 MR. GROSSMAN: I know you're dedicated but --

16 MS. CORDRY: They don't have a lot of people
17 there.

18 MR. GROSSMAN: 3:15 is a little bit --

19 MS. CORDRY: Plus, the pumps aren't really running
20 very well at 3:15 in the morning.

21 MR. GROSSMAN: Not well. All right. 3:15 p.m. to
22 3:50 p.m. Okay.

23 MS. CORDRY: Okay. Now this one, this is actually
24 after I had been talking to Mr. Core.

25 MR. GROSSMAN: That's Exhibit 347.

1 (Exhibit No. 347 was marked
2 for identification.)

3 MS. CORDRY: I think it was Mr. Core who had
4 pointed out that sometimes what he had seen, it didn't seem
5 like there were a lot, there were necessarily pumps were all
6 full so I thought well, let me go back again and look at
7 some, some checks and see how well they actually do in terms
8 of people seeing to move ahead, spending time at the pumps.
9 This also had to do with looking at I think some of the
10 traffic study where there was discussions about how much
11 time people spent at the pump but there wasn't really any
12 discussion of how long it would take people to pull up, get
13 to a pump, you know, find the pump, move ahead and so forth.
14 It was just strictly calculating the time spent at the pump
15 itself, and I had a feeling that probably was not completely
16 capturing what was going on.

17 So I went back out again and sat there for the two
18 hours and ten minutes and again, did this on a minute-by-
19 minute basis. And this time, I was trying to keep track of
20 how many pumps were actually full at any given time and this
21 day in February was less busy than April. People just don't
22 want to get up early in the morning in February. But what I
23 saw there was on a number of occasions, even when the pumps
24 were not completely full, when there were, say at 8:07, 10
25 pumps being used, there were still two cars waiting in line.

1 At 8:24, there was only six pumps being used and there still
2 was a car waiting. Starting at 8:33, several minutes in a
3 row, quite a few minutes in a row where there was 10 and 11
4 pumps being used off and on and yet, cars lined up and not
5 necessarily using all the pumps completely, and that went on
6 throughout that time period.

7 So what I was, in looking at it and trying to
8 figure out why people weren't actually filling up all the
9 pumps even when they were nominally available, there seemed
10 to be three issues there. One, people might not be able to
11 see if the pump was full when they were pulling up because
12 the congestion of other cars, because cars weren't
13 necessarily lined up completely evenly, because there was
14 just so much, you know, traffic in the area.

15 Secondly, I agree with Mr. Core that people did
16 not seem to understand, necessarily, that, these extra-long
17 pump hoses that Costco has and did assume that they needed
18 to wait and fill up on the normal side of the car because it
19 definitely seemed like the sides of the pumps where, most
20 pumps I think, most people have their gas tank on the
21 driver's side so those pumps were getting more service than
22 the ones where you would have to pull up and park on the
23 other side.

24 And the other thing that was happening was that
25 when people were using the extra-long pump hose, it did

1 appear that people, other people waiting in line were often
2 somewhat reluctant to try to pull through the area between
3 the two cars and pull up to the first pump. I have a shot,
4 this is actually one -- let me give you an additional one
5 here that I have that illustrates the point. This is a
6 picture I actually took down at Sterling but I believe the
7 dimensions are the same on the, on the pumps and so forth.
8 This would be what, 248?

9 MR. GROSSMAN: Exhibit No. 348, yes.

10 (Exhibit No. 348 was marked
11 for identification.)

12 MS. CORDRY: I forget exactly when I went to
13 Sterling but this was taken the summer sometime, which is
14 why everybody's in shorts, and not in February. But as you
15 can see, he is using his extra-long pump hose. He's pumping
16 on the driver's side of his car while he's parked on the
17 right-hand side of the, the pump is on his right-hand side
18 and as you can see, it does not appear that there's anybody
19 in front of him. There are definitely cars waiting behind
20 him but they do not appear to, either didn't see or did not
21 want to pull up through that area.

