

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 February 25, 2014, commencing at 9:36 a.m., at the Stella B. Warner Council Office Building, 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

Also Present:

Erich Brann, Costco Representative

Tim St. Pierre

Kenneth Chase

Ann Arevalo

Margaret Alpert

P R O C E E D I N G S

1 MR. GROSSMAN: This is the 27th day of the public
2 hearing in the matter of Costco Wholesale Corporation, Board
3 of Appeals No. S-2863, OZAH No. 13-12, a petition for
4 special exception pursuant to Zoning Ordinance Section 59-G-
5 2.06 to allow petitioner to construct and operate an
6 automobile filling station which would include 16 pumps.
7 The subject site is located at 11160 Veirs Mill Road, Silver
8 Spring, Maryland. That's Lot N-631, Wheaton Plaza, Parcel
9 10, also known as the Westfield Wheaton Mall, and is zoned
10 C-2, general commercial.

11 The hearing was begun on April 26th, 2013 and as
12 we all know, has continued for many days thereafter. The
13 hearing was noticed to resume again today and the next
14 session will be March 3, 2014 here in the second floor
15 hearing room, the COB, at 9:30 a.m. Okay. Will the parties
16 identify themselves, please, for the record?

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

18 MS. HARRIS: Good morning. Pat Harris on behalf
19 of Costco.

20 MR. GOECKE: Good morning. Mike Goecke for
21 Costco.

22 MR. ROSENFELD: Good morning. Michele Rosenfeld
23 for Kensington Heights.

24 MR. SILVERMAN: Good morning. Larry Silverman for

C O N T E N T S

Witnesses: Direct Cross Redirect Recross
Maria Jison
By Ms. Rosenfeld: 16 -- 92 --
BY Mr. Goecke: 61 100
Donna Savage
By Mr. Goecke: -- 106 -- --
By Ms. Rosenfeld: -- -- 179 --

E X H I B I T S

Exhibit No. Marked/Received
457A House Bill 1383 7
457B Senate Bill 631 7
465 Wheaton Costco Wholesales Capacity Results 8
466 Sullivan Rebuttal Report 9
467 Excerpt from 3/14/14 Zoning Ordinance Draft 137
468 Excerpts from 12/16/13 PHED Committee Draft 144
469 Excerpt from Zoning Ordinance 191

1 the Coalition to Stop Costco Gas.
2 MR. GROSSMAN: Hello.
3 MS. ADELMAN: Good morning. Abigail Adelman for
4 the coalition.
5 MR. GROSSMAN: Ms. Adelman. And I think I forgot
6 to say that this hearing is conducted on behalf of the Board
7 of Appeals. My name is Martin Grossman. I'm the Hearing
8 Examiner which means I will take evidence and write a report
9 and recommendation to the Board for its decision in the
10 case. Okay. Preliminary matters. At our session
11 yesterday, we added Exhibits 457 through 464, and Ms.
12 Adelman supplied, by e-mail, a copy of Senate Bill 632.

13 MS. ADELMAN: No, 1.

14 MR. SILVERMAN: 631.

15 MR. GROSSMAN: Oh.

16 MS. ADELMAN: 631.

17 MR. GROSSMAN: I mistyped that here. 631 which
18 requires a setback certification at any large station, for
19 any large station that's at least 1,000 feet from schools,
20 residences, playgrounds, recreation areas and the like

21 MS. ADELMAN: No. No, 300 feet.

22 MR. GROSSMAN: Oh, I thought you told me it was
23 the same as the --

24 MR. SILVERMAN: No.

25 MS. ADELMAN: Well, you're right.

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1 MR. GROSSMAN: As the House Bill.  
2 MS. ADELMAN: I did say that, and I was incorrect  
3 in the sense that last year, we requested 1,000 feet and  
4 this year, we're requesting 300 feet to keep in keeping with  
5 the EPA guidelines.  
6 MR. SILVERMAN: That triples our chance of  
7 succeeding.  
8 MR. GROSSMAN: Well, all right. So you're saying  
9 the Senate Bill differs from the House Bill.  
10 MS. ADELMAN: No. They're both the same. They're  
11 both 300 foot setback and not 1,000 foot setback.  
12 MR. GROSSMAN: Oh, did I misread the, the House  
13 Bill that -- hold on a second.  
14 MS. ADELMAN: I hope --  
15 MR. GROSSMAN: Now you really have me confused.  
16 MS. ADELMAN: I hope that's the case.  
17 MR. SILVERMAN: I was --  
18 MS. ADELMAN: I'll have to speak to my web master,  
19 Mr. Grossman.  
20 MR. SILVERMAN: I was told yesterday that there  
21 are differences.  
22 MS. ADELMAN: Really?  
23 MR. SILVERMAN: Yes. But I don't know that  
24 myself.  
25 MR. GROSSMAN: Hold on. Here's --

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1 MS. ADELMAN: I'll check, I'll have to check that.  
2 MR. GROSSMAN: House Bill 1383, which is we'll say  
3 Exhibit 457, we'll make it 457A.  
4 (Exhibit No. 457A was marked  
5 for identification.)  
6 MR. CHASE: Mr. Grossman?  
7 MR. GROSSMAN: Yes, sir.  
8 MR. CHASE: They're about to start drilling in the  
9 hallway. Will it be okay if I close the door?  
10 MR. GROSSMAN: Yes. I appreciate it. Thank you.  
11 That's been the drill around here recently. All right.  
12 Yes. The department, it says here in Section 6-103B of the  
13 House Bill, the department shall issue a setback  
14 certification if the large retail service station will be  
15 set back at least 1,000 feet.  
16 MS. ADELMAN: Wow. Thank you for pointing that  
17 out.  
18 MR. GROSSMAN: Boundary line to boundary line  
19 from. So that's what the, that's what it says in the House  
20 Bill, House Bill 1383 introduced on February 12, 2014.  
21 MS. ADELMAN: Thank you.  
22 MR. GROSSMAN: And Exhibit 457B is Senate Bill  
23 631.  
24 (Exhibit No. 457B was marked  
25 for identification.)

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1 MR. GROSSMAN: And, yes. That says in its Section  
2 6-103B calls for the setback certification if it's located  
3 at least 300 feet from, I would assume it's the same listing  
4 for types of activities.  
5 MS. ADELMAN: Uh-huh. It is.  
6 MR. GROSSMAN: So we do have a difference there on  
7 those two bills.  
8 MS. ADELMAN: Thank you.  
9 MR. GROSSMAN: And as I said, the Senate Bill will  
10 be Exhibit 457B, and the House one 457A. Okay. Also, the  
11 applicant e-mailed two documents, one from, one from Mr.  
12 Guckert's reply, rebuttal testimony and that will be Exhibit  
13 465 and that's entitled Costco Wheaton Capacity Results.  
14 (Exhibit No. 465 was marked  
15 for identification.)  
16 MS. ROSENFELD: Mr. Grossman, what's the date of  
17 that e-mail?  
18 MR. GROSSMAN: It's --  
19 MS. ADELMAN: It was Saturday.  
20 MS. ROSENFELD: Saturday's? Okay, thank you.  
21 MS. ADELMAN: Whatever date that was. The 22nd.  
22 MR. GROSSMAN: So that's Exhibit 465. Perhaps I  
23 should be wise and start another page here. Okay. And then  
24 we also received Mr. Sullivan's rebuttal report which will  
25 be Exhibit 466.

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1 (Exhibit No. 466 was marked  
2 for identification.)  
3 MR. GROSSMAN: Okay. All right. The witnesses  
4 scheduled for today are Dr. Jison to complete her testimony  
5 and Ms. Savage to complete her testimony. Mr. Sullivan is  
6 scheduled for his rebuttal on March 3, 2014 and Mr. Guckert  
7 is scheduled for his rebuttal testimony on March 11, 2014.  
8 Party submissions of agreed and unagreed conditions and  
9 objections to exhibits are now due on March 3, 2014 to be  
10 discussed at the March 11, 2014 meeting.  
11 MS. ROSENFELD: March --  
12 MR. GROSSMAN: March 11.  
13 MS. ROSENFELD: -- 11th?  
14 MR. GROSSMAN: Yes. We'll discuss them at the  
15 March 11 but they'll be submitted --  
16 MS. ROSENFELD: I'm sorry. I thought you said  
17 March 14. I might --  
18 MR. GROSSMAN: March 11, 2014.  
19 MS. ROSENFELD: Okay.  
20 MR. GROSSMAN: If I said March 14, I misspoke.  
21 Okay. Any other preliminary matters?  
22 MS. ROSENFELD: Mr. Grossman, with respect to the  
23 rebuttal report that Mr. Sullivan provided --  
24 MR. GROSSMAN: Yes.  
25 MS. ROSENFELD: -- it's certainly KHCA's view that

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1 it goes far beyond rebuttal. It's, in fact, a whole new  
2 report and it provides, it does not limit itself to the  
3 scope of Dr. Cole's testimony with respect to its analysis  
4 or its findings. In fact, what it does is go back and  
5 submit an entirely new set of modeling assumptions, new  
6 formulas, updated background levels, all information that  
7 has been generated and promulgated since, since Dr. Cole  
8 testified, and so we would object to its admission based on  
9 the fact that it in fact is not a rebuttal of Dr. Cole's  
10 testimony but in fact is yet again a new report containing  
11 new information and analysis.

12 MR. SILVERMAN: And it also has, for the first  
13 time, references which are extensive and long and need to be  
14 studied and puts us in a very awkward situation.

15 MR. GROSSMAN: Well, I don't have a problem with  
16 the references because you'll have ample time to look that  
17 up, but let Mr. Goecke address your point about rebuttal.

18 MR. GOECKE: The report does not contain any new  
19 samples or new data. It does apply new modeling techniques  
20 largely based on what Dr. Cole thought was the more  
21 appropriate method of modeling even though he didn't conduct  
22 it himself and so Mr. Sullivan took Dr. Cole up on his offer  
23 and merely applied the techniques that Dr. Cole said were  
24 most appropriate. It also responds to some specific themes  
25 that Dr. Cole testified to such as, you know, the conversion

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1 of how air behaves from a rural to an urban area, and so he,  
2 he delves into that more deeply. It talks about the time  
3 that's required for NO to convert into NO2.

4 These were areas that were discussed during Mr.  
5 Sullivan's direct testimony, during Dr. Cole's rebuttal  
6 testimony or, for the opposition's case, and Mr. Sullivan is  
7 merely replying to what Dr. Cole said so it is within the  
8 scope of what's been provided before. It is, I mean, she's  
9 correct that there are new modeling approaches applied here  
10 but as I said earlier, that is based largely on what Dr.  
11 Cole said was the correct way to do it.

12 MS. ROSENFELD: And in response to that, I would  
13 say that some of the modeling I think, as I read it, is  
14 based on updated EPA background levels so the moving target  
15 continues to move which, you know, it's my understanding was  
16 that that moving target was supposed to stop in August with  
17 the final submissions. And in addition to that, the, the  
18 suggestion that this creates a model based on the testimony  
19 provided by Dr. Cole, I submit it cherry picks two or three  
20 issues that Dr. Cole raised but in no way is a study that,  
21 or an analysis that encompasses the entirety of Dr. Cole's  
22 testimony and if that --

23 MR. GROSSMAN: Well, they're certainly entitled to  
24 cherry pick. That's not the -- it's a rebuttal. They can  
25 pick out whatever they want to rebut. The question raised

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1 is, the more difficult question is are they producing new  
2 material that should have been part of their case in chief.  
3 That's the, that's the real issue, but they can certainly  
4 pick any portion of Dr. Cole's testimony and elect to rebut  
5 that so that's not an issue. I just got it. I haven't had  
6 an opportunity to read through it, I glanced at it, so I'd  
7 like you point out specifically by page what are the new  
8 things in the Sullivan report that you say are, that should  
9 have been part of the case in chief?

10 MS. ROSENFELD: Well, the most significant,  
11 frankly, is the conversion rate of the NOx and NO2 because  
12 that is a modeling approach that was available to Mr.  
13 Sullivan throughout this proceeding had he chosen to use  
14 that modeling and using it now, at this point, is a  
15 fundamental change in his modeling assumptions and his new  
16 information. Frankly, it's a long report. I have not had a  
17 chance to go through it entirely. That jumped out at me,  
18 and I would like to respond to you in writing on a point-by-  
19 point basis.

20 MR. GROSSMAN: All right. Well, it's -- we have a  
21 hearing on March 3 --

22 MS. ROSENFELD: I --

23 MR. GROSSMAN: -- with Mr. Sullivan so we don't  
24 have a lot of time for a, a written submission.

25 MS. ROSENFELD: Even a page-by-page catalog

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1 perhaps if I submit that to you by close of business  
2 tomorrow?

3 MR. GROSSMAN: All right. That would be  
4 sufficient.

5 MS. ROB: Okay.

6 MR. GROSSMAN: And we'll give you another day to  
7 respond to that. How's that?

8 MR. GOECKE: Sure. That's fine. In fact, if I  
9 can address just a few of those points.

10 MR. GROSSMAN: Yes.

11 MR. GOECKE: In terms of the lowering background  
12 level for ambient air, Dr. Cole testified he agreed that the  
13 ambient air levels are decreasing in terms of NO2 and PM2.5  
14 and so just like Ms. Cordry has submitted more recent data  
15 for her observations of the traffic at the mall in December,  
16 the levels are, background levels are continuing to  
17 decrease. The longer this goes on, the more current  
18 information is lower and lower and Dr. Cole testified about  
19 that, so I think it is an appropriate rebuttal topic.

20 MR. GROSSMAN: Well --

21 MS. ROSENFELD: And --

22 MR. GROSSMAN: -- as far as the December updates,  
23 they're still in their case in chief, that's the difference  
24 here, so I don't see that as quite the same. They, I've  
25 allowed them, as part of their case in chief, to continue

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1 their submission through December, the holiday season, but  
2 we're now in your rebuttal case so the question is, is it  
3 true rebuttal or is it, or should it have been part of your  
4 case in chief. That's the, that's the issue.  
5 MS. ROSENFELD: And I would submit that to the  
6 extent that the applicant would be allowed to update  
7 background based on evolving information, likewise, evolving  
8 scientific studies and analysis should also be allowed to be  
9 updated. It's unfair for the applicant to update their  
10 science through their rebuttal case and yet, hold us to the,  
11 for example, the EPA NAAQS of, as were adopted in 2010. For  
12 us to be pegged to a scientific point in time that predates  
13 what they're allowed to update their information I think is  
14 unfair.  
15 MR. GROSSMAN: I'd have to look back at what, at  
16 the specifics of the report to answer that question. So in  
17 one sense, we want to make sure that this is part of true  
18 rebuttal, in the other sense, we want to get as close to  
19 truth as we can and so we have the tug of that thing and the  
20 same, for the same reason that I, I allowed you to  
21 supplement the record as far the December information for  
22 part of your case in chief in effort to get closer to the  
23 truth. I also have to keep that in mind in terms of the  
24 rebuttal. So in any event, by close of business tomorrow,  
25 why don't you e-mail me a document which we can then put in

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1 the record.  
2 MS. ROSENFELD: Certainly.  
3 MR. GROSSMAN: A page-by-page reference to those  
4 items that you consider not to be true rebuttal. And then  
5 that will be by, by February 26 close of business and then  
6 by February 27 close of business, the applicant can respond  
7 also with a document that can be included in the record and  
8 then I will rule on that hopefully by the next day. Yes,  
9 sir.  
10 MR. SILVERMAN: One of the points a conversion  
11 rate ran into was sort of central to his original analysis.  
12 I think Mr. Sullivan's basic thesis is he's being  
13 conservative and the central, one of the central elements of  
14 his conservatism was, was to pick, as EPA usually  
15 recommends, 100 percent conversion rate. And then when he  
16 changes that, how, how are we then supposed to understand  
17 his case in chief which is so dependent on that particular  
18 number to justify the conservatism which is required?  
19 MR. GROSSMAN: Aren't you arguing, you're arguing  
20 the case now. The question here is a pure procedural one of  
21 what is allowed in as rebuttal. You don't have to argue the  
22 case now. The question is what is true rebuttal here and  
23 what could have been part of the case in chief. If it could  
24 have been part of the case in chief and wasn't, then that's  
25 one thing. If in fact it's just a rebuttal statement, then

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1 it's perfectly permissible. Okay. All right. So then  
2 we'll hopefully have the answer to that by Thursday. At  
3 least you'll have my ruling on the point. Okay. More  
4 adventures in paradise here. All right. Any other  
5 preliminary matters? All right. Then shall we turn to Dr.  
6 Jison and invite her back to the stand? Good morning, Dr.  
7 Jison.  
8 MS. JISON: Good morning.  
9 MR. GROSSMAN: I remind you that you are still  
10 under oath. You have to answer yes.  
11 MS. JISON: Yes.  
12 MR. GROSSMAN: Okay.  
13 (Witness previously sworn.)  
14 MR. GROSSMAN: All right. And as I recall, you  
15 were still on direct so we have additional questions?  
16 MS. ROSENFELD: Yes, we do. Thank you, Mr.  
17 Grossman.  
18 MR. GROSSMAN: All right. Ms. Rosenfeld.  
19 DIRECT EXAMINATION (Continued)  
20 MS. ROSENFELD: Dr. Jison, has the EPA published  
21 any analysis with respect to potential health effects of NO2  
22 on people?  
23 MS. JISON: Yes, they have. And I'm going to  
24 refer to the 2010 Federal Register Notice on NO2, the final  
25 rule, which states that the administrator notes that the

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1 evidence relating to short-term, minutes to hours, NO2  
2 exposures to respiratory morbidity was judged in the ISA to  
3 be sufficient to infer a likely causal relationship. The  
4 EPA, EPA administrator cited four studies supporting short-  
5 term NO2 standards below 100 parts per billion and on page  
6 6495 of the Federal Register 2010 NO2 final rule, it stated  
7 that the EPA administrator considered an even lower short-  
8 term NO2 standard of 80 parts per billion because evidence  
9 existed that could support this lower standard.  
10 MR. GROSSMAN: And I'm sorry. What page was that  
11 again?  
12 MS. JISON: 6495.  
13 MR. GROSSMAN: And is that, is there an exhibit  
14 number attached to that?  
15 MS. JISON: Yes. It's 424A.  
16 MR. GROSSMAN: Okay.  
17 MS. JISON: So there, it was considered possible  
18 that NO2 induced increase in airway responsiveness could  
19 occur in asthmatics following exposures to concentrations of  
20 NO2 below 100 parts per billion and that such an increase  
21 could be clinical significant. Further, on page 6487 of the  
22 NO2 final rule, it's noted that several professional medical  
23 societies such as the American College of Chest Physicians,  
24 American Lung Association, American Medical Association and  
25 the American Thoracic Society supported setting the short-

1 term NO2 standard to below 80 parts per billion even  
2 supporting it below 50 parts per billion based on a study  
3 that demonstrated respiratory health effects around 50 parts  
4 per billion. That's from the Delfino study. Again --

5 MR. GROSSMAN: But that was not, that was not  
6 adopted.

7 MS. JISON: That was not included in the -- yeah,  
8 the 50 parts per billion was not adopted but the medical  
9 societies strongly urge because they, they felt, the medical  
10 community felt that the evidence, the scientific evidence  
11 was supportive of lowering it further to 50 parts per  
12 billion but that was an agency decision that the EPA made.

13 MR. GROSSMAN: And which particular measurement of  
14 NO2 is this? This is the hourly or is this the --

15 MS. JISON: I think this is the annual standard  
16 versus the, I always get them confused, 53 -- I think the  
17 lower standard is usually the annual standard and the hourly  
18 one is usually higher. I can't recall. I mean, I could  
19 look back in my notes and tell you for sure but I didn't  
20 bring those particular notes with me so I don't have the  
21 chart.

22 MR. GROSSMAN: All right.

23 MS. JISON: So, you know, the EPA didn't use that  
24 standard because at the time when they were deciding on the  
25 available data and you have a certain cut point when they

1 make their decisions, the data at that time, they didn't  
2 feel they had enough to support that but the medical  
3 community felt that this particular data was compelling  
4 enough to urge the EPA to have the standard at 50 parts per  
5 billion. I'm sure --

6 MR. GROSSMAN: All right. I'm going to let you  
7 check your notes just so we make sure that what we're  
8 talking about, which standard we're talking about.

9 MS. JISON: Okay.

10 MR. GROSSMAN: So go ahead and check your notes.

11 MS. JISON: Sure. Yeah. The annual standard is  
12 53 and the one hour standard is 100.

13 MR. GROSSMAN: Okay.

14 MS. JISON: You know, but since that particular  
15 study has come out, other studies have come out with health  
16 effects at lower levels.

17 MR. GROSSMAN: But the one hour standard is 100  
18 and you're saying that these other groups had advocated that  
19 the one hour standard be 50, is that what you're saying?

20 MS. JISON: Yeah. Yeah.

21 MR. GROSSMAN: Okay.

22 MS. JISON: So additional studies have come out  
23 more recently with health effects at lower levels and levels  
24 within the standard so the science is catching up and I'm  
25 sure when the EPA has their next rule-making session, more

1 of this data will be incorporated and it's likely that  
2 standards may be lowered even further.

3 Just to finish citing from the Federal Register  
4 again, on page 6500 of the NO2 final rule, the document  
5 refers to a meta analysis and states that the meta analysis  
6 does not provide any evidence of a threshold below which  
7 effects do not occur. The studies included in the meta  
8 analysis evaluated primarily mild asthmatics while more  
9 severely affected individuals could respond to lower  
10 concentrations. Therefore, it is possible that exposure to  
11 NO2 concentrations below 100 parts per billion could  
12 increase airway responsiveness in some asthmatics.

13 MS. ROSENFELD: And, Dr. Jison, going back for a  
14 moment to your discussion of the short-term NO2 standards,  
15 and you indicated that it was considered possible that  
16 asthmatics could suffer health effects at levels below 100  
17 and that such an increase could be clinically significant.  
18 Could you explain, from your point of view, what clinically  
19 significant means?

20 MS. JISON: Clinically significant or an asthmatic  
21 could mean that they're experiencing increased symptoms. It  
22 may be causing them to use more of their medications to  
23 control their asthma. It could mean that they're having to  
24 seek medical attention more frequently such as going to an  
25 urgent care visit or going to see their physician for an

1 acute complaint or going to an emergency department for  
2 acute care. Although asthma symptoms may be transient and  
3 reversible, they're still considered clinically significant  
4 because of those types of consequences and if they, if the  
5 acute exacerbation of asthma is severe enough, there are  
6 even more severe complications associated with that episode,  
7 so just them being transient does not necessarily mean it's  
8 an insignificant effect.

9 MS. ROSENFELD: Okay. Thank you. In his  
10 testimony on September 16th, Dr. Chase offered his opinion  
11 as to what constitutes a clinically insignificant health  
12 effect and specifically, he testified that insignificant  
13 health effect means, in his view, that it might be  
14 transient. Do you agree with Dr. Chase's testimony?

15 MR. GOECKE: Objection. We've already covered  
16 that.

17 MR. GROSSMAN: She just answered that, didn't she?

18 MS. ROSENFELD: She, she did.

19 MR. GROSSMAN: She just said just because it's  
20 transient does not mean it's significant. That's what she  
21 just testified.

22 MR. GOECKE: And we covered it on her last  
23 testimony as well in the last hearing.

24 MR. GROSSMAN: Well, let's deal with just this.  
25 She just said it here so --

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1 MS. ROSENFELD: Okay.  
2 MR. GROSSMAN: -- I don't think you have to ask  
3 again.  
4 MS. ROSENFELD: Do you know whether the EPA has  
5 made any determination as to what a transient health effect  
6 might be?  
7 MS. JISON: The EPA did mention, did provide a  
8 statement regarding transient health effects in the NO2  
9 final rule from the 2010 Federal Register Notice. On page  
10 6488, the EPA stated that the ISA concluded that transient  
11 increases in airway responsiveness, such as in asthma,  
12 following NO2 exposure have the potential to increase  
13 symptoms and worsen asthma control. The uncertainty over  
14 the adversity of the response reported in controlled human  
15 exposure studies does not mean that the NO2 induced increase  
16 in airway responsiveness is not adverse. Rather, it means  
17 that there's a risk of adversity, especially for asthmatics  
18 with more than mild asthma, but that risk can't, cannot be  
19 fully characterized based on existing studies.  
20 That statement indicates that the EPA has a  
21 different take on what I would interpret Dr. Chase's  
22 testimony to suggest which was that transient effects were  
23 clinically insignificant. The EPA, like the special  
24 exception standards, is concerned with all the health  
25 effects, not just those that result in permanent injury or

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1 disability.  
2 MS. ROSENFELD: And has the EPA studied whether  
3 adverse health effects occur at pollution concentrations  
4 below existing EPA standards for PM2.5 and for NO2?  
5 MR. GROSSMAN: Hold your answer to that. The last  
6 reference to the EPA discussion you just, you just stated,  
7 where is that from? Which specific --  
8 MS. JISON: This is from the NO2 final rule, 2010  
9 Federal Register Notice.  
10 MR. GROSSMAN: Right. And but what page?  
11 MS. JISON: 6488.  
12 MR. GROSSMAN: All right. So that last statement  
13 was from page 6488? Okay. All right. Ms. Rosenfeld, do  
14 you want to restate that question again?  
15 MS. ROSENFELD: Certainly. Has the EPA studied  
16 whether health effects, adverse health effects occur at  
17 pollution concentrations even below the EPA standards for  
18 PM2.5 and NO2?  
19 MS. JISON: Yes, they have. The EPA's  
20 determination to reduce the levels for PM2.5 and NO2 were  
21 based on evidence that there were health effects occurring  
22 at exposure levels well within the existing standards which  
23 had been intended to provide an adequate margin of safety.  
24 I'm referring again to the Federal Register Notice for PM2.5  
25 and which is page 3, 3120, and then again for the NO2 on

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1 page --  
2 MR. GROSSMAN: Hold on one second. Let's get,  
3 make sure we get -- what exhibit is that?  
4 MS. JISON: That's 424E like Edward.  
5 MR. GROSSMAN: Exhibit 424E. And that's the  
6 Federal Register Notice for PM2.5.  
7 MS. JISON: Final rule for PM2.5.  
8 MS. ROSENFELD: Right.  
9 MS. JISON: And then also for NO2 on page 6484.  
10 Specifically for NO2 from page 6480 from the final rule, the  
11 EPA stated that the ISA concluded that the findings of  
12 epidemiologic controlled human exposure in animal  
13 toxicological studies provide evidence that is sufficient to  
14 infer a likely causal relationship for respiratory effects  
15 following short-term NO2 exposure.  
16 It also says the ISA, Section 5.4 concluded that  
17 the strongest evidence for an association between NO2  
18 exposure and adverse human health effects comes from  
19 epidemiologic studies of respiratory symptoms, emergency  
20 department visits and hospital admissions. These studies  
21 include panel and field studies, studies that control for  
22 the effects of co-occurring pollutants and studies conducted  
23 in areas where whole distribution of ambient 24 hour average  
24 NO2 concentrations was below current standards, below the 53  
25 parts per billion.

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1 These are the types of health effects that, you  
2 know, we are concerned with, especially with the heightened  
3 exposure to pollutants. While the rule are expected to  
4 protect sensitive populations such as children, they are not  
5 designed to avoid harm to the most sensitive individuals.  
6 In setting those levels, the NO2 --  
7 MR. GROSSMAN: Right now are you reading? Are you  
8 telling me what the EPA said or are you giving your own  
9 opinion now?  
10 MS. JISON: This is my opinion, yeah. Sorry.  
11 MR. GROSSMAN: Okay. This is your opinion, okay.  
12 MS. JISON: Yeah.  
13 MR. GROSSMAN: So now state your opinion.  
14 MS. JISON: Yeah. So in setting those levels, the  
15 NO2 notice points out that the standard is not intended to  
16 ensure that -- okay. This is a quote from, this is a  
17 reference from the NO2 final register.  
18 MR. GROSSMAN: This -- all right.  
19 MS. JISON: Yeah.  
20 MR. GROSSMAN: So what you're about to say is from  
21 the register or is it your --  
22 MS. JISON: I'm paraphrasing from the register.  
23 MR. GROSSMAN: All right.  
24 MS. JISON: Okay. So, and this is from page 6502,  
25 so I'm paraphrasing what I understand that to mean.

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1 MR. GROSSMAN: Okay.  
2 MS. JISON: That the standard is not intended to  
3 ensure that there is zero risk, that the level will protect  
4 the most sensitive individuals. Again, I'll be  
5 paraphrasing. For the PM2.5 rule, they also point out that  
6 zero risk several times. That's on page 3090. But while --  
7 so now going back to my interpretation.  
8 MR. GROSSMAN: All right. Hold on one second.  
9 All right. So page 3090 of the --  
10 MS. ROSENFELD: Would this be your opinion?  
11 MS. JISON: Yes.  
12 MR. GROSSMAN: All right. So page 3090 of the  
13 Exhibit 424E.  
14 MS. JISON: 2.5 PM2.5.  
15 MR. GROSSMAN: Relating to the PM2.5 saying the  
16 standard is not intended for zero risk.  
17 MS. JISON: Right.  
18 MR. GROSSMAN: And there may still be some risk to  
19 sensitive individuals.  
20 MS. JISON: Yes.  
21 MR. GROSSMAN: And the same is true of the NO2  
22 regarding page 6502 in Exhibit 424A. Okay.  
23 MS. ROSENFELD: So Dr. Jison, what do you draw  
24 from those statements from the EPA?  
25 MS. JISON: So while children are undoubtedly more

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1 sensitive than adults, they're not a homogeneous category.  
2 Children at the Stephen Knolls School are a hypersensitive  
3 population and are at the very far end of the sensitivity  
4 scale, so would children with, with asthma such as my  
5 children. As a prior testimony indicated from one of the  
6 parents at the school, it's not uncommon to have at least  
7 one child die each year at the school which has a population  
8 of about 100 students, so that's a one percent death rate.  
9 In a normal school, that would be considered catastrophic  
10 and completely unacceptable.  
11 Even if those standards might be intended to  
12 protect a typical body of generally healthy children or  
13 children with some sensitive, children with mild asthma,  
14 that doesn't mean that they are completely protective of the  
15 special group that exists in our community and nowhere else.  
16 In addition, that particular parent, I think Ms.  
17 Alvarez, stated that not only are the children physically  
18 susceptible but an illness and prolonged treatment course  
19 resulting from such an illness, that might not be so bad for  
20 a child that can hear and understand what's going on and  
21 doesn't have any learning disabilities could be incredibly  
22 traumatizing for the types of children that are at that  
23 school like her daughter.  
24 MR. GROSSMAN: I remember her testimony.  
25 MS. ROSENFELD: So, Dr. Jison, in your opinion,

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1 has the EPA concluded that there are no adverse health  
2 effects when pollution concentrations are lower than the EPA  
3 National Ambient Air Quality Standards now in effect?  
4 MS. JISON: No. It's important to note again that  
5 the EPA did not conclude that there were no health effects  
6 below the standards. Rather at most, it was determining it  
7 did not yet have sufficient evidence to determine those  
8 issues. That's particularly true with respect to the annual  
9 PM2.5 standards where the actual average area ambient  
10 emissions were often at or around the level of the  
11 standards. It's not easy to determine what effect would be  
12 at lower than average levels.  
13 MR. GROSSMAN: Well, let me, let me pick up on  
14 that point, it's not easy to determine. How does one set a  
15 standard if it's not determinable and the EPA has not yet  
16 determined it?  
17 MS. JISON: Are you asking me how, how would the  
18 EPA set a standard basically or how would --  
19 MR. GROSSMAN: No. I'm asking you how would --  
20 the suggestion is here that I could set a standard or apply  
21 a standard to this proposed gas station, and you're telling  
22 me that the EPA has not yet been able to establish a  
23 standard which encompasses the level of risk that might be  
24 found here. How do I set that standard?  
25 MS. JISON: Well, I think you have to look at

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1 individual aspects of this particular application and the  
2 location, the population that's going to be affected and the  
3 particular sensitivities. You know, when the -- the EPA is  
4 trying to set standards nationally and they can't possibly  
5 cover every potential specific situation. It's not going to  
6 be completely protective, but they're using the scientific  
7 evidence and they have a certain requirement for the amount  
8 of evidence that they need to be able to set it at a  
9 particular level.  
10 With respect to this particular situation, I think  
11 we really have to, we can't rely on the EPA standards  
12 because they don't get down into the weeds of what the  
13 situation is. I think you need to look at the sensitivities  
14 of the population. I mean, you know, 1 in 12 people have  
15 asthma which is from the EPA standards, a sensitive  
16 population for which they specifically set a lower level for  
17 the standard but in addition to that, there are other people  
18 with chronic illnesses in the community, children at the  
19 Steven Knolls School, which is a very unique population to  
20 our neighborhood, are extremely vulnerable.  
21 This station, with its size and the amount of  
22 idling that's going to be occurring with the number of, the  
23 volume of gas station, gas buyers is going to create a  
24 source of added pollution in, in close proximity to this  
25 neighborhood, in close proximity to all these sensitive

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1 populations. These people in the neighborhood are not going  
2 to have a choice, like mall patrons or gas patrons, to just  
3 go and then leave the site. They're going to be chronically  
4 exposed and several studies, and the scientific evidence is  
5 growing that health effects do exist at levels well below  
6 the EPA standards and this community is going to have a  
7 chronic exposure which is going to be cumulative.

8 I mean, this gets back to the discussion we had  
9 about dose in my previous testimony and that Dr. Breyesse  
10 also kind of touched upon. You know, it's a cumulative  
11 effect. Studies, there are studies that show that the  
12 effects of PM2.5 deposition deep into the lungs can go  
13 systemic and can last long after the initial exposure event,  
14 and you're going to be cumulatively be adding to that for  
15 these people who live here and have no choice but to be near  
16 the station all the time.

17 MR. GROSSMAN: All right. Accepting everything  
18 you said as true and clearly, the conditions, the  
19 operational nature of this particular station is a factor as  
20 well as the site conditions, and I'll include in that the  
21 neighborhood as part of the site conditions and the fact  
22 that the Stephen Knolls School is there, you still haven't  
23 told me how I go about actually setting the standard. What  
24 level of pollution do I say at PM2.5 or NO2 is too much  
25 produced by this gas station at the Stephen Knolls School to

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1 establish that it should not be permitted?

2 MS. JISON: I think --

3 MR. GROSSMAN: If I don't use the EPA standards  
4 for this, which you're telling me I shouldn't use, what  
5 standard do I use?

6 MS. JISON: Well, I think it's difficult to focus  
7 on a particular, finding a particular level because studies  
8 are showing that, you know, we haven't found the threshold  
9 yet. I think what we need to focus on, you know, what I  
10 would focus on is are there health effects demonstrated  
11 within this range and does it make sense to put this gas  
12 station in this area when there's no need to have it there  
13 and when there, when scientific evidence clearly points that  
14 increasing exposure to such pollutants is associated with  
15 health effects.

16 I don't have an answer for how do you set a  
17 particular standard. I'm only, you know, what I'm concerned  
18 with is looking at the scientific data which shows there are  
19 health effects at these lower levels. True, we don't know  
20 what level is safe but given what we know, does it make  
21 sense to put a gas station in this community in close  
22 proximity to all these sensitive populations? I mean, you  
23 know, this is, this is a neighborhood. It's got a lot of  
24 different aspects to it but if there was a hospital or a  
25 daycare center or a convalescent home right there instead of

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1 homes and neighborhoods, would you put a gas station there  
2 knowing these types of health effects? So, you know, I  
3 don't know --

4 MR. GROSSMAN: But the level of health effects  
5 depends, to a great extent, on the actual level of pollution  
6 that will, will be affecting these people and that's part of  
7 the question here. What is the level that one should set?  
8 What if it's vanishingly small? The fact that it's a gas  
9 station alone can't be the determining factor. It is what  
10 does it produce and how does it affect these people.

11 MS. JISON: Well, I agree. And, you know, studies  
12 have shown that people who, studies where personal monitors  
13 were worn to measure personal exposures have shown that the  
14 personal exposures are much higher than what the ambient  
15 exposure would suggest. Even though ambient levels are at  
16 or slightly below standards in those studies, the personal  
17 exposures experienced by those subjects who were wearing  
18 those monitors on them show that they were exposed much  
19 higher so now you're going to put this station, which is a  
20 source of pollution, in close proximity to various sensitive  
21 populations in the neighborhood who did not have a choice,  
22 can't even avoid the source.

23 So, you know, I don't have an answer for how you  
24 would set a specific level or how you would pick a level but  
25 those are the things I would look at in deciding whether or

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1 not putting a station there would pose an adverse health  
2 effect to the community.

3 MR. GROSSMAN: Okay. Ms. Rosenfeld?

4 MS. ROSENFELD: Dr. Jison, I think you were, Mr.  
5 Grossman's question was prompted by your, your testimony  
6 with respect to your opinion as to the scientific evidence  
7 reflecting adverse health effects at or below the EPA  
8 standards. Do you have more on that that you wanted to say?

9 MS. JISON: Sure. Sure. So the EPA has  
10 repeatedly stated that the studies don't provide evidence of  
11 a threshold and the lowest levels of exposure within those  
12 studies are well below the standards. If emission levels  
13 are dropping overall, that means new studies will be taking  
14 place at lower levels and would be better able to show that  
15 there are still effects at those levels.

16 Another way that the studies demonstrate those  
17 effects is to standardize them to the amount of effect they  
18 show per standard increment to exposure. So, for instance,  
19 relative risk increases every 10 parts per billion, increase  
20 in NO2. So these types of studies are being done with  
21 respect to both PM2.5 and NO2 and they consistently show  
22 effects.

23 The PM2.5 studies demonstrate a dose response  
24 relationship and support the lack of a truly safe threshold.  
25 Studies demonstrate a dose response relationship with PM2.5

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1 levels and respiratory effects even at levels well below EPA  
2 limits. You know, the same can be said for, for NO2.  
3 Incremental increases in NO2 of 16.8 parts per billion based  
4 on two day averaging were associated with drops in lung  
5 function. You know, one measure is an FED one percent, the  
6 amount of air you can blow out of your lungs in the first  
7 second of forced expiration, and this was a study on 37  
8 subjects that the EPA had, had reference and showed that  
9 lung function was affected by incremental increases of  
10 around 16 parts per billion for NO2. The mean levels from  
11 that study of personal NO2 for 24 hours was 28 parts per  
12 billion which is well below the standard.  
13 MS. ROSENFELD: And, Dr. Jison, so is it fair to  
14 characterize your, your testimony that in your opinion, that  
15 there --  
16 MR. GROSSMAN: I'd prefer if you don't do that on  
17 direct. That is, I don't want you to summarize her opinion.  
18 You can ask her her opinion, which you have.  
19 MS. ROSENFELD: Okay. Did Dr. Chase provide any  
20 evidence or testimony that would refute your testimony here  
21 today with respect to potential adverse health effects  
22 below, at or below the NAAQS?  
23 MS. JISON: I don't believe so. From Dr. Chase's  
24 testimony, from what I read from the transcript, he stated  
25 that he read about 80 to 100 articles on health effects and

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1 stated that the list he referenced in his two-page report  
2 that was submitted to the Planning Board was a sub-set of  
3 those articles. We haven't been given those 80 to 100  
4 articles so I can't confirm the relevance of or  
5 applicability of those articles. However, the 15 articles  
6 he did reference in his two-page memo were relevant to, were  
7 not relevant to the discussion regarding effects on  
8 vulnerable populations such as asthma and respiratory  
9 effects. All but one dealt solely with effects of diesel  
10 fumes, which have not been a major factor in our case here,  
11 and 12 of the 15 articles appear to be from the same group  
12 of authors which might suggest a narrow focus.  
13 Dr. Chase also I think stated that he reviewed  
14 studies referenced by myself and Dr. Breyesse which, with  
15 respect to the health effects arising from pollution. I  
16 presume that he disagrees with mine and Dr. Breyesse's  
17 position but he did not provide any analysis of our, our  
18 references and we're left relying really just on his  
19 references of 15 articles from his Planning Board submission  
20 which were not relevant to what we're talking about here.  
21 I'll also note that these same articles that Dr.  
22 Breyesse and I have reviewed were also evaluated by EPA in  
23 CASAC and were part of their bases for setting the health  
24 standards. I think Dr. Chase had mentioned that regardless  
25 of whether the standard, whether the EPA change to the

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1 standard came out or not he would have concluded the same  
2 conclusion of no adverse health effects. I'm not sure how  
3 he could make that conclusion without an in depth analysis  
4 of the relevant literature. So, you know, I think I don't  
5 think he provided any testimony that could directly refute  
6 what I'm testifying to.  
7 I think from his reference to the CASAC and the  
8 margin of safety within the EPA standards, it appears maybe  
9 he might have a misunderstanding of how, how the standards  
10 are set and how, what the role of CASAC is. As Dr. Breyesse  
11 explained, the CASAC Committee doesn't define safety margins  
12 or standards. The EPA sets the standards and just tries to  
13 incorporate a margin of safety in them.  
14 I think also, Dr. Chase had suggested that the  
15 scientific literature may be too outdated and can't be  
16 translated or can't be applied to the present situation and  
17 suggested that no study can demonstrate any health impact  
18 but in my review of the literature and reading the EPA final  
19 rules and other Federal Register documents, clear that there  
20 are extensive studies that have been done that directly  
21 address the issues.  
22 The EPA, in their integrated scientific assessment  
23 in CASAC, have and continue to evaluate such studies every  
24 five years to determine whether the current standards are  
25 still protective of the public health. For example, the

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1 2010 final rule for NO2, the EPA noted extensive new  
2 literature that had been done since the last evaluation that  
3 supported a causal relationship between short-term NO2 and  
4 adverse respiratory health effects, and that's why the one  
5 hour NO2 standards were established.  
6 So I also note that Dr. Chase ultimately did  
7 recognize that health risks are dose-dependent, which he  
8 stated somewhere around page 35 of the transcript I think,  
9 and that the exposure to high enough levels of NO2 in people  
10 with lung disease, regardless of age, are going to be  
11 susceptible to asthma or other health effects. I remember  
12 that from his testimony. But, you know, what I conclude  
13 from Dr. Chase's testimony is that he did not consider this  
14 other evidence that both Dr. Breyesse and the EPA in CASAC  
15 have considered with regards to his conclusions.  
16 MR. GROSSMAN: Okay.  
17 MS. ROSENFELD: In Mr. Sullivan's report, and I'm  
18 referring now to his August report, he --  
19 MR. GROSSMAN: The August of 2014 or 20 --  
20 MS. ROSENFELD: August of 2013.  
21 MR. GROSSMAN: '13, okay.  
22 MS. ROSENFELD: We're not at August 2014 yet.  
23 MR. SILVERMAN: I hope that's not a premonition.  
24 MR. GROSSMAN: Oh, I'm sorry. I meant --  
25 MR. SILVERMAN: We can't deal with Mr. Sullivan by

1 August 2014.

2 MR. GROSSMAN: You put me in a hearing for two

3 days in a row and, you know, confusion sets in.

4 MS. ROSENFELD: I think we all suffer from that.

5 In Mr. Sullivan's report of August 2013, he reduces exposure

6 rates to NO2 by assuming 20 minute exposures although there

7 is a one hour exposure EPA standard. Do you agree with his

8 approach?

9 MS. JISON: No. And I want to reemphasize again

10 here the effects of cumulative dose, biopersistence of these

11 pollutants that are getting inhaled and the retention of

12 particles over time. For people who live nearby and

13 frequently visit the mall, they're going to be subjected to

14 repeated exposures as I already mentioned. The physical

15 characteristics of the fine and ultrafine particles of PM2.5

16 and below, smaller particles, lend themselves extremely well

17 to deposition in the lung and retention in the tissues and

18 repeated exposures, no matter how short they are, you know,

19 20 minutes, if you're doing it constantly over time which,

20 you know, people in the neighborhood who are adjacent to

21 the, the mall have no choice but to be exposed constantly

22 over time, even at any level of pollution, will have an

23 additive effect.

24 So the argument that exposure will be short-term

25 doesn't really inspire any confidence for absence of health

1 effects given the potential for cumulative dose retention

2 over time with repeated exposures.

3 MS. ROSENFELD: And, Dr. Jison, turning for a

4 moment to, staying on that point for just another moment,

5 the testimony reflected that people could be sitting in the

6 gas queues for as long as 20 minutes but that people, some

7 of those people would park their cars, walk to the mall,

8 walk back and be in the larger envelope of these more

9 elevated pollution concentrations. In your opinion, would

10 that 20 minute reduction rule apply to, to people who are

11 exposed for more than those 20 minutes?

12 MS. JISON: Um, I'm not understanding the question

13 well.

14 MS. ROSENFELD: The 20 minute reduction was really

15 generated to, designed to assess the exposure of people who

16 were in the gas queue itself --

17 MS. JISON: Uh-huh.

18 MS. ROSENFELD: -- while they sat in the gas queue

19 for 20 minutes. There was other testimony that people would

20 park their car, go to the warehouse, come back, gas their

21 cars, for example, exposure for more than 20 minutes. So in

22 your opinion, would that, would this two-thirds reduction be

23 relevant with respect to people in the mall parcel who may

24 be in the mall parcel for more than 20 minutes?

25 MS. JISON: So I don't think that reducing the

1 assumption of exposure time to 20 minutes would make sense

2 given those types of scenarios. I would expect that to

3 model that situation, you would want to --

4 MR. GOECKE: I object. She's not an expert in

5 modeling.

6 MR. GROSSMAN: I think I'll sustain that

7 objection, but I think she can testify not regarding the

8 modeling but on the health effects of, which I think is what

9 she was trying to say when she inserted the word modeling,

10 but I think that she can, she can testify as to whether or

11 not repeated 20 minute exposures should be just

12 characterized as 20 minute exposure for purposes of

13 something like PM2.5 and below or whether that's an

14 inappropriate way to think about it in terms of health

15 effects.

16 MR. GOECKE: Okay.

17 MR. GROSSMAN: So that's the question.

18 MS. JISON: Yeah. So I think in terms of health

19 effects, again, with regards to the cumulative dosing, I

20 don't think reducing your assumption to a 20 minute exposure

21 would be appropriate.

22 MS. ROSENFELD: And in your opinion, if somebody

23 were exposed at those levels for more than 20 minutes, what

24 is your opinion as to the potential health effects?

25 MR. GOECKE: Objection as to what levels.

1 MS. ROSENFELD: At the levels shown by Dr.

2 Sullivan, by Mr. Sullivan in his reports within the mall

3 parcel.

4 MS. JISON: Well, I mean, I haven't seen the most

5 recent report. I only know that there was some

6 miscalculations detected and then levels were adjusted.

7 MR. GROSSMAN: When you say the most recent, you

8 haven't seen the rebuttal report but you have --

9 MS. JISON: Right. Whatever just came out last

10 week.

11 MR. GROSSMAN: Right. Forget about the rebuttal

12 report.

13 MS. JISON: Right. So but to -- I'm sorry. I

14 forgot the question again.

15 MS. ROSENFELD: Let me rephrase the question.

16 You've testified about potential adverse health effects for

17 people within the adjoining neighborhood at the levels of

18 exposure below the EPA NAAQS. What is your opinion as to

19 the potential health effects for visitors and workers in the

20 mall parcel if they are exposed for more than 20 minutes?

21 MS. JISON: I mean, I think it's, it's again, it's

22 going to be cumulative --

23 MR. GOECKE: I'm going to object again.

24 MR. GROSSMAN: Hold on.

25 MR. GOECKE: There's no foundation for what the

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1 levels are for what she's testifying to. It's just an  
2 abstract exposure to, to what quantities? To 10 parts per  
3 billion, to 100 parts per billion?  
4 MR. GROSSMAN: You think you can hone that  
5 question a little bit to --  
6 MR. GOECKE: We --  
7 MR. GROSSMAN: Sustain that objection until we  
8 hear a rephrasing of that question.  
9 MR. GOECKE: I think we all agree that dose  
10 matters, so what's the dose she's talking about here?  
11 MR. GROSSMAN: Right.  
12 MS. ROSENFELD: Let me reserve that until I can  
13 pull his --  
14 MR. GROSSMAN: Okay.  
15 MS. ROSENFELD: Mr. Sullivan's report which I  
16 don't have handy at the moment.  
17 MS. JISON: Can I try to comment in general?  
18 MR. GROSSMAN: Well, no. Let's wait until we have  
19 a question.  
20 MS. JISON: Okay.  
21 MS. ROSENFELD: Dr. Chase had testified that  
22 assuming pollution levels are below the EPA National Ambient  
23 Air Quality Standards, that there will be no adverse human  
24 health effect. Do you agree with that statement?  
25 MS. JISON: I don't agree and from what I

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1 understand from Dr. Chase's testimony, he relied on Mr.  
2 Sullivan's studies to show that levels were sufficiently low  
3 and that they would not violate the EPA standards and  
4 therefore by definition, would be no health effects. I  
5 think there's some flaws in that type of rationale. First,  
6 Dr. Breyesse had testified that current EPA standards are in  
7 a constant of evolution and there's ample evidence that they  
8 have not yet reached a stopping point with respect to PM2.5  
9 and NO2. If the station were to be built, it would be  
10 difficult or impossible to reverse that decision a few years  
11 from now.  
12 MR. GROSSMAN: Well, let's not -- you can't  
13 comment on that.  
14 MS. JISON: Okay. But, you know, in light of the  
15 current scientific evidence, the EPA standard will likely be  
16 reduced further in the near term. Limiting one's self  
17 solely to the EPA standards is problematic in that the EPA  
18 only evaluates the health effects of specific pollutants so  
19 when they're looking at their studies, they're looking at  
20 health effects of PM2.5 or NO2 or carbon monoxide in  
21 isolation but in reality, the health effects of these  
22 pollutants are synergistic. While PM2.5 may have specific  
23 health effects at a certain concentration or dose, that  
24 effect can be greatly increased if PM2.5 is combined with  
25 NO2.

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1 To give a clinical example, I'll use risk of  
2 coronary artery disease or heart disease risk. There are  
3 several risk factors for coronary artery disease in  
4 developing heart attacks, the main ones are high blood  
5 pressure, high cholesterol, smoking, diabetes which often,  
6 you know, you can't control whether you get that or not, and  
7 prior other history of other cardiovascular diseases. Each  
8 risk -- if the, the odds of getting heart disease with one  
9 risk factor is about two-and-a-half times greater than a  
10 individual with no risk factors. If you add risk factors on  
11 top -- if you have two risk factors, your odds go up to  
12 about four times as likely. If you have three risk factors  
13 at the same time, your odds go up to five times more than an  
14 individual without the risk factors. And if you have all  
15 four risk factors, your odds are seven times more likely to  
16 have cardiovascular events.  
17 MR. GROSSMAN: Assuming that's true, I don't, I  
18 understand the analogy you're drawing but I don't know that  
19 I can apply it to the effects of the synergistic effects you  
20 suggested to multiple pollutants unless you tell me that  
21 there are studies that show these synergistic effects from  
22 multiple pollutants.  
23 MS. JISON: Well --  
24 MR. GROSSMAN: I'm not going to just assume that  
25 because a combination of high cholesterol and diabetes and

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1 other risk factors has synergistic effects that there is a  
2 synergistic effect for multiple pollutants.  
3 MS. JISON: Right. I mean, to go on with the  
4 clinical example, and I'll address your comment  
5 specifically, if you already have diabetes and high blood  
6 pressure, cholesterol, why on earth would you ever pick up  
7 smoking if you want to avoid having heart disease. But the  
8 EPA, there are studies that show the effects of the  
9 combination of those pollutants. The, in fact, the PM2.5  
10 report, the EPA stated they excluded those types of studies  
11 because they couldn't tease out the individual effects of  
12 those pollutants but the effects on whole of traffic  
13 pollution, which was what was measured in those studies,  
14 demonstrated adverse health effects. The EPA just noted  
15 that they didn't use those studies because they couldn't pin  
16 it down to individual pollutants and wouldn't be able to  
17 apply that to a specific standard for an individual  
18 pollutant.  
19 But those studies do exist and I think those are  
20 the issues that this specific application is concerned with  
21 is to consider those data and effects from the combination  
22 of those pollutants as well as individual pollutants even  
23 though the EPA knows, recognizes that for their standard  
24 setting of individual pollutants, they can't use that data.  
25 I think it's relevant here.

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1 MR. GROSSMAN: Okay.  
2 MS. JISON: That's my opinion.  
3 MR. GROSSMAN: All right.  
4 MS. ROSENFELD: And, Dr. Jison, have you reviewed  
5 any of those studies that show the synergistic effect of  
6 combining various pollutants?  
7 MS. JISON: I have. Let me see if I have the  
8 actual reference in my notes. I can't find a specific  
9 reference. I could probably look that up and get back to  
10 you, but I don't have that in my notes.  
11 MS. ROSENFELD: Okay. Perhaps after the break --  
12 MR. GROSSMAN: All right.  
13 MS. ROSENFELD: -- she can provide that  
14 information. All right. Dr. Jison, early in, very early in  
15 the stages of these proceedings, and I'm not sure you were  
16 here for, for that, Mr. Grossman asked a question with  
17 respect to your letter dated March 29th of 2013, and I'm  
18 referencing here Exhibit No. 96D like dog. And I'm going to  
19 read to you from his question, while central site, regional  
20 and local average ambient air pollution and particulate  
21 matters -- actually, I misspoke. I'm reading first from Dr.  
22 Jison's letter.  
23 MR. GROSSMAN: Okay.  
24 MS. ROSENFELD: And then I will follow up with the  
25 question you asked.

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1 MR. GROSSMAN: All right.  
2 MS. ROSENFELD: In your letter, you said while  
3 central site, regional and local area average ambient air  
4 pollution and particulate matter levels may be within EPA  
5 recommended limits, scientific studies have shown that  
6 personal micro-environmental exposures to pollutants are  
7 likely to be higher and can exceed EPA limits due to special  
8 circumstances affecting individuals and their local,  
9 specific local environment. Such circumstances include  
10 personal exposures, exposures to pollutant point sources  
11 such as standing in traffic while waiting for a bus, living  
12 near a regional fuel depot, visiting your asthma doctor's  
13 office which is located near a regional fuel depot, or  
14 walking past a regional fuel depot during your daily commute  
15 or shopping trip.  
16 MR. Grossman's question, he asked whether this  
17 analysis would apply, as well, to all gas stations and the  
18 like making all gas stations inherently health hazardous.  
19 How would -- in your opinion, what is the answer to that  
20 question?  
21 MS. JISON: Well, I'm not saying that all gas  
22 stations are necessarily going to have an adverse effect on  
23 people. A smaller station or one located in an area with  
24 lower background pollution levels, one more distant from  
25 adjoining uses or, or, you know, sensitive populations may

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1 not have any adverse health effect at all. I don't have the  
2 benefit of any scientific analysis of pollution  
3 concentrations in those types of hypothetical settings so I  
4 don't presume health effects under, you know, I can't  
5 presume those effects under those hypothetical  
6 circumstances.  
7 For this particular station, it's my opinion that  
8 it will cause adverse health effects on people based on this  
9 unique aspect of the whole scenario. This station's unique.  
10 It brings a very high concentration of a large volume of  
11 cars to one area that are going to be idling for an extended  
12 period of time, is very close to homes, the school for  
13 sensitive kids, a pool where various teens come to train,  
14 and it's in the middle of a shopping mall where people will  
15 spend considerable amounts of time, both being in line  
16 getting gas and shopping and eating and, you know, many  
17 neighborhood residents go there to basically convalesce and  
18 recuperate and incorporate walking around the mall as part  
19 of their general health, daily health routine so most gas  
20 stations don't operate in this type of environment.  
21 Mr. Sullivan and Dr. Cole testified that there's a  
22 correlation between the volume of gasoline pumped and the  
23 effects on air quality. You know, the more gas that's  
24 pumped, the greater the potential adverse health impacts so  
25 in my opinion, the adverse health effects of this station

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1 would go above and beyond effects of other local gas  
2 stations. This effect is compounded by the location of the  
3 station in an area that already has high pollution levels  
4 and if it's proposed in a more rural and suburban setting,  
5 it might not be an issue depending on what that alternative  
6 setting is and the characteristics of the surroundings.  
7 MS. ROSENFELD: Also, in, early in the  
8 proceedings, Mr. Grossman, in responding to some of Mr.  
9 Grossman's questions, Kensington Heights Association has  
10 argued, based on certain court decisions, that the Hearing  
11 Examiner can't make his decision based on idealized or an  
12 average neighborhood but has to look at the specific  
13 surrounding area. Are there factors unique to this  
14 neighborhood that in your view, distinguish it from an  
15 average neighborhood?  
16 MS. JISON: Yeah. Again, I'll, you know,  
17 reiterate the points I --  
18 MR. GROSSMAN: You don't have to reiterate.  
19 MS. JISON: Okay.  
20 MR. GROSSMAN: I think she has already answered  
21 that question at least twice in her testimony.  
22 MS. ROSENFELD: Okay. Mr. Grossman, if I could  
23 have about a five minute break?  
24 MR. GROSSMAN: All right.  
25 MS. ROSENFELD: I'd like to pull those numbers

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1 and, from Mr. Sullivan's prior report, and I have a few  
2 follow-up questions for Dr. Jison. I think we're close to  
3 finish.  
4 MR. GROSSMAN: All right. So come back at about  
5 10 to 11. Recess until then.  
6 (Whereupon, at 10:43 a.m., a brief recess was  
7 taken.)  
8 MR. GROSSMAN: Okay. We're back on the record.  
9 Ms. Rosenfeld?  
10 MS. ROSENFELD: Yes. Dr. Jison, in Mr. Sullivan's  
11 August 16th, 2013 report, he had a figure 1, and I believe  
12 it was named figure 1 in his, his report, where he  
13 identified maximum concentrations within the gas station  
14 special exception area.  
15 MR. GROSSMAN: What do you mean, on the site  
16 itself?  
17 MS. ROSENFELD: On the site itself.  
18 MR. GROSSMAN: Okay.  
19 MS. ROSENFELD: On the site itself.  
20 MR. GROSSMAN: Okay.  
21 MS. ROSENFELD: A series of isopleths. He's  
22 predicted 98th percentile one hour NO2 concentrations, and  
23 this one was using 90 as the background. The maximum was  
24 160. Subsequently, he divided that by three to come up with  
25 a 20 minute exposure. In your opinion, is that an

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1 appropriate way to evaluate dosage for the pollutants within  
2 the mall parcel at that location?  
3 MR. GOECKE: Objection.  
4 MR. GROSSMAN: And that is?  
5 MR. GOECKE: Exceeds the scope of her expertise,  
6 determining the modeling, the appropriate way to apply the  
7 modeling to determine somebody's dosage.  
8 MR. SILVERMAN: It's a health question.  
9 MS. JISON: It's a health question. It's a dosage  
10 question.  
11 MR. GOECKE: If we have an assumed dosage and she  
12 wants to talk about what that effect might be, I think that  
13 would be appropriate but to say whether or not Mr. Sullivan  
14 has appropriately characterized what the exposure would be  
15 is something entirely different.  
16 MS. ROSENFELD: I'll --  
17 MR. GROSSMAN: I'm going to sustain that  
18 objection. I think --  
19 MS. ROSENFELD: I'll rephrase.  
20 MR. GROSSMAN: -- that's a fair --  
21 MS. ROSENFELD: I'll be happy --  
22 MR. GROSSMAN: -- that's a fair objection.  
23 MS. ROSENFELD: -- to rephrase the question.  
24 MR. GROSSMAN: All right.  
25 MS. ROSENFELD: In your opinion, at a dosage of,