22 You can see there is space between the cars and if
23 there is no one standing there, that is enough space, in
24 general, for people to pull through but when there is
25 somebody standing on the side of their car, it did appear

1 from my observation that a lot of cars were concerned or
 2 just didn't want to take a chance of getting too close to
 3 somebody with a gas hose in his hand and would wait until
 4 that, until that person was finished. So --
 5 MR. GROSSMAN: What, you said summer. Summer of
 6 2012?
 7 MS. CORDRY: 2013 is -- this summer.
 8 MR. GROSSMAN: This past summer.
 9 MS. CORDRY: Yes. So again, this just goes into
 10 the question of if you assume a capacity based on every pump
 11 being full, you're probably going to somewhat overestimate
 12 what is going to happen at the station because even though
 13 they're at pump capacity nominally there, it doesn't
 14 necessarily get filled up immediately and get used by
 15 people.
 16 MR. GROSSMAN: Human frailties intervene.
 17 MS. CORDRY: Human frailties. Human inabilities.
 18 Human caution. Take your pick. All of, all of the above.
 19 MR. GROSSMAN: Okay.
 20 MS. CORDRY: So in order to verify all of that and
 21 those assumptions and so forth, I made one more visit up
 22 there, and this time I also went back to Elkridge to try to
 23 see when cars, to really get a better handle on how many
 24 cars there might be, say at Elkridge, before they started
 25 overflowing out onto the street and whether or not it would

1 coincide with the, the designated queuing numbers that
 2 theoretically you could have there.
 3 And that's the third page, the March 10th, 2013
 4 observations I made. I went there that day between 3:15 and
 5 3:50, and again, this was a week, a weekend afternoon where
 6 again, it's generally quite heavy volume there. This time I
 7 didn't try to count the, the people at the pumps. They did
 8 seem to be doing a better job of keeping the pumps full with
 9 that many cars lined up but what I tried to do was both look
 10 at the waiting and then to actually look at when it started
 11 to overflow and make the comments about the overflow and so
 12 forth. So I'm not sure that this one doesn't look at this
 13 exhibit. Well, okay. The comments are mostly I'm dealing
 14 with what is overflowing there.
 15 If you look at like, for instance, at 3:19 when
 16 there were 24 cars waiting, with that number of cars, they
 17 had already filled up into what I'm calling the straight
 18 area. If you look at the 3:45, there is the expanded area
 19 and then it narrows down to the, the entry straightaway
 20 there. At that point, say for instance at 3:19, with only
 21 24 cars, they had already moved, cars were already into that
 22 straightaway area of the station and would be then impeding
 23 the ability of cars to move over to the other queuing lane
 24 until they cleared out.
 25 At 3:23, with 29 cars in the actual queuing area,

1 there were between two and six cars, it varied over the
 2 course of a minute, waiting to get into the area, the park
 3 and other areas out in the street, waiting to be able to get
 4 into the queuing area. Similarly, the next, the next
 5 minute, there was 30 cars in the queuing area, there was two
 6 waiting to come in right into that area, there were two
 7 then, two additional ones blocking across traffic, and I
 8 didn't see any attendant back there.
 9 MR. GROSSMAN: So this didn't seem to happen in
 10 the morning. This happened in the afternoon time.
 11 MS. CORDRY: Right. In the morning, because
 12 again, remember, in the mornings, the store itself does not
 13 open until 10:00.
 14 MR. GROSSMAN: Right.
 15 MS. CORDRY: Until 9:30 or 10:00. So and you can
 16 actually see that from some of the other, Mr. Sullivan's
 17 report for instance. His, his August report show the number
 18 of transactions per hour and it is substantially lower
 19 before the store opens and as soon as the store opens, it
 20 pretty much builds up to capacity and stays at capacity
 21 constantly through that time period. It's in his report.
 22 Oh, yeah. On page 21 of Mr. Sullivan's August report, he
 23 shows that minute-by-minute number of transactions at the
 24 Sterling station from 10:00 to 7:00 p.m. and it starts very
 25 small at about 10:01 and then almost immediately builds up

1 to 95 to 100 percent of capacity almost continuously across
 2 the board there.
 3 So when you look at the morning, yes. It
 4 generally does not overflow the queue. Sometimes there
 5 isn't waiting but as I, as I showed most times, there was at
 6 least some waiting. In the afternoon, particularly weekend
 7 afternoons, you definitely is one of the prime periods when
 8 you get the queuing going on.
 9 MR. GROSSMAN: Okay.
 10 MS. CORDRY: So again --
 11 MR. GROSSMAN: How much longer will your testimony
 12 be?
 13 MS. CORDRY: A couple more minutes.
 14 MR. GROSSMAN: Okay.
 15 MS. CORDRY: So pretty much all of these
 16 observations here, the ones where I have comments, these are
 17 all time periods where the cars were into an area where they
 18 would be blocking people from being able to queue, and I
 19 think in none of these were there, in fact, I don't think I
 20 ever counted 34 cars in the queuing area and that you had
 21 many times where it was blocked in the queues.
 22 MR. GROSSMAN: Okay.
 23 MS. CORDRY: So basically, that being the point,
 24 that Mr. Guckert testified with respect to, for instance,
 25 this station that they assumed that they could get, I think

1 it was 45 cars into the queuing area and again, that's based
2 on them lining up nice and neatly and very carefully and so
3 forth. And this, I think, shows that that doesn't really
4 work that well and as an example of what actually is the
5 problem here, they showed you the Sterling station now.
6 What I actually have another picture of is the Sterling
7 station, if I can find it in this bunch, as it looked in
8 2011 when Mr. Sullivan was doing his various analyses and
9 taking his pictures and so forth. And it's a very different
10 look if I can find it, here we go, because they actually re-
11 did the entire queuing area at Sterling presumably because
12 it really wasn't working, for exactly the kind of reasons
13 Mr. Core and I have been observing.

14 MR. GROSSMAN: This will be Exhibit 349, and this
15 is photo, aerial photo of Sterling Costco station. When was
16 this?

17 MS. CORDRY: If you see at the bottom there,
18 bottom right-hand corner, imagery date 1/31/2011.

19 MR. GROSSMAN: 1/31/11. All right.
20 (Exhibit No. 349 was marked
21 for identification.)

22 MR. GROSSMAN: And you are purporting to show?

23 MS. CORDRY: If you look at this and then you look
24 at the one that was put in 343, 342, the color one that they
25 placed into evidence, it's the same shot basically but, and

1 you can see the canopy of the station in each case. But in
2 January of 2011, they had some kind of median, just kind of
3 C-shaped median there do you see?

4 MR. GROSSMAN: I see it.

5 MS. CORDRY: And then another one cutting across
6 there and some other barriers and so forth, and the cars are
7 kind of lined up. They're trying to get in there, the cars
8 trying to come to the second row from the bottom have to
9 angle around that big median strip.

10 MR. GROSSMAN: Right.

11 MS. CORDRY: And the ones trying to get in the
12 third row are getting blocked by the other ones. I have no
13 idea who designed that station. I hope it wasn't Mr.
14 Hurlocker because I hope he's done, doing a better job with
15 ours but apparently, at some point, somebody realized that
16 design was not working and was leading cars -- and you can
17 see that the cars are then, that farthest bottom line there,
18 the cars are backing up, winding out there, going out
19 towards the sides where you could touch by there.

20 MR. GROSSMAN: Where it is, yeah.

21 MS. CORDRY: So that's when apparently at some
22 point between January of 2011 and October of 2012, they took
23 out all of those various barriers and made it so all of the
24 cars could come straight in without any disruptions, without
25 any bottlenecks, without any constrictions and so forth.

1 And yes, those cars now are moving through much better and
2 probably are not creating much of a blockage. In addition,
3 as you can see, this station again, as with Elkridge, the
4 gas station is very far away from the store again,
5 completely separate from the, from the parking lot. You go
6 out of that gas station and you go into a big main drive
7 aisle. You don't go through other parking areas. The
8 loading docks for this station are of course all the way at
9 the back of the store, probably at least 1,000 feet away.