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1 at an NO2 concentration of 160, in your opinion, would a  
2 person who spends 20 minutes at that dosage be likely to  
3 suffer from adverse health effects?  
4 MS. JISON: I mean, it, you know, it depends on,  
5 you know, the sensitivities of those persons and the  
6 circumstances of whatever activity is bringing them to that  
7 particular source. I mean, certainly, the most sensitive  
8 individuals with chronic lung diseases and asthma may, may  
9 very well have effects at that level. Certainly, people on  
10 the mall who are, who go there let's say just 20 minutes to  
11 exercise in that area or have lunch or if they work there,  
12 maybe they're having lunch in that area, there, there's  
13 restaurants in that area with outside seating, if they're  
14 there for 20 minutes and they're doing that every day,  
15 that's going to be cumulative exposure and a cumulative dose  
16 that they're experiencing, you know, along the lines of what  
17 I've been saying.  
18 So I don't believe that you can adequately  
19 characterize someone's dose or exposure by making an  
20 assumption of a 20 minute exposure. You know, what I think  
21 we need to consider here is what people are doing there.  
22 You know, I had mentioned earlier that people go to the mall  
23 to exercise, the pool is nearby, people are exercising.  
24 When you're exercising, you're breathing faster. You're  
25 moving a larger volume of air within your lungs and you're

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1 also, presumably, then moving a larger volume of pollutants  
2 into and out of your lungs, pollutants that are going to be  
3 deposited and retained in, in your lungs and potentially  
4 cause downstream effects. And that's going to be  
5 cumulative, whether, you know, sure, if you're there one  
6 time in your life for 20 minutes, probably you won't suffer  
7 much but in the case of the neighborhood and the mall  
8 patrons and gas station patrons who frequently use the mall,  
9 it's more than likely that you're going to get a larger  
10 exposure than what a 20 minute assumption might predict.  
11 MR. GROSSMAN: Ms. Rosenfeld, you used the term  
12 160. 160 what?  
13 MS. ROSENFELD: Micrograms per cubic meter.  
14 MR. GROSSMAN: Okay. And of which, which  
15 pollutant are we talking about?  
16 MS. ROSENFELD: This is NO2.  
17 MR. GROSSMAN: And was that the -- okay.  
18 MS. ROSENFELD: Figure 1.  
19 MR. GROSSMAN: So you split the, split the one  
20 hour dosage into, into a, into three parts and said 20  
21 minutes --  
22 MS. ROSENFELD: Yes.  
23 MR. GROSSMAN: -- of NO2.  
24 MS. ROSENFELD: That's correct.  
25 MR. GROSSMAN: And Dr. Jison, when you referred to

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1 cumulative effects before, I think you were talking about  
2 PM2.5 and smaller particles which had, were likely to be  
3 deposited in organs. Were you also talking about NO2 with  
4 regard to deposits?  
5 MS. JISON: With that particular thing, I was  
6 talking about PM2.5 but as far as the exposure and  
7 cumulative effects of recurrent exposures in general, I  
8 would expect there would be additive effects and, you know,  
9 there's often synergistic effects with NO2 and PM2.5.  
10 MR. GROSSMAN: So you think that there are  
11 additive effects with NO2 as well as PM2.5?  
12 MS. JISON: Yeah. And studies do demonstrate that  
13 the health effects of PM2.5 and NO2 are synergistic, that  
14 even when you tease out individual effects of those  
15 pollutants, you still find associations of health effects  
16 with the individual pollutants but there are associations  
17 with them combined.  
18 MR. GROSSMAN: Okay.  
19 MS. ROSENFELD: Dr. Jison, the people, there have  
20 been individuals who have testified in this case that if  
21 this gas station were built, they would use this gas  
22 station, and some of those individuals testified that they  
23 suffered from asthma and/or cardiac illnesses and/or used  
24 oxygen. In your opinion, if individuals with those types of  
25 medical conditions were exposed to NO2 at this level for 20

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1 minutes, what is the likelihood that they could suffer from  
2 an adverse health effect?  
3 MS. JISON: So the studies have shown that you're  
4 seeing health effects, not the, these are, these are not,  
5 the studies are not the 20 minutes with the standard  
6 exposures but you're seeing health effects at levels well  
7 below the standards in those studies. Now --  
8 MR. GROSSMAN: You said the standard. You mean  
9 the one hour?  
10 MS. JISON: Right.  
11 MR. GROSSMAN: Okay.  
12 MS. JISON: Now, if you want to consider something  
13 where you divide the exposure by three and consider the  
14 shorter exposure, I would expect, given the scientific data,  
15 that the most sensitive individuals who would be exposing  
16 themselves to that particular level could have health  
17 effects given what we know at even lower levels for, for  
18 longer exposures.  
19 MS. ROSENFELD: And in your opinion, if an average  
20 person were exposed to these levels of pollutants for 40  
21 minutes, in your opinion, is there the potential for adverse  
22 health effects?  
23 MR. GOECKE: Objection to what an average person  
24 is.  
25 MR. GROSSMAN: Well, I mean, I'll say a different

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1 thing and that is that she's already testified that it could  
2 have adverse effects at 20 minutes so what's the point in  
3 asking her whether it could have adverse effects at 40  
4 minutes?  
5 MS. ROSENFELD: Well, I thought the objection was  
6 that by reducing this by two-thirds, we were looking at  
7 reduced dosage. If you're satisfied with the answer at 20  
8 minutes --  
9 MR. GROSSMAN: Well, she's answered, she answered  
10 that. Her answer, I'm not saying I'm satisfied or  
11 dissatisfied. Her answer was that based on the studies of  
12 the effects on, you could have effects at, even at 20  
13 minutes at these levels. I think that was her testimony.  
14 Is that correct, Dr. Jison?  
15 MS. JISON: Uh-huh.  
16 MR. GROSSMAN: You have to answer so the --  
17 MS. JISON: Yes.  
18 MR. GROSSMAN: Okay. And --  
19 MS. ROSENFELD: And --  
20 MR. GROSSMAN: -- given that answer, I don't think  
21 there's any point in asking the 40 minute question, is  
22 there?  
23 MS. ROSENFELD: Because my, my question was  
24 directed at people who had compromised health.  
25 MR. GROSSMAN: Right.

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1 MS. ROSENFELD: People with cardiac issues, people  
2 with asthma, people on oxygen.  
3 MR. GROSSMAN: That was the 20 minute question.  
4 MS. ROSENFELD: That was, that was the 20 minute  
5 question. My question now is for the average healthy person  
6 which is --  
7 MR. GROSSMAN: Okay.  
8 MS. ROSENFELD: -- what I understand the EPA is  
9 designed to protect.  
10 MR. GROSSMAN: I understand. I'm sorry. I  
11 misunderstood.  
12 MS. ROSENFELD: The question is at 40 minutes, in  
13 your opinion, is there a potential for adverse health  
14 effects on an average person.  
15 MR. GROSSMAN: And I'm going to overrule the  
16 objection as to average.  
17 MS. JISON: So again, that would depend on, you  
18 know, the, the characteristics of that average person and,  
19 you know, if it's 40 minutes in your entire lifetime,  
20 probably not but, you know, average people that might come  
21 to Costco or the mall to shop or get gasoline could include  
22 children who are still growing and developing their lungs  
23 and if they're coming for 40 minutes at a time on a repeated  
24 basis, that may have effects on their lung growth. I mean,  
25 studies have shown reduced lung growth and lung function

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1 achievement in children over the long course who are  
2 chronically exposed even in communities where the ambient  
3 levels or pollutants were below the standard, so those types  
4 of average people could experience health effects from that  
5 type of an exposure.  
6 Pregnant women, studies have shown, and this was  
7 submitted in one of my follow-up written testimonies, you  
8 know, prenatal exposure in pregnant women is associated with  
9 low birth weight and reduced lung function in the children  
10 postnatally and also, increased incidence of respiratory  
11 infections in those children who were exposed prenatally.  
12 And the exposure levels in those studies were also around  
13 and below the standards.  
14 MR. GROSSMAN: All right. So you use the term  
15 prenatal exposure and exposure level. Prenatal exposure to  
16 what?  
17 MS. JISON: So well, in this particular case, to  
18 PM2.5, pregnant women, during their first or second  
19 trimester, wore personal monitors that measured levels of  
20 PM2.5 and so it was, the exposure was standardized to a 24  
21 hour level exposure and then after the children were born,  
22 they were followed very closely for several years. And lung  
23 function was measured at a certain point, and they also  
24 followed very closely for development of respiratory  
25 infections, and they measured birth weight.

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1 And there's a clear association with increasing  
2 levels of PM2.5 and reduced birth weight, reduced lung  
3 function in early childhood and increased respiratory  
4 infections, and these effects were teased out, other co-  
5 varying conditions were analyzed and accounted for and they  
6 were still, there was still a negative effect associated  
7 with PM2.5 in those studies.  
8 MR. GROSSMAN: Okay.  
9 MS. ROSENFELD: Dr. Jison, in your opinion, is  
10 there a potential for adverse health effects on people who  
11 work on the mall parcel? In particular, I want to draw your  
12 attention to the attendants at the gas station and people at  
13 the loading dock for the warehouse.  
14 MS. JISON: Yeah. There's potential for adverse  
15 health effects because those people are going to be  
16 chronically exposed because they work there and they have to  
17 be there. And depending on whether or not they have other  
18 conditions that may make them even more vulnerable to health  
19 effects, the clinical significance could be greater  
20 depending on what conditions they have. You know, if they  
21 have asthma or some other respiratory condition, that kind  
22 of chronic exposure would definitely have a negative effect.  
23 MS. ROSENFELD: So overall, in your opinion, will  
24 the proposed gas station have adverse health effects on  
25 residents, workers and visitors in the subject area?

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1 MS. JISON: Yes. Again, based on my review of the  
2 pollution levels projected and even based on data from the  
3 scientific literature of levels below the standards, it's my  
4 opinion that there will be adverse health effects on, on  
5 these populations. It's likely that the children and  
6 elderly living in the neighborhood are more likely to suffer  
7 from more frequent and more severe exacerbations of their  
8 chronic conditions such as asthma due to increased pollution  
9 levels that are projected. It's likely that students at the  
10 Stephen Knolls School may suffer adverse respiratory health  
11 effects as they visit the mall parcel and as a result of the  
12 elevated PM2.5 and NO2 levels within the mall parcel.  
13 Some people from the community testified that they  
14 would use the gas station. You know, as we said, it depends  
15 whether those people who are using the gas station and the  
16 mall and coming to visit, what other conditions they have  
17 definitely, they will, they will be affected. People with  
18 young children growing up in this neighborhood, you know,  
19 may have reduced lung function and that's, you know,  
20 children's lungs are very sensitive. Children who have  
21 asthma are even more sensitive and, and, you know, that is  
22 extremely concerning and based on the data that I've  
23 reviewed, I really believe that those proposed specific  
24 populations will have adverse health effects.  
25 They may not be apparent early on but, you know,

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1 later in life, they're going to be predisposed to, to,  
2 they'll have less reserve and maybe have increased  
3 predisposition to adverse reactions to other intercurrent  
4 illnesses that occur on top of their, their chronic  
5 condition. You know, you're going to be, by increasing  
6 pollution levels, you're going to be affecting the lung  
7 function of a population in the long-term so whether or not  
8 those effects are apparent now or ten years from now,  
9 they're still significant effects and I think, you know,  
10 that should be seriously considered so --  
11 MS. ROSENFELD: Thank you, Dr. Jison. I have no  
12 further questions.  
13 MR. GROSSMAN: Okay. Cross-examination. Oh, I  
14 guess we should start out by saying does the Coalition have  
15 any questions?  
16 MR. SILVERMAN: No, sir.  
17 MR. GROSSMAN: Okay. I don't see --  
18 MS. ROSENFELD: Ms. Duckett actually asked me to  
19 tell you she couldn't be here today.  
20 MR. GROSSMAN: Okay. So we don't have any  
21 questions from Kensington View Civic Association, so now  
22 we'll come to the applicant. Cross-examination.  
23 CROSS-EXAMINATION  
24 MR. GOECKE: Thank you. Good morning, Dr. Jison.  
25 MS. JISON: Uh-huh.

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1 MR. GOECKE: You said that the EPA had access to  
2 all the studies that you and Dr. Breyesse relied upon, is  
3 that correct?  
4 MS. JISON: I don't think I said all the studies,  
5 but many of the studies that we reviewed were also reviewed  
6 by the EPA.  
7 MR. GOECKE: And in addition to those studies,  
8 they reviewed voluminous amounts of additional information.  
9 MS. JISON: Yes.  
10 MR. GOECKE: And they still came up with their EPA  
11 National Ambient Air Quality Standards.  
12 MS. JISON: Right. There's a certain cut-off  
13 point as far as the date of, you know, when a study was  
14 published that they would consider so they don't necessarily  
15 review all the current data but they do review a voluminous  
16 number of studies.  
17 MR. GOECKE: Right. And in your letter from March  
18 29th of 2013, you wrote that in 2006, based on the growing  
19 scientific evidence, that ambient air pollution and fine  
20 particulate matter have adverse health effects, the EPA  
21 further lowered the 24 hour exposure limit, I'm talking  
22 about PM2.5 here, to 35 micrograms per cubic meter and  
23 considered an even lower 30 microgram per cubic meter limit.  
24 Is it your testimony that the EPA has not updated the PM2.5  
25 standard since 2006?

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1 MS. JISON: No. I was just stating rationale from  
2 that 2006 rule to make an example of how they considered  
3 lowering it based on some scientific evidence they may have  
4 had but ultimately did not go with that decision because  
5 maybe they felt, you know, akin to their recent rulings,  
6 that at that time, they did not have enough data to support  
7 that level. But, you know, as time moves on and the data  
8 accumulates, they reassess and reevaluate the standards.  
9 MR. GOECKE: So you agree that the 2006 standards  
10 that you addressed in your letter are not the governing  
11 standards today?  
12 MS. JISON: Let me look back at the current  
13 standards because I know they were recently revised. So the  
14 current standard for PM2.5 is 35. You're talking about the  
15 annual standard for 24 --  
16 MR. GOECKE: Yes.  
17 MS. JISON: -- 24 hours?  
18 MR. GOECKE: Yes.  
19 MS. JISON: So the current standard for 24 hours  
20 is 35.  
21 MR. GOECKE: Okay.  
22 MS. JISON: So --  
23 MR. GOECKE: Okay.  
24 MS. JISON: -- it appears they haven't changed it.  
25 MR. GROSSMAN: 35?

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1 MR. GOECKE: Micrograms.  
2 MS. JISON: Micrograms per cubic meter.  
3 MR. GROSSMAN: Okay.  
4 MR. GOECKE: And you also testified that the EPA  
5 had access to reports that attempted to study the  
6 synergistic effect of multiple pollutants, is that correct?  
7 MS. JISON: Uh-huh.  
8 MR. GOECKE: And that they, the EPA has not set  
9 any standards on synergistic levels, have they?  
10 MS. JISON: No.  
11 MR. GOECKE: And why is that?  
12 MS. JISON: Because they are setting standards for  
13 individual pollutants and when I referenced that study, that  
14 was to make the point that, you know, they're making  
15 standards for individual pollutants. So the data they're  
16 considering, they want to see, you know, specific pollutants  
17 being measured and analyzed and that although there are  
18 synergistic effects of all pollutants in general, and maybe  
19 they might recognize that as far as the rule-making for  
20 individual standards, those studies don't necessarily help  
21 them in determining what specific levels of an individual  
22 pollutant should be the standard because in those studies,  
23 those individual pollutant levels were not quantified.  
24 MR. GOECKE: So the EPA has declined some levels  
25 for synergistic combinations of impairment. Isn't that --

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1 MR. SILVERMAN: I object.  
2 MR. GOECKE: -- what you're asking Mr. Grossman to  
3 do here today?  
4 MR. GROSSMAN: Hold on a second.  
5 MR. SILVERMAN: Mr. Goecke said the EPA has  
6 declined to do it. It's not all clear to me, in fact it's  
7 very clear to me they may not have the legal jurisdiction to  
8 do it so is, is --  
9 MR. GROSSMAN: The objection is overruled. She  
10 can answer the question if they --  
11 MS. JISON: Can you repeat your question?  
12 MR. GOECKE: Sure. The EPA has not promulgated  
13 standards for synergistic effects but isn't that what you're  
14 asking Mr. Grossman to do in this proceeding?  
15 MS. JISON: I'm not asking Mr. Grossman to come up  
16 with a standard for synergistic effects of pollutants. What  
17 I am emphasizing are the things that should be considered  
18 when deciding whether or not this gas station should be  
19 placed in this that doesn't have an apparent need for such a  
20 station given the characteristics of the neighborhood and  
21 the sensitive populations that are there and what we knows  
22 about the health effects at levels below EPA standards. So  
23 I'm not asking him to set a particular standard for overall  
24 pollutants. I'm just emphasizing what things I believe  
25 should be considered when deciding the appropriateness of

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1 the application.  
2 MR. GOECKE: Are you familiar with the current  
3 background levels of, for example, NO2 for one hour exposure  
4 in the mall area?  
5 MS. JISON: I mean, I've heard various testimonies  
6 regarding that. I know the ambient pollution levels are  
7 fairly high in this area in general. Dr. Cole, you know,  
8 based on his analysis, has predicted that the levels of NO2  
9 are going to be exceeding the EPA standards for that area.  
10 MR. GOECKE: I'm just talking about independent of  
11 any modeling analysis that Mr. Sullivan or Dr. Cole has  
12 done, what are the current --  
13 MS. ROSENFELD: I --  
14 MR. GROSSMAN: If I can finish.  
15 MS. ROSENFELD: Objection.  
16 MR. GROSSMAN: He has to finish the question.  
17 MR. GOECKE: What are the current background  
18 levels for one hour of NO2 in the mall area?  
19 MS. JISON: Well --  
20 MR. GROSSMAN: Hold on.  
21 MS. JISON: -- I can't tell you exactly.  
22 MR. GROSSMAN: Hold on one second. Hold on. I  
23 think there's an objection coming up.  
24 MS. ROSENFELD: Objection. There are various  
25 figures in Mr. Sullivan's reports that have different levels

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1 and if Mr. Goecke has a specific question about a specific  
2 level, I invite him to ask her a question but frankly, Mr.  
3 Sullivan's own report is internally inconsistent with what  
4 those levels may or may not be.  
5 MR. GROSSMAN: I'm going to overrule the  
6 objection. She can answer and say what you said if she  
7 wants to. She can, she can respond to the question. Go  
8 ahead.  
9 MS. JISON: I don't know the exact levels that are  
10 on the mall. I know that in general, this area has high  
11 levels of pollution. I've seen the levels but I can't  
12 recall what they were. I've seen a lot isopleths in various  
13 data but I can't recall the exact numbers.  
14 MR. GOECKE: In your opinion, at what level would  
15 a sensitive, a member of a sensitive population, an  
16 asthmatic, someone with a heart condition, experience  
17 adverse health effects based on exposure to NO2?  
18 MS. JISON: I mean, again, it's difficult to say  
19 what level. We know that scientific studies are showing  
20 that the health effects can be seen at levels well below the  
21 standards and that we haven't seen the threshold yet, so I  
22 can't say a specific level.  
23 MR. GROSSMAN: See, that's the, that is the  
24 problem because this case and legal proceedings in general  
25 are about line drawing and the question is where to draw

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1 that line, and you're telling me well, there are synergistic  
2 effects, there's no zero point. How do I use that to  
3 determine the level to apply here?  
4 MS. JISON: Well, you know, like I said before,  
5 it's difficult to try to pinpoint a specific level. I mean,  
6 I think what I've been saying is that you need to consider  
7 what are the adverse health effects, what are the sensitive  
8 populations and, and, you know, the types of exposures  
9 occurring here. I mean, it's, I don't disagree that finding  
10 that particular level is a difficult thing. The EPA  
11 recognizes that the threshold level hasn't been found yet.  
12 I mean, we haven't -- we can only do studies at the current  
13 levels and when they go down, the current standards, and  
14 when the standards change, then we can get more data on that  
15 but, you know, it's always been my opinion that you can't  
16 rely on a particular line drawn in the sand in this case.  
17 You're going to have to consider everything else around it  
18 and infer the line I think.  
19 MR. GROSSMAN: All right. Mr. Goecke?  
20 MR. GOECKE: So is it fair to say that the  
21 students at Stephen Knolls School, for example, are such a  
22 vulnerable population that from a policy reason, it just  
23 doesn't make sense to take a risk of exposing them to  
24 additional pollutants?  
25 MS. JISON: Well, what do you mean by a policy

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1 reason? I think it just doesn't make sense period to expose  
2 them to additional pollution.  
3 MR. GOECKE: Sure. Sure. Let me rephrase. So if  
4 you can't tell us at what level they will begin to  
5 experience adverse health effects, how do you know that the  
6 gas station is going to cause adverse health effects?  
7 MS. JISON: Well, you're putting a source, I mean,  
8 this gas station is particularly unique. This is not just  
9 your everyday gas station. This is a gas station that's  
10 going to bring a lot of idling cars and going to be a source  
11 of additional pollution so, you know, it wouldn't make sense  
12 to put that near such vulnerable populations.  
13 MR. GOECKE: Okay. Let's talk about PM2.5. How  
14 much PM2.5 will the children at Stephen Knolls School get  
15 exposed to because of the gas station?  
16 MS. JISON: Well, I mean, you're asking me to  
17 predict what number they're going to get exposed to. You  
18 know, studies suggest that people's personal exposures are  
19 going to be higher depending on what they're doing, where  
20 they're going and what types of sources they're going to be  
21 exposed to. I can't give you a number that those children  
22 will be exposed to. We know that health, you can see  
23 adverse health effects at levels below the standards. I  
24 know that this area is already above the standards and now  
25 you're going to bring another source of pollution there and,

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1 you know, it doesn't make sense to put that source near such  
2 a vulnerable population. If you're asking me to predict  
3 what exposure of PM2.5 those children are going to get, I  
4 couldn't predict that. I would put a monitor on them and  
5 measure it and then I could give you those numbers.

6 MR. GOECKE: So you haven't -- have you reviewed  
7 Mr. Sullivan's reports that, that estimate what their  
8 exposure levels would be?

9 MS. JISON: Well, it's been awhile since I've  
10 looked at Mr. Sullivan's reports. I know that his reports  
11 show that the additive amount of PM2.5 on top of ambient  
12 levels suggest that it would be insignificant compared to  
13 the total background but the point that I have been making  
14 is that, you know, personal exposures have been shown in  
15 studies to be much higher than what ambient levels have  
16 measured. Depending on, you know, your activities and the  
17 chronicity of your exposure, you're going to have an  
18 increased dose exposure which could last more than that  
19 exposure and could have additive and cumulative effects if  
20 you have recurrent exposure.

21 So I would expect that even though Mr. Sullivan's  
22 predictions demonstrate that the incremental amount of PM2.5  
23 being added to the ambient levels are, are extremely small,  
24 I still believe that you would see adverse effects based on  
25 the data that I've seen, you know, because of, of those

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1 reasons, because of the sensitivity of the population, the  
2 chronic nature of the exposures and -- yeah.

3 MR. GOECKE: At what level would you expect the  
4 students to experience adverse health effects for PM2.5?

5 MS. JISON: Well, I mean, studies haven't shown a  
6 threshold effect. I mean, we know there's levels below EPA  
7 standards so I would expect that with the station, adding  
8 pollution to already ambient levels and with the nature of  
9 activities that go on and the other, you know, the children  
10 at the mall go, at the school go to the mall frequently --

11 MR. GOECKE: Uh-huh.

12 MS. JISON: -- to have educational activities and  
13 recreation so with that chronicity of exposure, I would  
14 expect to see health effects on that sensitive population,  
15 you know, at levels below the EPA limits. I can't give you  
16 a specific number where I would say, yeah, they're going to  
17 have health effects because even current studies in  
18 literature haven't determined that number.

19 MR. GOECKE: Oh, so the studies that you're  
20 relying on haven't identified a specific level that's  
21 triggered adverse health effects.

22 MS. JISON: They haven't identified a threshold  
23 where adverse health effects do not occur.

24 MR. GOECKE: Okay. So all exposure to PM2.5  
25 creates adverse health effects.

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1 MS. JISON: I don't know that you can conclude  
2 that from those studies. We just know that the threshold at  
3 which adverse effects do not occur has not been determined  
4 by current studies.

5 MR. GOECKE: Okay. So conversely then, there  
6 hasn't been a study that's shown, for example, exposure to  
7 one microgram per cubic meter of PM2.5 over a one hour  
8 exposure has any adverse health effects.

9 MS. JISON: I have not seen such a study.

10 MR. GOECKE: And so if Mr. Sullivan found that the  
11 exposure at Stephen Knolls School would be .003 micrograms  
12 per cubic meter for a one hour PM2.5 exposure, that would be  
13 significantly less than any study that's out there that  
14 shows adverse health effects for one hour exposure of PM2.5

15 MS. JISON: Well, I think what I've been saying  
16 here is that you cannot rely on that type of prediction as  
17 the sole determinate of one's exposure so no matter what he  
18 may be predicting, based on the studies that I have seen, it  
19 is likely that personal exposures will be higher.

20 MR. GOECKE: The studies that you rely on to talk  
21 about exposures to nitrogen dioxide and PM2.5, many of them  
22 deal with exposure to vehicular traffic, isn't that right?

23 MS. JISON: Yes.

24 MR. GOECKE: As opposed to living near gas  
25 stations.

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1 MS. JISON: Right.

2 MR. GOECKE: I think there were, there were two  
3 studies that you relied on that focused on living near gas  
4 stations, the one in Spain and the one in Greece.

5 MS. JISON: I don't believe -- I think those may  
6 have been included in Ms. Adelman's testimony but the  
7 studies that I have been referencing were the traffic-  
8 related ones.

9 MR. GOECKE: Okay. And is it fair to say that you  
10 would expect higher levels of emissions to come from  
11 traffic, especially heavy traffic on a freeway, than at a  
12 gas station?

13 MS. ROSENFELD: Objection. She's not here to  
14 testify on vehicular-related emissions levels.

15 MR. GROSSMAN: I think you're, you're right but  
16 I'm going to, it is cross-examination and he can explore the  
17 basis for her opinions so I think that's a fair question as  
18 to, you know, upon what she bases her opinion, so I'll  
19 overrule the objection.

20 MS. JISON: Can you restate the question?

21 MR. GOECKE: Sure. I'll try. Yes. Do you agree  
22 that -- let me try again. Is it possible that the  
23 literature focusing on exposure to car traffic is because  
24 that's where the greatest levels, or where high levels at  
25 least, of exposures to PM2.5 and NO2 occur?

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1 MS. JISON: The, well, in those studies, they  
2 measured the ambient levels in the area and showed that  
3 there were health effects even at those ambient levels in  
4 the area where there was high traffic that were below the  
5 EPA standards. You know, this gas station is going to be a  
6 collection of idling cars generating pollution. Whether or  
7 not that pollution is more or less than in moving traffic I  
8 think is not necessarily relevant with respect to the  
9 ambient levels because we're seeing effects at levels below  
10 the EPA standards. Whether, you know, there's moving  
11 traffic there or it's idling traffic, the ambient levels are  
12 the ambient levels and we're seeing effects below them so  
13 I'm not sure that your question, I don't know that, you  
14 know, that really matters with respect to the point I was  
15 making.

16 MR. GOECKE: Well, we can agree that the effect of  
17 living near a gas station is not something that is well  
18 studied.

19 MS. JISON: There are some studies. Probably not  
20 as well studied as traffic.

21 MR. GOECKE: Have you sited any studies or relied  
22 on any studies that talk about the effects of living near a  
23 gas station in North America?

24 MS. JISON: No.

25 MR. GOECKE: Not one?

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1 MS. JISON: That's correct.

2 MR. GOECKE: And is it because they don't exist or  
3 because you chose not to rely on them?

4 MS. JISON: Well, there's very few studies.  
5 There's very few studies and --

6 MR. GOECKE: Have you read them?

7 MS. JISON: No.

8 MR. GOECKE: Why not?

9 MS. JISON: Well, I was, you know, I was concerned  
10 with looking at health effects at levels around the  
11 standards. I think whether the pollution is generated by  
12 moving traffic or, or a gas station, you know, my goal was  
13 to find out about the health effects with varying levels of,  
14 of pollution and exposures. How those exposures may occur,  
15 you know, certainly there's more data regarding traffic-  
16 related exposures and those are the majority of what I  
17 looked at. There's very few data on gas stations but I  
18 think if you're concerned with just finding out what are the  
19 effects from a certain level of pollutant, I don't think  
20 it's a big difference as far as where that pollutant is  
21 coming from, whether it's moving traffic or idling traffic.  
22 It's essentially the same pollutant and the ambient levels  
23 are the ambient levels.

24 MR. GOECKE: Where's the greatest source of PM2.5  
25 in the mall area in that Exhibit 159 to your, to your left

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1 there?

2 MS. JISON: Well, I mean, you know, the roads are  
3 very busy. Georgia Avenue, and there's moving traffic all  
4 around the mall on major roads so --

5 MR. GOECKE: So you think Georgia Avenue is  
6 probably the, likely the highest source of PM2.5 for the  
7 kids at the Stephen Knolls School?

8 MS. JISON: Well, I don't know that you can say, I  
9 mean, Georgia Avenue generates a lot of pollution because of  
10 the heavy traffic on that road so, you know, I --

11 MR. GOECKE: Do you know how they exposed the  
12 PM2.5 levels from Georgia Avenue compared to say the  
13 activity on the mall itself?

14 MS. JISON: I can't recall that information.

15 MR. GOECKE: And we agree that this is a large  
16 mall.

17 MS. JISON: Well, I mean, it's a mall. I don't  
18 know whether you might want to call it large compared to  
19 other malls but sure. It's a big piece of property.