10 MR. GROSSMAN: You don't mean the, you mean the
11 loading docks for the warehouse.

12 MS. CORDRY: The loading docks for the warehouse,
13 yes.

14 MR. GROSSMAN: All right. You said the station.

15 MS. CORDRY: So you don't have this interaction
16 between the parking and the loading docks and the main drive
17 entrances and the Ring Road around the store and the parking
18 and the gas station. All of these things have separate
19 features and they're all separated. The entrance to the, to
20 the store is actually along this, it's a little hard to see
21 because the forest is right here, but there is a road right
22 there that runs alongside the, the gas station and again,
23 you peel off to go into the gas station so it's separate
24 from the, from the Ring Road. You're not crossing back and
25 forth and interfering with that. And then you can come down

1 here in this drive aisle or this drive aisle to park there.

2 So compared to this, the design at Wheaton, this
3 is a much more sensible design and I, it probably makes
4 sense to put here, I could put in some other stations, maybe
5 just introduce a couple pictures of a couple other stations
6 which will have the same point and then I guess be ready for
7 their cross on Thursday or --

8 MR. GROSSMAN: Well, let's, let's save that
9 because I have to leave.

10 MS. CORDRY: Okay. Yes. That's what I meant.

11 MR. GROSSMAN: Okay.

12 MS. CORDRY: I just, I was just going to, if you
13 want me to introduce --

14 MS. HARRIS: Can we have the copies of the pictures
15 if you're going to be talking about them?

16 MS. CORDRY: Yeah. If you want them, I can just
17 go ahead and --

18 MR. GROSSMAN: Give them the copies of the
19 pictures.

20 MS. CORDRY: -- mark them and then you can --
21 right. Let's see. I have the one in Frederick. Guess that
22 is 350 then.

23 MR. GROSSMAN: Yes. 350, an aerial photo. This
24 is also a Costco gas station?

25 MS. CORDRY: Uh-huh. And let's see. This one is

1 Leesburg.
 2 MR. GROSSMAN: When was the Frederick one taken?
 3 MS. CORDRY: It looks like that's 9/30/2008.
 4 MR. GROSSMAN: All right. And this will be
 5 Exhibit 350.
 6 MS. CORDRY: I thought we passed 350, no?
 7 MR. GROSSMAN: 350 is the Frederick station.
 8 MS. CORDRY: Okay. 350 is Frederick. Okay.
 9 (Exhibit No. 350 was marked
 10 for identification.)
 11 MR. GROSSMAN: Exhibit 351. Where is this next
 12 one?
 13 MS. CORDRY: Leesburg, yeah.
 14 MR. GROSSMAN: 351 is aerial photo Costco station
 15 in Leesburg.
 16 (Exhibit No. 351 was marked
 17 for identification.)
 18 MR. GROSSMAN: And when was this one taken?
 19 MS. CORDRY: That one was taken also 9/30/2008.
 20 No. Yes. Yes. Those were both taken on 9/30/2008.
 21 MR. GROSSMAN: Okay.
 22 MS. CORDRY: It says Leesburg on it. If we want
 23 to put the color one in, I have a color one of Leesburg as
 24 well.
 25 MR. GROSSMAN: No. That's --

1 MS. CORDRY: All right.
 2 MR. GROSSMAN: Let's just go with --
 3 MS. CORDRY: All right. So --
 4 MR. GROSSMAN: -- what we got. Okay.
 5 MS. CORDRY: I think that's really pretty much
 6 about what I had to say other than I would just take a
 7 minute or two when we come back but, about this station
 8 here.
 9 MR. GROSSMAN: Okay. All right then. So we are
 10 ready to adjourn for the day. We'll resume here on
 11 Thursday, the 24th at 9:30 a.m. Thank you. We are
 12 adjourned.
 13 (Whereupon, at 4:46 p.m., the hearing was
 14 concluded.)
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C E R T I F I C A T E

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

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

By:

Josephine Hayes, Transcriber

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