20 MR. GOECKE: It's a regional mall. It's been  
21 referred to a regional mall.

22 MS. JISON: That was back in --

23 MS. ROSENFELD: Objection.

24 MS. JISON: -- the 1960s.

25 MS. ROSENFELD: Dr. Jison is not here with

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1 expertise on --

2 MR. GROSSMAN: Sustained.

3 MS. ROSENFELD: -- relative mall acreage and --

4 MR. GOECKE: Well, my point is this, Mr. Grossman.  
5 We have the third largest mall in the Washington D.C. area  
6 with 6,000 parking spaces.

7 MS. ROSENFELD: Objection.

8 MR. GROSSMAN: Well, no. He can state his  
9 rationale.

10 MS. ROSENFELD: Okay. Sorry.

11 MR. GOECKE: And as Dr. Jison has pointed out, a  
12 very busy street, and there's two other very busy streets  
13 she hasn't talked about yet, and I'm just, and she's  
14 concerned about unidentifiable levels of exposures, so is it  
15 safe for the kids at Stephen Knolls School today?

16 MR. GROSSMAN: Well, hold on a second.

17 MS. ROSENFELD: Objection. Objection. Actually,  
18 I have several. The first, I don't know where in the record  
19 this has ever been identified as the third largest regional  
20 mall.

21 MR. GROSSMAN: Fair enough.

22 MS. ROSENFELD: Secondly, with respect to these,  
23 quote unquote, unidentified levels of pollutants, Mr.  
24 Sullivan has provided report after report that purports to  
25 identify what those levels are and if Mr. Goecke has a

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1 specific question about those specific levels, he's free to  
2 ask it but --  
3 MR. GROSSMAN: He can, in general, probe the  
4 rationale of the witness' opinion. The problem was he got  
5 into questions about the description of the mall so let's,  
6 let's start it again and try a question that goes to what  
7 you can legitimately ask her about.  
8 MR. GOECKE: Well, I feel like it is legitimate to  
9 ask her about exposures from what's generated --  
10 MR. GROSSMAN: Yes. I'm not saying it's not. You  
11 can ask her about that. You just, you're asking her more of  
12 a description question about the mall itself as opposed  
13 to --  
14 MR. GOECKE: Okay.  
15 MR. GROSSMAN: But go ahead.  
16 MR. GOECKE: Okay. Well, let's start with are you  
17 familiar with what levels of exposure the children at  
18 Stephen Knolls School are exposed to today at one hour NO2  
19 or one hour PM2.5?  
20 MS. JISON: I know that they're close to the  
21 standards. I don't know the exact level. But you're  
22 actually pointing to the neighborhood.  
23 MR. GROSSMAN: Right.  
24 MS. JISON: Stephen Knolls School is a little  
25 further to the right.

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1 MR. GROSSMAN: It's further to the east.  
2 MS. JISON: That parking lot around to the right.  
3 There.  
4 MR. GOECKE: Right there?  
5 MS. JISON: Yes.  
6 MR. GROSSMAN: Yes.  
7 MR. GOECKE: Thank you. Thank you. I got  
8 disoriented. You're saying that the Stephen Knolls children  
9 are exposed to levels that are near the EPA NAAQS right now?  
10 MS. JISON: I believe so. I mean, I believe that  
11 the area in general has, you know, fairly high levels.  
12 MR. GOECKE: And so if I understand your testimony  
13 correctly then, that there's no safe threshold and adverse  
14 health effects can occur at levels far below the EPA NAAQS,  
15 you're testifying that they're already getting exposed to  
16 levels near the EPA NAAQS, then isn't it unsafe for them  
17 today?  
18 MS. JISON: Well, if you're asking me do I believe  
19 it's, you know, being near Georgia Avenue, which is a source  
20 of pollution, is a good thing, no, I don't believe that's a  
21 good thing. If you're, you know, is putting another point  
22 source of pollution in an area where those children are  
23 going to go and be further exposed a good idea? No. I  
24 don't think that's a good idea either. I mean, again, this  
25 goes back to the risk factors in the synergy example that,

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1 you know, I gave. If you already know that ambient levels  
2 are high and that even levels below standards are being  
3 shown to have health effects, why would you put another  
4 source of pollution and chronic exposure to those sensitive  
5 populations in that area?  
6 MR. GOECKE: Well, let me ask you this. If the  
7 levels are so high and unhealthy there already, why would  
8 you put your medical practice there?  
9 MS. JISON: Well, I didn't put my medical practice  
10 there so I don't know the answer to that question.  
11 MR. GOECKE: Where's your medical practice?  
12 MS. JISON: Well, I no longer have a solo medical  
13 practice. I practice medicine at Holy Cross Hospital part-  
14 time and I work full-time at the FDA so I, my medical  
15 practice, when I had it, was not located there.  
16 MR. GOECKE: It wasn't located at the mall?  
17 MS. JISON: No.  
18 MR. GOECKE: Okay. But you live near the mall.  
19 MS. JISON: Yes. I do live near the mall.  
20 MR. GOECKE: And your husband is an asthmatic.  
21 MS. JISON: Yes.  
22 MR. GOECKE: And your children are too.  
23 MS. JISON: Yes.  
24 MR. GOECKE: So is this a safe area for your  
25 family to live?

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1 MS. JISON: I don't disagree that an area with  
2 high levels of pollution is not good for people with chronic  
3 conditions.  
4 MR. GOECKE: And yet, you moved there voluntarily.  
5 MS. JISON: Well, I, I came to this area for  
6 training and I did not have children when I came to this  
7 neighborhood and there was no proposed gas station at that  
8 mall, there was no Costco there and the amount of traffic  
9 going into that mall, based on the current stores and  
10 demographics of the area at the time when I moved there,  
11 were very different from what it is now. If, if you're  
12 asking me, you know, would I continue to live there if there  
13 was a gas station there? Absolutely not.  
14 MR. GOECKE: On your resume, it lists your address  
15 as 11006 Veirs Mill Road. Is that your home address or  
16 business address?  
17 MS. JISON: I'm sorry. That's a business mailing  
18 address. My home address is located on Torrance Drive which  
19 is directly adjacent to the mall.  
20 MR. GOECKE: Okay.  
21 MS. JISON: That was just a mailing address for my  
22 former practice.  
23 MR. GOECKE: And where is that mailing address  
24 located?  
25 MS. JISON: That's on the, that's at the UPS Store

1 on the mall parcel.  
2 MR. GOECKE: Okay. So okay. So Ms. Rosenfeld  
3 asked you about folks, hypothetical shoppers at the Costco  
4 gas station getting exposed for 20 minutes using the one  
5 hour level of 160 micrograms per cubic meter, and you  
6 testified that you believe there would be adverse health  
7 effects or there could be adverse health effects --

8 MS. JISON: Uh-huh.

9 MR. GOECKE: -- based on that 20 minute exposure,  
10 is that correct?

11 MS. JISON: Based on the 20 minute exposure  
12 depending on, you know, what I said was if it's only going  
13 to be one 20 minute exposure you're entire lifetime, it's  
14 unlikely you would get any adverse health effects from that  
15 but for mall shoppers and patrons, it's likely that that 20  
16 minute exposure is going to recur over time and that dose is  
17 going to accumulate and could lead to adverse health  
18 effects.

19 MR. GOECKE: So your focus is more on the  
20 cumulative effect of those exposures.

21 MS. JISON: Yeah.

22 MR. GOECKE: Okay. And if we assume that there's  
23 a 90 microgram per cubic meter background level of NO2 at  
24 the mall right now, then, then that, the cumulative  
25 exposures at that level could cause adverse health effects

1 for people as well.

2 MS. JISON: Yes. But you also have to look at,  
3 you know, the particular sensitivities of those particular  
4 patrons and visitors. I mean, patients with, people with  
5 chronic conditions or specific vulnerabilities may have  
6 effects, may experience effects at those particular levels  
7 that a healthy individual may not or may experience effects  
8 at less frequent exposures than a healthy individual would.

9 MR. GOECKE: Sure, sure. The effects depend on  
10 the health of the person, the age of the person, other --  
11 there's a multitude of factors that go into whether or not  
12 somebody's going to have an adverse health effect, is that  
13 fair?

14 MS. JISON: Yes.

15 MR. GOECKE: Okay. But my point is merely that  
16 even if there's no gas station there, the levels that  
17 currently exist are likely to threaten, in your words,  
18 sensitive populations.

19 MS. JISON: Studies do show that levels below the  
20 limits, which would be the levels that you are quoting, are  
21 associated with adverse health effects. The point that we  
22 have, I have been making is that you're going to put another  
23 point source there that will increase the personal exposures  
24 and could cause more health effects.

25 MR. GOECKE: So you would be opposed to any new

1 development at that site that would create NO2 or PM2.5  
2 emissions.

3 MS. JISON: I mean, any development that would  
4 increase pollution levels this close to the neighborhood and  
5 the sensitive populations contained within it would not be a  
6 good idea.

7 MR. GOECKE: And that's because of the inherent  
8 adverse health effects that would be generated by that new  
9 development.

10 MS. JISON: I mean, it depends what you're putting  
11 there but, yeah. If it's generating pollution or, you know,  
12 things that have known effects, I would come to that  
13 conclusion.

14 MR. GOECKE: So any, any gas station, not just a  
15 Costco gas station, would cause adverse health effects then.

16 MS. JISON: Well, this gas station is very unique.  
17 I mean, any gas station, you know, I don't --

18 MR. GOECKE: Right, but I'm asking --

19 MS. JISON: This is a hypothetical.

20 MR. GOECKE: Yes.

21 MS. JISON: You know, it depends on the type of  
22 gas station you're talking about. I mean, there's many  
23 different types of gas stations. What kind of volume of  
24 traffic are you bringing with that station? You know, I  
25 don't know what type of levels, you know, that your

1 hypothetical station would be bringing. I mean, an added  
2 source of pollution, in general, is not a good idea.

3 MR. GOECKE: So it's possible that a gas station  
4 there could not create adverse health effects for the  
5 residents and the folks at the school and the pool.

6 MS. JISON: Well, I don't know that I could answer  
7 that without, you know, additional data regarding the type  
8 of gas station you're proposing to put in there.

9 MR. GOECKE: I'm just asking you if it's possible.

10 MS. JISON: Is it possible that it would -- I  
11 don't know.

12 MR. GOECKE: And, Dr. Jison, when you talk about  
13 the potential for adverse health effects, what you're really  
14 talking about is the risk of potential adverse health  
15 effects, isn't that correct?

16 MS. JISON: Sure. Yes.

17 MR. GOECKE: You can't guarantee that exposures at  
18 a certain level, even if, even if we took a certain, an  
19 individual student at Stephen Knolls, someone who had very,  
20 very vulnerable shall we say, and you couldn't guarantee  
21 that at certain exposure levels below the EPA NAAQS they  
22 were likely to react in a certain way.

23 MS. JISON: No. I could not guarantee how a  
24 particular student would react at a certain level of  
25 pollutant. I think what we do know is that, you know, even

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1 at levels below EPA standards, we are seeing health effects  
2 and the most vulnerable populations are more sensitive to  
3 that and have increased risk of that but I couldn't predict  
4 for sure which student and at what level is going to have an  
5 effect.  
6 MR. GOECKE: And you've testified that the EPA  
7 standards are not designed to eliminate all this, right?  
8 MS. JISON: I don't believe so.  
9 MR. GOECKE: But at the same time, the EPA is  
10 tasked, a federal law, with setting standards that protect  
11 the general population.  
12 MS. JISON: The intention is to protect the  
13 general population as well as, you know, some of the  
14 sensitive populations because they have a secondary  
15 standard, at least for PM2.5 which, you know, is intended to  
16 also protect sensitive populations such as the elderly and  
17 those with asthma. You know, I don't know what the -- I  
18 can't speak for the EPA but the way I interpret it is that  
19 they are trying to set a national standard that's a  
20 framework but there's, you know, I don't believe that you  
21 can possibly encompass every situation with those national  
22 standards. There are specific situations that just cannot  
23 be molded within that framework which I believe is the  
24 situation with this particular application.  
25 MR. GOECKE: So in your opinion, has the EPA

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1 failed its obligation?  
2 MS. JISON: Um, I think, I don't think the EPA  
3 failed its obligation. I mean, it's obligation is to --  
4 this is what I understand its obligation. I don't know  
5 their formal charter but, you know, I think their obligation  
6 is to evaluate the scientific data and to set standards as  
7 best they can with that data, but I think everyone realizes  
8 that that has limitations and cannot be applicable to every  
9 possible situation so --  
10 MR. GOECKE: You talked a lot about the asthma in  
11 terms of how it affects both individuals and the population  
12 generally and you would agree, wouldn't you, that asthma  
13 cases are trending up right now.  
14 MS. JISON: Yes.  
15 MR. GOECKE: And do you also agree that levels of  
16 PM2.5 in the ambient air are decreasing?  
17 MS. JISON: Well, as the standards -- yeah. I  
18 would agree that some, I mean, it depends on where you are.  
19 MR. GOECKE: Uh-huh.  
20 MS. JISON: You know, not everybody is in  
21 compliance or close to compliance but in general, that is  
22 the trend, and the goal of the EPA standards is to reduce  
23 that.  
24 MR. GOECKE: So even when PM2.5 levels decrease,  
25 it doesn't guarantee, necessarily, that rates of asthma will

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1 decrease.  
2 MS. JISON: Right.  
3 MR. GOECKE: I'd like to compare exposures to, NO2  
4 and PM2.5 to radiation for example. Do you agree that  
5 there's no known safe levels of exposure to radiation?  
6 MS. JISON: I would have to do a more thorough  
7 review of the literature to be able to comment on that  
8 MR. GOECKE: Uh-huh.  
9 MS. JISON: I mean, I think in general, radiation  
10 exposure is not a good thing but as far as thresholds, I  
11 don't think I can comment on that  
12 MR. GOECKE: Okay. Mr. Grossman, if we could have  
13 a short break, I think I'm almost done.  
14 MR. GROSSMAN: All right. Come back at, we'll  
15 recess until 5 to 12.  
16 MR. GOECKE: Thank you.  
17 (Whereupon, at 11:47 a.m., a brief recess was  
18 taken.)  
19 MR. GOECKE: Are we back on the record?  
20 MR. GROSSMAN: We're back on the record.  
21 MR. GOECKE: Then no further questions.  
22 MR. GROSSMAN: All right. Any redirect?  
23 MS. ROSENFELD: Yes.  
24 MR. GOECKE: Well, I'm sorry. I actually have  
25 one --

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1 MR. GROSSMAN: All right.  
2 MR. GOECKE: I just have one question.  
3 MR. GROSSMAN: One more.  
4 MS. ROSENFELD: No take-backs.  
5 MR. GOECKE: I didn't take my hand off the piece.  
6 Sorry, Dr. Jison. Back to the synergistic effects real  
7 quickly. Would you agree that the synergistic effects on a  
8 roadway, on an especially heavy traveled roadway, would be  
9 different than the synergistic effects in this mall area  
10 next to a residential community?  
11 MS. JISON: I don't think so because it's the same  
12 pollutants.  
13 MS. ROSENFELD: I'm sorry. I didn't, I didn't  
14 hear the question.  
15 MR. GROSSMAN: He said would you agree that the  
16 synergistic effects on a roadway would be different from the  
17 synergistic effects on a --  
18 MR. GOECKE: At this mall parcel with a --  
19 MR. GROSSMAN: This mall parcel.  
20 MR. GOECKE: -- with a residential neighborhood  
21 surrounding it.  
22 MS. JISON: Can you -- I'm sorry. All the back  
23 and forth is confusing me. What was the actual question?  
24 MR. GOECKE: Sure, sure. Let me try it again.  
25 I'll get make it more clear. The studies that you

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1 referenced referring to the synergistic effects of exposures  
2 to NO2 and PM2.5 and other contaminates were based largely  
3 on roadway scenarios, is that correct?  
4 MS. JISON: Yes.  
5 MR. GOECKE: Okay. And isn't it fair to say that  
6 the concentration of contaminates at the mall would be  
7 different than what you might find on a heavily traveled  
8 roadway?  
9 MS. JISON: Are you talking about at the mall in  
10 general or with the gas station?  
11 MR. GOECKE: I'm talking about, let's assume the  
12 gas station were at the mall. So this mall, this  
13 hypothetical gas station that Costco is seeking to build  
14 there.  
15 MS. JISON: I mean, the pollutants are being  
16 generated by traffic or vehicles. Whether they're moving or  
17 idling, it's the same pollutants so I don't believe that the  
18 synergistic, synergistic effects would be different.  
19 MR. GOECKE: Well, aren't pollutants also going to  
20 be generated by other uses at the mall, restaurants, other  
21 stores?  
22 MS. JISON: Sure.  
23 MR. GOECKE: And there's different contaminates  
24 coming from the backyards of people in the community.  
25 MS. ROSENFELD: Objection. I don't think that

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1 evidence is in the record.  
2 MR. GROSSMAN: Well, it's cross-examination. I'm  
3 not sure what I can get out of this but I'm going to allow  
4 the question.  
5 MS. JISON: I mean, sure. You can generate  
6 pollution from various different things but to go back to  
7 your question regarding the roadway and the gas station,  
8 it's still cars or vehicles generating the pollution. I  
9 think you'd have to do a study to quantify actual, what the  
10 synergistic effects are but, you know, it's the same  
11 pollution coming out of the same vehicles. It's just a  
12 matter of what they happen to be doing at that point in  
13 time, so I don't believe that the synergistic effects would  
14 be all that different.  
15 MR. GOECKE: Okay. So your testimony is the  
16 synergistic effects would be the same regardless of the  
17 amount of the contaminates or other contaminates that might  
18 be playing into the, the cloud of contaminates if you will?  
19 MS. JISON: It depends on what other contaminates  
20 are there. I mean, there is, you know, if you have more of  
21 one particular contaminate or another, you could have more  
22 effects.  
23 MR. GOECKE: And that's, and that's my point, that  
24 it could be apples to oranges in terms of what the  
25 contaminates are here at the mall compared to what the

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1 studies are that you were referring to before.  
2 MS. JISON: Well, the studies I've been referring  
3 to have been vehicular emissions which is the same type of  
4 emissions coming from the gas station and people driving  
5 around the mall and visiting the mall and visiting the gas  
6 station, so those are the same type of emissions.  
7 MR. GOECKE: Okay. No further questions.  
8 MR. GROSSMAN: All right. Any redirect?  
9 MS. ROSENFELD: Just a few questions, yes.  
10 REDIRECT EXAMINATION  
11 MS. ROSENFELD: Mr. Goecke asked you if there were  
12 many studies that looked at the effect of living near a gas  
13 station as opposed to living near, near roadways. Are the  
14 effects of living, are the effects of vehicular emissions on  
15 people who live near roadways well studied?  
16 MS. JISON: Yes.  
17 MS. ROSENFELD: And in your opinion, are cars  
18 driving on a Ring Road and driving through gas queues  
19 traffic?  
20 MS. JISON: Yes.  
21 MS. ROSENFELD: And --  
22 MR. GROSSMAN: I don't know if that -- that's not  
23 a matter of opinion, is it? It's a matter of definition,  
24 isn't it, whether something is traffic? You mean is it  
25 traffic in the same sense as the studies?

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1 MS. ROSENFELD: In the same sense. In this  
2 instance, you --  
3 MR. GROSSMAN: That's really the question.  
4 MS. ROSENFELD: In this instance, you have cars  
5 driving on a road. The Ring Road has been much referenced.  
6 MR. GROSSMAN: I think the question is is the  
7 traffic on the Ring Road analogous or directly comparable to  
8 the traffic studies that you are relying on in terms of  
9 pollution effects to nearby residents.  
10 MS. JISON: I mean, the traffic is generating the  
11 same pollutants, I mean, if you're asking, if your specific  
12 question traffic on the Ring Road analogous to the traffic  
13 in those studies, I mean, the volume of traffic may be  
14 different. However, the levels of the pollutants, from what  
15 I've seen, are tending to be similar, at least those  
16 measured by the central monitors, so that the type of  
17 traffic it seems can still produce similar ambient levels of  
18 pollution at which we're still seeing some health effects.  
19 MR. GROSSMAN: I mean, there's traffic and then  
20 there's Atlanta after one inch of snow, you know.  
21 MS. ROSENFELD: Dr. Cole, in his testimony,  
22 offered his opinion that in fact, Mr. Sullivan didn't use  
23 the right modeling assumptions, MOVES versus Mobile6, and  
24 that if the proper modeling techniques had been applied,  
25 then in fact --

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1 MR. GROSSMAN: This is a redirect. It's not a  
2 cross-examination so I think you have to be little careful  
3 about --  
4 MS. ROSENFELD: I understand.  
5 MR. GROSSMAN: -- how much of a scenario you're  
6 setting up here.  
7 MS. ROSENFELD: Okay. I'm just trying to put my  
8 question in the context of the evidence that's been put in  
9 the record.  
10 MR. GROSSMAN: I understand.  
11 MS. ROSENFELD: In your opinion, if emissions  
12 levels were higher than Mr. Sullivan has projected, would  
13 that have a greater synergistic effect than at the levels  
14 he's predicted, Mr. Sullivan has predicted?  
15 MS. JISON: I mean, if, if you're generating more  
16 than one type of pollutant versus another or all of them in  
17 general, I would expect that you would see more synergy in  
18 the effects.  
19 MS. ROSENFELD: Okay. Thank you. Mr. Goecke  
20 asked you many questions related to sort of the, I'll call  
21 them the theoretical diminishing returns, as pollutant  
22 levels drop as you get more distant from the gas station,  
23 what effect might that really have. I'd like to bring your  
24 attention back to figure 1.  
25 MR. GROSSMAN: I don't think that's diminishing

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1 returns by the way but --  
2 MS. ROSENFELD: Okay.  
3 MR. GROSSMAN: That's something else.  
4 MS. ROSENFELD: How would you characterize it?  
5 MR. GROSSMAN: Well, I don't know but it's not  
6 what they --  
7 MS. ROSENFELD: Okay. Okay.  
8 MR. GROSSMAN: -- what they mean when they say  
9 diminishing returns.  
10 MS. ROSENFELD: The effect of lower pollutant  
11 levels as they get reduced further below the NAAQ standards.  
12 Going back to figure 1 from Mr. Sullivan's August 16th, 2013  
13 report, I draw your attention again to the one hour NO2  
14 concentrations within the mall parcel itself and in your  
15 opinion, at 160 micrograms per cubic meter of NO2, are there  
16 potentially adverse health effects?  
17 MS. JISON: Yes. You know, again, it goes back to  
18 the dose and the nature and sensitivities of the people  
19 going there and, you know, the chronicity. But the EPA  
20 actually, when they set the one hour standards, felt that  
21 there was evidence for short-term health effects. If I can  
22 read from their NO2 final rule again on page 6493 from the  
23 2010 Federal Register Notice as part of the rationale for,  
24 for their decision, they state that in assessing the most  
25 appropriate approach for the one hour standard and the most

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1 appropriate range of standard levels to propose, the  
2 administrator considered the broad body of scientific  
3 evidence assessed in the ISA including epidemiologically-  
4 controlled human exposure studies as well as results of  
5 exposure and risk analyses presented in their REA.  
6 In light of the body of available evidence and  
7 analyses as described above, the administrator concluded in  
8 the proposal that it is necessary to provide increased  
9 public health protection for at-risk individuals against an  
10 array of adverse respiratory health effects linked with  
11 short-term, for example, 30 minutes to 24 hour exposures to  
12 NO2. Such health effects have been associated with exposure  
13 to the distribution of short-term ambient NO2 concentrations  
14 across an area including high or short-term, for example,  
15 peak exposure concentrations such as those that can occur on  
16 or near major roadways and near other sources of NO2 as well  
17 as the lower short-term exposure concentrations that occur  
18 in areas not near major roadways or other sources.  
19 MR. GROSSMAN: Okay.  
20 MS. ROSENFELD: So in your opinion, levels of 160  
21 micrograms would potentially result in adverse health  
22 effects.  
23 MS. JISON: Yes.  
24 MS. ROSENFELD: And levels at or above 100 could  
25 result in adverse health effects.

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1 MS. JISON: Potentially, based on the  
2 characteristics of the person being exposed.  
3 MS. ROSENFELD: And levels below 100,  
4 incrementally below? Say between 90 and 100.  
5 MS. JISON: Right. I mean, studies have been  
6 showing that incremental levels even below the standards but  
7 incrementally higher levels within the standards can be  
8 associated with adverse health effects.  
9 MS. ROSENFELD: And without going to zero or one  
10 or two, based on your review of the EPA regulations, perhaps  
11 as low as 70?  
12 MS. JISON: Yeah. I mean, that was what was  
13 behind all those medical, professional medical societies  
14 wanting to urge the EPA for even lower standards than what  
15 they had set.  
16 MS. ROSENFELD: And Mr. Goecke asked you if you  
17 could predict if any particular individual would suffer a  
18 specific adverse health effect at any of these levels. Has  
19 the EPA found that adverse health effects below the NAAQS  
20 for NO2 have a particular effect on specific populations,  
21 general populations?  
22 MS. JISON: Well, I mean, I think a lot of the  
23 studies that I have been referencing and from their final  
24 rule do show that levels below the standards have been  
25 associated with health effects, especially in vulnerable

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1 populations as people with respiratory and cardiovascular  
2 conditions and asthma.  
3 MS. ROSENFELD: Mr. Goecke also asked you about  
4 radiation and whether or not in your opinion, there was any  
5 safe minimum exposure to radiation. In your experience as a  
6 medical doctor, is radiation used in medical settings for  
7 medical treatments?  
8 MS. JISON: Yes. I mean, radiation is used for  
9 treatment of various cancers.  
10 MS. ROSENFELD: And why would they expose somebody  
11 to radiation if it's a known, known risk?  
12 MR. GOECKE: Objection. This goes beyond the  
13 scope.  
14 MR. GROSSMAN: It does, but I don't quite  
15 understand where you're going with this. What --  
16 MS. ROSENFELD: If you'll indulge me with two more  
17 questions, I'll be finished. If I could finish my line of  
18 questioning on this topic.  
19 MR. GOECKE: It all goes beyond the scope. I  
20 asked her one question. She said she wasn't familiar and I  
21 abandoned that line of questioning.  
22 MR. GROSSMAN: Let's hear the, what are the last  
23 two questions? I overrule the objection, but I don't see  
24 it's going to affect anything in any way but go ahead and  
25 ask the question.

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1 MS. ROSENFELD: If you could answer.  
2 MS. JISON: Why would somebody --  
3 MS. ROSENFELD: Why would somebody assume the risk  
4 of exposing themselves to radiation?  
5 MS. JISON: Well, I mean, the person who would be  
6 being treated with the radiation has a condition that can be  
7 mitigated by that radiation and usually would have weighed  
8 the risks and benefits and that given their current  
9 circumstances, the benefit of radiation treatment would  
10 outweigh the risk of them dying from a particular type of  
11 cancer.  
12 MS. ROSENFELD: And are you aware of whether NO2  
13 or PM2.5, either are used in any medical setting for  
14 treatment?  
15 MS. JISON: No. Not for treatment.  
16 MR. GROSSMAN: No, you're not aware or, no, it's  
17 not used for treatment?  
18 MS. JISON: No. It's not used.  
19 MR. GROSSMAN: All right.  
20 MS. ROSENFELD: Okay. I have no further  
21 questions.  
22 MR. GROSSMAN: All right. Is there any recross  
23 from the Coalition?  
24 MR. SILVERMAN: No, sir.  
25 MR. GROSSMAN: And Ms. Duckett is not here. Any

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1 recross from the applicant?  
2 MR. GOECKE: One question.  
3 RECCROSS-EXAMINATION  
4 MR. GOECKE: Dr. Jison, when Dr. Cole testified,  
5 as Ms. Rosenfeld mentioned, he raised some concerns about  
6 Mr. Sullivan's modeling methods. And Mr. Grossman asked him  
7 while he was testifying, Mr. Grossman said I am concerned  
8 about your point about uncertainty and that sort of thing  
9 but when you get down to the incremental levels, it appears  
10 to me, correct me if I'm wrong, when you talk about  
11 incremental levels, even using the rural standards of .009  
12 at the pool and .009 at the school in terms of micrograms  
13 per cubic meter, we're talking about levels that are so  
14 small that it seems to me, and tell me if I'm wrong about  
15 this, that even your uncertainty issues wouldn't create  
16 that, wouldn't make that into a significant problem. And  
17 Dr. Cole responded I think I can concede that point but  
18 within a very important -- but I'm not making any  
19 concessions with regard to the concentrations within the  
20 mall.  
21 So if I understand that correctly, Dr. Cole is  
22 testifying that the PM2.5 levels, the incremental increase  
23 are only concerned at the mall and not at the school, pool  
24 or homes. Do you agree with this testimony?  
25 MS. JISON: That -- can you explain his testimony

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1 again, that the incremental levels are --  
2 MR. GOECKE: That the incremental --  
3 MS. ROSENFELD: Perhaps --  
4 MR. GOECKE: -- PM2.5 increase generated by the  
5 gas station activities would be so small at the pool, the  
6 school and the home that it's not a concern, that it's, let  
7 me say that it's insignificant is the word he used.  
8 MS. ROSENFELD: Mr. Goecke, if you have a copy of  
9 that testimony, perhaps Dr. Jison can --  
10 MR. GROSSMAN: I think it's quoted in, in an  
11 attachment to Mr. Sullivan's supplemental --  
12 MS. ROSENFELD: Which I don't believe Dr. Jison  
13 has.  
14 MR. GROSSMAN: But you can show it to her.  
15 MS. ROSENFELD: It's a mouthful.  
16 MR. GROSSMAN: Yes, it is.  
17 MR. GOECKE: Dr. Jison, I'm showing you an excerpt  
18 from Dr. Cole's transcript beginning on page 77. If you'd  
19 just read the portion that's in the red box and then flip  
20 over to the following page.  
21 MR. GROSSMAN: Yes. It's the December 6, 2013  
22 testimony of Dr. Cole and the page that he's included is, is  
23 I guess pages 74 to 77.  
24 MR. GOECKE: And then it goes on to pages 78  
25 through 81.

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1 MR. GROSSMAN: Okay.

2 MR. GOECKE: And we're focused on, specifically on

3 pages 77 and 78.

4 MS. JISON: So is he saying, or is this saying

5 that the, I'm trying to understand what the .009 numbers

6 are.

7 MR. GOECKE: That would be the incremental

8 increase caused by the gas station, PM2.5 using a rural

9 analysis for one hour exposure, and that's .009 micrograms

10 per cubic meter, at the school.

11 MS. JISON: At the school. And whether that

12 amount of addition to ambient levels --

13 MR. GOECKE: Is significant.

14 MS. JISON: -- is significant.

15 MR. GROSSMAN: And at the pool.

16 MS. ROSENFELD: Objection.

17 MR. GROSSMAN: It was at the school and at the

18 pool. You mentioned residents. Now, I don't recall that

19 being part of that.

20 MR. GOECKE: I may have misspoke.

21 MR. GROSSMAN: Okay. So it said -- the question

22 related to the, Mr. Sullivan's figures for the incremental

23 increase of PM2.5 at the school and the pool using those

24 rural standards. What's your objection?

25 MS. ROSENFELD: My objection is that as I read

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1 Mr., Dr. Cole's testimony, he is testifying in the context

2 of the incremental increase, vis-a-vis the IPA standards,

3 and not testifying with respect to health-related issues.

4 MR. GROSSMAN: Well, we can let the witness

5 interpret it the way she wants but I think it's an accurate

6 quote except for the residents reference from those pages,

7 77 and 78, in the transcript. She can say if she agrees or

8 disagrees. That's up to her.

9 MS. JISON: So if I understand the question,

10 you're asking me if this amount of this increment in

11 addition to the background levels of PM2.5, whether that

12 increment is significant with regards to the overall total

13 ambient level.

14 MR. GROSSMAN: With regard to health effects.

15 MS. JISON: With regard to health effects. Well,

16 I think what I've been saying this whole time is that, you

17 know, with regard to the total number and the magnitude of

18 the background level, that is a small amount but with

19 regards to health effects, we're definitely seeing health

20 effects below current EPA standards and studies are showing

21 that personal exposures are much higher than what you're

22 measuring in ambient levels and that putting a point source

23 of pollution, in my opinion, is likely to increase someone's

24 personal exposure levels and lead to adverse health effects.

25 MR. GOECKE: Okay. So you've said that many times

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1 but I'm not sure you answered my question. Will .009 cause

2 adverse health effects?

3 MR. SILVERMAN: .009 what? What are you talking

4 about?

5 MR. GOECKE: Micrograms per cubic meters, one hour

6 exposure, PM2.5.

7 MS. ADELMAN: NO2.

8 MS. JISON: Well, the studies have never shown

9 what the actual lower limit of where you don't see health

10 effects are so I don't think I could answer for sure that,

11 you know, I agree that that's a very small amount but again,

12 the studies are showing that below the EPA standards, we're

13 still getting, health effects of the, you know, for the

14 ambient levels and the personal exposure levels are much

15 higher, you know. You're putting a source that people are

16 going to recurrently go back to and be exposed to so, you

17 know, I think the additive of this, that number to the

18 ambient levels is not particularly helpful in determining

19 the health effects.

20 MR. GOECKE: But there's no studies that show that

21 that level of exposure creates adverse health effects.

22 MS. JISON: No. I have not seen any and the

23 studies that are out there have not found the threshold for

24 where health effects don't occur.

25 MR. GOECKE: Thank you. No further questions.

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1 MS. ROSENFELD: Dr. Jison --

2 MR. GROSSMAN: Hold on. This was the -- you want

3 a re-redirect?

4 MS. ROSENFELD: I do.

5 MR. GROSSMAN: I don't really think it's

6 necessary. I think we understand. She's stated her

7 position multiple times, so I thank you very much, Dr. Jison

8 --

9 MS. JISON: Thank you.

10 MR. GROSSMAN: -- for taking the time to come down

11 here and share your, your views with us. All right. Shall

12 we turn now to the cross-examine -- I see a head shaking.

13 No? We shouldn't turn anywhere?

14 MS. HARRIS: We should go to lunch.

15 MR. GROSSMAN: We should go to lunch first?

16 MR. GROSSMAN: All right. And then we return for

17 Ms. Savage cross-examination?

18 MR. GOECKE: Savage.

19 MR. GROSSMAN: And how long do you anticipate that

20 will take?

21 MR. GOECKE: About an hour.

22 MR. GROSSMAN: Okay. All right.

23 (Whereupon, at 12:19 p.m., a luncheon recess was

24 taken.)

25 MR. GROSSMAN: Mr. Goecke, are you ready to savage

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1 Ms. Savage?  
2 MR. GOECKE: I hope so.  
3 MS. SAVAGE: Let's hope not.  
4 MR. GROSSMAN: You may proceed.  
5 MR. GOECKE: Thank you.  
6 CROSS-EXAMINATION  
7 MR. GOECKE: Good afternoon, Ms. Savage.  
8 MS. SAVAGE: Hi.  
9 MR. GOECKE: I'd like to start by asking you about  
10 walkability at the mall.  
11 MS. SAVAGE: Okay. Okay.  
12 MR. GOECKE: How would you characterize, or let me  
13 put it this way, how heavily trafficked is the Ring Road  
14 right now with pedestrians?  
15 MS. SAVAGE: With pedestrians?  
16 MR. GOECKE: Yes.  
17 MS. SAVAGE: Not very but there's, there is really  
18 no place for them to walk. I mean, they could sort of walk  
19 on the, there's a path-ish.  
20 MR. GOECKE: Where is the path?  
21 MS. SAVAGE: It would be around, right around the  
22 outside of the outer loop of the Ring Road. I mean, it's a  
23 path in that people are walking on it so there's little  
24 grass there.  
25 MR. GOECKE: And you're pointing to the southern

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1 portion of the Ring Road?  
2 MS. SAVAGE: Yes. You can, you can more or less,  
3 you can more or less walk all the way around. In most  
4 places, there, there's enough grass or whatever to walk on.  
5 It's uneven surface but it's there.  
6 MR. GOECKE: Okay. So to your knowledge, most  
7 people walk on the grass portion next to the road as opposed  
8 to the road itself?  
9 MS. SAVAGE: No. Sorry. I think most people --  
10 it depends on the time of the day. Now, some -- if it's  
11 before the Costco Warehouse opens, there's not very much  
12 traffic back there and so people will attempt to walk on the  
13 road itself.  
14 MR. GOECKE: Okay.  
15 MS. SAVAGE: Also, I think people tend to more --  
16 if they're walking all the way around like this, they're  
17 doing that for exercise.  
18 MR. GOECKE: When you say like this, what are you  
19 pointing to --  
20 MS. SAVAGE: I'm sorry.  
21 MR. GOECKE: -- for the record?  
22 MS. SAVAGE: Walking around the Ring Road from the  
23 west side of the Ring Road all the way around, around the  
24 bottom to the south side and then on up this way on the east  
25 side. For exercise, that would be an all the way around the

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1 mall exercise route.  
2 MR. GOECKE: Okay.  
3 MS. SAVAGE: But people who are going somewhere as  
4 opposed to exercising are going to the mall or to the Metro  
5 or whatever, are going to walk through and they're going to  
6 not spend that much time on whatever path is there if  
7 they're on the south side and they're going to cross to go  
8 either into the mall or through the mall or something like  
9 that. So there's two different, kind of two different kinds  
10 of walkers.  
11 MR. GOECKE: Thank you. Do you have any sense of  
12 how heavily trafficked this area is starting from the, the  
13 western portion of the Ring Road along the southern portion  
14 of Ring Road to Georgia Avenue and Veirs Mill Road?  
15 MS. SAVAGE: Traffic with vehicles?  
16 MR. GOECKE: With pedestrians.  
17 MS. SAVAGE: With pedestrians, okay.  
18 MR. GOECKE: Yes.  
19 MS. SAVAGE: I don't, I don't know how to show  
20 heavily trafficked. I wouldn't call it heavily trafficked,  
21 no. I wouldn't call it that but numbers, I can't really  
22 give you numbers.  
23 MR. GOECKE: Do you know if the pedestrian traffic  
24 along that portion of the Ring Road has increased or  
25 decreased since the Costco opened?

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1 MS. SAVAGE: If you're just talking along the Ring  
2 Road, I don't think I've seen much of a difference. If  
3 you're talking about crossing the Ring Road to do shopping,  
4 yes. There are people who are shop, coming from Kensington  
5 Heights neighborhood and shopping particularly at Costco, so  
6 that cross traffic has increased, has definitely increased.  
7 MR. GOECKE: The cross traffic--  
8 MS. SAVAGE: Yeah.  
9 MR. GOECKE: -- into the mall area has increased.  
10 MS. SAVAGE: Into the mall area, correct. Into  
11 and back from.  
12 MR. GOECKE: But in your opinion, there hasn't  
13 been any change --  
14 MS. SAVAGE: Going around --  
15 MR. GOECKE: -- around the circumference.  
16 MS. SAVAGE: I, I don't think so. I haven't, I  
17 haven't looked enough times to be scientifically sure so I,  
18 it's sort of a very impressionistic answer.  
19 MR. GOECKE: Sure. So taking your two general  
20 categories though, sort of the exercise walkers and the  
21 folks who are walking to the mall, starting with the  
22 exercise walkers, if they're walking along the Ring Road and  
23 the gas station were there, it wouldn't interfere with their  
24 path whatsoever, would it?  
25 MS. SAVAGE: Well, if you're talking about putting

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1 a gas station physically in front of their path, no, it  
2 wouldn't do that but --  
3 MR. GOECKE: Well, when you say physically in  
4 front, it's not blocking the path.  
5 MS. SAVAGE: No. It's not blocking their path. I  
6 agree with you on that. Other interference aspects of the  
7 walking I think are relevant here, and it's not the gas  
8 station so much as cars are lining up down, down here on the  
9 southern portion or right into the gas station and coming  
10 out a little bit on the Ring Road. That's a bunch of air  
11 that -- if you're, if I'm going out for an exercise walk,  
12 I'm not going to walk past a bunch of idling cars. I  
13 wouldn't walk on Georgia Avenue, for instance, in rush, in  
14 the inbound rush hour.  
15 MR. GOECKE: But didn't you just testify that  
16 exercise walkers already go up along Veirs Mill Road?  
17 MS. SAVAGE: They do. I wouldn't.  
18 MR. GOECKE: Cars don't idle on Veirs Mill Road?  
19 MS. SAVAGE: Actually, Veirs Mill Road seems to me  
20 to be less traveled than Georgia, so I gave Georgia as an  
21 example. They do back --  
22 MR. GOECKE: Is that less traveled?  
23 MS. SAVAGE: -- up a little bit on Veirs Mill,  
24 yes.  
25 MR. GOECKE: Is Veirs Mill less traveled than the

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1 Ring Road?  
2 MS. SAVAGE: I doubt it but I tend to go on the  
3 Ring Road at off hours because I don't want to deal with the  
4 traffic when I'm taking my car so.  
5 MR. GOECKE: It's not that -- I doubt it too.  
6 MS. SAVAGE: I doubt it. I doubt it.  
7 MR. GOECKE: And so these exercise walkers already  
8 travel along the Veirs Mill Road which, as you admit, has  
9 more traffic than the Ring Road.  
10 MS. SAVAGE: Than the Ring Road now, okay, but not  
11 the Ring Road with a gas station.  
12 MR. GOECKE: So you're saying that when the gas  
13 station opens, there will be more traffic on the Ring Road  
14 than on Veirs Mill Road?  
15 MS. SAVAGE: I'm saying there will be more traffic  
16 on the Ring Road. How it's going to compare to Veirs Mill  
17 Road I don't know.  
18 MR. GOECKE: Okay.  
19 MS. SAVAGE: That's all theoretical, or  
20 hypothetical.  
21 MR. GOECKE: Okay. So let's talk about the other  
22 category of folks, the folks that walk to the mall.  
23 MS. SAVAGE: Okay.  
24 MR. GOECKE: So how will the gas station impede  
25 their ability to get to the mall?

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1 MS. SAVAGE: Well, I think part of the key is  
2 crossing right about here which is where the Mt. McComas  
3 development is. Yeah, I know. I'll describe it.  
4 MR. GOECKE: Thank you.  
5 MS. SAVAGE: The southern edge of the Ring Road  
6 right sort of across from where the loading dock is and  
7 where the eastern leg of the gas station area would be which  
8 is right where the Mt. McComas land is and where there is  
9 currently a crossing. People who are crossing there, my  
10 understanding, if this gas station is built, God forbid,  
11 and, sorry, and we get our sidewalk along here, along the  
12 Ring Road, southern and western portions of Ring Road, there  
13 will be only one travel lane on traffic on I guess what I'll  
14 call the outer loop of the Ring Road at the point from the  
15 west down to the south. One lane of traffic.  
16 Any cars that come in through there are going to,  
17 that want to go to the gas station, and there will be a  
18 bunch that come in from the Valley View entrance and go, go  
19 around on the western side, will be turning left into the  
20 gas station. And they will back up traffic along the Ring  
21 Road behind them because ostensibly, there is no other  
22 travel lane for all those cars to go in. That's going to  
23 cause even further congestion and I wouldn't want to cross  
24 there and you've got all, you've got the cars coming from  
25 the other direction on the inner loop of the Ring Road, so

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1 coming from the east, and they will either be going past the  
2 gas station or lining up to get into the gas station. And  
3 I, that's just a -- then you have the trucks coming and the  
4 people, people coming to Target and Costco and the trucks --  
5 MR. GOECKE: Those people are already coming  
6 there.  
7 MS. SAVAGE: Right. Okay. So you're talking  
8 about the new --  
9 MR. GOECKE: So let's talk about the difference.  
10 MS. SAVAGE: Okay. Okay.  
11 MR. GOECKE: So we put the gas station in.  
12 MS. SAVAGE: Okay.  
13 MR. GOECKE: So that's going to add traffic to the  
14 gas station, right?  
15 MS. SAVAGE: It's going to add quite a bit of  
16 traffic and I certainly wouldn't want to cross there. I  
17 would try to find another place to cross because that's just  
18 not going to be -- and that's one of the major crossing  
19 areas right now.  
20 MR. GOECKE: So this is a place where you like to  
21 cross right now.  
22 MS. SAVAGE: Well, this is where, place where we  
23 do cross right now and the development, as I think I  
24 mentioned, the development of Mt. McComas has a connection  
25 to the mall at that point put in by request of residents and

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1 the planning staff, board, staff. So it's going to  
2 continue. That connection is going to continue.  
3 MR. GOECKE: So it's your testimony that the  
4 traffic is going to be so bad on the Ring Road that people  
5 won't be able to cross from the southern portion of Ring  
6 Road into the mall area.  
7 MS. SAVAGE: Again, you're being very black and  
8 white about things. It's more -- not that they won't ever  
9 be able to because there won't be a blockage in front of  
10 them.  
11 MR. GOECKE: Okay.  
12 MS. SAVAGE: But that it will be unsafe, extremely  
13 unpleasant and I don't know. I guess those are the two  
14 descriptors I would use.  
15 MR. GOECKE: And but you agree that if the  
16 pedestrian walkway is installed, the elevated five foot  
17 pedestrian walkway --  
18 MS. SAVAGE: Uh-huh.  
19 MR. GOECKE: -- that would make the route easier  
20 for pedestrians along the Ring Road.  
21 MS. SAVAGE: Well, sure. That, yeah. Of course.  
22 MR. GOECKE: It's a more enjoyable walk than  
23 walking on a road with traffic.  
24 MS. SAVAGE: It is a safe walk.  
25 MR. GOECKE: Yes.

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1 MS. SAVAGE: Yes. And it is a more enjoyable walk  
2 with the sidewalk than without the sidewalk, no other things  
3 considered.  
4 MR. GOECKE: So more people are, people are more  
5 likely to walk along the pedestrian walkway than they are  
6 along the Ring Road itself, don't you think?  
7 MS. SAVAGE: Well, I hope so and I think the, the  
8 proof of that is on McComas Avenue, in our neighborhood is  
9 on McComas Avenue, the western portion of McComas Avenue. A  
10 couple three years ago and prior to that, we did not have  
11 sidewalks on either side. We now had the county put in a  
12 sidewalk, thank you very much, on that section of McComas  
13 Avenue and people use it like crazy. So I think you put in  
14 a sidewalk, people will come.  
15 MR. GOECKE: So the area you were pointing to  
16 before, I don't know if you were specific enough on the map,  
17 Exhibit 159, the where people cross --  
18 MS. SAVAGE: All right.  
19 MR. GOECKE: -- is east of where the gas station  
20 would go, is that correct?  
21 MS. SAVAGE: Just on the sort of the eastern edge,  
22 yes.  
23 MR. GOECKE: And there's a three-way stop at that  
24 location, isn't there?  
25 MS. SAVAGE: If you say so. I don't know. I'm

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1 sorry. I don't remember.  
2 MR. GOECKE: But this, isn't this the path that  
3 you use so frequently?  
4 MS. SAVAGE: No. I am not the one who uses it.  
5 MR. GOECKE: Oh, okay.  
6 MS. SAVAGE: It is used by the neighborhood but I,  
7 I live much further down here so I go, would go in more this  
8 way.  
9 MR. GOECKE: And you're not sure whether there's a  
10 three-way stop there.  
11 MS. SAVAGE: If you tell me there is, there is.  
12 MR. GOECKE: Okay.  
13 MS. SAVAGE: I'm not going to dispute that.  
14 MR. GOECKE: Okay.  
15 MS. SAVAGE: Yeah. Sure. Are you implying -- can  
16 I ask you a question about that three-way stop? Am I  
17 allowed to do that?  
18 MR. GROSSMAN: Why don't you ask me a question.  
19 MS. SAVAGE: All right. I'll ask you a question.  
20 Feeling left out, are you? A three-way stop, we had a -- a  
21 three-way stop wouldn't necessarily mean that people are  
22 going to stop. And I don't know about your experience but  
23 my, our experience in the neighborhood is that stop signs --  
24 in fact, the county told us they wouldn't put a stop sign at  
25 a place we requested because people won't stop and it will

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1 make pedestrians feel, feel safe by having the stop sign but  
2 it won't actually be safe so.  
3 MR. GROSSMAN: First of all, that wasn't the  
4 question.  
5 MS. SAVAGE: Oh. Oh, you're right. Okay.  
6 MR. GROSSMAN: Secondly, you --  
7 MS. SAVAGE: So --  
8 MR. GROSSMAN: You said what somebody told you  
9 about it and --  
10 MS. SAVAGE: Okay.  
11 MR. GROSSMAN: -- I think I'm going to strike  
12 that --  
13 MS. SAVAGE: Okay.  
14 MR. GROSSMAN: -- because I don't think it's fair  
15 that the suggestion that, that somebody in authority said  
16 people won't, that cars won't stop at the stop sign and  
17 therefore, it's unsafe unless we have that person or some  
18 document that --  
19 MS. SAVAGE: Okay.  
20 MR. GROSSMAN: -- that shows that.  
21 MS. SAVAGE: Well, okay. So my question is I just  
22 was wondering if Mr. Goecke was assuming that a three-way  
23 stop will take care of all problems, and I doubt it will so.  
24 MR. GROSSMAN: Okay.  
25 MS. SAVAGE: That's my answer but maybe you have a

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1 better answer.  
2 MR. GROSSMAN: I'm not allowed to give answers.  
3 MS. SAVAGE: Oh, okay. Never mind.  
4 MR. GOECKE: Okay. Well, why don't you tell us.  
5 Assuming there's a three-way stop there now, are there  
6 problems at that intersection right now?  
7 MS. SAVAGE: I don't know of any but that doesn't  
8 mean they're not there. I don't walk there. I don't want  
9 you to get the impression that I walk there every day  
10 because I don't.  
11 MR. GOECKE: How often do you walk there?  
12 MS. SAVAGE: I would say a couple times a month.  
13 That's about it.  
14 MR. GOECKE: Yesterday when you testified, you  
15 said that there's going to be a walkway installed  
16 irrespective of what happens with the Costco gas station.  
17 Is that your understanding?  
18 MS. SAVAGE: Well, that was my understanding and  
19 then I might have been disabused into that notion by some  
20 discussions over lunch but --  
21 MR. GOECKE: Who disabused you of that notion?  
22 MS. SAVAGE: Well, a couple of different people  
23 who I was having lunch with were saying that they weren't,  
24 they weren't sure that we were actually going to get that  
25 walkway or not and my understanding was, when I testified,

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1 that was my understanding, that that was part of the deal,  
2 the \$4 million that Westfield got to help build the Costco  
3 wing of the mall, that a walkway would be put in there, and  
4 I was told that maybe that's not the case. That was my  
5 understanding but I'd have to go back and check on that.  
6 MR. GOECKE: So you don't know whether or not  
7 there's a walkway that would go in there if a gas station --  
8 MS. SAVAGE: I am less sure of that at this point  
9 than I was yesterday.  
10 MR. GOECKE: And the basis for your belief about  
11 that there was going to be a walkway installed, where did  
12 that come from?  
13 MS. SAVAGE: Well, obviously, not a written piece  
14 of paper that I have my hands on. I, I guess one would say  
15 common knowledge of discussion in the community, or  
16 community expectation. Something like that.  
17 MR. GROSSMAN: My recollection is that back in  
18 April of 2013, there was some exchange put in a letter from  
19 Ike Leggett or to Ike Leggett regarding Westfield putting in  
20 a walkway. That's my recollection.  
21 MR. GOECKE: Your recollection, as usual, is very  
22 good although it was March.  
23 MS. SAVAGE: Oh, okay.  
24 MR. GROSSMAN: Your flattery is gladly accepted by  
25 me.

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1 MS. SAVAGE: Well, thank you.  
2 MR. GOECKE: I'm passing --  
3 MS. SAVAGE: It is in writing. Okay.  
4 MR. GOECKE: I'm passing out what's been  
5 previously marked as Exhibit 122 and --  
6 MS. SAVAGE: Well, thank you for finding that.  
7 MR. GOECKE: -- this may be a different letter  
8 than what you're referring to, Mr. Grossman, but this is a  
9 letter to Steve Silverman in Montgomery County from Jim  
10 Agliata at Westfield.  
11 MS. SAVAGE: Oh, okay. Okay.  
12 MR. GOECKE: And if you would take a look at this  
13 real quickly. Would you like a copy, Mr. Grossman?  
14 MR. GROSSMAN: Thank you.  
15 MS. SAVAGE: This is 122, okay.  
16 MR. GOECKE: 122.  
17 MS. SAVAGE: Thank you. Okay. Pedestrian access  
18 section I presume.  
19 MR. GOECKE: And if I can just direct your  
20 attention specifically to the intro paragraph leading up to  
21 on page 1, a summary of areas, a summary of areas of  
22 discussion is, colon, and then you can jump to sub-paragraph  
23 D on the top of page 2.  
24 MS. SAVAGE: Okay. So this is a three --  
25 Westfield said they were willing to put in a three foot

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1 cross-hatched pathway on the existing asphalt.  
2 MR. GOECKE: Yes.  
3 MS. SAVAGE: Okay.  
4 MR. GOECKE: Yes.  
5 MS. SAVAGE: Okay.  
6 MR. GOECKE: Does this document refresh your  
7 recollection about --  
8 MS. SAVAGE: Yes.  
9 MR. GOECKE: -- where you may have heard it?  
10 MS. SAVAGE: Yes.  
11 MR. GOECKE: Is this --  
12 MS. SAVAGE: I just hadn't looked recently, sorry.  
13 MR. GOECKE: No, that's fine. And but as you read  
14 this letter or as your recollection is refreshed, is  
15 Westfield obligated to provide this walkway?  
16 MS. SAVAGE: The walkway that's in here or that  
17 walkway we're talking about?  
18 MR. GOECKE: The three foot walkway that's  
19 referenced in Exhibit 122.  
20 MS. SAVAGE: Okay. Are they obligated?  
21 MR. GOECKE: Yes.  
22 MS. SAVAGE: It all depends on your definition of  
23 obligated. If they said that they were going, if they  
24 offered to do it, then if this information is made public,  
25 then it seems to me there becomes an expectation that

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1 Westfield will do it. Are they legally obligated? Probably  
2 not.  
3 MR. GOECKE: Let's assume that they did decide to  
4 follow-up and install a three foot cross-hatched pathway on  
5 the existing asphalt.  
6 MS. SAVAGE: Okay.  
7 MR. GOECKE: So three feet is two feet less than  
8 the five foot walkway that Costco is agreeing to have  
9 installed, is that correct?  
10 MS. SAVAGE: By my math, yes.  
11 MR. GOECKE: And would you agree that five feet is  
12 better than three feet?  
13 MS. SAVAGE: Yes.  
14 MR. GOECKE: It's like an AT&T commercial. And is  
15 it better that the walkway would be elevated as opposed to  
16 just being marked on the road itself?  
17 MS. SAVAGE: Yes.  
18 MR. GOECKE: Okay. So even if Westfield were  
19 obligated to install the walkway that we talked about, the  
20 path that's going to come in at the gas station is going to  
21 be better?  
22 MS. SAVAGE: Yes. Which is not to say that we  
23 couldn't do Westfield to do a five foot raised pathway if we  
24 pushed on it.  
25 MR. GOECKE: I don't doubt your confidence --

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1 MS. SAVAGE: But that's future.  
2 MR. GOECKE: -- or your ability to get people to  
3 do things.  
4 MS. SAVAGE: That's right. There you go.  
5 MR. GOECKE: Turning to the zoning of this area  
6 right now, the mall area --  
7 MS. SAVAGE: Okay.  
8 MR. GOECKE: -- we agree that it's currently zoned  
9 at C-2.  
10 MS. SAVAGE: Yes.  
11 MR. GOECKE: And that under C-2 zoning --  
12 MS. SAVAGE: This. This part here, yes. The part  
13 we're talking about.  
14 MR. GOECKE: Right. The portion of the mall  
15 property where the special exception is located.  
16 MS. SAVAGE: Correct.  
17 MR. GOECKE: And so because it's zoned C-2,  
18 Westfield couldn't develop multiunit housing even if they  
19 wanted to.  
20 MS. SAVAGE: That is correct.  
21 MR. GOECKE: And when they did the zoning rewrite,  
22 before they did the zoning rewrite, there were other areas  
23 in Montgomery County zoned at C-2, isn't that correct?  
24 MS. SAVAGE: Yes. It's my understanding, yes.  
25 MR. GOECKE: And in Wheaton specifically, there

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1 were other C-2 areas.  
2 MS. SAVAGE: Yeah. I think so. I shouldn't say  
3 yes because I don't recall exactly but, yes. I believe so.  
4 I'm not --  
5 MR. GOECKE: And do you have a copy --  
6 MS. SAVAGE: There is a, there is a map in here of  
7 current zoning. There it is. I believe it's -- that's just  
8 the Westfield area. Page 52 has just the Westfield zoning.  
9 MR. GOECKE: Try page 38 of the Wheaton Sector  
10 Plan if you may.  
11 MS. SAVAGE: Yeah, okay. Here we go. Yeah.  
12 There are a few, there are a few other areas, yeah.  
13 MR. GOECKE: Yes. And I count five. Does that  
14 look right to you?  
15 MS. SAVAGE: One, two, three, four -- that's C-2,  
16 that tiny little thing. Yes, five.  
17 MR. GOECKE: Okay. And after the sector plan was  
18 revised, how many areas were zoned C-2?  
19 MS. SAVAGE: Mall, mall and mall.  
20 MR. GOECKE: I'm sorry. Were retained as C-2  
21 zoning.  
22 MS. SAVAGE: One.  
23 MR. GOECKE: And that's the mall area, right?  
24 MS. SAVAGE: Yes. That portion of the mall area.  
25 MR. GOECKE: And you agree that auto-centric uses

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1 are common in C-2 areas?  
2 MS. SAVAGE: I don't really have an opinion on  
3 that. I don't know how to -- no. I, I don't know how to  
4 answer that.  
5 MR. GOECKE: Okay. Well, for example, do you know  
6 that auto, automobile parts and tire supply stores are  
7 available to be created as of right in a C-2 zone?  
8 MS. SAVAGE: I, I believe I recall that, yes.  
9 MR. GOECKE: And that's obviously an auto-centric  
10 use.  
11 MS. SAVAGE: That's obviously auto-centric, yes.  
12 MR. GOECKE: And would you characterize that as  
13 being the polar opposite of some of the goals of the Wheaton  
14 Sector Plan?  
15 MS. SAVAGE: So you said tire and battery?  
16 MR. GOECKE: Automobile parts and tire supply.  
17 MS. SAVAGE: Parts and tire supply and --  
18 MR. GOECKE: Or Tire-Rama.  
19 MS. SAVAGE: -- because they would be auto-  
20 centric.  
21 MR. GOECKE: Right.  
22 MS. SAVAGE: I would say that if they didn't  
23 already exist, that they shouldn't be part of a transit area  
24 that is the Wheaton -- yes. We shouldn't be actively  
25 promoting them. I wouldn't say we kick them out but we

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1 shouldn't be actively be promoting them, putting new ones  
2 in.  
3 MR. GOECKE: Because in your opinion, it  
4 encourages people to use automobiles.  
5 MS. SAVAGE: It encourages people to use  
6 automobiles and we're trying not to do that.  
7 MR. GOECKE: But there's no preclusion in the  
8 sector plan or under the Zoning Ordinance that precludes  
9 auto-centric uses in the C-2 zone.  
10 MS. SAVAGE: That is true.  
11 MR. GROSSMAN: I guess the essence I get from that  
12 question, that series of question is if the Planning Board  
13 intended to preclude an auto-centric use on the mall because  
14 of this concept of TOD, TOD, then why did it recommend  
15 continuation of the C-2 zone in the sector plan?  
16 MS. SAVAGE: My understanding is they punted on  
17 doing that because of the zoning rewrite that was happening  
18 and they said that so I pointed that out, at some point, in  
19 the sector plan.  
20 MR. GROSSMAN: Well, they said it's possible that  
21 it will be --  
22 MS. SAVAGE: That it could, yeah.  
23 MR. GROSSMAN: -- that it could be changed as --  
24 MS. SAVAGE: Yeah.  
25 MR. GROSSMAN: -- part of the zoning rewrite.

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1 MS. SAVAGE: Yeah. And, and I think given the  
2 timing, at least at the latter part of the sector plan,  
3 there was always, there was already some discussion about  
4 how that would change and that would change. Why did --  
5 MR. GROSSMAN: You don't think that this is just  
6 part of a compromise in which they recognize that there's an  
7 existing mall there in --  
8 MS. SAVAGE: Yeah, oh.  
9 MR. GROSSMAN: -- the C-2 zone and they said, they  
10 recognize there are going to be auto-centric uses as part of  
11 the Wheaton area and so they --  
12 MS. SAVAGE: I am sure that's true.  
13 MR. GROSSMAN: -- they had part of the plan?  
14 MS. SAVAGE: I am sure that's true, and I  
15 remember, I'm sorry I don't remember the specifics but I  
16 remember when there was discussion initially when they were  
17 talking about the sector plan about making the whole mall CR  
18 and there was just, there was push-back from Westfield on  
19 that because my understanding is that CR zoning requires  
20 parking in the back, I think that's what it is, in the back  
21 of buildings in the CR zone, and it just doesn't work in a  
22 mall. And there are other reasons why the CR zone would not  
23 work in the, sort of the core of the mall.  
24 MR. GROSSMAN: Right.  
25 MS. SAVAGE: And Westfield pushed back on that and

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1 that push back is what we see here, is that the C-2 --  
2 MR. GROSSMAN: I'm not concerned as to whether or  
3 not Westfield pushed back as I am as to what the Planning  
4 Board intended and what the Council intended in adopting  
5 this Wheaton Sector Plan, the CBD Sector Plan. That's my  
6 question.  
7 MS. SAVAGE: So are you sort of saying that well,  
8 if they wanted to be really strict TOD constructionists,  
9 they would have said some, they would have somehow zoned it  
10 or made, had some wording in here that said no more auto-  
11 centric stuff period in the zone?  
12 MR. GROSSMAN: I'm not saying that. I'm just  
13 asking the question.  
14 MS. SAVAGE: Oh, okay.  
15 MR. GROSSMAN: I was trying to interpret --  
16 MS. SAVAGE: You were asking if I know whether,  
17 how to deal with that question, that statement.  
18 MR. GROSSMAN: What was the intent of the --  
19 MS. SAVAGE: Yeah. I don't, I don't know the  
20 answer to that.  
21 MR. GROSSMAN: Okay.  
22 MS. SAVAGE: I'm sorry.  
23 MR. GROSSMAN: Thank you.  
24 MR. GOECKE: Let's turn to page 53. It may give  
25 us some insight. Tell me when you're there.

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1 MS. SAVAGE: I'm there.  
2 MR. GOECKE: In the second paragraph from the top,  
3 the second sentence reads the owners currently have no plans  
4 to develop this property for uses other than retail, and the  
5 C-2 zoning is not conducive to mixed-use development.  
6 MS. SAVAGE: Uh-huh.  
7 MR. GOECKE: However, the frontage on Veirs Mill  
8 Road closest to the Metro station is an appropriate location  
9 for high-density office, residential hotel and additional  
10 retail.  
11 MS. SAVAGE: Uh-huh.  
12 MR. GOECKE: Did I read that correctly?  
13 MS. SAVAGE: You did.  
14 MR. GOECKE: So isn't the purpose of a sector plan  
15 to keep the mall auto-centric in C-2 and to focus the TOD  
16 along Veirs Mill Road?  
17 MS. SAVAGE: I think that might be a little bit of  
18 a leap in the sense that, yes, for now that's what they're,  
19 that's what they're suggesting, that that happen.  
20 MR. GOECKE: Well, they say the owners have no  
21 plans to develop this property for --  
22 MS. SAVAGE: The owners -- right.  
23 MR. GOECKE: -- uses other than retail so if not  
24 now --  
25 MS. SAVAGE: Right.

1 MR. GOECKE: -- when are you referring to?  
 2 MS. SAVAGE: The owners don't have any plans now.  
 3 I've already testified to that. But Westfield has, has no  
 4 actual plans to develop, other than that Power Point that I  
 5 showed for the section that's now rezoned as CR. But for  
 6 the C, currently C-2 zone section, they don't have a plan.  
 7 I don't pretend that they do have a plan. So this wording  
 8 is reflecting the reality that there is no plan currently  
 9 for that section. I, I agree with you on that.  
 10 MR. GOECKE: Okay. Thank you. And in fact, as  
 11 you testified yesterday, there has been significant TOD  
 12 development along, in the ped shed --  
 13 MS. SAVAGE: Uh-huh.  
 14 MR. GOECKE: -- of the Wheaton Metro site.  
 15 MS. SAVAGE: Well, that's actually in the core. I  
 16 wouldn't even call it --  
 17 MR. GOECKE: Okay.  
 18 MS. SAVAGE: The ped shed is the half mile radius.  
 19 MR. GOECKE: Fair enough.  
 20 MS. SAVAGE: So within right, like right on top of  
 21 the Metro or right near the Metro in most cases.  
 22 MR. GOECKE: In fact, you made the point yesterday  
 23 that there's very little space of which new TOD development  
 24 can occur because it's such a mature area.  
 25 MS. SAVAGE: Well, I think TOD is not just what

1 happens on top of the Metro. TOD is what happens within  
 2 that half mile ped shed. That's -- and so there are,  
 3 there's a big parcel sitting right there that can have mixed  
 4 use and it's called Westfield Mall, and that could be  
 5 redeveloped and that's within the transit-oriented  
 6 development ped shed.  
 7 MR. GOECKE: Right. So but we --  
 8 MS. SAVAGE: Maybe I'm not answering your  
 9 question.  
 10 MR. GOECKE: You're not answering my question but  
 11 just --  
 12 MS. SAVAGE: Okay.  
 13 MR. GOECKE: -- to kind of back up, so we agree  
 14 that there are no plans to use the mall as anything other  
 15 than a mall, correct?  
 16 MS. SAVAGE: Except for this section here.  
 17 MR. GOECKE: Except for the frontage.  
 18 MS. SAVAGE: Right. And some residences down  
 19 here.  
 20 MR. GOECKE: The foot --  
 21 MS. SAVAGE: Yeah, okay.  
 22 MR. GOECKE: I'm sorry.  
 23 MS. SAVAGE: The C-2 zoned land.  
 24 MR. GOECKE: Thank you.  
 25 MS. SAVAGE: Okay.

1 MR. GOECKE: And we also agree that in the C-2  
 2 zone, Westfield is unable to develop residential properties.  
 3 MS. SAVAGE: That is correct.  
 4 MR. GOECKE: Okay. And we also agree that there's  
 5 lots of TOD development going in the CR area in the CBD.  
 6 MS. SAVAGE: Correct.  
 7 MR. GOECKE: And that the gas station, and that  
 8 the gas station is not going to undo the TOD development  
 9 that's already happened.  
 10 MS. SAVAGE: The developments -- that's correct  
 11 because that's -- right. Correct.  
 12 MR. GOECKE: And the gas station is not going to  
 13 undo any TOD developments that are in progress.  
 14 MS. SAVAGE: Correct.  
 15 MR. GOECKE: And in fact, the gas station is not  
 16 going to impede the ability to develop new TOD in that area.  
 17 MS. SAVAGE: In that area. That's a caveat, but  
 18 in that area, yes, that's correct.  
 19 MR. GOECKE: Right. And, Mr. Grossman, you can  
 20 stop me if you don't want us to talk about this but we, you  
 21 testified a little bit yesterday about the rewrite.  
 22 MS. SAVAGE: Okay.  
 23 MR. GOECKE: And how you're anticipating that the  
 24 zoning may change where the special exception area is  
 25 located.

1 MS. SAVAGE: Not just me who is anticipating but,  
 2 yes. We are collectively anticipating, yes.  
 3 MR. GOECKE: But because you are the one  
 4 testifying today, not the --  
 5 MS. SAVAGE: Good point. Okay.  
 6 MR. GOECKE: Not the collective.  
 7 MS. SAVAGE: Right.  
 8 MR. GOECKE: If the zoning is changed to GR, it  
 9 will allow Westfield to develop residential properties but  
 10 it will not require them to do so.  
 11 MS. SAVAGE: That is correct.  
 12 MR. GOECKE: Okay. Right. And even then, it's  
 13 capped at 30 percent of the square footage.  
 14 MS. SAVAGE: Yes. Yes.  
 15 MR. GOECKE: And Westfield could still achieve the  
 16 maximum density with other uses than residential.  
 17 MS. SAVAGE: Yes, they could. Right because they  
 18 don't have to do residential.  
 19 MR. GOECKE: I'm not sure if this was exhibitized  
 20 yesterday. It's a March 4th, 2014 Council draft of the  
 21 rewrite.  
 22 MR. GROSSMAN: I don't believe so.  
 23 MS. SAVAGE: No. It was not exhibitized  
 24 yesterday.  
 25 MR. GOECKE: Okay. Are we --

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1 MS. SAVAGE: March 4th --  
2 MR. GOECKE: This was handed out yesterday.  
3 MS. HARRIS: No, it wasn't.  
4 MR. GOECKE: I'm sorry. Okay. Bear with me.  
5 Would you receptive to exhibitizing that, Mr. Grossman, or  
6 do you prefer not to?  
7 MR. GROSSMAN: I don't know what exactly it is.  
8 It's a what? It's a March --  
9 MR. GOECKE: It's a Council draft dated March 4th,  
10 2014, excerpts.  
11 MR. GROSSMAN: Well, March 4th, 2014 --  
12 MS. SAVAGE: We haven't had them yet.  
13 MR. GROSSMAN: I've been informed that I was  
14 aspirational myself in having an August 2014 date and now,  
15 you're falling into the same --  
16 MS. HARRIS: If I could, the latest draft of the  
17 zoning rewrite, which there was a straw poll taken, is dated  
18 March 4th in anticipation that they're going to vote on this  
19 draft on March 4th.  
20 MR. GROSSMAN: I see.  
21 MS. HARRIS: Hence the date.  
22 MS. SAVAGE: Okay.  
23 MS. ROSENFELD: Do you have an extra copy?  
24 MR. GROSSMAN: Let me see what you have.  
25 MR. GOECKE: And I'll proffer that what I'd like

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1 to explore is what, how they define GR, and I want to show a  
2 couple of versions of the editing process before they cut it  
3 down to what they're proposing to do.  
4 MR. GROSSMAN: Okay. You have multiple copies of  
5 the same page here so this is a page of it.  
6 MS. SAVAGE: Maybe one is for me.  
7 MR. GROSSMAN: I'm going to allow, because it was  
8 brought up in direct and I let them continue to discuss this  
9 issue even though I said I don't think it's relevant, I'm  
10 going to allow you to put that in as part of the cross-  
11 examination.  
12 MR. GOECKE: Okay. Is it still your position that  
13 this is not relevant to your decision?  
14 MR. GROSSMAN: That's correct.  
15 MR. GOECKE: Okay.  
16 MR. GROSSMAN: To me, I'm not going to speculate  
17 on whether or not -- well, first of all, what I said as far  
18 as the rewrite itself, and that's actually a portion of the  
19 rewrite as opposed to the rezoning, the area-wide rezoning,  
20 I said that's more concrete because they have had a straw  
21 vote in which they generally speak in approved language. I  
22 have in some changes, I've seen a memo outlining various  
23 changes that are in that March 4, '14 proposed draft so  
24 there have been some changes but they have, the essence of  
25 it is included in the straw vote so I, I think that's a more

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1 concrete thing. What I said was that the, the rezoning, the  
2 area-wide rezoning was entirely speculative at this point  
3 because they haven't even had a straw vote.  
4 MR. GOECKE: Okay.  
5 MR. GROSSMAN: So as far as certainly is that  
6 page, you can introduce that page.  
7 MR. GOECKE: So I guess my question, if this were  
8 to be voted upon and passed as, as this case, before you've  
9 made your recommendations in this case, would you then  
10 consider it because you're no longer speculating at that  
11 point?  
12 MR. GROSSMAN: I, my understanding, first of all,  
13 is that the zoning, the rewrite of the ordinance wouldn't go  
14 into effect until sometime in October, as I recall, of 2014.  
15 MR. GOECKE: Okay.  
16 MR. GROSSMAN: It might be October 31 or 2014. I  
17 can't recall the exact date.  
18 MS. SAVAGE: Sometime in October, yeah.  
19 MR. GROSSMAN: And so, you know, unless, unless  
20 this were delayed that long, which it won't be, I would -- I  
21 guess I'd have to consider the fact that it's out there so I  
22 wouldn't say it would be irrelevant if they, if they enact  
23 it.  
24 MR. GOECKE: Thank you. I appreciate that. And  
25 given that, I want to go back to -- pass this out.

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1 MR. GROSSMAN: This will be Exhibit 467, and it's  
2 page 4-81 from the March 4, 2014 draft of a pending Zoning  
3 Ordinance rewrite.  
4 (Exhibit No. 467 was marked  
5 for identification.)  
6 MR. GROSSMAN: By the way, while we're in this  
7 convenient pause, you produced the Agliata letter, Exhibit  
8 122. I also note there's an Exhibit 123 received at that  
9 May 6th, 2013 hearing. It was an April 19, 2012 letter from  
10 Steve Silverman to Isiah Leggett. Do you have that handy?  
11 MS. HARRIS: I have one copy of that.  
12 MR. GROSSMAN: Can I take a look at that just to  
13 refresh my recollection because I think that might have also  
14 referenced a pedestrian path.  
15 MS. SAVAGE: May I ask a question related to that?  
16 MR. GROSSMAN: Certainly.  
17 MS. SAVAGE: Is it of all interest to you if the  
18 Planning Board Chair says something at a public hearing that  
19 she believes that a path should be, a sidewalk should be  
20 provided all the way around? That has doesn't hold any --  
21 MR. GROSSMAN: Well -  
22 MS. SAVAGE: -- strength for you, does it, because  
23 I could --  
24 MR. GROSSMAN: First of all, it's of interest to  
25 me anything that the Planning Board Chair says because she's

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1 a friend but --  
2 MS. SAVAGE: All right. I mean for this case.  
3 MR. GROSSMAN: -- but in terms of what to consider  
4 as part of the, the record in this case --  
5 MS. SAVAGE: Uh-huh.  
6 MR. GROSSMAN: -- I would say no.  
7 MS. SAVAGE: Okay.  
8 MR. GROSSMAN: Her offhand comments would fall  
9 into that broad category of items that are generally not  
10 considered as part of the legislative history.  
11 MS. SAVAGE: Yeah. Okay.  
12 MR. GROSSMAN: And we don't even have the hearing  
13 that occurred before the Planning Board in front of us, and  
14 we generally don't have it in front of us because they're  
15 not sworn testimony there.  
16 MS. SAVAGE: Right.  
17 MR. GROSSMAN: It would also, I'm sure, be  
18 duplicative of much that we've already covered here but we  
19 do get the letter. What is automatically part of the record  
20 here is the letter from the --  
21 MS. SAVAGE: So if it's not in there, it's either  
22 in there or it isn't.  
23 MR. GROSSMAN: -- from the Planning Board.  
24 MS. SAVAGE: Yeah, okay.  
25 MR. GROSSMAN: And that letter reflects a 3 to 2

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1 split on the Planning Board and the majority, the 3 voted  
2 that they felt that the, that this application was not  
3 consistent with the --  
4 MS. SAVAGE: Right.  
5 MR. GROSSMAN: -- sector plan for reasons they  
6 outline in there, so that's what's really before me.  
7 MS. SAVAGE: Okay.  
8 MR. GROSSMAN: Okay.  
9 MS. ROSENFELD: Mr. Grossman, at the opportune  
10 time, I do have a question about Exhibit 467.  
11 MR. GROSSMAN: Okay. Could you hold on one second  
12 while I just take a look at this?  
13 MS. ROSENFELD: Sure.  
14 MR. GROSSMAN: Okay. Let me return this letter to  
15 you. It doesn't really shed light on this issue. Thank  
16 you. And now let me take a look at Exhibit 467. Okay.  
17 Before we go on, Ms. Rosenfeld had a question.  
18 MS. ROSENFELD: Mr. Goecke, is this the full copy  
19 of the text associated with the GR zone or is this an  
20 excerpt?  
21 MR. GOECKE: This is a full copy of Section 4.6.1  
22 which are the intent statements.  
23 MS. ROSENFELD: But I assume there's more to the  
24 GR zone than 4.6.1?  
25 MR. GOECKE: You assume what?

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1 MR. GROSSMAN: Yes. There's clearly more because  
2 in 4.6.2, they reference the GR zone. There may be other  
3 portions of the Zoning Ordinance that, of the draft that  
4 reference the GR zone.  
5 MS. ROSENFELD: Okay. I'd like the record to  
6 reflect that this is just a portion.  
7 MR. GROSSMAN: Yes. It is page 4-81. The exhibit  
8 specifically is page 4-81 from the March 4, 2014 draft of  
9 the pending Zoning Ordinance rewrite.  
10 MS. ROSENFELD: Thank you.  
11 MR. GOECKE: All right. Thank you. My question  
12 is just on the intent, Ms. Savage. If you look at Section  
13 B --  
14 MS. SAVAGE: Uh-huh.  
15 MR. GOECKE: -- general retail, no. 1, it reads  
16 the GR zone is intended for commercial areas of a general  
17 nature including regional shopping centers and clusters of  
18 commercial development. The GR zone provides development  
19 opportunities adjacent to the county's most auto-dominated  
20 corridors and those areas with few alternative mobility  
21 options. Did I read that correctly?  
22 MS. SAVAGE: Yes, you did.  
23 MR. GOECKE: So if this is passed, the special  
24 exception will be in an area that's designated as GR which  
25 is specifically intended to be used for the most auto-

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1 dominated corridor, areas adjacent to auto-dominated  
2 corridors.  
3 MR. GROSSMAN: That's not -- your question assumes  
4 something that's not correct. This doesn't apply the GR  
5 zone to the location of the subject site. This adopts a  
6 rewrite of the Zoning Ordinance but it doesn't rewrite the  
7 map. There's a separate --  
8 MR. GOECKE: Correct.  
9 MR. GROSSMAN: -- parallel track for the map  
10 rewrite which may apply the GR zone --  
11 MR. GOECKE: Okay.  
12 MR. GROSSMAN: -- to this site.  
13 MS. SAVAGE: Okay. So it's --  
14 MR. GROSSMAN: You assume that --  
15 MR. GOECKE: So all right. So that's fair enough.  
16 So there's a --  
17 MS. SAVAGE: There's an if there, yes.  
18 MR. GOECKE: -- missing link there. Assuming that  
19 the map would be rewritten such that the special exception  
20 area would be rezoned as GR --  
21 MR. GROSSMAN: Yes. That's the assumption that I,  
22 I'm not indulging it.  
23 MR. GOECKE: Correct.  
24 MR. GROSSMAN: But it was, it was discussed on  
25 direct.

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1 MR. GOECKE: Thank you. Right.  
2 MR. GROSSMAN: So if the GR zone were to apply to  
3 this site.  
4 MR. GOECKE: To this site.  
5 MS. SAVAGE: Right.  
6 MR. GOECKE: Then it would, it would retain its,  
7 its existence as a regional shopping mall adjacent to  
8 heavily trafficked areas.  
9 MS. SAVAGE: Is there a question in there  
10 somewhere?  
11 MR. GOECKE: Is that correct?  
12 MS. SAVAGE: Oh, okay. Yes. And I'd like to, if  
13 I might just say a couple words about that. I will not say  
14 that we don't have heavily traffic routes within that half  
15 mile radius within the Wheaton Sector Plan area. We do. We  
16 have University is less so but we have Veirs Mill and we  
17 have Georgia, and those are three heavily traveled routes.  
18 They're auto-dominated areas. We're trying to move in a  
19 different, slightly different direction according to the  
20 sector plan. We're not taking, we're not going to pull  
21 those roads up. They're still going to be in use but we're  
22 trying to move in an opposite direction of that. That's  
23 what the sector plan is saying. It doesn't say that we're  
24 getting rid of all the auto-domination. It just doesn't say  
25 that.

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1 MR. GOECKE: So a gas --  
2 MS. SAVAGE: It acknowledges that.  
3 MR. GOECKE: But a gas station would be an  
4 appropriate use in an auto-dominated area.  
5 MS. SAVAGE: If we needed one.  
6 MR. GOECKE: Well, putting aside that this is --  
7 MS. SAVAGE: Which we don't.  
8 MR. GOECKE: We're not in the need analysis.  
9 Putting aside need, let's assume need --  
10 MS. SAVAGE: Yeah. Okay. We're talking  
11 theoretical now. Yeah. If there were no other gas stations  
12 within a couple miles, that would be fine, yes. That would  
13 be -- okay. I'm sorry. I'm --  
14 MR. GOECKE: The question is merely whether or not  
15 a gas station, independent of need in and of itself, is  
16 appropriate in an auto-dominated area.  
17 MS. SAVAGE: A gas station, yes.  
18 MR. GOECKE: Thank you. And, Mr. Grossman, we're  
19 handing out another excerpt from the zoning rewrite project.  
20 This one is dated December 16th, 2013.  
21 MR. GROSSMAN: This is from the PHED Committee  
22 draft?  
23 MR. GOECKE: Yes.  
24 MS. SAVAGE: Yes.  
25 MR. GROSSMAN: I think that's unwise because we

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1 have a superseding draft. I mean, the draft --  
2 MR. GOECKE: I'm sorry.  
3 MR. GROSSMAN: Why use the PHED Committee draft  
4 when there's already another draft? The one you just gave  
5 me a portion of in Exhibit 467 is the new draft so, and they  
6 renumbered, by the way, some of the chapters are different,  
7 so why add the confusion of something from the PHED  
8 Committee? I don't understand that.  
9 MR. GOECKE: Only to show the evolution of the  
10 drafts, to show how they changed.  
11 MR. GROSSMAN: I see. Okay. That answers my  
12 question. All right. So this will be Exhibit 468.  
13 (Exhibit No. 468 was marked  
14 for identification.)  
15 MS. ROSENFELD: Mr. Grossmann, if I could take a  
16 look at this for a minute.  
17 MR. GROSSMAN: Sure.  
18 MS. ROSENFELD: I may have an objection.  
19 MR. GROSSMAN: Okay.  
20 MR. GOECKE: Take your time.  
21 MS. ADELMAN: Do you have another one?  
22 MR. GOECKE: Yes.  
23 MS. ADELMAN: Thank you.  
24 MR. GOECKE: Can I trade you, Abigail?  
25 MS. ADELMAN: Sure.

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1 MR. SILVERMAN: I liked yours better.  
2 MS. ROSENFELD: Mr. Grossman, I object to the  
3 introduction of this proposed exhibit.  
4 MR. GROSSMAN: Well, let's identify it first.  
5 MS. ROSENFELD: Sure.  
6 MR. GROSSMAN: So it's page, pages 2-1, 2-7 and 2-  
7 8. So Exhibit 468 is the PHED Committee draft dated  
8 December 16, 2013, pending zoning rewrite, pages 2-1 and 2-7  
9 and 2-8. Okay. So now, yes. What is your objection?  
10 MS. ROSENFELD: Exhibit 467 is a not yet adopted  
11 piece of legislation, and 468 and perhaps other previous  
12 iterations go to the legislative history and the evolution  
13 of this not yet adopted version. Typically, you look at  
14 legislative history if there is some suggestion that what is  
15 in effect is not clear on its face. Otherwise, you're  
16 looking at the law as adopted and here, we're only at straw  
17 vote adoption. So I think that as a matter of statutory  
18 construction and a matter of what's relevant in terms of the  
19 current status of these proceedings, this is both  
20 inappropriate and irrelevant.  
21 MR. GROSSMAN: Well, I'm not saying it's not going  
22 to be irrelevant and as I told you, I'm very leery about  
23 this whole area. However, it was brought up on the direct  
24 examination of this witness, the zoning rewrite, and we did  
25 allow presentation of evidence relating to it so I'm not

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1 going to prohibit this exhibit from coming into the record.  
2 The level of attention it deserves is certainly going to be  
3 mitigated by the things you just said, that is we don't even  
4 have a, we have a straw vote on deck. I believe, by the  
5 way, that what they actually, the straw vote they took was  
6 probably on the PHED draft that is contained in 468 whereas  
7 the vote that they're about to take in Exhibit 267, the  
8 portion of 267, is one that they actually haven't voted on  
9 yet. It's got some modifications but I don't, I don't know.  
10 Let's -- so what did you want to point out as far as 468?  
11 MR. GOECKE: Just a couple of things real quickly  
12 and then we'll move on, Mr. Grossman.  
13 MR. GROSSMAN: Okay.  
14 MR. GOECKE: So on the first page of Exhibit 468  
15 in sort of the middle of the page, it indicates that  
16 deletions are indicated by brackets, so deletions from the  
17 prior version of this have been bracketed out so you can see  
18 what's there but they're not longer a part of this document.  
19 And then if we turn to, to page 2-7 under Section B, intent  
20 statements in general, it talks about how GR, among other  
21 zones, permit general commercial uses with limited  
22 residential use of varying densities. And it goes on to say  
23 the earlier draft also was going to require the zones to say  
24 while minimizing the reliance on automobile use. Do you see  
25 where that says that, Ms. Savage?

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1 MS. SAVAGE: I do.  
2 MR. GOECKE: And did I read that correctly?  
3 MS. SAVAGE: Yes.  
4 MR. GOECKE: And so you agree that this most  
5 recent draft decided not to focus on minimizing reliance on  
6 automobiles in GR zones?  
7 MS. ROSENFELD: Mr. Grossman, objection. Before  
8 she answers --  
9 MS. SAVAGE: I can't really --  
10 MS. ROSENFELD: Hold on.  
11 MR. GROSSMAN: Hold on one second.  
12 MS. ROSENFELD: Before she answers, I have here in  
13 Exhibit 467, Section 4.6.1 intent statement A and intent  
14 statement B, and I am unclear where in Exhibit 468 the  
15 statement that Mr. Goecke just read correlates to what's in  
16 467. So before the witness answers that question, I'd like  
17 to know how they parallel because I don't see it.  
18 MR. GROSSMAN: Yes. I think, and there's been  
19 some renumbering and re-lettering --  
20 MR. GOECKE: A little bit.  
21 MR. GROSSMAN: -- so that makes it more difficult,  
22 but this, on the preceding page but assuming that Section  
23 4.6.1 in Exhibit 467 is the intent statement that matches up  
24 with that subsection B you see on 468 which is green lined,  
25 those are the, I believe are the parallel things. And

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1 what's missing is after the word recreate, you'll see there  
2 are bracket areas in part of the green highlight on 468 and  
3 what's been bracketed in as having been removed from an  
4 earlier draft is the language while minimizing the reliance  
5 on automobile use. So they no longer, in the draft  
6 ordinance that was voted on, the PHED Committee draft and  
7 the straw vote, it had excluded that language about  
8 minimizing reliance on automobile use and that, so that the  
9 revised version contained in 467 does not have that language  
10 at all.  
11 MR. SILVERMAN: Is there -- I wonder if Mr. Goecke  
12 has a case or if you have one that says you can rely on  
13 deletions in a committee process to get at the intended  
14 legislation. How you can, how much you can rely on such  
15 things --  
16 MR. GROSSMAN: Well, you know, we do --  
17 MR. SILVERMAN: I think it's a very problematic  
18 thing. Sometimes people delete things because they're  
19 really not necessary. They're redundant.  
20 MR. GROSSMAN: We know we can look at committee  
21 reports, and this is, this is part of a PHED Committee  
22 report that went to the, that went to the Council.  
23 MR. SILVERMAN: That I agree with.  
24 MR. GROSSMAN: It said the staff, the Council  
25 staff attorney, Jeff Zyontz, had a memo and then he attached

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1 this draft for the straw vote. And so his memo summarized  
2 and then this, this was the attachment, so I guess it is  
3 part of legitimate legislative history. As they --  
4 MR. SILVERMAN: Well, I don't, I don't question  
5 that. I'm sorry to interrupt.  
6 MR. GROSSMAN: I think it's part of legitimate  
7 legislative history as it's part of the committee, in  
8 effect, the PHED Committee report, the committee charged  
9 with the primary responsibility for the rewrite so, yes. I  
10 think it is a legitimate part of it. Do I think it's going  
11 to affect anything that I do? No, I don't. So, so it's not  
12 -- once again, this whole area is, you know, I'm not saying  
13 that because it's part of something that's already been  
14 voted on, I don't exclude it in the same way I do the, the  
15 county-wide map amendment but do I think it should be a  
16 major part of the consideration of this special exception  
17 case? I don't think it's a major part, you know, it's a  
18 footnote.  
19 MR. SILVERMAN: I just wanted to make the separate  
20 point that deducing legislative intent from what the  
21 legislature did not do or what they deleted is fraught with  
22 difficulties and in the case I've read, usually, it's given  
23 very low weight because you don't know why they deleted it.  
24 They, you know, it could be for stylistic reasons, it could  
25 be because, because minimizing automotive uses is one of

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1 many benefits of this new zone. One doesn't know.  
2 MR. GROSSMAN: Well, take a look at Jeff Zyontz's  
3 cover memo that went to the Council and see if he says why  
4 he, why it was deleted in this draft. I don't remember  
5 because I, I didn't read that carefully for this section but  
6 in any event, I think it's legitimately admissible here for  
7 all the reasons we're talked about.  
8 MR. GOECKE: And just one final question on this  
9 and then we'll move along.  
10 MR. GROSSMAN: Yes.  
11 MR. GOECKE: And then, Ms. Savage, if you'll look  
12 at Subsection D in the brackets, it similarly shows that the  
13 words reduce dependence on the automobile by providing have  
14 been deleted from the draft, is that correct?  
15 MR. GROSSMAN: This is Subsection C.  
16 MS. SAVAGE: Subsection C you mean, yes.  
17 MR. GOECKE: I'm sorry. Yes.  
18 MS. SAVAGE: Um, that is correct. Can I, may I  
19 comment on that.  
20 MR. GROSSMAN: That is part of the statement of  
21 the intent of the GR, NR, LSC and EF, EOF zones --  
22 MR. GOECKE: Okay. Right.  
23 MR. GROSSMAN: -- is to, and then they list a  
24 number of things and one of the things that's not in there  
25 now is item C. The bracketed portion says reduce dependence

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1 on the automobile by providing and instead, they just  
2 substitute the word provide employment areas and so on. And  
3 that's, that corresponds to Section 4.6.1-A3 in, on page 481  
4 which is part of Exhibit 467.  
5 MS. SAVAGE: May I comment a little further on  
6 that?  
7 MR. GROSSMAN: Go ahead.  
8 MS. SAVAGE: Okay. Um, well, I wish you had  
9 showed this to me a couple months ago because this, if you  
10 look at A, whereas we just read C, if you look at A, it says  
11 implement the recommendations or policy or whatever of the  
12 applicable master plan so we have things at odds here. We  
13 have as to how this applies in Wheaton to Westfield. We  
14 have a GR zone that, that, if you want to agree that it says  
15 that they've taken out the automobile, reducing dependence  
16 on the automobile and yet, the master plan, the sector plan  
17 says reduce dependence on the automobile.  
18 So had I been smart enough to see this months ago,  
19 I would have pointed this problem out to somebody, planning  
20 staff and somebody, and said, and figured out a way to do  
21 that because in Wheaton, we have two things bumping up  
22 against each other, so I don't know which takes precedence.  
23 I mean, to me, right now the master plan takes, the sector  
24 plan takes, takes precedence. That says reduce, everything  
25 we do within the Wheaton Sector Plan area should move toward

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1 reducing dependence on automobiles. That says that in many  
2 places so I'm just offering that up.  
3 MR. GOECKE: But as you testified yesterday, every  
4 new development doesn't have to satisfy every goal in the  
5 master plan.  
6 MS. SAVAGE: That is true.  
7 MR. GOECKE: So it's possible that Wheaton can be  
8 moving these goals, moving towards these goals even while  
9 retaining an automotive-centric area.  
10 MS. SAVAGE: That is true. It doesn't make a lot  
11 of sense to me, but it's true.  
12 MR. GOECKE: Isn't it also true that in an auto-  
13 centric area, idling is common?  
14 MS. SAVAGE: I don't, I can't answer that. I  
15 don't know what that means.  
16 MR. GOECKE: Where there's a lot of traffic,  
17 there's idling.  
18 MS. SAVAGE: Well, there's a lot of traffic on the  
19 Beltway. Only sometimes does it idle. I can't really, I  
20 can't make that, I can't answer that.  
21 MR. GOECKE: But similarly, the --  
22 MS. ROSENFELD: Is Mr. Goecke prepared to  
23 stipulate to that as a global assertion?  
24 MR. GOECKE: And taking your analogy about the  
25 Beltway and applying it to the gas station, there could be a

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1 lot of pass-through traffic at the gas station. It doesn't  
2 mean there's always going to be a lot of idling there.  
3 MS. SAVAGE: Pass-through at the gas station.  
4 Well, if there are no lines to get gas, that's true.  
5 MR. GOECKE: Uh-huh.  
6 MS. SAVAGE: However, we saw, whose report was  
7 that, I put it in evidence yesterday?  
8 MR. GROSSMAN: Mr. Guckert's.  
9 MS. SAVAGE: Thank you. That listed all of the  
10 numbers of cars queued up and, on a weekend day, and it  
11 looked like pretty much the whole time the gas station was  
12 open, cars were queued up. Cars were queued up at that  
13 location and will likely be queued up here so, yeah. If  
14 there's a time when there's no queuing, there won't be any  
15 idling. I don't think that will happen but --  
16 MR. GOECKE: Yesterday you testified that the  
17 idling at the gas station will be a unique feature of  
18 Wheaton, is that right?  
19 MS. SAVAGE: Unique feature of Wheaton at this gas  
20 station, yes.  
21 MR. GOECKE: But there's lots of other uses that  
22 could, could be developed here that would create idling.  
23 MS. SAVAGE: Such as?  
24 MR. GOECKE: Such as a fast food restaurant.  
25 MS. SAVAGE: Okay. Sometimes -- maybe during

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1 dinner there would be four or five cars idling.  
2 MR. GOECKE: Such as a drive-thru bank.  
3 MS. SAVAGE: My bank, the bank that I use on  
4 University Boulevard drive-thru, I never have to idle at but  
5 maybe that's because I go at an odd time but, yeah. It  
6 could. One or two cars, but not 20 or 30 or 40 cars.  
7 There's a qualitative difference.  
8 MR. GOECKE: What about at a traffic light in any  
9 of, in the CBD?  
10 MS. SAVAGE: Sure.  
11 MS. ROSENFELD: Objection. Mr. Grossman, if --  
12 MS. SAVAGE: I don't see the point.  
13 MS. ROSENFELD: -- Mr. Goecke has questions  
14 related to other special exception uses that might be  
15 relevant here, they might be --  
16 MR. GROSSMAN: No. It's perfectly acceptable on  
17 cross-examination for him to challenge the assumption that  
18 idling is peculiar to the gas station. His -- you may think  
19 that the reference is overblown given the nature of the two  
20 uses but that's, it's still within his province to, to ask  
21 these questions on cross-examination so overruled.  
22 MS. SAVAGE: I think I said that idling was unique  
23 to this gas station when I, maybe I should have qualified  
24 that, compared to other gas stations. I think I did qualify  
25 that. I wasn't comparing it to these other situations.

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1 MR. GOECKE: I'd like to go to the Exhibit 464B.  
2 Do you still have a copy of that in front of you? This is  
3 the Power Point presentation on Westfield Wheaton Mall.  
4 MS. SAVAGE: Got it.  
5 MR. GOECKE: And this is an exhibit that you  
6 testified about yesterday.  
7 MS. SAVAGE: Uh-huh.  
8 MR. GOECKE: If you would turn to the third page  
9 from the end --  
10 MS. SAVAGE: Okay.  
11 MR. GOECKE: -- and at the top it says the plan  
12 explained on interior and exterior pedestrian routes.  
13 MS. SAVAGE: Okay.  
14 MR. GOECKE: Okay. And it shows the CR portion of  
15 the mall where several TOD developments have, exist, right,  
16 along Veirs Mill Road?  
17 MS. SAVAGE: Yes. Right.  
18 MR. GOECKE: Or at least were being proposed at  
19 the time.  
20 MS. SAVAGE: Were being proposed, right.  
21 MR. GOECKE: Yeah. And then at the same time down  
22 in the southwest corner of the mall, we have the proposed  
23 Costco gas station.  
24 MS. SAVAGE: Well, we don't have -- oh.  
25 MR. GOECKE: And I should point out that this is

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1 where the original location was going to be.  
2 MS. SAVAGE: Yes.  
3 MR. GOECKE: It's no longer being proposed at that  
4 location.  
5 MS. SAVAGE: Is that what that, that little, that  
6 thing is down there? Yeah. Okay.  
7 MR. GROSSMAN: With the arrow.  
8 MS. SAVAGE: Yeah.  
9 MR. GOECKE: With the blue arrow pointing to it.  
10 Exactly.  
11 MS. SAVAGE: Well, the -- okay. The blue arrow is  
12 not for that purpose but okay. Yes.  
13 MR. GOECKE: And so this document shows that even  
14 with TOD development, the gas station was being proposed in  
15 conjunction with that TOD development, right?  
16 MS. SAVAGE: Well, I'm a little confused about  
17 that question. They're putting in things that --  
18 MR. GOECKE: Let me --  
19 MS. SAVAGE: -- they're assuming are going to be  
20 there and then they're showing just because it, it's like if  
21 you take a satellite view, you've got a picture of what's  
22 there. This is -- I don't understand the point.  
23 MR. GOECKE: Let me put it to you this way.  
24 Westfield was proposing to install a gas station at the same  
25 time they were proposing to install TOD developments.

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1 MS. SAVAGE: Westfield wasn't proposing a gas  
2 station. I don't know what you're, I don't understand what  
3 you're saying.  
4 MR. GOECKE: Well --  
5 MR. GROSSMAN: Yesterday when you testified and  
6 introduced this Westfield Wheaton Mall proposal --  
7 MS. SAVAGE: Right.  
8 MR. GROSSMAN: -- by Westfield as Exhibit 464B,  
9 you introduced it to indicate that Westfield was proposing  
10 along the fringes that had been rezoned to the CR zone that  
11 they had some residential development.  
12 MS. SAVAGE: Okay.  
13 MR. GROSSMAN: And what he's pointing out here is  
14 that if you look at another page in your exhibit, the  
15 Westfield plans, they also show that part of their plan was  
16 to have a gas station as part of the Costco development.  
17 That's, I think, isn't that correct?  
18 MR. GOECKE: That's correct, Mr. Grossman. Thank  
19 you.  
20 MS. SAVAGE: Okay. So it's the Costco gas  
21 station. Okay. I didn't want you, I didn't want you to  
22 think that I was saying that Westfield was planning a gas  
23 station there because not the case. I still don't  
24 understand the, really understand the question. So  
25 Westfield was putting in here, because this was 2010 let's

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1 remember when the gas station was still proposed at that  
2 location, they were putting in what they thought was, I  
3 guess, going to happen. Yeah. Okay. I'll agree with that.  
4 MR. GOECKE: And the gas station wasn't inhibiting  
5 the two of these developments that they were planning or  
6 thought was going to happen.  
7 MS. SAVAGE: I think this was Westfield putting in  
8 the reality of what they thought was going to happen and  
9 you're saying it would, they would still do that eastern  
10 portion, eastern and southern portion development and this  
11 wouldn't affect it.  
12 MR. GOECKE: Exactly.  
13 MS. SAVAGE: For that portion that's currently  
14 zoned CR where they could do that kind of development.  
15 MR. GOECKE: Correct.  
16 MS. SAVAGE: Um, I guess that's what they thought.  
17 I have no idea what Westfield thought but, so I can't really  
18 answer that but if you force me to, I'll say I guess that's  
19 what they thought.  
20 MR. GROSSMAN: We won't force you.  
21 MS. SAVAGE: You won't force me. Oh, thank you.  
22 MR. GROSSMAN: We just want you to answer to  
23 the --  
24 MS. SAVAGE: Okay.  
25 MR. GROSSMAN: -- best of your ability.

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1 MS. SAVAGE: Okay. Well, my ability then is I  
2 have no idea what Westfield was thinking so --  
3 MR. GROSSMAN: It's just that it was an exhibit  
4 that you put in.  
5 MS. SAVAGE: Yes. I know, but I never even  
6 noticed that little part there. You're right. It's there.  
7 MR. GOECKE: And going back to your comment about  
8 what, what the sector plan is requiring, yesterday you  
9 testified that the sector plan does not specifically provide  
10 for gas stations in any location I believe.  
11 MS. SAVAGE: I believe -- and the whole process.  
12 We never talked about wanting more gas stations, yes.  
13 MR. GOECKE: Right.  
14 MS. SAVAGE: Process and the plan itself, yes.  
15 MR. GOECKE: But the converse is true also, that  
16 the plan doesn't specify that gas stations may not go in a  
17 certain area.  
18 MS. SAVAGE: It's true. Well, that's technically  
19 true, yes. Although one could certainly imply, or is it  
20 infer, sorry, I'm too tired, that when you talk about a non,  
21 when you talk about reducing auto usage and reducing  
22 greenhouse gas emissions, you could make an inference from  
23 that that gas stations are probably not high on their  
24 priority list.  
25 MR. GOECKE: Well, do you agree that the Council

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1 was well aware of the proposed Costco gas station when they  
2 did the sector plan?  
3 MS. SAVAGE: Yes.  
4 MR. GOECKE: And so they could have precluded it  
5 had they wanted to.  
6 MS. SAVAGE: There was some legislation that we  
7 actually attempted to have passed, and it got amended  
8 slightly in the passage and that didn't quite help us out  
9 enough but, yes. They could have -- well, wait. Are you  
10 talking about for the sector plan, when they passed the  
11 sector plan?  
12 MR. GOECKE: Yes.  
13 MS. SAVAGE: Something like, it seems to me  
14 something like that would be too specific for a sector plan.  
15 We could have put in here oh, by the way, there's a little  
16 footnote somewhere that no large gas station is allowed in  
17 this plan. That's, I think that's made clear by the goals  
18 of the sector plan by inference.  
19 MR. GOECKE: But they could have precluded, for  
20 example, special exceptions on the mall site.  
21 MS. SAVAGE: Special exceptions. All special  
22 exceptions on the mall site?  
23 MR. GOECKE: Yes.  
24 MS. SAVAGE: That -- yeah. Of course technically,  
25 they could have. I think that would have been, Westfield

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1 would have screamed for that, screamed if that had happened.  
2 MR. GOECKE: Hadn't they done that in other master  
3 plans, prevented special exceptions in certain areas?  
4 MS. SAVAGE: I don't know.  
5 MR. GOECKE: Turning now to the bike-ability of  
6 Wheaton and the mall area in particular. If you could turn  
7 to page 67 of the sector plan.  
8 MS. SAVAGE: Okay.  
9 MR. GOECKE: And page 67 shows many roads with a  
10 red dotted line of shared roadways for on-road --  
11 MS. SAVAGE: Right.  
12 MR. GOECKE: -- bikes.  
13 MS. SAVAGE: Signed shared roadways, yep.  
14 MR. GOECKE: Right. And so the Ring Road is just  
15 like many other roads in the Wheaton area including Georgia  
16 Avenue and Veirs Mill Road, isn't that right?  
17 MR. GROSSMAN: What do you mean it's just like?  
18 MS. SAVAGE: Just like?  
19 MR. GROSSMAN: What does that mean?  
20 MR. GOECKE: Sure. It's a shared road for, for  
21 bikes and cars.  
22 MR. GROSSMAN: In other words, you're saying that  
23 that, page 67 of the sector plan, as I think Mr. Gang  
24 testified, that the, that the Ring Road is designated as a  
25 shared road for, is that your, what your point --

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1 MR. GOECKE: Yes. Let me try another way.  
2 Yesterday, Ms. Savage, you testified that the Costco gas  
3 station is likely to impede the ability of people who ride  
4 their bikes along the Ring Road because of the increased  
5 traffic, right?  
6 MS. SAVAGE: In part, yeah. Oh, yeah. In large  
7 part, yes.  
8 MR. GOECKE: But then earlier today as we talked  
9 about it, the traffic on Veirs Mill Road is much more than  
10 on the Ring Road.  
11 MS. SAVAGE: Yeah. I mean, I haven't done traffic  
12 counts but, yeah. I'm assuming it is.  
13 MR. GOECKE: And people bike on Veirs Mill Road.  
14 MS. SAVAGE: They do. I wouldn't but they do.  
15 MR. GOECKE: And many, as we see on page 67, many  
16 bike on many other roads.  
17 MS. SAVAGE: Well, I do think there's a little bit  
18 of a difference between, sort of responding in part to your  
19 original question about the difference between Georgia  
20 Avenue and the Ring Road. They are both shared, signed  
21 shared roadways but the Ring Road is listed as a local  
22 connection whereas Georgia Avenue is not listed as a bikeway  
23 that's a local connection. I think this is, I'm not a bike  
24 person so this is speculative, I'm sorry, but it seems to me  
25 that --

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1 MR. GROSSMAN: Well, let's not speculate.  
2 MS. SAVAGE: All right.  
3 MR. GROSSMAN: But you can give me your  
4 interpretation if you'd like.  
5 MS. SAVAGE: All right. Sorry. I'm not  
6 speculating. My interpretation is that local connection  
7 bikeways are going to be qualitatively different and  
8 somewhat different bikers will be on those roadways than on  
9 Georgia Avenue. Georgia Avenue, if someone's riding a bike  
10 on Georgia Avenue, they're commuting most likely to  
11 someplace and they have an entire different mindset, in my  
12 opinion, than someone who is going to bike around the mall,  
13 say, from the neighborhood for exercise. I don't think  
14 anybody would really bike on, I don't think, on Georgia  
15 Avenue for exercise.  
16 MR. GROSSMAN: I think you slipped into a lot of  
17 speculation there.  
18 MS. SAVAGE: Sorry.  
19 MR. GROSSMAN: But can I --  
20 MS. SAVAGE: Okay. I wouldn't.  
21 MR. GROSSMAN: Can I see a copy of the master  
22 plan, the sector plan, please?  
23 MR. GOECKE: Hold on one second.  
24 MS. SAVAGE: Oh, I have an extra copy, do you know  
25 that? I have an extra copy.

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1 MR. GROSSMAN: You do?  
2 MS. SAVAGE: Yeah, I do.  
3 MR. GROSSMAN: Then you can give --  
4 MS. SAVAGE: I mean, I want it back. It cost \$20.  
5 MR. GROSSMAN: I'll definitely give it back to  
6 you. Mr. Goecke --  
7 MS. SAVAGE: Sorry. I forgot that.  
8 MR. GROSSMAN: -- Ms. Savage had an extra copy so  
9 we got yours.  
10 MR. GOECKE: Thanks.  
11 MS. SAVAGE: That's page 67.  
12 MR. GROSSMAN: Right. So I would -- the reason I  
13 asked for this is I had recalled that when Mr. Gang  
14 testified that he, he pointed out that there was a  
15 difference between things that are designated as shared  
16 roadways --  
17 MS. SAVAGE: Uh-huh.  
18 MR. GROSSMAN: -- and indicated in the red dots,  
19 and then something called a dual bikeway, a shared use path,  
20 proposed bike lanes which are, was indicated by this blue  
21 and green dotted thing. And the Ring Road is, is designated  
22 as a signed shared roadway.  
23 MS. SAVAGE: Right.  
24 MR. GROSSMAN: And if I recall his testimony, he  
25 indicated that that meant that there wasn't a, that the

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1 sector plan was not calling for a specific path that was  
2 designated as a bike path around the Ring Road but rather,  
3 that, that it would just share the road with cars, is  
4 that --  
5 MS. SAVAGE: There would probably be signs to  
6 indicate that.  
7 MR. GROSSMAN: Right.  
8 MS. SAVAGE: Yeah.  
9 MR. GROSSMAN: Is that your understanding of --  
10 MS. SAVAGE: That's my understanding, yes.  
11 MR. GROSSMAN: Okay. Because I know there was  
12 other testimony from others who said it was a goal or desire  
13 that there be not just a pedestrian pathway but a shared  
14 pedestrian bike pathway but that was not shared with  
15 vehicles which seems to be --  
16 MS. SAVAGE: That's not my understanding but --  
17 MR. GROSSMAN: Well, I'm trying to remember if  
18 that was the testimony from the Sierra Club witness, but  
19 that seems to be different from what the page 67 indicates  
20 the sector plan is planning for.  
21 MS. SAVAGE: Uh-huh. Uh-huh.  
22 MR. GROSSMAN: Okay.  
23 MR. GOECKE: Okay. And then if you would please,  
24 turn to page 68, the second main bullet point down. On the  
25 top of the page it says bikeway network and it says request

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1 the state to designate the plan area as a bicycle and  
2 pedestrian priority area. This designation will facilitate  
3 funding for bicycle and pedestrian improvements on state  
4 roads. If I understand your testimony correctly yesterday,  
5 you were saying that the goal of the sector plan is to  
6 designate the Ring Road as a bicycle and pedestrian priority  
7 area.

8 MS. SAVAGE: Yeah. I guess I said -- yes.  
9 MR. GOECKE: Okay.  
10 MS. SAVAGE: Yes.  
11 MR. GOECKE: But do you know or do we agree that  
12 the Ring Road is not a state road?  
13 MS. SAVAGE: Yes. But I think the point was, the  
14 way I read that second bullet --  
15 MR. GOECKE: I'm sorry. You know that it's not a  
16 state road?  
17 MS. SAVAGE: I know that it's not a state road,  
18 yes.  
19 MR. GOECKE: Okay.  
20 MS. SAVAGE: Okay. Sorry. I didn't answer that.  
21 The way I read that second bullet on page 68 was that if the  
22 state were to designate the entire plan area as a bicycle  
23 and pedestrian priority area, that would facilitate funds to  
24 be available for the state roads to which these paths  
25 connect. That's my, that's how I read that. It would free

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1 up some money to, to --  
2 MR. GOECKE: And where --  
3 MS. SAVAGE: -- make improvements on state roads.  
4 MR. GOECKE: Where does it describe that  
5 connection you just referred to?  
6 MS. SAVAGE: Well --  
7 MR. GOECKE: What is that based on I guess, your  
8 interpretation?  
9 MS. SAVAGE: That's based on my own logic. I  
10 mean, that's what that says to me and, you know, just  
11 generally what I've been hearing is that obviously, state --  
12 most of the roads in the Wheaton Sector Plan area are not  
13 state roads. Certainly not the Ring Road but other roads  
14 around there also are not state roads. So this only applies  
15 to a program that I don't know the name of, of monies  
16 available for bicycle improvements on state roads but  
17 apparently, in order to do that, you have to have some  
18 network of bicycle pathways that will get you to those state  
19 roads. Otherwise, why improve them for bikes if they can't  
20 get there. So I'm just sort of thinking logically here.  
21 MR. GOECKE: Thank you. Yesterday you testified a  
22 bit about the community expectations for what Wheaton is  
23 aspiring to becoming. Do you agree that Costco does not  
24 have to satisfy community expectations as part of the  
25 special exception process though?

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1 MS. SAVAGE: Of course. Yes. It doesn't have to.  
2 I would think they would want to try.  
3 MR. GOECKE: And you also testified about Wheaton  
4 as a transportation hub. The gas station, if it's built, is  
5 not going to impede people's ability to take Metro, is it?  
6 MS. SAVAGE: Impede people's ability. Well, it  
7 will kind of be in the way of all of the walkers in the  
8 Kensington Heights neighborhood who walk to the Metro from,  
9 through that area so --  
10 MR. GROSSMAN: You mean the ones that cut through  
11 the mall itself?  
12 MS. SAVAGE: That's correct. That's correct.  
13 MR. GOECKE: And these are the ones who cross to  
14 the east of where the proposed Costco gas station is going.  
15 MS. SAVAGE: To the east of there, yes, and the  
16 additional traffic. Also, there is also --  
17 MR. GOECKE: Could you step back just a little  
18 bit? Thank you.  
19 MS. SAVAGE: -- an informal pathway at the end of  
20 Peregoy which is actually I think down here. There is a  
21 connection at the end of Faulkner which is, I think I'm  
22 pointing to right about there. The traffic would, the extra  
23 traffic from the gas station would impede that as well.  
24 MR. GOECKE: Can you show us where the Metro is  
25 located?

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1 MS. SAVAGE: Let me get my glasses on for this  
2 one. It is right -- where is it? Right there? Am I seeing  
3 the M? I don't even -- you can't even see it up close. You  
4 expect me to see it from here? Okay. It's right, it's  
5 probably right here. It's right here. It's right under  
6 Georgia so it's, I think it's -- and that's Reedie, right?  
7 MR. GOECKE: It is.  
8 MS. SAVAGE: Is that Reedie? Okay. So it's right  
9 about on Georgia just south of Reedie.  
10 MR. GOECKE: Okay. So folks who are walking from  
11 Kensington Heights, they could go south along the Ring Road  
12 up towards Georgia Avenue.  
13 MS. SAVAGE: They could.  
14 MR. GOECKE: All right.  
15 MS. SAVAGE: I bet Westfield would rather than go  
16 through the mall and buy some things.  
17 MR. GOECKE: And if they were coming from  
18 Faulkner, they could walk directly through the mall.  
19 MS. SAVAGE: They could. They still have to cross  
20 the Ring Road but, yeah. All these people have to cross the  
21 Ring Road. That's part of my problem here.  
22 MR. GOECKE: And what's your understanding of how  
23 much increased traffic there will be on the Ring Road  
24 because of the Costco gas station?  
25 MS. SAVAGE: Do I wait until he's finished

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1 talking?  
2 MR. GOECKE: No. Go ahead.  
3 MS. SAVAGE: Okay. My understanding is that 30  
4 percent of the people who, see if I get this right, 30  
5 percent of customer cars that come to the gas station come  
6 only for the gasoline. I don't know actual numbers. I  
7 can't give you actual numbers.  
8 MR. GOECKE: Do you know how many people are  
9 walking to Metro from Kensington Heights every day now?  
10 MS. SAVAGE: I don't have a total number of that.  
11 I would, I know about, let me see if I can -- people I know.  
12 I don't know everybody and we have 700 homes.  
13 MR. GROSSMAN: Well, I don't know that -- this, I  
14 don't think, will be helpful because I'm suspecting there  
15 may be other people that you don't know that --  
16 MS. SAVAGE: I'm sure there are but I - if he asks  
17 me how many do I know --  
18 MR. GROSSMAN: Right.  
19 MS. SAVAGE: -- who walk there, I could answer  
20 that.  
21 MR. GROSSMAN: Okay.  
22 MS. SAVAGE: But I don't so I don't know the  
23 answer.  
24 MR. GROSSMAN: Okay.  
25 MR. GOECKE: Mr. Grossman, this may be a good

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1 point to take a quick break, and I think we can wrap up  
2 pretty quickly.  
3 MR. GROSSMAN: Okay. So five minute break. Come  
4 back about a quarter to 2:00.  
5 MR. GOECKE: Thank you.  
6 (Whereupon, at 2:40 p.m., a brief recess was  
7 taken.)  
8 MR. GROSSMAN: Mr. Goecke, do you have the whole  
9 rewrite proposal with you?  
10 MS. HARRIS: I do.  
11 MR. GROSSMAN: Yes. I just wanted to look at  
12 something if you have that handy.  
13 MS. HARRIS: The most recent?  
14 MR. GROSSMAN: Yes.  
15 MR. GROSSMAN: What I was actually looking for was  
16 whether or not the automobile filling station is a  
17 conditional use listed as a permitted conditional use in the  
18 GR zone.  
19 MS. HARRIS: Uh-huh.  
20 MR. GROSSMAN: It is?  
21 MS. HARRIS: Yes.  
22 MR. GROSSMAN: Okay.  
23 MS. SAVAGE: It is or is not you say?  
24 MR. GROSSMAN: She said it is.  
25 MS. HARRIS: It is.

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1 MS. SAVAGE: It is.  
2 MS. HARRIS: I was smiling because --  
3 MS. SAVAGE: Right. Right.  
4 MS. HARRIS: -- despite that fact that it was  
5 supposed to be an easy document to follow --  
6 MR. GROSSMAN: Hard to find it.  
7 MS. SAVAGE: Right.  
8 MS. HARRIS: -- it's pretty confusing, yes.  
9 MR. GROSSMAN: Well, confusion is our business.  
10 We're the government.  
11 MS. SAVAGE: Apparently.  
12 MR. GROSSMAN: It's got pretty pictures. All  
13 right. Mr. Goecke.  
14 MR. GOECKE: Thank you, Mr. Grossman. Ms. Savage,  
15 I just have a few more questions for you.  
16 MS. SAVAGE: Okay.  
17 MR. GOECKE: In terms of the sector plan's  
18 aspirations to further TOD development, would you agree that  
19 there are certain mechanisms that can be employed to further  
20 that goal?  
21 MS. SAVAGE: Of course.  
22 MR. GOECKE: Right. For example, would you agree  
23 that the parking lot district is an area that's intended to  
24 promote transit-oriented development?  
25 MS. SAVAGE: Yeah. That -- yeah. Yes.

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1 MR. GOECKE: Okay. And in fact, on page 20 of the  
2 sector plan, there is a map, map 3, showing the parking lot  
3 district. Do you see that?  
4 MS. SAVAGE: I do.  
5 MR. GOECKE: Okay. And you agree that the Wheaton  
6 Westfield Mall is not part of the parking lot district.  
7 MS. SAVAGE: That is true.  
8 MR. GOECKE: Okay. So this is an example of where  
9 the plan is furthering, striving to further its goal of TOD  
10 that it doesn't apply specifically to the mall area.  
11 MS. SAVAGE: That is one such example.  
12 MR. GOECKE: Okay. And on page 22, they show  
13 another device or mechanism to, to promote TOD and that's  
14 proposed priority retail streets, is that right?  
15 MS. SAVAGE: Um, that's right. I'm not sure how  
16 -- that's a little bit less directly connected to TOD but go  
17 ahead.  
18 MR. GOECKE: Okay. But would you agree that, that  
19 proposed priority retail streets are intended or have the  
20 effect of reducing vehicle traffic?  
21 MS. SAVAGE: I guess, yes.  
22 MR. GOECKE: Okay.  
23 MS. SAVAGE: I mean, I don't think that's the main  
24 reason why we're seeing this map here but --  
25 MR. GOECKE: But it --

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1 MS. SAVAGE: -- one would hope that that would be  
2 the case.  
3 MR. GOECKE: And it promotes walkability.  
4 MS. SAVAGE: It promotes walkability, yes.  
5 MR. GOECKE: Yes.  
6 MS. SAVAGE: Yes.  
7 MR. GOECKE: And again, the red streets that are  
8 highlighted on page 22 are not to the Westfield Wheaton  
9 Mall.  
10 MS. SAVAGE: That is correct.  
11 MR. GOECKE: Okay. And then on page 28 of the  
12 sector plan, it identifies various spaces including civic  
13 green spaces and neighborhood open spaces that again, are  
14 intended to further many of the aspiration goals of the  
15 sector plan, would you agree with that?  
16 MS. SAVAGE: Many of the -- right. Not, not  
17 related to TOD but a couple of the goals of the sector plan,  
18 yes.  
19 MR. GOECKE: And again, those are outside the  
20 Wheaton Westfield Mall District.  
21 MS. SAVAGE: They are, but the ways to get to them  
22 are inside. You see those arrows there? The one goes right  
23 through the center of Wheaton Mall. That's a connection  
24 point.  
25 MR. GOECKE: So you're saying that those arrows

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1 designate what?  
2 MS. SAVAGE: Those are local access to downtown  
3 core. It says it right there in the, on the side there.  
4 That is how all of the accesses to the central core of  
5 Wheaton are viewed. One of them comes directly through  
6 Kensington Heights and goes right straight through the mall,  
7 so it's indirectly related to those public green spaces.  
8 MR. SILVERMAN: Right through the gas station.  
9 MS. SAVAGE: Right through the, true, right  
10 through the gas station. That's true. I'd also point out  
11 that, that northern and eastern portion of the mall is  
12 listed as an area of likely redevelopment where public use  
13 space will be provided through the redevelopment process and  
14 that same arrow, that same access point goes directly  
15 through the mall to that space on mall property. That's  
16 the, the currently now CR-zoned property of the mall.  
17 MR. GOECKE: And you would agree that these arrows  
18 are conceptual. They're not specific routes, right?  
19 MS. SAVAGE: I guess.  
20 MR. GOECKE: Doesn't one --  
21 MS. SAVAGE: I mean, yeah.  
22 MR. GOECKE: Doesn't one of the arrows go directly  
23 through the water towers right here?  
24 MS. SAVAGE: Okay, okay. They're conceptual.  
25 Yes. They're conceptual. Fine.

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1 MR. GOECKE: Okay. Is it your contention that any  
2 increase in traffic on the Ring Road is going to inhibit or  
3 impede walkability or bike-ability in that area?  
4 MS. SAVAGE: I'm not going to say any increase.  
5 I'm going to say that a significant increase that I know  
6 you're going to make me define and I will in a minute, a  
7 significant increase which I think the gasoline, this new  
8 Costco gas station would mean is going to do it. A few  
9 cars, no. This is not, we're not talking a few cars here.  
10 MR. GOECKE: Well, I asked you about that before  
11 and you said you didn't know how many more cars it would  
12 generate.  
13 MS. SAVAGE: Well, I don't know how many more but  
14 30 percent of what, whatever -- again, I'm not sure if it's  
15 30 percent of Costco customers because I'm sorry, I don't  
16 know the, what the denominator is, but 30 percent of the  
17 cars coming to the gas station come only for gas. That's  
18 new trips. That's a lot of new trips. That's a lot of new  
19 trips so that, that, to me, is a significant number. I  
20 can't give you the exact number.  
21 MR. GOECKE: Okay. And you said you were going to  
22 define for us what you consider to be a significant number.  
23 MS. SAVAGE: Right. Well, I just, I'm going to  
24 take that back because the 30 percent is, is, I just  
25 realized that I don't have an actual number. I don't. I

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1 don't have that, those figures. But 30 percent, if you give  
2 me a second, I could probably figure it out at 12 million  
3 gallons a year or if someone has a calculator.  
4 MR. GROSSMAN: You don't have to do that.  
5 MS. SAVAGE: But let me say like 2,000 cars a day,  
6 30 percent, 600 cars.  
7 MS. ADELMAN: That's an hour.  
8 MR. SILVERMAN: Twelve million gallons a year.  
9 MR. GROSSMAN: No, no calling out from the --  
10 MS. SAVAGE: No coaching.  
11 MR. GROSSMAN: -- from the audience.  
12 MS. SAVAGE: I could give you -- I'm remembering  
13 2,000 cars a day to the gas station. Mr. Goecke, I'm  
14 remembering, to my memory, when we figured it out at 12  
15 million gallons a year approximately 2,000 cars a day.  
16 Thirty percent of that is 600 cars. That's 600 additional  
17 cars. I'm pretty sure that figure is correct. That's a  
18 lot.  
19 MR. GOECKE: Are you aware that there's more than  
20 10 million square feet of development approved for the  
21 Wheaton Sector area?  
22 MS. SAVAGE: I didn't know the total number, no.  
23 I did not know the total number.  
24 MR. GOECKE: Assuming that were to be true,  
25 wouldn't that generate a lot, significant amount of traffic?

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1 MS. SAVAGE: It depends on where that development  
2 is happening. If you're talking about development that's  
3 right around the Metro, I'm not saying people won't have  
4 cars but there is a significant number, and I don't think  
5 it's in the sector plan but a significant number of people  
6 in the Wheaton area who don't have cars, more so than in  
7 other areas of the county. Now, whether that's because they  
8 can't afford them or they don't want them or whatever, I  
9 don't know but when you develop around Metro, you get people  
10 who don't want the expense and hassle of cars so, yes.  
11 Traffic will increase.  
12 MR. GOECKE: You would agree that even mixed-use  
13 developments can generate a lot of traffic.  
14 MS. SAVAGE: Mixed-use developments can generate  
15 traffic. I'm not going to characterize it as a lot of  
16 because I don't know.  
17 MR. GOECKE: For example, the Safeway development  
18 that you, that you showed us your photograph of yesterday,  
19 are you aware that there's about 500 apartments?  
20 MS. SAVAGE: There are a lot, yes. It's a biggie.  
21 MR. GOECKE: I'm sorry. Five hundred parking  
22 spaces for the apartments in that building.  
23 MS. SAVAGE: Okay. I didn't know, I didn't know  
24 that but it doesn't surprise me.  
25 MR. GOECKE: Doesn't surprise you.

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1 MS. SAVAGE: Yeah.  
2 MR. GOECKE: And so do all those people use the  
3 Metro?  
4 MS. SAVAGE: Probably not all the time. Five  
5 hundred parking spaces doesn't mean they're all in use by  
6 the way but --  
7 MR. GOECKE: So it's possible that mixed-use  
8 developments like that could also generate a significant  
9 amount of traffic.  
10 MS. SAVAGE: Well, all development throughout the  
11 county is generating more traffic. That's an issue and  
12 that's an issue in Wheaton too, sure. Of course.  
13 MR. GOECKE: Thank you. No further questions.  
14 MR. GROSSMAN: Any redirect  
15 MS. ROSENFELD: Yes. Thank you, Mr. Grossman.  
16 REDIRECT EXAMINATION  
17 MS. ROSENFELD: Ms. Savage, turning back to the  
18 sector plan itself for just a minute, going back to page 28,  
19 you testified about the red arrow, the mall core connection  
20 and the, I think the blue arrow, the local access to  
21 downtown core. Am I correct, are those --  
22 MS. SAVAGE: Yes.  
23 MS. ROSENFELD: -- the two arrows you were  
24 referencing?  
25 MS. SAVAGE: Yes.

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1 MS. ROSENFELD: Looking on page 29 under  
2 connectivity, is there any reference in there with respect  
3 to Wheaton Mall's role, that property's role in connectivity  
4 in Wheaton?  
5 MS. SAVAGE: Yes. In fact, I think I might have  
6 read this into the record yesterday. I'm not sure. The  
7 Westfield Wheaton Mall will be integrated with the CBD  
8 through pedestrian connections and street-oriented uses  
9 along its edges. That's what we have there is edges.  
10 MS. ROSENFELD: And in your reading of that  
11 sentence on page 29, do you think that further clarifies or  
12 elaborates on the map on page 28 and if so, how?  
13 MS. SAVAGE: Well, I think it makes pretty clear  
14 that as we, as the CBD develops and we put in those nice  
15 green spaces and we have all these buildings and we have  
16 civic space and all these things that are planned as the 20  
17 years progress, that we need connections through that and  
18 that the plan is saying okay, there are people that live all  
19 around, in addition to people who live in the core, people  
20 who live around the core on the outside of the core and they  
21 need to get, be able to get to these wonderful amenities in  
22 Downtown Wheaton and one of those ways to do it is through  
23 the mall from our neighborhood. I'm not sure I answered  
24 that question. Did I?  
25 MS. ROSENFELD: You did.

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1 MS. SAVAGE: Sort of?  
2 MS. ROSENFELD: Thank you. Ms. Savage, do you  
3 recall if there is a graphic in the sector plan that shows  
4 pedestrian connections through, around the mall parcel?  
5 MS. SAVAGE: As opposed to bikeways.  
6 MS. ROSENFELD: Yes.  
7 MS. SAVAGE: You're talking about just pedestrian  
8 walkways.  
9 MS. ROSENFELD: I apologize, Mr. Grossman. I  
10 thought I had that page.  
11 MS. SAVAGE: It's not where you think it is.  
12 MR. GROSSMAN: How do you know?  
13 MS. SAVAGE: Because I keep looking. Hm. Well,  
14 other than that connectivity page --  
15 MS. ROSENFELD: Ah, yes. Never mind. I found it.  
16 Page --  
17 MS. SAVAGE: Where?  
18 MS. ROSENFELD: Page 61, please.  
19 MS. SAVAGE: Oh. Oh, right, right, right. Sorry.  
20 Yes. Thank you. Skipped it.  
21 MS. ROSENFELD: On page 61, do you see any, any  
22 information that would suggest master plan recommendations  
23 that there be pedestrian connections into the Westfield Mall  
24 parcel?  
25 MS. SAVAGE: Um, yes. I see some that are listed

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1 as already existing and from Kensington Heights, those green  
2 little, I don't know --  
3 MR. GROSSMAN: The solid green.  
4 MS. SAVAGE: Solid green things, and there's a  
5 proposed one also. I believe at the end of Peregoy in the  
6 southwest corner of the mall, connected to the southwest  
7 corner of the mall. The other one, two, three already  
8 exist.  
9 MS. ROSENFELD: And when Mr. Goecke asked you  
10 about the pedestrian pathway that's proposed around the Ring  
11 Road around the southern edge of the mall parcel, in, are  
12 you aware of the fact that there is a wall as well proposed  
13 with the proposed gas station?  
14 MS. SAVAGE: yes.  
15 MS. ROSENFELD: And do you have an opinion as to  
16 whether or not that wall would enhance or impede pedestrian  
17 connectivity?  
18 MS. SAVAGE: Well, it would certainly focus  
19 connectivity into where -- I assume there are going to be  
20 some openings. Otherwise, if there are no openings, there's  
21 totally no connectivity so just common sense leads me to  
22 believe that there must be some openings in those walls.  
23 MR. GROSSMAN: Well, it depends on how long the  
24 wall is.  
25 MS. SAVAGE: That's a good point.

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1 MR. GROSSMAN: I don't know that the wall that's  
2 proposed impedes any of the openings suggested on the map on  
3 page 61.  
4 MS. SAVAGE: Well, it would, it would impede the  
5 proposed one but not, I don't think it would impede the  
6 current ones but that proposed, that dotted proposed  
7 pedestrian connection.  
8 MR. GROSSMAN: Mr. Goecke, do you -- I don't  
9 recall. Does the planned wall go, come as far west as the  
10 planned pedestrian connection?  
11 MS. SAVAGE: It goes up.  
12 MS. HARRIS: In the right, in the corner?  
13 MR. GROSSMAN: Yes.  
14 MS. HARRIS: Well, the thing about that proposed  
15 plan is two things. One is I think Mr. Duke testified  
16 because of the steep slope --  
17 MR. GROSSMAN: Yes.  
18 MS. HARRIS: -- it wouldn't go straight as  
19 indicated. It would need to meander because of the slope,  
20 and it would likely end about where the wall ends on that  
21 left side.  
22 MR. GROSSMAN: So to answer my question, are you  
23 saying that the wall would or would not impede on the  
24 proposed pedestrian path that's dotted, the dotted line.  
25 MS. SAVAGE: It sort of does.

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1 MR. BRANN: It, it would not. It doesn't --  
2 MS. ROSENFELD: Looking at Exhibit 230, could you,  
3 Mr. Brann, could you identify where the wall begins?  
4 MR. BRANN: Sure. The wall starts approximately  
5 at the end of the loading dock wall right here and it  
6 continues westward along the Ring Road towards the southern  
7 corner. Then it heads north up to approximately the  
8 property line of the last residential property.  
9 MR. GROSSMAN: Okay.  
10 MR. BRANN: Approximately this area right here.  
11 And because of the steep slope in this area, to provide a  
12 handicap accessible pathway --  
13 MR. GROSSMAN: Right.  
14 MR. BRANN: -- it would simply require around --  
15 MR. GROSSMAN: And when you say this area, you're  
16 talking --  
17 MS. HARRIS: Peregoy Drive.  
18 MR. BRANN: From Peregoy Drive north.  
19 MR. GROSSMAN: Okay.  
20 MR. BRANN: So it would -- basically, the two  
21 would sort of work together as far as providing the  
22 necessary buffers and providing access for the, for handicap  
23 accessible.  
24 MR. GROSSMAN: All right. And would it, would the  
25 wall block the pedestrian access that is planned for at, is

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1 it Mt. McComas?  
2 MS. ROSENFELD: Mt. McComas, yes.  
3 MR. BRANN: Again, no. Part of, part of what will  
4 happen with this development is a lot of this fill that's in  
5 here will go ahead.  
6 MR. GROSSMAN: Yes.  
7 MR. BRANN: So again, you'll have a handicap  
8 accessibility issue but right now, it's proposed for the  
9 eastern edge of the mountain from this property which would  
10 basically coincide with the eastern end of the wall.  
11 MR. GROSSMAN: Okay. The answer is that it would  
12 not impede the access.  
13 MR. BRANN: It would not. In a rather long drawn  
14 out way, it would not.  
15 MR. GROSSMAN: Detailed, not long and drawn out.  
16 Okay.  
17 MS. ROSENFELD: Ms. Savage, Mr. Goecke asked you,  
18 I think, are all of, are auto-centric uses common in the C-2  
19 zone, and one example that he gave was an auto parts and  
20 tire supply store. Based on your experience, is one  
21 obligated to drive to an auto parts and tire supply store to  
22 shop there?  
23 MS. SAVAGE: No. In fact, I mean, you could go  
24 pick up a spark plug or some other smaller thing, even an  
25 AM/FM radio or some other smaller part that isn't working in

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1 your car, you would, you could walk to that certainly and  
2 pick up. You know, a tire, probably not.  
3 MR. GROSSMAN: You could roll with that.  
4 MS. SAVAGE: You could. Technically, you could.  
5 That's true.  
6 MS. ROSENFELD: And do you know if an auto parts  
7 and tire supply store requires a special exception in the C-  
8 2 zone?  
9 MS. SAVAGE: My understanding is not but I'm not  
10 100, that it does not require a special --  
11 MS. ROSENFELD: So if it did not need a special  
12 exception, is there a requirement that it, that there be a  
13 finding of conformance to the sector plan before a building  
14 permit could be issued that use?  
15 MS. SAVAGE: I guess not.  
16 MR. GROSSMAN: I don't know if that was the point  
17 that he was getting at but it's okay.  
18 MS. ROSENFELD: Turning to Exhibit 467, Division  
19 4.6. I'll call it the straw vote. No, the Council draft of  
20 the Zoning Ordinance rewrite.  
21 MS. SAVAGE: Right.  
22 MS. ROSENFELD: Under Section 4.6.1, intent  
23 statements, A, general, it says residential uses are  
24 generally limited to 30 percent of the total gross floor  
25 area on the subject site. Do you know the overall acreage

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1 of the Wheaton Mall?  
2 MS. SAVAGE: It's 70 something, 75, 6 acres.  
3 Something like that  
4 MS. ROSENFELD: And so approximately a third of  
5 that subject site would be, in terms of acreage?  
6 MR. GROSSMAN: Would be what? That's not a -- you  
7 didn't finish the question.  
8 MS. ROSENFELD: That's would be what?  
9 MR. GROSSMAN: Well, no. You're asking the  
10 question.  
11 MS. SAVAGE: One-third would be approximately 25  
12 acres.  
13 MS. ROSENFELD: So there could be substantial  
14 potential for residential uses on the Wheaton Mall property,  
15 is that correct, substantial square footage?  
16 MS. SAVAGE: Yes.  
17 MR. GROSSMAN: You mean if the GR zone is  
18 approved?  
19 MS. ROSENFELD: If the GR zone is approved. And  
20 on that same exhibit, 467, under B, Mr. Goecke mentioned the  
21 second sentence under subparagraph 1, the GR zone provides  
22 development opportunities adjacent to the county's most  
23 auto-dominated corridors and those areas with few  
24 alternative mobility options. What do you understand an  
25 auto-dominated corridor to be?

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1 MS. SAVAGE: To me, that would mean something like  
2 Georgia Avenue and anything on, directly on either side of  
3 Georgia Avenue, or Views Mill and anything on either side.  
4 Pretty, pretty narrow. That's my understanding. Pretty  
5 narrow definition of that.  
6 MS. ROSENFELD: Okay. And so would you consider  
7 the area of the mall, the southern end of the mall, to be  
8 adjacent to one of those auto-dominant corridors?  
9 MS. SAVAGE: Adjacent, no.  
10 MS. ROSENFELD: Mr. Goecke also had mentioned  
11 legislation that had been introduced and you, you spoke to  
12 that. I'm not certain which legislation you were, you were  
13 referring to. You said it wasn't adopted entirely to your  
14 satisfaction. Could you explain what that legislation was  
15 and if there was any other legislation associated with this  
16 site? The County Council legislation.  
17 MS. SAVAGE: Oh, yeah. Okay. So just the second  
18 half of that, not the first. You want me to tell you again  
19 which -- okay. Sorry. I think --  
20 MR. GROSSMAN: You said you tried to --  
21 MS. SAVAGE: There's two parts of that section.  
22 MS. ROSENFELD: No, no. Oh, no, no, no. I --  
23 MS. SAVAGE: Two parts of that. Okay.  
24 MS. ROSENFELD: I'm not talking about the GR zone.  
25 MS. SAVAGE: Okay. So --

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1 MS. ROSENFELD: My --  
2 MS. SAVAGE: Okay. Other legislation associated  
3 with the site, yes. When Costco first announced on February  
4 4th, 2010, yes, I remember the date, officially announced to  
5 our neighborhood that they were coming, and Westfield was  
6 there at that announcement, they also said that they wanted  
7 to bring a gas station with them and what Costco ended up  
8 doing is basically saying to the county --  
9 MR. GROSSMAN: She's asking you about what  
10 legislation you talked about. Just what legislation.  
11 MS. SAVAGE: It's a zoning -- okay. I'll tell you  
12 the whole story. It was a zoning text amendment, I believe  
13 the number was 10-04, that would have exempted this Costco  
14 gas station from going through the special exception  
15 process.  
16 MS. ROSENFELD: And was that legislation  
17 successful?  
18 MS. SAVAGE: It was not. We beat it down.  
19 MS. ROSENFELD: Turning your attention for the  
20 moment to Exhibit No. 464B, and I'd like to refer you to the  
21 same page, three from the back of the document, that Mr.  
22 Goecke questioned you about.  
23 MS. SAVAGE: One, two, three. Okay.  
24 MS. ROSENFELD: Does this graphic show the prior  
25 proposed location of the gas station?

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1 MS. SAVAGE: Um, yes. It does.  
2 MS. ROSENFELD: And was the current sector plan,  
3 the January 2012 sector plan in effect at the time that the  
4 prior special exception was introduced?  
5 MS. SAVAGE: It was not. We were under the prior  
6 sector plan which was dated 1990.  
7 MS. ROSENFELD: And in your opinion, if this  
8 proposed gas station were introduced under the current  
9 sector plan, would it conform to the recommendations of the  
10 current sector plan?  
11 MS. SAVAGE: It would not only not conform to that  
12 but also, another little piece of legislation that I forgot  
13 to mention, um, that required that large gas stations  
14 defined as selling 3.6 million gallons or more per year must  
15 be at least 300 feet from outdoor recreation and schools,  
16 and that was also I think a ZTA and it had a number but I  
17 don't remember.  
18 MS. ADELMAN: 12-07.  
19 MS. SAVAGE: Twelve something.  
20 MS. ADELMAN: 07.  
21 MS. SAVAGE: 12-07. Thank you. So it would have  
22 been in violation of both of those.  
23 MS. ROSENFELD: Mr. Goecke also asked you about  
24 your opinion as to why in the sector plan the Council may  
25 not have elected to eliminate all special exceptions from

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1 the Wheaton Sector Plan.  
2 MS. SAVAGE: Uh-huh.  
3 MS. ROSENFELD: And I'd like to introduce --  
4 MR. GOECKE: I object. That's not what I asked  
5 her.  
6 MR. GROSSMAN: What did you ask?  
7 MR. GOECKE: I asked her whether they could have  
8 eliminated all special exceptions.  
9 MS. ROSENFELD: Whether they could have.  
10 MR. GOECKE: On the mall site.  
11 MR. GROSSMAN: Okay. She amends her question to  
12 accurately reflect what you asked.  
13 MS. ROSENFELD: I'd like to introduce the current  
14 Zoning Ordinance which includes the C-2 zone.  
15 MR. GROSSMAN: All right. So this is Exhibit 469.  
16 (Exhibit No. 469 was marked  
17 for identification.)  
18 MS. SAVAGE: I actually don't have a copy of that.  
19 MS. ROSENFELD: No, you don't.  
20 MS. SAVAGE: Good, okay. Well, I'll share.  
21 MR. GROSSMAN: She wants you to guess. Which is --  
22 MS. ROSENFELD: Okay. I'll guess. That's fine.  
23 MR. GROSSMAN: -- pages C4-1 through C4-16  
24 regarding commercial zones.  
25 MS. ROSENFELD: And, Ms. Savage, I'm looking at

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1 Section 59-C-4.1, commercial zone, I'm sorry, 4.2, the land  
2 use chart in the Zoning Ordinance. And I have a question  
3 about several of these proposed, these special exception  
4 uses, and my question for you is whether or not they are, in  
5 your opinion, auto-centric.  
6 MS. SAVAGE: Okay.  
7 MS. ROSENFELD: An amateur radio facility.  
8 MS. SAVAGE: No.  
9 MS. ROSENFELD: A cable communication system.  
10 MS. SAVAGE: No.  
11 MS. ROSENFELD: A telecommunications facility.  
12 MS. SAVAGE: No.  
13 MS. ROSENFELD: A domiciliary care home for more  
14 than 16 residents.  
15 MS. SAVAGE: No.  
16 MS. ROSENFELD: A nursing home.  
17 MS. SAVAGE: No.  
18 MR. GROSSMAN: I don't know. Those last two could  
19 be auto-centric or not. If your point is that there are  
20 uses, special exception uses in commercial zones that don't  
21 necessarily require autos, I don't think that's going to be  
22 disputed.  
23 MS. ROSENFELD: Okay. I'm happy to hear that.  
24 The, my --  
25 MR. GROSSMAN: I mean, that doesn't mean that

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1 autos couldn't be used.  
2 MS. SAVAGE: Right.  
3 MS. ROSENFELD: I appreciate that. And with  
4 respect to other potential special exception uses, in your  
5 opinion, would these types of uses be characterized as  
6 residential, and these are special exception uses that are  
7 permitted in the C-2 zone.  
8 MS. SAVAGE: Okay.  
9 MS. ROSENFELD: Dwellings.  
10 MS. SAVAGE: Residential, yes.  
11 MS. ROSENFELD: Personal living quarters.  
12 MS. SAVAGE: Yes.  
13 MS. ROSENFELD: A domiciliary care home for more  
14 than 16 residents.  
15 MS. SAVAGE: Yes.  
16 MS. ROSENFELD: Hospitals.  
17 MS. SAVAGE: Yes. Residences? Maybe not.  
18 MR. GROSSMAN: By the way --  
19 MS. SAVAGE: Temporary residences.  
20 MR. GROSSMAN: -- you're missing a page that has a  
21 footnote under dwellings which seems to be, you said  
22 permitted. It says, it has a P and has a footnote 40. Do  
23 you know what that footnote 40 refers to because it's not in  
24 your exhibit?  
25 MS. ROSENFELD: Sure. I can tell you in one

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1 minute. Yes, 40. I will read it into the record and then  
2 submit this to a written copy. Dwellings are permitted in  
3 the C-2 zone in a hotel or motel lawfully existing in the C-  
4 2 zone on October 24, 1972 on a site larger than 1.5 acres  
5 within 1500 feet of a Metro station located in a central  
6 business district provided. The sector plan district --  
7 this is long --  
8 MR. GROSSMAN: All right. So you can stop reading  
9 it out loud.  
10 MS. ROSENFELD: Okay.  
11 MR. GROSSMAN: I call for mercy. So what's your  
12 point, that there may be some residential or quasi-  
13 residential uses that are allowed in the C-2 zone?  
14 MS. ROSENFELD: That's correct. And I would, I  
15 add nursing homes.  
16 MR. GROSSMAN: Under certain specified  
17 circumstances.  
18 MS. SAVAGE: Right.  
19 MS. ROSENFELD: And, yes. My point, I proffer my  
20 point here is that simply because a substantial part of the  
21 mall parcel remains C-2 does not mean that residential uses  
22 could not be built on the property.  
23 MS. HARRIS: Mr. Grossman?  
24 MR. GROSSMAN: Yes.  
25 MS. HARRIS: Well, I'd like to object to that as a

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1 mischaracterization of this requirement which I know very  
2 well since I was the drafter of it and --  
3 MR. GROSSMAN: You plead guilty?  
4 MS. HARRIS: I do.  
5 MR. GROSSMAN: With an explanation though.  
6 MS. HARRIS: The, because the site does not meet  
7 the requirements of that footnote and therefore, residential  
8 dwellings, per that, would not be permitted on the site.  
9 MR. GROSSMAN: Okay. I mean, all of this is to  
10 say peripheral is to put it blandly. It's just not going to  
11 factor in. Whether or not somebody could argue that some  
12 form of residence is allowed in a C-2 zone in a nursing home  
13 or whatever just is not going to factor into whether or not  
14 I recommend, and I suspect it's not going to factor in to  
15 whether the Board of Appeals approves this special  
16 exception.  
17 MS. ROSENFELD: Mr. Grossman, I have no further  
18 questions.  
19 MR. GROSSMAN: All right.  
20 MS. SAVAGE: May I amend an answer that I gave?  
21 MR. GROSSMAN: Sure.  
22 MS. SAVAGE: It will be short. I promise.  
23 MR. GOECKE: It depends.  
24 MS. SAVAGE: One of the questions that Ms.  
25 Rosenfeld asked me was whether the location of the, the old

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1 location of the gas station would have violated the old 1990  
2 sector plan and my, I said my answer to that was yes. But  
3 my answer to that is actually I don't know or I don't recall  
4 because I haven't looked at that old sector plan for a  
5 really long time. So I don't know, but my other part of my  
6 answer does hold and that is it would have violated ZTA 12-  
7 07.  
8 MR. GROSSMAN: Okay. All right. Any recross?  
9 MR. GOECKE: No.  
10 MR. GROSSMAN: No?  
11 MR. GOECKE: No recross.  
12 MR. GROSSMAN: All right. Well, thank you very  
13 much, Ms. Savage.  
14 MS. SAVAGE: I'm done?  
15 MR. GROSSMAN: You are done subject to being  
16 recalled.  
17 MS. SAVAGE: Okay. I'll be here.  
18 MR. GROSSMAN: I don't anticipate that.  
19 MS. SAVAGE: I'll be here.  
20 MR. GROSSMAN: Let me return --  
21 MS. SAVAGE: Oh --  
22 MR. GROSSMAN: Thank you very much for lending me  
23 that.  
24 MS. SAVAGE: Sure.  
25 MR. GROSSMAN: All right. So I think we're plum

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1 out of witnesses for the rest of today but as I said, the  
2 parties can take an opportunity here to discuss questions of  
3 agreed upon conditions and whatever. That's not mandatory  
4 that you do that now obviously but it may be an opportunity  
5 to do it while you're all sitting around a table. And we  
6 will then, once again, we will resume on October 3 at 9:30  
7 a.m.  
8 MS. ADELMAN: March. March, March.  
9 MR. GROSSMAN: Yes. I said October, didn't I?  
10 MS. ADELMAN: Yes.  
11 MS. SAVAGE: You did.  
12 MR. GROSSMAN: It was --  
13 MR. SULLIVAN: Wishful thinking.  
14 MS. SAVAGE: And by then --  
15 MR. GROSSMAN: It was Michele's fault.  
16 MS. SAVAGE: -- the new zoning map will be  
17 available.  
18 MR. GROSSMAN: She's got me really confused today.  
19 All right. Let me restate that. This hearing will resume  
20 on March 3, 2014 in this room, second floor hearing room, in  
21 the Council Office Building at 9:30 a.m., March 3, 2014.  
22 Anything, any further business?  
23 MS. HARRIS: Just to be clear, that will be the  
24 commencement of our rebuttal case with Mr. Sullivan on the  
25 3rd, and Mr. Guckert will not be available until the --

1 MR. GROSSMAN: 11th.  
2 MS. HARRIS: -- 11th.  
3 MR. GROSSMAN: And I guess those are the only  
4 witnesses that we have --  
5 MR. GOECKE: Remaining.  
6 MR. GROSSMAN: -- left on our agenda.  
7 MR. GOECKE: That's right.  
8 MS. ROSENFELD: Unless there are other rebuttal  
9 witnesses that we're not aware of.  
10 MR. GROSSMAN: They said that, you weren't here I  
11 don't think yesterday and they said there are only two that  
12 they were planning on, Mr. Sullivan and Mr. Guckert. Okay.  
13 Then we are adjourned until March 3. Not October 3, March  
14 3.

15 (Whereupon, at 3:26 p.m., the hearing was  
16 concluded.)

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C E R T I F I C A T E

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

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

By:

Josephine Hayes, Transcriber

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